

**THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. CHAN SAM,
DEFENDANT AND APPELLEE.***G.R. No. 5874. December 09, 1910*

Ponente: CARSON, J.

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This is an appeal from a judgment of the Court of First Instance of the Fourteenth Judicial District, sitting at Jolo, discharging the defendant and appellee from custody under a complaint filed by the acting collector of customs for the port of Jolo. The prayer of the complaint is that the defendant be deported on the ground that he is a Chinese laborer, found in the municipality of Jolo, Philippine Islands, unprovided with the certificate of registration prescribed for Chinese laborers under the provisions of Act No. 702 of the Philippine Commission.

The undisputed facts as disclosed by the record are that the defendant is a Chinese person; that some time in 1902 or 1903 he entered the Philippine Islands without the consent or knowledge of the immigration officers; that at that time he was a laborer, and that he continued to be a laborer in the Philippine Islands until the month of January, 1907; that he failed to procure the certificate of registration prescribed for all Chinese persons by section 6 of Act No. 702 in the time limited therein during which such certificates might be procured; that he offered no sufficient or satisfactory excuse for his failure so to do; and that he continued in the Philippine Islands down to the date of his arrest in these proceedings on or about the 23d day of September, 1909.

The only question of fact as to which there is any real dispute is defendant's allegation that from some time about the 1st of January, 1907, down to the date of his arrest he was not employed as a laborer, and was in fact engaged in buying and selling merchandise at a fixed place of business, which business was conducted in his own name.

The evidence submitted by the defendant in support of his allegations in this regard is not wholly satisfactory either as to quantity or quality, but we do not deem it necessary to review the findings of the trial court sustaining defendant's contention, because we are of opinion that granting the truth of all the facts relied upon by the defendant, the provisions of the Chinese Immigration Laws imposed upon the court below the imperative duty of causing him to be deported.

The precise question upon which the case-turns, as raised by the facts relied upon by the defendant himself, is whether an unregistered Chinese laborer who has made an unlawful entry into these Islands and has taken up his residence and remained therein as a laborer for two or three years thereafter, is subject to deportation in the event that he changes his occupation from that of a laborer to that of a member of one of the privileged classes before an order of deportation is entered against him.

On April 14, 1899, by Circular No. 13, Division of Customs and Insular Affairs, the Secretary of War declared the laws and regulations governing immigration to the United States to be in effect in the territory under the government of the military forces of the United States, and directed collectors of customs to enforce said laws and regulations until the establishment of immigration stations in said territory, and that said circular was published, for the information of all affected thereby, by the military governor of the Philippine Islands on May 30, 1899, in

Circular No. 6, series of 1899. Thereafter Congress passed the Act of April 29, 1902, entitled "An Act. to prohibit the coming into and to regulate the residence within the United States, its Territories, and all territory under its jurisdiction, and the District of Columbia, of Chinese and persons of Chinese descent," which Act provides in section 1 as follows:

"That all laws now in force prohibiting and regulating the coming of Chinese persons and persons of Chinese descent into the United States, and the residence of such persons therein, including sections five, six, seven, eight, nine, ten, eleven, thirteen, and fourteen of the Act entitled 'An Act to prohibit the coming of Chinese laborers into the United States,' approved September thirteenth, eighteen hundred and eighty-eight, be, and the same are hereby, re-enacted, extended, and continued so far as the same are not inconsistent with treaty obligations, until otherwise provided by law, and said laws shall also apply to the island territory under the jurisdiction of the United States, and prohibit the immigration of Chinese laborers, not citizens of the United States, from such island territory to the mainland territory of the United States, whether in such island territory at the time of cession or not, and from one portion of the island territory of the United States to another portion of said island territory; Provided, however, That said laws shall not apply to the transit of Chinese laborers from one island to another island of the same group; and any islands within the jurisdiction of any State or the District of Alaska shall be considered a part of the mainland under this section."

Section 4 of said Act provides as follows:

"That it shall be the duty of every Chinese laborer, other than a citizen, rightfully in and entitled to remain in any of the insular territory of the United States (Hawaii excepted) at the time of the passage of this Act, to obtain within one year thereafter a certificate of residence in the insular territory wherein he resides, which certificate shall entitle him to residence therein, and upon failure to obtain such certificate as herein provided he shall be deported from such insular territory; and the Philippine Commission is authorized and required to make all regulations and provisions necessary for the enforcement of this section in the Philippine Islands, including the form and substance of the certificate of residence so that the same shall clearly and sufficiently identify the holder thereof and enable officials to prevent fraud in the transfer of the same: Provided, however, That if said Philippine Commission shall find that it is impossible to complete the registration herein provided for within one year from the passage of this Act, said Commission is hereby authorized and empowered to extend the time for such registration for a further period not exceeding one year."

Pursuant to the authority conferred by Congress in said section 4, the Philippine Commission, on March 27, 1903, passed Act No. 702, entitled "An Act to regulate the registration of Chinese persons in the Philippine Archipelago, and to carry into effect and enforce the provisions of section four of the Act of Congress approved April twenty-ninth, nineteen hundred and two, entitled 'An Act to prohibit the coming into and to regulate the residence within the United States, its Territories, and all territory under its jurisdiction, and the District of Columbia of Chinese persons and persons of Chinese descent.'" In section 3 of said Act it is provided as follows:

"Each certificate of registration shall contain the name, age, date, and place of birth, registry of birth, if any, local residence, occupation, and photograph of the person therein described, and such other data in respect to him as shall be prescribed by the Insular Collector of Customs, and shall be issued by the proper officer upon payment to him of a fee of fifty cents United States currency, said fee to be accompanied by a true photograph of the applicant in triplicate to the satisfaction of such officer."

Section 5 of said Act provides as follows:

"Every Chinese person having a right to be and remain in the Philippine Islands shall obtain the certificate of registration specified in section three of this Act as evidence of such right, shall pay the fee and furnish his photograph in triplicate as in said section prescribed; and every Chinese person found without such certificate within the Philippine Islands after the expiration of the time limited by law for registration shall be presumed, in the absence of satisfactory proof to the contrary, to be a Chinese laborer and shall be subject to deportation

as provided in section four of this Act. Every Chinese person shall, on demand of any customs official, police, Constabulary, or other peace officer, exhibit his certificate and on his refusal to do so may be arrested and tried as provided in section four of this Act."

Said section 4, above-mentioned, provides in part as follows:

"Any Chinese laborer within the limits of the Philippine Islands who shall neglect, fail, or refuse to obtain within the time prescribed by section four of the Act of Congress of the United States, referred to in section one of this Act, the certificate of registration by this Act provided to be issued, and who shall be found within the Philippine Islands without such certificate of registration after such time has elapsed, may be arrested upon warrant issued by the Court of First Instance of the province or by the justice's court of the municipality returnable before said Court of First Instance, by any customs official, police, Constabulary, or other peace officer of the Philippine Islands and brought before any judge of a Court of First Instance in the Islands, whose duty it shall be to order that such Chinese laborer be deported from the Philippine Islands, either to China or the country from whence he came, unless he shall affirmatively establish clearly and to the satisfaction of such judge, by at least one credible witness other than Chinese, that although lawfully in the Philippine Islands at and ever since the passage of this Act he has been unable by reason of accident, sickness, or other unavoidable cause to procure the certificate within the time prescribed by law, in which case the court shall order and adjudge that he procure the proper certificate within a reasonable time and such Chinese laborer shall bear and pay the costs of the proceeding: Provided, however, That any Chinese laborer failing for any reason to secure the certificate required under this law within two years from the date of its passage shall be deported from the Islands. If it appears that such Chinese laborer had procured a certificate in due time but that the same has been lost or destroyed, he shall be allowed a reasonable time to procure a duplicate from the Insular Collector of Customs or from the officer granting the original certificate, and upon the production of such duplicate such Chinese laborer shall be discharged from custody upon payment of costs."

Section 12 of said Act No. 702 (taken from sec. 2 of the Act of Congress of November 3, 1893, amending the Act of May 5, 1892, entitled "An Act to prohibit the coming of Chinese into the United States") provided 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 laundrymen 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."

The manifest purpose and object of all this legislation was to make it unlawful for any Chinese laborer to enter the Philippine Islands or to remain there in the event that he does in fact unlawfully gain an entry; and to subject such persons to deportation, without unnecessarily molesting those Chinese persons, including laborers, who were lawfully in the Philippine Islands at the time when the Chinese Immigration Laws of the United States were extended to the Islands, and whose right to be and remain there is not questioned.

To secure these ends a system of registration was provided whereby every Chinese person, including Chinese laborers, "having a right to be and remain in the Philippine Islands" could obtain a certificate of registration, the possession of which would serve as a shield against arrest on a charge of being in the country unlawfully; while the failure by a Chinese laborer, not a citizen of the United States, to obtain such a certificate within the time prescribed by law made such laborer subject to deportation, whether he originally had or had not a right to be and

remain in the Islands, unless he affirmatively established that by reason of accident, sickness, or other unavoidable cause he was unable to procure one, and further that he was lawfully in the Philippine Islands at and ever since the date of the passage of the Registration Act.

The facts relied upon by defendant himself disclose that he was and continued to be a Chinese laborer in the Philippine Islands long after the registration period expired; that he did not secure the prescribed certificate; that he had no sufficient reason for his failure to do so; and that he was not lawfully in the Philippine Islands at the time of the passage of the Chinese Registration Act. Manifestly, therefore, his admitted residence within the Islands as a laborer after the registration period has elapsed subjected him to deportation, and when he was found without his certificate and brought before the proper court and these facts established it was the duty of that court to order his deportation in compliance with the express provisions of the statute.

Counsel for the appellee contends that since the defendant was a merchant in fact and not a laborer at the time when he was arrested the deportation provisions of the law are not applicable to him. But under the letter of the law (sec. 4, Act No. 702) it is the duty of the court to order the deportation of any Chinese laborer who fails to obtain the required certificate, and who is found in the Islands after the registration period has expired, and no exception is made therein in favor of such persons because of a change of status after they have become subject to deportation. To construe the statute so as to inject such an exception into its provisions would be in violation not only of the letter of the law but also of its spirit and intent since it manifestly seeks to prohibit Chinese laborers from entering the Islands, to render such entry unlawful, and to make such persons subject to deportation in the event that they in fact gain an unlawful entry and take up their residence in the Islands; and to deny the right of lawful entry to a Chinese laborer, but to say to him that if by any means he can gain an unlawful entry in the Islands he will be relieved of the consequences flowing from his unlawful act if at any time after he gains his unlawful entrance he changes his status and assumes the occupation of one of the privileged classes, would be to set a premium on the unlawful but successful evasion by Chinese laborers of the laws prohibiting their entrance into the Islands. A strained construction of a particular section of a statute which would tend to defeat the main object for which the statute was enacted and to encourage the violations of its principal prohibitory provisions should not be adopted when the language of the section under consideration clearly admits of a construction in harmony with the spirit and intent of the statute as a whole. The failure of a Chinese laborer to comply with the provisions of section 4 of Act No. 702 having once rendered his residence unlawful, and he having thus become subject to deportation for lack of the prescribed certificate, his residence continues to be unlawful up to the time when he is "found within the Philippine Islands without such certificate." His residence being unlawful he can not lawfully assume the status of a merchant, and of course it is only the lawful status of a merchant which is intended to confer upon a Chinese person the privileges accorded to merchants and members of other privileged classes in territory of the United States. We, therefore, hold that a Chinese laborer who has become subject to deportation for a failure to comply with the provisions of the above-cited section 4 of Act No. 702 is not and can not be purged of this liability by the mere fact that after the liability had attached he changed his occupation to that of one of the privileged classes.

In support of his contention, counsel for appellee cites the case *Ex parte Ow Guen* (148 Fed. Rep., 926), which he says is the only case he has been able to find which involves the exact question under consideration. To our minds neither the authority nor the reasoning¹ of that case is conclusive. It is an unappealed judgment of a district judge, and the reasoning rests upon his assumed premise that although the courts are required to adjudge any unregistered Chinese laborer to be unlawfully in the United States at any time when such person is found there and brought to trial on a charge that he is there unlawfully, nevertheless the residence of such person prior to his arrest was lawful and conferred upon him all the privileges incident to a lawful residence in the country. We are unable to understand how a residence can be said to be lawful which the courts are authorized and required by law

to adjudge and declare to be unlawful in the event that its legality is submitted to them for adjudication.

In the case of *The U. S. vs. Chu Chee* (93 Fed. Rep., 797), it was held that "a Chinese person who obtains entry into the United States without the certificate from the Chinese Government showing him to be a member of the class privileged to enter, which is required by the Acts of Congress, can not establish his right to remain, when arrested under the Act of May 5, 1892, as a Chinese laborer within the United States without the certificate of residence required by law, by proof that since his entry he has not been a laborer, but has followed the occupation of a member of the privileged class." And on page 804, in the course of its decision of that case, the United States circuit court of appeals, ninth circuit, through Circuit Judge Morrow, said:

"But it is contended on the part of the defendants that the status of Chinese aliens domiciled in the United States must be determined according to their status at the time of arrest, and not at the time of entry, and that, upon being arrested, it was competent for them to show by affirmative proof that they were students engaged in acquiring an education in our schools, and, being so engaged, they were not members of the prohibited class, and not subject to deportation. When, however, that domicile has been acquired contrary to, and in violation of the laws of the United States, and when, as here, it is only through an unlawful entry into the United States that the Chinese persons secure a residence in this country, they can not purge themselves of their offense by assuming the occupation of members of the privileged class, and establish the right to remain by proof of that character. The right of the defendants to land in this country on the claim of being students was dependent upon their producing to the collector of customs, at the port of their arrival, the certificate required by section 6 of the Act of 1882, as amended; and to entitle them to remain here they must thereafter produce the same to the proper authorities whenever lawfully demanded."

While the facts in this case were not strictly analogous to those in the case under consideration, and it may be doubted whether the courts of these Islands would have jurisdiction to issue an order of deportation upon a similar state of facts arising here (a point which we do not now undertake to decide), nevertheless the reasoning of that opinion confirms us in our conclusion that the residence of an unregistered Chinese laborer in these Islands after the date prescribed by law for the issue of registration certificates has elapsed is unlawful and subjects him to deportation, and that his liability to deportation continues as a result of this unlawful residence even though he should thereafter cease to be a laborer in fact.

Ten days hereafter let judgment be entered reversing the appealed judgment without costs to either party in this instance, and directing the court below to enter the proper order of deportation in accordance herewith, and twenty days thereafter let the record be returned to the court below. It is so ordered.

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

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