

**JUAN CO, BY MARTIN M. LEVERING, HIS CURATOR AD LITEM,
PLAINTIFF AND APPELLANT, VS. JAMES J. RAFFERTY, COLLECTOR
OF CUSTOMS, DEFENDANT AND APPELLEE.**

G.R. No. 4602. October 04, 1909

Ponente: MORELAND, J.

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MORELAND, J.:

On or about the 18th day of February, 1905, Juan Co, the plaintiff in this action, arrived on board a vessel in the harbor of Cebu direct from China and sought to land. Disembarkation was refused by the customs authorities on the ground that he was a subject of China and as such was not entitled to enter the Philippine Islands. He alleged that he was 17 years of age and a native of the Philippine Islands; that he was the illegitimate son of a Filipino woman and of a Chinese merchant, both residents of Cebu at the time of his birth; that he was taken to China by his father when he was 6 or 7 years of age; and that his father had not since that time returned to the Philippine Islands, but had remained continuously in China; that, on arriving at an age where he could care for himself, he had left his father in China and returned to the Philippine Islands, desiring to resume a residence in the country where he was born. These claims of the plaintiff were duly and personally investigated by the defendant in the case, who was then, as now, collector of customs of the city of Cebu. At hearings appointed for the purpose the defendant heard the declarations and the testimony of the plaintiff, of his alleged mother, and of all other witnesses whom the plaintiff desired to produce in favor of his contentions. Thereafter the defendant appointed a commission to investigate the allegations of the plaintiff as to his right to land and his claim to citizenship in the Philippine Islands. That commission heard the proofs and declarations by the plaintiff, and of his alleged mother and all other witnesses whom the plaintiff desired to produce, and, after having carefully investigated the merits of the case, rendered a decision in which they found that the contentions of the plaintiff were not sustained and that he was not entitled to land in the Philippine Islands.

A careful investigation of the record in this case discloses that the plaintiff has not been deprived of any opportunity to present such proofs as he desired and has been denied no privilege which the law confers. He was given every opportunity to protect his rights. A fair and impartial hearing was given him in the manner prescribed by law, and, after due deliberation upon the part of those authorities, based upon the proofs of the case, it was found as a fact that the plaintiff was not born in the Philippine Islands, but was born in China, and that he had no right to be admitted into the Philippine Islands. The proceedings referred to were duly transmitted to the defendant by the commission, and he, after having personally investigated the matter himself, approved the findings of the commission and ordered the deportation of the plaintiff. After having been passed upon by the defendant, the matter, with all the record, was transmitted to the Collector of Customs for the Philippine Islands, who, after a careful review of the whole case, in a written opinion, approved the action of the defendant and of the commission appointed by him. Later the matter was presented, at the request of the plaintiff, to the Secretary of Finance and Justice, who, after a careful review of the whole proceedings, approved the same.

While the proceedings above mentioned were being carried on, the plaintiff was permitted to land in the city of

Cebu upon giving a bond conditioned that he would hold himself ready for deportation if it should finally be determined that he was not entitled to land. While enjoying the privileges thus given to him in the city of Cebu, the plaintiff on or about the 27th day of February, 1905, caused proceedings to be instituted in the Court of First Instance of the city of Cebu having for their object the adoption of the plaintiff by a Chinese resident of the city of Cebu named Co Kip Jat. Such proceedings were carried to a successful issue and the plaintiff was on said date duly adopted as a son of the said Co Kip Jat pursuant to the laws of the Philippine Islands, under which said proceedings were brought.

The claims of the plaintiff as to his right to land having been defeated by the decision of the customs authorities above referred to, the plaintiff, by his attorney, Martin M. Levering, on or about the 28th day of February, 1907, instituted the action at bar, in which the plaintiff asked that the court decree an order of perpetual prohibition preventing the defendant from deporting the plaintiff from the Philippine Islands. He alleges two grounds as the basis of such action:

First. That the plaintiff was born in the city of Cebu of a Chinese father and a Filipino mother and that he was a natural-born citizen of the Philippine Islands.

Second. That having been duly adopted as a son of Co Kip Jat in the proceedings above referred to, he, upon the successful termination of those proceedings, became a citizen of the Philippine Islands and had the right to remain therein.

That action was brought to trial before the Court of First Instance of the city of Cebu on the 20th day of April, 1907. Substantially the same evidence was produced by the plaintiff in this case as was produced by him before the collector of customs and his commission above referred to. The only substantial difference was the testimony relative to the adoption of the plaintiff by Co Kip Jat. At the conclusion of the trial the court rendered a decision adverse to the plaintiff's claim. From that judgment the plaintiff appealed to this court.

As to the claim of the plaintiff that he has a right in the Philippine Islands because of his having been born here under the circumstances above set forth, it must be, and is, denied. That question has been settled adversely to plaintiff's claim by the Supreme Court of the United States and by the Supreme Court of the Philippine Islands. In the case of *Ngo-Ti vs. W. Morgan Shuster, Collector of Customs* (7 Phil. Rep., 355), the court, in discussing the precise question presented here, says (p. 358):

"The principal and important question, whether the decision of the administrative officers is final or not upon question of citizenship has, we think, been decided in the case of the *United States vs. Ju-Toy* (198 U. S., 253). In that case the court said:

" 'It is established, as we have said, that the act purports to make the decision of the Department final, whatever the ground on which the right to enter the country is claimed, as well when it is citizenship as when it is domicile, and the belonging to a class excepted from the exclusion acts. * * * If, for the purpose of argument, we assume that the fifth amendment applies to him, and that to deny entrance to a citizen is to deprive him of liberty, we, nevertheless, are of opinion that with regard to him due process of law does not require judicial trial.'

"In the case of *Pearson vs. Williams* (202 U. S., 281), the court said at page 286 :

" 'But the matter which was before the mind of Congress presumably was that which had been before it on the former occasion, which had been the subject of judicial discussion (*Lem Moon Sing vs. United States*, 105 U. S., 538; *Fok Yung Yo vs. United States*, 185 U. S., 296), and which was not quite disposed of until the last term of this court. (*United States vs. Ju-Toy*, 198 U. S., 253.)'

"According to this judgment, the decision of the administrative officers upon the question of citizenship is final

where no abuse of authority of any kind on their part is alleged. There is no allegation of that character in this case."

While an abuse of discretion and authority upon the part of the customs officials in the proceedings referred to is alleged by the plaintiff, no proof sustaining that allegation appears in the record. There is not a scintilla of evidence indicating that the customs officials in any way abused their authority or discretion.

As to the other contention of the plaintiff, viz, that, having been adopted by a person domiciled in the Philippine Islands, he himself thereupon became a citizen of the Philippine Islands in the sense that he was not subject to deportation but had a perfect right to remain here regardless of the conditions upon which he was allowed to land, I am of the opinion that that claim must also be disallowed. The status and right of the plaintiff to enter the Philippine Islands under the circumstances of this case are to be determined as of the time when he presented himself for entry and not by events that subsequently transpired. (U. S. vs. Ju-Toy, 198 U. S., 253, 263.) If he was not entitled to land in the Philippine Islands of right at the time he was admitted under bond, he could not while in them under that bond do anything which would render valid and unconditional his original entry.

For the reasons above expressed, the judgment of the lower court must be, and hereby is, affirmed, with costs against the appellant.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.

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