

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. YU KIAO, DEFENDANT AND APPELLEE.

G.R. No. 6419. October 02, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action brought by the plaintiff to determine whether or not the defendant had a right to remain in the Philippine Islands. To this end the following complaint was presented against him in the Court of First Instance of the city of Manila, upon the 3d day of August, 1910.

"The undersigned represents: that he is a duly authorized official of the immigration division of the Bureau of Customs, Manila, P. I., and that he hereby accuses Yu Kiao, a Chinese laborer now in the detention station for Chinese immigrants, of violation of the law, committed as follows:

"That on or about the 1st day of August, 1910, in the city of Manila, P. I., the said Yu Kiao, a Chinese laborer, was found within the Philippine Islands, without having in his possession or having secured the certificate of residence required by Act No. 702 of the Philippine Commission.

"Wherefore, the undersigned prays that a warrant of arrest be issued for said party by this court, to try and determine whether said Chinaman has, or has not, a right to remain in these Islands, and in the latter case to order his deportation to China or to the country whence he came, with such other measures as may be deemed suitable and applicable to the case.

(Sgd.) "SANDALIO RODRIGUEZ."

This complaint was duly sworn to before a notary public.

The defendant was arrested and brought before the said court. On the 15th of August the cause was brought to trial.

On the 17th of August, 1910, the Hon. A. S. Crossfield, after having heard the evidence, rendered the following decision:

"From the evidence adduced during the trial, P find:

"That said Yu Kiao was born at Navotas, Province of Rizal, P. L; that his father was a Chinaman and his mother a Filipina; that his parents were legally married, and shortly after his birth he was baptized in the Roman Catholic Church and christened Pablo Yu; that at the age of three or four years he was taken to China by his father, where he remained until he was seven years old, when he returned to the Philippine Islands with his father, who afterwards died here; that his mother is also dead, and he is now a cook employed in a grocery store in the city of Manila.

"It does not appear in the record whether the defendant's father was still living at the time when certificates of registration were issued.

"As this boy was born in the Philippine Islands and resided here with his parents up to the time of their death, and he was not old enough to get a certificate of registration at the time when such certificates were issued, even though it might have been necessary for him to secure one, and realizing that there is no place whither he may be sent, I hold that he should not be deported from the Philippine Islands and that he does not need a certificate of registration, for he is a citizen and native of the Philippine Islands.

"Accordingly, this case is dismissed with the costs de oficio.

"A copy of this decision will be furnished the defendant to be used by him in lieu of other document, should any further question be raised as to his right to remain in the Philippine Islands."

From that decision the plaintiff appealed to this court and made the following assignment of error;

"The court erred in declaring the appellee to be a citizen of the Philippine Islands because he was born therein, and therefore erred in dismissing this case and ordering his release."

From the evidence adduced during the trial of the cause the following facts seem to be proven beyond question:

First. That Santiago Yulong, a Chinese person, and Enrica Santos, a Filipina woman, were duly and legally married in the Philippine Islands; the exact date of the marriage does not appear of record.

Second. That as the result of said marriage two children were born, one having died some years before the date of the trial of the present cause, and the other being the defendant herein.

Third. That when the defendant herein was a very small boy, his father (Santiago Yulong) took him to China, where they remained for a few years; the exact time does not appear of record.

Fourth, That when Santiago Yulong returned to the Philippine Islands, after his said visit to China, he brought with him his son, the defendant, some years before the American occupation of the Islands, and continued to live in the pueblo of Navotas, Province of Rizal, until his death, which occurred some years before the trial of the present cause.

Fifth. That the said Santiago Yulong and his wife, Enrica Santos, both died some considerable time before the trial of the present cause. The date when the parents died does not appear of record.

Sixth. That the defendant continued to live with his parents until the time of their death.

Seventh,. That at the time the defendant was arrested he was a cook in the home of his cousin.

Eighth. That at the time of the trial, the defendant was seventeen (17) years of age.

The record does not disclose what business or occupation the father of the defendant had. There is nothing in the record which shows that the father of the defendant did not have a right to reside and to continue to reside in the Philippine Islands at the time of his death.

The question presented is, under all of the facts disclosed by the record, has the defendant a right to continue to reside in the Philippine Islands, notwithstanding the fact that he does not have the certificate required under Act No. 702 of the Philippine Commission?

Said Act No. 702 is an Act to regulate the registration of Chinese persons in the Philippine Islands and to carry into effect and enforce the provisions of section 4 of an Act of Congress approved 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 persons and persons of Chinese descent."

It will be remembered that the defendant is a minor child; that his parents resided in the Philippine Islands at the

time of their death and, so far as the record shows, had a perfect right to continue to remain therein.

There has been some difference of opinion among the judges of the Federal, district, and circuit courts of the United States upon the question whether the minor child, of a Chinese person who has a right to remain in territory of the United States, can enter territory of the United States without the certificate provided for by law.

The judges in some cases have held that the wife and minor child are entitled to come into the country with him (the father) or after him (the father) without the certificate prescribed. See *In re Chung Toy Ho* (42 Fed. Rep., 398) (1890); *In re Lee Yee Sing* (85 Fed. Rep., 635) (1898); *In re Tung Yeong* (19 Fed. Rep., 184) (1884); *In re Lum Lin Ying* (59 Fed. Rep., 682) (1894); *U. S. vs. Gue Lim* (83 Fed. Rep., 136) (1897).

Other judges have held that the wife and minor children can not enter territory of the United States, even though the father was within the territory of the United States and had a right to remain therein, without the certificate required by law. See *In re Ah Quan* (21 Fed. Rep., 182, 186) (1884); *In re Ah Moy* (21 Fed. Rep., 785) (1884); *In re Wo Tai Li* (48 Fed. Rep., 668) (1888) ; *In re Li Foon* (80 Fed. Rep., 881) (1897).

The Supreme Court of the United States, in the case of *U. S. vs. Gue Lim* (176 U. S., 459) (1900), in a carefully decided opinion has held that the wife and minor children of a Chinese person who has a right to remain in territory of the United States, have a right to enter the United States without the certificate required by law. In discussing the question involved in that case, Mr. Justice Peckham, speaking for the court, said:

"To hold that a certificate is required in this case is to decide that the woman can not come into the country at all, for it is not possible for her to comply with the act, because she can not in any event procure the certificate even by returning to China. She must come in as the wife of her domiciled husband or not at all. The act was never meant to accomplish the result permanently excluding the wife under the circumstances of this case, and we think that, properly and reasonably construed, it does not do so. If we hold that she is entitled to come in as the wife, because the true construction of the treaty and the act permits it, there is no provision which makes the certificate the only proof of the fact that she is such wife.

"In the case of the minor children, the same result must follow as in that of the wife. All the reasons which favor the construction of the statute as exempting the wife from the necessity of procuring a certificate apply with equal force to the case of minor children of a member or members of the admitted classes. They come in by reason of their relationship to the father, and whether they accompany or follow him, a certificate is not necessary in either case. When the fact is established to the satisfaction of the authorities that the person claiming to enter, either as wife or minor child, is in fact the wife or minor child of one of the members of a class mentioned in the treaty as entitled to enter, then that person is entitled to admission without the certificate."

That decision settles the question that children of Chinese persons, who have a right to remain in the territory of the United States, may enter without a certificate. Of course this decision does not involve the right of children of Chinese laborers to enter the territory of the United States.

In the present case the question is whether or not a minor child can remain in territory of the United States without the certificate required by law. It would seem to require no argument to influence an unprejudiced mind if such minor child can enter, without the certificate that after he has once been permitted to enter in order to be under the care and custody of his parents, he may remain in such territory without the certificate.

The theory of this decision is:

- (a) That the law does not prohibit the entrance of such minors, under the circumstances of the present case; and
- (b) That the minor children have a right to be under the care and protection of their parents. (*Lo Po vs. McCoy*, 8

Phil. Rep., 343.)

Our conclusions, based upon the facts in the present case and the law applicable thereto, are:

First. That the defendant, being a minor, would have had a right to enter the Philippine Islands without a certificate had his parents been living; and

Second. That the mere fact that his parents have died in no way changes his right to remain in the country without A certificate. His country is the country of the home of his parents. To permit him to be deported, under the circumstances of this case, would be to take him from the country adopted as the home of his parents, and to send him into a foreign country, among strangers. In our opinion no such results were contemplated by the law.

Upon the conclusions which we have reached, we deem it unnecessary to discuss the question whether the defendant is a citizen of the Philippine Islands or not. In our opinion the sentence of the lower court should be and is hereby affirmed.

Torres, Mapa, Carson, and Moreland, JJ., concur.

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