

ANG KAH LIAN, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.*G.R. No. 7073. December 24, 1912*

Ponente: JOHNSON, J.

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From the record it appears that Ang Kah Lian, on the 6th day of January 1911, arrived at the port of Manila on the steamship Yingchow and requested permission to enter the Philippine Islands. He admitted that he was a Chinese person of the age of 37 years. He alleged that he was a resident Chinese merchant of the Philippine Islands. He admitted that he had left the Islands in the year 1907. He alleged that he was a member of a mercantile firm with an interest of P15,000 at the time he left the Islands in the year 1907. He admitted that before he left Manila in 1907 he withdrew P5,000 from said business. It is admitted that the business in which Ang Kah Lian was a partner went into bankruptcy about a year before his return. (January 6, 1911.) It is not denied that the records of the office of the Collector of Customs show that on or about the 7th of February, 1905, the Collector of Customs of the Philippine Islands had indorsed Ang Kah Lian as a resident Chinese merchant of the Philippine Islands, doing business at 139 Calle Nueva, in the city of Manila. The records of the office of the Collector of Customs also show that Ang Kah Lian returned the Philippine Islands and was admitted as a resident Chinese merchant on or about the 3d of October, 1907. The records of the office of the Collector of Customs further show that after an investigation, a merchant's certificate had been issued to Ang Kah Lian on January 22, 1907, and that at that time he was a partner in an importation of silk and dry-goods business, at 139 Calle Nueva, in the city of Manila, under the firm name Ang Ban-Ka, the capital of which was P85,000, and that the interest of Ang Kah Lian in said business was P15,000.

Upon the foregoing facts the board of special inquiry denied Ang Kah Lian the right to enter the Philippine Islands as a resident Chinese merchant upon the ground that the mercantile business in which he had been engaged did not exist at the time of his return.

From that decision of the board of special inquiry, an appeal was taken to the Collector of Customs, where the same was affirmed.

Later the applicant presented a petition for the writ of habeas corpus to the Court of First Instance of the city of Manila. After a due consideration of the facts, the Honorable A. S. Crossfield, judge, found that the petitioner was entitled to enter the Philippine Islands as a resident Chinese merchant and so ordered.

From that decision of the Court of First Instance the Attorney-General appealed to this court.

The principal ground of the appellant is that the lower court failed to find that there had been an abuse of authority on the part of the Collector of Customs. The contention of the appellant is that courts have no authority to take jurisdiction of a case like the present, without first finding the executive department of the Government had abused the authority conferred upon it by law. This contention of the appellant is sustained by numerous authorities (Roa vs. The Collector of Customs, p. 315, U. S. vs. Go-Siaco, 12 Phil. Rep., 490; Munoz vs. The Collector of 20

Phil. Rep., 494.)

It is admitted that Ang Kah Lian was a merchant at the time he left the Philippine Islands in the early part of the year 1907 and that he has been a resident Chinese merchant for some years theretofore. It is also admitted that some months prior to his return the mercantile business in which he was interested became bankrupt. It is not denied that he had a right to return to the Philippine Islands had his business not become bankrupt. It is not denied that he left the Philippine Islands in 1907 and that he left with the intention of returning. The record shows that he had some other interests in the Philippine Islands besides his interest in said firm. As a resident Chinese merchant of the Philippine Islands for more than a year prior to his departure in 1907, it is admitted that he had a right to return provided his business still existed. No decision has been called for and it is believed that none exists holding that the mere fact that the business of a resident Chinese merchant has failed during his temporary absence from the territory of the United States, would have the effect of depriving him of his right to reenter. Under the Act of Congress of November 3, 1893, a domiciled merchant in the territory of the United States shows that fact by parole testimony. He was not required, on his return to the territory of the United States, to present any form of certificate. How the Collector of Customs of the Philippine Islands, in the Chinese Immigration Circular No. 186, as amended by Chinese Immigration Circular No. 224, provided in paragraph No. 42, that Chinese merchants residing within the Philippine Islands, who desire to go abroad temporarily, may secure an indorsement to the effect that they are Chinese resident merchants, by leaving. This indorsement is for the purpose of facilitating their return. This paragraph No. 42 further provides that said merchants may return only, notwithstanding the indorsement, when they still retain the mercantile interest owned by them at the time of their departure. The Acts of Congress have been searched in vain to find any authority for this restriction. The Collector of Customs has authority under the law to make regulation for the due administration of the immigration laws. But he may not impose restrictions not based upon the law. If a resident Chinese merchant may leave the territory of the United States and return thereto under the administrative department of the Government can not make a regulation prohibiting him. This, of course, presupposes that the professional status the person has not changed from the time of his leaving until the time of return. The certificate which a resident Chinese merchant may secure by leaving the territory of the United States is only obtained for the purpose of facilitating his entrance upon his return. If he was a merchant when he went out, and there is no proof that his professional status has been changed, the presumption is that his professional status has continued. The mere fact that the business of a professional merchant has gone in bankruptcy does not, of itself, change the professional status of such person. He may, by reason of business reverses, be temporarily not engaged in his actual profession; but certainly it can not be contended that bankruptcy itself would make a merchant a laborer. We are of the opinion that if a resident Chinese is found to be a merchant when he leaves the territory of the United States, that he has a right to return, provided he returns within prescribed time, unless there is some proof showing that he has changed professional status of a merchant to that of a laborer.

It is our opinion that the judgment of the Court of First Instance should be affirmed, and it is so ordered.

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

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