

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. SY QUIAT, DEFENDANT AND APPELLEE.

G.R. No. 4839. February 01, 1909

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal taken by the United States from a judgment of the Court of First instance of Manila, discharging Sy Quiat, the defendant and appellee, from custody. The proceedings were had under and by virtue of the provisions of Act No. 702 of the Philippine Commission, upon a sworn complaint alleging that the defendant is a Chinese laborer, that he was found in the city of Manila on January 23, 1908, that at that time he did not have in his possession the certificate of residence prescribed for such persons in the above-mentioned Act, and that he never has acquired such certificate.

The trial court found that:

"Sy Quiat was born in Amoy, China, and had been in the Philippine Islands since 1889; that he is now and has been for some years last past a joint owner with his partner in a store located on Calle Aceiteros in the city of Manila; that the license for the business is in the name of Cliua Chui, but that the partnership papers are in the name of Chua Chui and Sy Quiat, and that Sy Quiat is not a Chinese laborer."

To this judgment and to the order overruling a motion for a new trial plaintiff excepted, and the case is now submitted to this court on plaintiff's bill of exceptions to which no objection has been made either as to form or content.

In the opinion in the case of the United States vs. Lim Co[1] (No. 4838), just decided, we quoted at length all the pertinent provisions of the Act of Congress of April 29, 1902, and of the Act of the Commission Numbered 702, which are applicable to the facts proven in this case; they are therefore omitted from this opinion to avoid unnecessary repetition.

It will be seen that under the provisions of section 5 of Act No. 702, every Chinese person found without the prescribed certificate after the expiration of the time limited by law for registration, is presumed, in the absence of satisfactory proof to the contrary, to be a Chinese laborer, and is subject to deportation, as provided in the Act; in other words, in proceedings looking to the deportation of Chinese persons under the provisions of this section, the burden of proof rests upon the defendant to show that he is not a Chinese laborer.

Similar provisions in the Chinese Exclusion Act of May 5, 1892 (27 Stat. at L., 25), have been held valid. (*Low Foon Yin vs. U. S. Commissioner of Immigration*, 145 Fed. Rep., 791; see also *U. S. vs. Lung Hong*, 105 Fed. Rep., 188; *U. S. vs. Sing Lee*, 125 Fed. Rep., 627; *U. S. vs. Yee Gee You*, 152 Fed. Rep., 157-159.) And it has been held that proceedings brought under the Chinese Exclusion Act for the deportation of a Chinese person are civil and not criminal (*In re Lam Jung Sing*, 150 Fed. Rep., 608); and that the facts constituting the defense in such cases are peculiarly within the knowledge of the party charged, and the burden of proof is naturally placed upon him. (*In re Sing Lee* and *In re Ching Jo*, 54 Fed. Rep., 334.) Reference to these cases appears to furnish a

sufficient answer to contentions based upon the constitutionality of the provisions of the Act in this regard.

Defendant and appellee does not deny that he is a Chinese person or that he was found, as alleged in the complaint, in the city of Manila, on the 23d day of January, 1908, without the certificate prescribed in the above-cited provisions of law for persons of his race and citizenship; but he denies that he is a Chinese laborer, alleging that he is a merchant and that he is now and has been ever since the passage of the Act lawfully in the Philippine Islands, but that he was unable, by reason of sickness and other unavoidable causes, to procure a certificate within the time prescribed by law.

The evidence introduced at the trial in support of defendant's allegations consists of the testimony of the defendant himself, and of the witnesses Chua Chui, Vicente Upo Enriquez, and Andres Setente.

Defendant swore that he was the owner of a cigar store and a sari-sari store, both situated at No. 204 Calle Aceiteros, in the city of Manila; that these stores were conducted in the name of Chua Ohui; that they were not conducted in his own name, because that is the practice with many Chinese, and because one Chinaman has to stay in the store while the other goes to the provinces to sell goods; that he sells at wholesale and retail; that he values the store at P4,000; that one-half of the business belongs to Chua Chui and one-half to himself; that the license under which they do business is in the name of Chua Chui; that he has debts due and owing to the amount of about P500; that he was born at Amoy, China, and is 37 years of age; that he has been in the Philippine Islands since the year 1889; that after his arrival he went first to the Divisoria Market, but had no business there, as he was only waiting for a steamer; that he stayed there about six months, and then went to Marinduque, where he lived for six years and a half with his father who had a store there; that about six years ago he went to Calauan, Laguna, where he stayed about six months; that during the time of the registration of Chinese in the Islands he was in the hospital suffering from a bullet wound with which he was laid up for twenty-two months; that he was prevented from getting his registration certificate on account of his wound, and that when he recovered in 1905 "they were not issuing any more certificates;" that before he was wounded "they did not have any certificates;" that he has no certificate of registration and no cedula for this year because, since he has no certificate, he can not obtain a cedula.

Chua Chui, a Chinese witness, testified that he lives at No. 204 Calle Aceiteros, where he has a tienda in which he sells tobacco, cigarettes, and sari-sari; that Sy Quiat, the defendant, is his partner, and that they sell at wholesale and sometimes at retail; that the value of the business is about P4,000; that he keeps a set of Chinese books; that "it is mentioned in the books, the partnership of two men Sy Quiat and the witness; that if required he could bring the books into court; that the store is in the name of the witness (Chua Chui), and is conducted in his name, and that the license for the store is in his name; that he has a cedula as a merchant and has a merchant's certificate.

Vicente Upo Enriquez, a native witness for the defendant, testified that he is a practicante (unlicensed physician) and has known Sy Quiat since December, 1903; that he assisted him for a month until he was entirely recovered, after leaving the hospital and coming to Manila; that Sy Quiat has a tienda at No. 204 Calle Aceiteros; that it is worth P4,000; that he sells canned goods, matches, paper, onions, and various kinds of Chinese foods; that they sell cigars and tobacco but in a separate store from the sari-sari store, although the stores have the same door; that he has seen Sy Quiat acting as representative looking after the store; that he does not know whether Sy Quiat is a partner or an employee of the store.

Andres Setente, also a native witness, testified that he lives at Calle Ylaya and sells firewood, which he brings from Mariveles and peddles around the streets to the Chinese; that he has known Sy Quiat since 1896, when the witness belonged to the police force; that at that time Sy Quiat had a tienda at Santo Cristo; that he now has a tienda where he sells tobacco, cigarettes, and sari-sari; that he asked the defendant if he had a store, and that he

told him that he had a partner who is a merchant and has a merchant's certificate.

We do not think that this evidence constitutes "satisfactory proof" of the fact that the defendant is a "merchant" in the sense in which that term is employed in Act No. 702. Section 12 of that Act, which is taken from section 2 of the Act of Congress of 1893, amending the Act of May 5, 1892, entitled "An Act to prohibit the coming of Chinese into the United States," provides as follows:

"The word 'laborer' or 'laborers' wherever used in this Act shall be construed to mean both skilled and unskilled manual laborers, including Chinese laundry men and Chinese employed in mining, fishing, huckstering, peddling, or taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

"The term 'merchant' as employed in this Act signifies a person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor except such as is necessary in the conduct of his business as such merchant. The definition of 'laborer' and 'merchant' set out in this section shall receive the same construction as that given to it by the Federal courts of the United States and the rulings and regulations of the Treasury Department of the United States."

We think that the finding of the trial court that "the defendant is now and has been for some years last past a joint owner with his partner in a store located on Calle Aceiteros, in the city of Manila" is not satisfactorily proven by the testimony of record, and that there is no competent or admissible evidence in the record in support of the finding that "the partnership papers are in the name of Chua Chui and Sy Quiat."

The evidence with which the defendant undertook to establish his allegation that he has a half interest in the store on Calle Aceiteros is wholly unconvincing and unsatisfactory. It is difficult to believe that in proceedings in the Court of First Instance of Manila, looking to his deportation from the Islands, the defendant, if he were in truth, the owner of a half interest in a store worth P4,000, situated in the city of Manila, could not and would not have offered more satisfactory proof of this fact, for it would appear that the strongest and most convincing evidence in support of such a claim must have been easily available if it had been true. No evidence of any kind appears in the record save only the verbal declaration of the defendant himself and that of his alleged partner. The testimony of Andres Setente, a street peddler of firewood, upon such a question in relation to one of his clients may be wholly disregarded. The only evidence in support of the finding that the partnership papers are in the name of Chua Chui and Sy Quiat was the testimony of the witness Chua Ohui, who stated that "it is mentioned in the books, the partnership of two men," Sy Quiat and the witness. But this testimony was clearly incompetent on the ground that the books themselves were the best evidence as to their contents, and should not have been admitted over the objection of counsel for the United States, which was interposed in due time. We think that the court undoubtedly erred in admitting this testimony and in refusing to accede to the motion of counsel for plaintiff to compel defendant to bring the books into court. The burden of proof resting upon the defendant, it was his duty to offer the books in evidence, if he conceived that they were or could sustain any of his material allegations, and his failure so to do, after plaintiff called for their production, justifies the presumption that, if introduced in evidence, they would not have tended to sustain his allegations.

But even were it possible to regard these findings as satisfactorily proven by the testimony of record, such findings and the evidence on which they rest are clearly insufficient to sustain the ultimate conclusion of fact by the trial court that Sy Quiat is a "merchant" and not a "Chinese laborer," in the sense in which those words are used in the Act. Both the defendant and his alleged partner testified that the stores at No. 204 Calle Aceiteros were conducted in the name of Chua Chui, and not in the name of the defendant, and that the license therefor was also in the name of Chua Chui. The term "merchant," as defined in the Act, is limited to a person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, and the defendant

having wholly failed to prove that he is engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, must be presumed under section 5 to be a Chinese laborer, and subject to deportation as provided in section 4, since it is not denied that he is a Chinese person found without the prescribed certificate within the Philippine Islands after the expiration of the time limited by law for registration.

We are satisfied that the meaning which we have given to the words "Chinese laborer" and "Chinese merchant" as used in the Act of the Commission is in conformity with the express provisions of the Act itself; and it will be found that a similar meaning has been given these words as used in the Chinese Exclusion Acts of the Congress of the United States by the Federal courts of the United States and the rulings and regulations of the Treasury Department, which, by the express provisions of section 12 of the Act, are made authoritative guides as to the definition which should be given these terms in this jurisdiction.

In the case of the U. S. vs. Chung Ki Foon (83 Fed. Rep., 143, 144), it was held that "Chinese laborers," as used in the Act of November 3, 1803 (c. 14, sec. 1, 28 Stat. 7, U. S. Comp. St., 1901, p. 1322), relating to certificates of residence, "refer not only to those actually engaged in manual labor at the date of the passage of that Act, but were intended to include all Chinese persons dependent upon their manual labor as a means of securing an honest livelihood and self-support, and those who are not 'officers, teachers, students, merchants, or travelers for curiosity,' within the meaning of the treaty of November 17, 1880, between the United States and China."

In the case of U. S. vs. Pin Kwan (100 Fed. Rep., 609) it was held that proof "that a Chinese person, since he came to the United States, has been assisting in the business of a mercantile company, keeping the books and selling the goods, and that lie has an interest in the stock of goods of such company, is insufficient to establish his status as a merchant within the statute."

In the case of U. S. vs. Chung Ki Foon (83 Fed. Rep., 143, 144) it was held that "the words, 'Chinese laborers,' in the Act of November 3, 1893 (28 Stat. 7, sec. 1), amending the Act of May 5, 1892 (27 Stat. 25, sec. 6), and relating to certificates of residence, included a Chinaman engaged in the business of keeping a restaurant and lodging house, and all Chinese persons dependent upon their labor for support whether actually employed as laborers or not."

In the case of the U. S. vs. Quan Gin (61 Fed. Rep., 395) it was held that under the statute not only must the business be conducted in the Chinese person's own name, but that a Chinese person seeking admission upon the ground that he was a returning merchant must be excluded where it appears that the business was conducted under a firm name of which his own name was no part. In that case there was evidence that the defendant was a partner and that Chinese persons do not in general conduct business in individual or partnership names, but the court said (p. 397):

"It is contended, in opposition to this view of the law, that such an interpretation will exclude nearly every Chinese merchant seeking to enter the United States, since, as before stated, it is claimed that Chinese merchants do not, as a rule, conduct their business affairs in individual or partnership names. This may be so, but if it is so, it is a consideration to be addressed to the lawmaking power and not to the court"

And referring to an opinion of the Attorney-General of the United States, dated April 6, 1904, the court further said:

"The Attorney-General gives a most convincing reason for his interpretation of the statute. He says:

"This requirement that a merchant must conduct a business in his own name can have but one purpose, to wit, that he who is a merchant in fact shall also be known to be such by the parties with whom he deals and by the public generally. That purpose could readily be defeated if it were possible to conceal his identity by trading under an assumed name, or under the disguise of a "Co."

"When it is considered how easy it is for a Chinese person seeking admission into the United States to claim a small interest in the business of buying and selling merchandise, it is evident that the statute has been wisely framed to prevent the admission of Chinese persons into the United States upon the fictitious and fraudulent claim that they are merchants. In my opinion, therefore, when an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in business in this country as a merchant, he must, before being admitted, establish by the testimony of two credible witnesses, other than Chinese, among other things, that he conducted the business in which he was engaged, either in his own name, or in a firm name of which his own is a part."

The Department of Commerce and Labor of the United States (to which by act of Congress the final decision of administrative appeals from rulings of immigration officers has been transferred from the Treasury Department) ruled on May 18, 1904, as follows:

"Another and more important reason exists, however, for the denial of the appellant, to wit: According to his own sworn statement, the Canton firm in which he claims membership is engaged in the manufacture of 'black-wood furniture,' a circumstance which removes him from the mercantile class as contemplated by the Chinese Exclusion Law. Upon this point see Department decision of December 7, 1903 (No. 10723-C), and December 14, 1903 (No. 9774-C), in the last mentioned of which the following passage is quoted from the decision rendered February 18, 1895, in the Lai Moy case, by the United States Circuit Court of Appeals, ninth circuit (66 F. R. 955) :

"The designation "merchant" does not include, comprehensively, all who are not laborers, but strictly "a person (to quote the Act) engaged in buying and selling merchandise." To fabricate merchandise as appellant did, is not to buy and sell it. Nor may both be done, for the "merchant" may not (again to quote the Act) "engage in the performance of any manual labor except such as is necessary in the conduct of his business as such merchant;" that is, in buying and selling merchandise; and the manual labor which is precluded is skilled as well as unskilled."

It appearing that the defendant is not a "merchant" within the meaning of that term as used in the Act, and that he is a Chinese laborer, and that he has neglected, failed, or refused to register under the provision of the Act of Congress of April 29, 1902, and the provisions and regulations enacted pursuant thereto by the Philippine Commission in Act No. 702, it was the duty of the trial court to order his deportation from the Philippine Islands, and the judgment of that court discharging him from custody is, therefore, reversed without costs in this instance.

In twenty days judgment will be entered reversing the judgment of the trial court and ten days thereafter the record will be returned to the court wherein it originated, where judgment will be entered in conformity herewith. So ordered.

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

[1] Page 703, post.

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