

**UY KAI HU, PETITIONER AND APPELEE, VS. H. B. MACCOY,
RESPONDENT AND APPELLANT.***G.R. No. 7318. January 24, 1913*

Ponente: TRENT, J.

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The accepted facts in this case are these: The petitioner, formerly a resident Chinese laborer of the Philippine Islands, and, as such, issued a certificate in 1903 in accordance with Act No. 702 of the Philippine Commission, went to China in 1905 without first securing the certificate required by section 7 of the Act of Congress of September 13, 1888, to entitle him to reenter this country. He returned as a laborer on or about June 13, 1911, as a stowaway on the steamer Taisang, and sought to enter the Philippine Islands without being passed by the immigration authorities. To aid him in so entering, he dressed himself as a sailor, although he was not, as a matter of fact, a member of the crew, and he being in the disguise of a sailor was not held in quarantine as were the passengers aboard the vessel, although he was being watched by the customs officers. He came ashore in a launch, disembarked, ran a few yards, and was then arrested and taken before an immigration officer, who, on account of the regular offices being closed for the day, permitted him to go where he pleased for the night upon his promise to return the following morning for examination. He returned and after the proper preliminaries a board of special inquiry was convened. After a fair and impartial hearing this board rendered the following decision:

"The board decides that Uy Kai Hu, alias Yu Ki Hu, arrives at this port as a stowaway and does not present the certificate required by law for the admission of Chinese. He expresses a wish to return to China on the same boat. It is Accordingly so ordered."

While petitioner was being held by the customs authorities awaiting deportation, he caused to be filed in the Court of First Instance of the city of Manila a petition asking for a writ of habeas corpus on the ground that he was illegally imprisoned and deprived of his liberty by the customs authorities and that there did not exist any order of commitment which justified his detention. After hearing the trial court ordered the petitioner discharged from custody, saying in part:

"The petitioner having landed in the Philippine Islands and having his certificate of registration showing him to be a resident of the Philippine Islands, the said board of inquiry had no jurisdiction over him and acted without authority in ordering him deported.

* * * * *

"The petitioner actually being in the Philippine Islands and having his certificate of registration in the Islands as a laborer cannot be removed except in the manner as provided by law now in force in the Islands. The customs authorities, acting as immigration officers, cannot, under the law, deport the petitioner."

From this order the Collector of Customs appealed and now insists that the court erred: (1) In not treating the finding and action of the duly authorized immigration officers upon the question of the right of the petitioner to enter the Philippine Islands and other questions of fact as final and conclusive, having been made by a tribunal

authorized to decide the same, since it was not alleged or made to appear that such officers had abused the discretion or power invested in them; (2) in not holding that the petitioner's certificate of residence was of no value; and (3) in holding that the petitioner had "landed."

The Act of Congress of August 18, 1894, provides that:

"In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final unless reversed on appeal to the Secretary of the Treasury."

The jurisdiction of the Treasury Department was afterwards transferred to the Department of Commerce and Labor by the Act of February 14, 1903. The above provisions are enforced in the Philippine Islands by the customs authorities.

It is entirely clear that when the petitioner in cases of this character is an alien, and when the right to deport him depends upon a question of fact and when there has been a hearing by the customs authorities of that question, and the conclusion of those authorities is based upon some evidence, such conclusion cannot be reviewed by the courts, and if the fact so found does in law justify the deportation, it must proceed, however mistaken the conclusion of that department may seem to the court to have been. On the other hand, it is equally clear that errors of law by that department may be reviewed by the courts in any case wherein it appears that the error has resulted in excluding one who would have been admitted under the facts found had the question of law been correctly decided; that an erroneous conclusion of law, made by those officers, cannot be sustained by being mistakenly called a conclusion of fact; that a conclusion of fact based upon no evidence tending to support it is of no force; that the hearing at which no evidence is introduced is no hearing; and that the customs officers' authority for deportation must be found in the Statute. (*Lewis vs. Prick*, 189 Fed., 146, and cases cited therein under Note 1.) In the case at bar the petitioner was given a hearing and the board found that he arrived as a stowaway and did not present the required certificate. No other finding of fact was reduced to writing, but we must assume that the board also found that the petitioner was arrested at the time and place and under the circumstances as stated in the accepted facts. From these facts as found the board reached the conclusion (a conclusion of law) that the petitioner must be deported. While we are precluded from reviewing the action of the board as to the findings of fact, we may inquire whether the facts so found do in law justify the deportation.

Before determining the legal value of the petitioner's certificate of registration and whether he had "entered" the Philippine Islands before he was arrested so as to place him without the jurisdiction of the customs authorities, we will inquire whether or not the customs authorities have the power or are authorized to administer and enforce both the general immigration law and the Chinese exclusion Acts; and also whether or not a Chinese laborer seeking to enter comes within the provisions of both of these bodies of law or within the latter only.

The immigration laws and the Chinese exclusion Acts are enforced in the Philippine Islands by the customs authorities. (*In re Allen*, 2 Phil. Rep., 630; *Ngo-Ti vs. Shuster*, 7 Phil. Rep., 355; *Jao Igco vs. Shuster*, 10 Phil. Rep. 448; *Juan Co vs. Rafferty*, 14 Phil. Rep., 235; and many other later cases.) The procedure for the enforcement of both bodies of laws is the same. (Chinese and Immigration Circular No. 186, which was promulgated under Act No. 355, section 19, and the Act of Congress of February 6, 1905.) Chinese persons and persons of Chinese descent must be examined by the customs officers as to their right to admission under the provisions of the general immigration Act as well as under the provisions of the laws relating to Chinese exclusion. (Acts of Congress February 20, 1907, and April 29, 1902, and cases cited, *supra*.)

When the petitioner was arrested in the manner set forth in the accepted facts he had in his possession a Chinese laborer's certificate of residence. This certificate was issued in 1903, or some two years before he left the Islands.

The trial court appears to have been of the opinion that this certificate is conclusive proof of the petitioner's right to remain in the Islands. Of course, this holding rests upon the proposition that the petitioner had entered the Philippine Islands when he was arrested and that therefore the immigration authorities had no jurisdiction in the premises. The certificate of registration was issued under the provisions of Act No. 702 of the Philippine Commission and was conclusive proof of the petitioner's right to then remain in the Islands, but he left this country without first obtaining the return certificate required by section 7 of the Act of September 13, 1888. This section reads in part as follows:

"And no Chinese laborer shall be permitted to reenter the United States without producing to the proper officer of the customs at the port of such entry the return certificate herein required."

The language here used is mandatory. There can be no escape from its provisions. A Chinese laborer must provide himself with one of these return certificates prior to his departure from the country if he would return and reenter. The fact of his departure admitted, as in this case, the only legal method of reentry is by the production of such a certificate. It matters not that the petitioner might have been entitled to have a return certificate issued to him. This certificate is the one prerequisite for reentrance; and if he has it not there is no remedy. There is no authority for dispensing with the production of this certificate. And furthermore, section 7, *supra* provides that such a certificate shall be good for only one year except in certain enumerated cases, when it may be extended for one additional year. As the petitioner remained away for over five years, return certificate issued on his departure, even if produced, would have had no value whatever. It therefore appears that the petitioner has no possible ground for claiming the right to reenter this country. (United States vs. Tuck Lee, 120 Fed., 989.)

It is contended that the petitioner, having landed from the launch free from all physical restraint by the immigration authorities, had "entered" the Philippine Islands and was therefore no longer subject to the administrative proceedings provided for the deportation of undesirable aliens; in other words, that the immigration authorities no longer had jurisdiction over his person.

The words "enter" and "entry" have such a variety of meanings, not only in the jargon of the law, but in their ordinary lay acceptations, that it would be obviously improper to assign a meaning to either not sanctioned by the sense in which the word is used. To enter a country in the sense of the immigration laws means something more than merely stepping upon dry land within its jurisdiction. One does not go into a foreign country as an immigrant with the intention merely of crossing the border. He enters there with the intention of performing acts of business, pleasure, or travel, or to earn a livelihood, all of which necessitates his communicating with the inhabitants and mingling with them. It being recognized as dangerous to the body politic to allow certain classes of aliens to do any of these things, provision is made to examine all aliens upon their arrival at the border line or port of entry, and refuse those who are found to be ineligible any further opportunity of accomplishing whatever their object may have been in coming to the country. What difference exists, if any, between the case of an alien who submits to the lawful method for gaining entrance to the country and the case of an alien who manages to land or cross the border at a place not designated by the immigration authorities and is arrested by them before he has had time to accomplish any of those things for which he may have come to the country? It is clear that whatever his object in coming to the country may be, it is totally defeated by such an arrest, and that, as a matter of fact, he is in no better position in respect to that object than if he had not been passed by the immigration officers. So long as such a person has been prevented from acquiring a residence or domicile and engaging in the ordinary pursuits of life, there can be no excess of authority on the part of the immigration officers in detaining him, for that is exactly what the law authorizes these officers to do until he has passed the required examination. If they may not be permitted to take all steps necessary to accomplish this purpose, it will be very difficult indeed to enforce the law. If by surreptitiously crossing the border at a point along the miles and miles of unguarded border an alien places

himself beyond the administrative proceedings of the immigration laws, it is patent that very many who fear the examination will avail themselves of this means of entering the country.

It has been urged that the only safe way for the courts to decide this question is to adhere to the rule that an alien once within the boundary limits of the country free from all physical restraint, even for the shortest space of time, must be considered as having "entered;" that any other method of deciding this question leads to confusion and uncertainty, with the result that every case must be decided upon its own facts and circumstances. At first sight this is a plausible solution of the question, designed to relieve the courts of a great deal of trouble and worry. It is to be inferred, according to this argument, that if the lawmakers do not desire to countenance such practices it is their duty to pass appropriate legislation whereby the immigration authorities will be empowered to arrest such persons after they have crossed the border. But we apprehend that the passage of such legislation is impracticable. Such a law could not specify that the jurisdiction of the immigration officers extended to only a certain distance into the interior, because in a crowded city an immigrant might take up his residence within a block of the immigration officers and live there unmolested until he was thoroughly domiciled, while at other points along the boundary line he might not be able to find food or shelter until he had penetrated miles into the interior. It could not specify that after a certain time the immigration officers would lose jurisdiction, because he might be in hiding for a month without having been able to take up his residence in any one place, or he may have taken up the ordinary pursuits of life, within a very short period of time. We think the legislation on the subject is sufficiently clear as it now stands and that the question of whether an alien has been domiciled or not is no more difficult in the case of the immigration laws (and we include the Chinese exclusion Acts) than in any other case; nor is it more difficult of solution than questions of contributory negligence, laches, whether evidence constitutes the res gestae of a case, and many other questions daily decided by the courts, in which the particular facts and circumstances of the case under consideration largely determine the decision of the court. The petitioner according to the accepted facts having been arrested by the immigration authorities a few minutes after having landed, certainly cannot be said to have "entered" the country in the sense of the immigration laws. Nor are we unsupported by authority in so holding.

In *Ex parte Chow Chok et al.* (161 Fed., 627) it appears that eight Chinese persons were detained by a Chinese inspector for the purpose of returning them to China, they having been refused admission to enter the United States. After full opportunity to be heard by the immigration authorities on their right to enter, Judge Ray said:

"The circumstances are somewhat peculiar, and R. M. Moore, an attorney at law, swears out these writs in behalf of these persons, alleging that their detention is unlawful, in that, when apprehended, they had already entered the United States, and were found therein, and were not seeking admission, and that, conceding that they were then unlawfully in the United States and had no right to remain therein, the Chinese inspector in charge, H. R. Sisson, had no jurisdiction or power to hold them in custody and deport them or return them to China or pass on their cases; that they were found in the United States and in no sense have applied for admission into the United States; that they are not seeking to enter, but to remain unmolested; that for these reasons they are entitled to a hearing on the question of their right to be and to remain in the United States before a United States commissioner or judge in the regular way with the usual right of appeal in such cases."

The court, after stating the details concerning the execution of the plan of these eight Chinamen to enter the United States and the action of the immigration authorities in watching their movements up to the point of the arrival of the Chinamen near the border line, said:

"When near the line, the teams referred to halted, and the Chinese alighted and moved toward the border. The inspectors, or some of them, kept them in sight, and, as the Chinese' crossed the border, passing from the highway to the railroad track, and thence along it as they crossed, they were closely followed by Inspectors West and Landis, who had been joined by Inspectors Yale and Dunton, who had been waiting at a farm house

on the Canada side. All these officers were there for the purpose of preventing the illegal entrance of these persons into the United States, for the purpose of apprehending them if they did enter, and sending them back to China if on due examination found not entitled to enter. The purpose was to prevent their 'entrance' into the United States, within the intent and meaning of the Chinese exclusion Acts. Nothing was said to them as they crossed the border into the United States, nor until they have proceeded something like a fourth of a mile along the track after crossing the border. Then Inspector Dunton gave them to understand they would have to go along with the inspectors. From that point into Rouse's Point, the nearest railroad station for taking the train to Malone, the nearest port of entry, these petitioners were accompanied by Inspectors West, Dunton, and Landis, who took possession of and carried most of their baggage. These inspectors were acting under the orders of their superior. I sustain the objection to the statement that the inspectors 'took charge of them' as a conclusion. Their purpose in being there, and what was said and done, are acts which speak for themselves. It is evident that the officers took them actually into their custody and under their control for the purpose of preventing their actual and completed entry into the United States as 'entry' or 'entrance' should be construed; that is, to prevent their going at large or becoming domiciled in the United States. It is evident the purpose was to take them from the place where they crossed the border by all necessary force, to Malone, the designated point for the admission of Chinese persons into the United States, for due investigation of the facts bearing on their right to enter into the United States.

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"I think it clear that 'found unlawfully in the United States' refers to those Chinese persons who have entered the United States, gone at large, mixed with and become a part of our population, and not to those who, arriving at the border, and suspected of having an intention to enter unlawfully, are followed by the officers having authority to exclude them and actually taken into custody and immediately conducted to the nearest port of entry for investigation of their right to enter, so soon as it is developed that it is their purpose to enter unlawfully and go at large in defiance of law."

The writs were dismissed and the petitioners were remanded. This order was affirmed in a per curiam opinion by the circuit court of appeals. (163 Fed., 1021.)

In the case of *Ex parte Li Dick* (174 Fed., 674), the proceedings were conducted under the provisions of the Immigration Law of February 20, 1907. It appears that Li Dick was apprehended and taken into custody in the city of Utica, near the central part of the State of New York, on October 22, 1909, on the charge that he was then and there a Chinese alien and that he had surreptitiously entered the United States at or near the town of North Burke from the Dominion of Canada without having produced a certificate of admission or having been examined or inspected as required by the immigration laws and regulations of the United States, and that therefore he had surreptitiously entered in violation of law. Three days later the Acting Secretary of the Department of Commerce and Labor issued his warrant under the provisions of sections 20 and 21 of the Immigration Act and the warrant was placed in the hands of an immigration inspector for execution. Two days thereafter the inspector took Li Dick into custody and he was so held in custody by the inspector when a writ of habeas corpus was applied for and allowed. Li Dick made contradictory statements about his entrance into the United States but finally admitted that he left Montreal, Canada, on a Monday evening preceding his arrest and came by automobile; that he came to Montreal from China, where he had been some eight or nine months; and that he had been in Montreal only a few days. He was asked why he smuggled himself into the United States and stated that he had lived in that country before and wanted to come back again; that he had not made preparations to return at the time he left, as several of his friends had been turned down and he thought he would meet their fate too, So he did not apply; that since he left the United States last he had not applied for readmission at a port of entry for Chinese; that he was to pay the man who brought him into the United States from Montreal in the automobile \$170; that he remained in a barn after leaving the automobile until they started for the train and took a rig and drove several hours; and that the

same party that brought him from Montreal to the barn took him to the train. The court held as follows:

"In so far as the status of Li Dick is concerned in his relation to the Department of Commerce and Labor and Bureau of Immigration, I am of the opinion that while he was, in a sense, 'found unlawfully within the United States,' he was when found and apprehended in precisely the same condition as to his right to be and remain in the United States as though he had then presented himself at a port of entry for admission, or had been apprehended by the immigration officers in the very act of crossing the border into the United States in violation of law at some point remote from a port of entry, and there stopped by them. Can there be any question that the immigration officers may prevent such an entry by a Chinese alien even though he had a mercantile domicile in this country prior to his departure, even though such departure and absence was intended to be temporary only? In this case Li Dick had just entered or crossed the border secretly and in the nighttime. He had not reached his destination in the United States. He had not settled down and become a part of the resident population. He was still engaged in the act of surreptitiously entering the United States as much as though he had been on foot running to gain entrance and had reached a point ten or twenty rods this side the boundary line when actually overtaken and apprehended. In such a case as that, must the alien Chinese person be taken before a justice, judge, or a commissioner as one found unlawfully within the United States? Clearly not. (Ex parte Chow Chok et al. (C. C.), 161 Fed., 627, affirmed by circuit court of appeals, 163 Fed., 1021, 90 C. C. A., 230; United States vs. Ju Toy, 198 U. S., 263, 25 Sup. Ct., 644, 49 L. ed., 1040.)

"In my opinion he is lawfully in the custody of the Chinese inspector and inspector of immigration, and the immigration officers may examine into his case and return him to Canada if he is denied admission. In my opinion for purposes of disposition by the immigration officers under the immigration law he is deemed to be in Canada seeking admission into the United States. I know of no right he has gained by surreptitiously entering in defiance and violation of law. When returned to Canada, whence he came, he may present himself at a port of entry, submit to examination and inspection, present his case as an alleged domiciled Chinese merchant entitled to return to and remain in the United States, and if he sustains his claim no doubt the immigration officers will admit him.

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"But Li Dick concedes that he is a Chinese person, an alien, that he departed to China some eight or nine months ago, without making any preparation or arrangements for his return, and that when he did return he purposely failed the law clear that he must be returned to Canada, or deported to China if Canada will not receive him, and that his right as a domiciled merchant cannot be brought in question in these proceedings or the proceedings pending before the Department of Commerce and Labor, Bureau of Immigration. The warrant is not void, the Department has jurisdiction and possession of his person, and, at this stage of the case, at least, the courts should not and will not interfere."

The writ was dismissed and the petitioner remanded. This same Li Dick again sought discharge from custody on a writ of habeas corpus, claiming that he was illegally held and deprived of his liberty on a warrant of deportation made by the Acting Secretary of the Department of Commerce and Labor. In its decision the circuit court again considered his claim that he was not subject to the provisions of the Immigration Law of February 20, 1907, and the writ was likewise dismissed and the petitioner again remanded. (Ex parte Li Dick, 176 Fed., 998.)

The judgment of the lower court is reversed and the petitioner is remanded to the Collector of Customs for deportation. Without costs.

The appeal interposed by the clerk of the court from the order of the court directing that the petition be filed without requiring the fees of the clerk and sheriff to be paid in advance will be decided in a separate opinion.

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

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