

## THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. TAN SAM TAO, DEFENDANT AND APPELLEE.

*G.R. No. 5673. March 21, 1910*

Ponente: CARSON, J.

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### CARSON, J.:

In this case, which appears to be in the nature of a test case, there is no contention as to the facts, which are definitely and comprehensively stipulated, and the only question submitted for our consideration is whether, under the facts thus stipulated, defendant and appellee, who is a Chinese person, apprehended under the provisions of Act No. 702, is a "merchant" and was a "merchant" during the period of registration prescribed in that Act, as that term is defined therein.

Section 12 of Act No. 702 of the Philippine Commission provides that:

"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."

This definition is taken bodily from the provisions of the Chinese-exclusion laws enacted by Congress which were extended to the island territory of the United States; and the Philippine Commission, upon which was imposed the duty of enforcing the laws thus extended to these Islands, properly refrained from any attempt to modify or to change the requisites of the definition laid down by Congress, and took care to provide that the terms "merchant" and "laborer" as used in the Act should have the same meaning as that given to them by the Federal courts of the United States, thus eliminating any possibility that, influenced by local law, the meaning given these terms should in any wise affect the uniformity of application and administration of the Chinese-exclusion laws in the United States and the Philippines.

The facts as stipulated by counsel are as follows:

- Tan Sam Tao, the defendant, is a Chinaman, 38 years of age, who has been in the Philippines for the past twenty-four years.
- On June 15, 1909, an officer of the Manila customhouse demanded of the said Tan Sam Tao that he exhibit his certificate as a Chinese resident in the Philippines, and the said Tan Sam Tao declined and refused to exhibit it, and in consequence thereof was arrested by the said officer and brought before this court, where the complaint in this case was filed against him requesting the deportation of the said Tan Sam Tao from these Islands.
- The said Tan Sam Tao justifies his sojourn in the Philippines by alleging that he is a merchant, as defined by the Act of Congress for the exclusion of Chinese from the territory of the United States, which claim is disputed by

the officers charged with administration of the provisions of the said Act in the Philippines.

- The said Tan Sam Tao is at the present time, and has been for more than ten years, a member of a firm having a fixed place of business, to wit, No. 27 calle Nueva, Binondo, Manila.

- The said Tan Sam Tao is interested to the extent of P11,100 of the capital of P40,900 invested in the said business among the six members, in the following manner:

Tan Sam Tao..... P11,100

Tan Sara Chian..... 9,500

Tan Se Ken..... 6,600

Tan Bu Ay..... 4,500

Ching Suy Hong..... 5,200

Tan Sam Juan..... 4,000

- The said Tan Sam Tao can prove these facts by two competent witnesses who do not belong to the Chinese race.

- Proof of the existence of the said firm, composed of the six members aforesaid, appears in the articles of incorporation, wherein it is set forth that the defendant is the owner of his share in his own name, and the same facts are to be found in the books of the firm.

- The said business consists of the purchase and sale to the public, by wholesale and retail, of textiles, under the firm name of "Jap Jin," sometimes called "Jap Jin & Co.," which, translated into English, means "United for prosperity."

- The said Tan Sam Tao does not do nor has he done other manual labor than what is or was necessary in the said business to which he devotes himself exclusively.

- Neither the said Tan Sam Tao nor his firm are registered in the Mercantile Register, nor in the Bureau of Internal Revenue, but the license for the said business, issued by the Collector of Internal Revenue, is in the name of one of the other members of the said firm.

- The said business is established and carried on in accordance with the Chinese customs, the articles of incorporation being drawn up and the bookkeeping done in the Chinese language.

From the facts thus stipulated, there can be no doubt that appellee is in fact a merchant, but the question submitted is whether from these facts he can be said to have conducted his business in his own name, so as to bring him under the definition of the term "merchant" as above set out.

This precise question was submitted and decided upon an agreed statement of facts substantially similar to the stipulation of facts above set out, by the Circuit Court of Appeals for the Ninth Circuit (Lee Kan vs. U. S., 10 C. C. A., 669; 15 U. S. App., 516; 62 Fed., 914) in an opinion delivered by Mr. Justice McKenna, then circuit judge, which was cited with approval by the Supreme Court of the United States in the cases of Tom Hong, Tom Dock and Lee Kit vs. U. S. (193 U. S., 517, 518), and in which, as observed by Justice Day in the latter cases, "the subject was so fully considered as to leave little to be added to the discussion."

From this opinion we quote at length:

"To ascertain the meaning of Congress, the purpose of the Act as well as the language must be considered. The provisions of section 2, supra, are amendments to the Act of May 5, 1892, commonly called the 'Geary Act,'

and they and the Act they amend are but steps in legislation to regulate and restrict the coming of Chinese laborers into the United States, and all provisions in regard to other classes are but means to that end. In interpreting that legislation, this purpose has been steadily regarded, as by well-known canons of interpretation it must have been regarded, and the general language of the Acts confined to executing this purpose. (In re Low Yam Chow, 13 Fed., 605.) The sanction of these Acts is the treaty of November, 1880, modifying that of 1868, except the Scott law, which, to its extent, abrogated the treaty; but this also was no exception to the purpose of the legislation, to wit, the exclusion of laborers. Besides, it was expressed in terms so irresistibly clear as to leave interpretation no function. The first article of the treaty of November, 1880, provides that 'the Government of the United States may regulate, limit, or suspend the coming or residence of Chinese laborers to the United States, but may not absolutely prohibit it;' but the treaty also provides 'that the limitation or suspension shall be reasonable, and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitation.' Furthermore, in the second article it is declared that 'Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body or house-hold servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and objects of the most favored nations.' The first Act after this treaty was that of May 6, 1882. It prohibited the coming of Chinese laborers for ten years, and contained provisions to secure the prohibition. Among others, it provided, in section 6, that the identity of 'every Chinese person other than a laborer should be evidenced by a certificate issued under the authority of the Chinese Government.' This Act came up for consideration before Justice Field, in the case of In re Low Yam Chow, supra, and he held that the 'section was evidently designed to facilitate proof by Chinese, other than laborers coming from China, and desiring to enter the United States. \* \* \* It is not required as a means of restricting their coming. To hold that such was its object would be to impute to Congress a purpose to disregard the stipulation of the second article of the new treaty that they should be allowed to go and come of their own free will and accord.' The learned justice also says:

" 'And we will not assume, in the absence of plain language to the contrary, that Congress intended to disregard the obligation of the original treaty of 1868, which remains in full force except as modified by the supplementary treaty of 1880.'

"This case and its language were approved by the United States Supreme Court in Lau Ow Bew vs. U. S. (144 U. S., 59, 12 Sup. Ct., 517), and other cases were there collected and commented on which sustain its principle. There is nothing in the Geary and the McCreary Acts which excludes them from the doctrine of these cases, or in any way includes merchants in the limitations or prohibitions on immigration. That we are right in this case is sustained by the explanation made by Mr. Geary in the House of Representatives when the McCreary bill was under consideration. The provisions of section 2, supra, were not contained in the bill reported by the Committee on Foreign Affairs. They were moved as amendments by Mr. Geary, and in explanation of them he said:

" 'There is one other definition that we think necessary. The treaty permits "merchants" to come into this country. We have no desire to restrict the movements of the mercantile class; but the trouble has been that men pretending to be merchants have asked for admission at New York and other places, have sworn that they had interest in stores established in those communities, have been admitted as merchants, and immediately developed into full-fledged laborers. We merely ask for a definition of the word "merchant" which shall be broad enough to protect every man legitimately engaged in that industry, and narrow enough to prevent the designation being used as an instrument of fraud by a class that we do not desire. This amendment requires every Chinaman asking to be admitted into the United States, and who claims to have formerly resided here, to prove that for at least one year, at some fixed place of business within the Union, he was engaged in buying and selling merchandise. We do not demand that he shall have a dollar's worth of stock, or a thousand dollars' worth; we simply follow the language of the treaty, and demand this protection to our own people.'

"How efficient the amendment is for the purposes declared by Mr. Geary we shall hereafter show. It is incontestable that it was not directed at merchants any more than prior legislation was, or that it was not intended to regulate their methods of business, except so far as necessary to prevent evasions of the Act. It was directed at laborers - to prevent them from assuming a false character. To construe it otherwise is to make merchants its primary objects and subject them to a discrimination and inconvenience within the country to which no other merchants are subjected. It would not only forbid them to do business as it is their custom to do, but to do business as it is the custom of all commercial people to do. It is stipulated in this case that the designation of the firm of which petitioner is a member was selected in accordance with a custom which has prevailed from time immemorial among the Chinese, and expresses a propitious omen, and means, when literally rendered in English, 'everlasting,' 'great,' 'bountiful.' But, as stated by counsel, the custom is not exclusive with Chinese. It prevails with other people, and the Bon Marche of Paris, and the Golden Rule Bazaar of this city were cited, among others, as examples. These designate, as the name Wing Tai Lung designates, a house rather than a firm, and expresses the sentiment and principle which shall govern its dealings. It might be better if the practice were more general. The construction contended for by the Government would not only forbid the Chinese this practice, but forbid them, as we have said, the common practice of this country, and of all commercial countries. The designations of very few business houses contain the names of all of the partners. One or two are usually named, and the others are not named, but only their existence indicated by the addition 'and company.' We can not believe that Congress intended to forbid to Chinese merchants, not only their own customs, but the custom of merchants wherever trading is practiced. But we construe section 2 to mean that the interest of the merchant must be real, and appear in the business and partnership articles in his own name, and not that his name must appear in the firm designation. And this reaches the evil which existed. It was not complained that the firm designation was a cover to deception. According to the stipulation, it could not be in many cases. It contained no name to claim. It was complained that an interest was claimed which stood in a name other than the claimant's, and that the ownership was established by Chinese testimony. Section 2 prevented this, and required name and ownership to go together, and to be established by the testimony of credible witnesses other than Chinese. This view is confirmed by considerations drawn from other sections of the Act. The definition of 'merchant' is general. The provision of section 2 is:

"The term merchant employed herein and in the Acts of which this Act is amendatory shall have the following meaning, and none other.'

"The definition is then given as hereinbefore stated. Section 6 requires all Chinese laborers to register, the penalty of refusal being deportation from the country. All who are not merchants within the requirements of the definition (excluding, of course, certain privileged classes) are laborers; hence the definition applies not only to the merchant who claims to enter the United States, having formerly been here, but to him who stayed and while he stays.

"The interpretation of the Government makes the law forbid him to stay as a merchant and do business as he formerly did, and to what end? That he may be deported? No one desires it. That he may be compelled to register as a laborer? A useless compulsion. And, to accomplish an undesired or useless result, we are asked to attribute to Congress an intention to change the business methods of many people, and to compel them to adopt inconvenient and, maybe, impracticable ones. Chief Justice Fuller, delivering the opinion of the court in *Lau Ow Bew vs. U. S.*, supra, said:

"Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion.'

"And the learned Chief Justice cites *Church of Holy Trinity vs. U. S.* (143 U. S., 457, 12 Sup. Ct, 511) ; *Henderson vs. Mayor* (92 U. S., 259) ; *U. S. vs. Kirby* (7 Wall., 482); *Oates vs. Bank* (100 U. S., 239). This is a wise canon of construction. By its language general enough to include other things is confined to the purpose of the lawmakers, securing it and avoiding confusion and disappointment, and often absurdity. Illustrating this

canon, Justice Field, in the case of *Ah Tie* (13 Fed., 294), said:

"So the judges of England construed the law which enacted that a prisoner breaking prison should be deemed guilty of felony, holding that it did not apply to one breaking out when the prison was on fire, observing that the prisoner was "not to be hanged because he would not stay to be burnt." And, in illustration of this doctrine, the construction given to the Bolognian law against drawing blood in the street is often cited. That law enacted that whoever thus drew blood should be punished with the utmost severity, but the courts held that it did not extend to the surgeon who opened the vein of a person falling down in the streets in a fit.'

"And the learned justice, *In re Low Yam Chow*, supra, gave two additional illustrations taken from decisions of the Supreme Court:

"A law of Congress declares that whoever willfully obstructs or retards the carrier of the mails of the United States shall be deemed guilty of a public offense, and be punished by a fine. A mail carrier in Kentucky was arrested by the sheriff upon a charge of murder, and for the arrest the sheriff was indicted. The Supreme Court held that the general language of the Act of Congress was not to be construed to extend to the case; for it could not be supposed that Congress intended to interfere with the enforcement of the criminal laws of the State in its legislation to prevent unnecessary obstruction in the carriage of the mails. It would have been absurd to hold that, in order to secure the speedy transportation of the mails, immunity from punishment for a crime was given to the mail carrier. (*U. S. vs. Kirby*, 7 Wall., 482.) So the Act of Congress for the recovery of the proceeds of captured and abandoned property during the late war required the claimant in the Court of Claims to prove that he had never given aid or comfort to the rebellion; yet the Supreme Court held that one who had been pardoned by the President was relieved from this requirement. The general language of the Act covered his case, but, as the pardon in legal effect blotted out the guilt of the offender - that is, closed the eyes of the court so that it could not be considered as an element in the determination of his case - the pardon was deemed to take the place of the proof, and relieved him from the necessity of establishing his loyalty. "It is not to be supposed," said the Supreme Court, "that Congress intended by the language of the Act to encroach upon any of the prerogatives of the President, and especially that benign prerogative of mercy which lies in the pardoning power. It is more reasonable to conclude that claimants restored to their rights of property by the pardon of the President were not in contemplation of Congress in passing the Act, and were not intended to be embraced by the requirement in question. All general terms in statutes should be limited in their application so as not to lead to injustice, oppression, or any unconstitutional operation, if that be possible. It will be presumed that exceptions were intended which would avoid results of that nature." *Carlisle vs. U. S.*, 16 Wall., 153.'

"And the learned justice said, virtually, that these cases would have justified him in restricting section 6 of the Act of 1882 to merchants coming from China, even if the general term used in the section were susceptible of a larger meaning. Undoubtedly, if the purpose of the Act had been a limitation on the immigration of merchants, as it was of laborers, its language would have applied to their coming from everywhere. There can be no temptation, in order to secure the exclusion of Chinese laborers, to give a strained construction to section 2. As we construe it, it is entirely sufficient, and completely fulfills the objects of the legislation. It does not disturb real merchants in the privileges guaranteed by the treaty, and it prevents false ones from claiming them. It makes the definition of the word 'merchant' that which Mr. Geary aptly said it was intended to be - 'broad enough to protect every man legitimately engaged in that industry, and narrow enough to prevent the designation being used as an instrument of fraud by a class that we do not desire.' The burden of proof is on the person seeking to land, and the character of the facts which he must prove, the time which they must have existed, and the witnesses by whom proved, together with the possibilities of counter proof inevitably suggested, make deception impossible, except under a very negligent administration of the law. A place in the firm name would not prevent this, nor is it to be apprehended."

The reasoning and authority of the foregoing decision, accepted and approved by the Supreme Court of the United States, is clearly decisive of the issue involved in this appeal, and renders further discussion wholly superfluous.

It is proper, nevertheless, to direct attention to the decisions of this court in the cases of the U. S. vs. Sy Quiat (12 Phil. Rep., 676) and U. S. vs. Lim Co (12 Phil. Rep., 703), in each of which we held the defendant not to be a "merchant" as that term is employed in the Act under consideration, the evidence not sustaining the claim of the defendant that he owned an interest in a certain store as alleged by him, or that his name was included in any partnership agreement touching the ownership of that store, and it affirmatively appearing that the store in question was conducted in the individual name of a Chinese person other than the defendant. Upon the facts thus found these decisions were clearly correct, and are in nowise in conflict with the reasoning of the decision in the case of Lee Kan vs. U. S., above cited and adopted as its own by this court.

In support of our ruling in those cases, we cited a number of decisions of the Federal courts, and among others we quoted at length from the case U. S. vs. Quan Gin (61 Fed. Rep., 395), which goes much farther than was necessary for the purposes of our decisions in the former cases; and is in direct conflict with the later decisions of the Supreme Court of the United States above cited, in so far as it holds that the mere fact that the name of a Chinese person is not included in the firm name of the business in which he claims to be a partner is sufficient ground to sustain a holding that the business is not conducted "in his own name," as that phrase is used in the statute defining the word "merchant."

The rule laid down in the Quan Gin case (supra) was not necessarily drawn in question by the facts proven in the Sy Quiat and Lim Co cases, and the only proper bearing of the Quan Gin case on those cases was to show, when taken together with the other Federal cases cited, that the Federal courts have uniformly held that proof that one is a "merchant" as that term is used<sup>1</sup> in the Chinese-exclusion Acts is incomplete without proof that the alleged merchant conducts his business under his own name. The quotation from that case, however, setting out as it does the objectionable rule, doubtless was calculated to mislead those interested, and we are glad to avail ourselves of this opportunity to correct any mistaken inference which may have been drawn from the fact that this quotation appears in the body of the opinion, without an express disavowal of the rule. The rule itself not being necessary to the decisions in the Sy Quiat and Lim Co cases was not given the consideration which it would have had if it had been necessary for the purpose of those cases to adopt or reject it, and, indeed, the attention of the court and of the writer of the opinions in those cases, who is also the writer of this opinion, was not directed to the Lee Kan case (supra) and the case in the Supreme Court of the United States adopting the reasoning of that case (193 U. S., 517, 518), at the time when the Sy Quiat and Lim Co cases were submitted.

The judgment of the court below discharging the defendant from custody should be affirmed and the bail bond exonerated with the costs of this instance against the appellant. So ordered.

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

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