

LEONG GUEN, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.*G. R. No. 9195. September 13, 1915*

Ponente: JOHNSON, J.

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It appears from the record that the plaintiff and appellant is a Chinese person; that he arrived at the port of Manila on the 7th of December, 1912, on the steamship Tean, and alleged that he was the minor son of Tu Woo, a resident Chinese merchant in the Philippine Islands; that he was 18 years of age, and requested permission to land. The board of special inquiry, on the same day, December 7, 1912, investigated the question of the right of the plaintiff to enter the Philippine Islands and reached the conclusion, after hearing the declaration of several Chinese witnesses, that he was misrepresenting his age, that he is no longer a minor, and refused him the right to land in the Philippine Islands.

From that decision an appeal was taken to the Honorable H. B. McCoy, Insular Collector of Customs, who found that "from a careful examination of the testimony taken before the board of special inquiry and a personal examination of the applicant, the undersigned is of the opinion, and so finds, that the said Leong Guen is more than 21 years of age and is therefore no longer to be considered a minor, within the meaning of the Chinese Exclusion Law" and affirmed the decision of the board of special inquiry.

Later, and on the 28th of December, 1912, the plaintiff presented a petition for the writ of habeas corpus in the Court of First Instance of the city of Manila. The Collector of Customs was ordered to answer said petition. The answer set up the proceedings taken in the department of customs, together with the decision of said department. While the fact does not appear of record it is nevertheless admitted by the defendant that, at the time said petition for the writ of habeas corpus was brought on for hearing, it was dismissed, by agreement of counsel, in order that further testimony might be taken before the Collector of Customs regarding the age of the plaintiff. It is presumed that by virtue of said agreement the Honorable Charles S. Lobingier entered the following order on the 11th of January, 1913: "This cause coming on for hearing, upon request of counsel for the petitioner, it is hereby ordered that this cause be dismissed absolutely, with prejudice at petitioner's cost."

Later, from the record it appears that, perhaps in accordance with said agreement, further testimony was taken before the board of special inquiry on the 2d of April, 1913. During the second examination, two medical witnesses were examined, Louis Ottofy and Doctor Saleeby. Their testimony related only to the age of the plaintiff. Doctor Ottofy testified that, in his opinion, the plaintiff was about 20 years old. Doctor Saleeby testified that, in his opinion, the plaintiff was about 21 years of age.

After hearing the additional testimony, the board of special inquiry rendered the following decision. "After hearing the additional evidence offered by the detained, in support of his claim that he is still a minor, and carefully considering the conflicting opinions of the two physicians called, as to the age of the detained, the board is still of the opinion and so finds that the said Leong Guen is more than 21 years of age. The board finds no

reason to reverse its decision of December 7, 1912, and the detained is therefore refused landing; the board finds him to be a Chinese person coming to this port without the necessary papers required by law for the admission of Chinese."

From that decision of the board of special inquiry an appeal was taken to the Honorable H. B. McCoy, Insular Collector of Customs, who, after a careful examination of the additional facts presented to the board of special inquiry on the 2d of April, 1913, reached the conclusion that, "from a careful examination of the entire testimony taken by the board of special inquiry, both upon the original hearing and upon the rehearing, and from a personal examination of the applicant, the undersigned is of the opinion, and so finds, that the said Leong Guen is more than 21 years of age, and is, therefore, no longer to be considered a minor, within the meaning of the Chinese Exclusion Law;" refused the plaintiff the right to land in the Philippine Islands and ordered him to be deported.

Later, and on the 10th of June, 1913, after a lapse of nearly two months from the decision of the Collector of Customs, the plaintiff presented another petition for the writ of habeas corpus in the Court of First Instance of the city of Manila. The Collector of Customs was ordered to answer said petition. After due consideration of the petition and answer and the accompanying exhibits, the Honorable Charles S. Lobingier denied the petition for the writ of habeas corpus.

From that decision the plaintiff appealed to this court and made several assignments of error. After setting out the various assignments of error, the appellant, in his brief, makes the following statement as to the real question presented to this court. "The sole question is one as to the age of the petitioner. All of his evidence is to the effect that at the date of his arrival in the Philippine Islands he was less than 21 years of age."

It will be remembered that the board of special inquiry and the Insular Collector of Customs found that the plaintiff was no longer a minor and could not, therefore, be admitted into the Philippine Islands as the minor son of a resident Chinese merchant. Subject to certain observations, which may be made later, it may be stated generally, that if there is some proof in the record supporting the conclusions of the Collector of Customs, the judicial department of the Government is without authority to change or modify his conclusions. An examination of the evidence, therefore, becomes important, for the purpose of determining whether or not there was some proof supporting said conclusions.

It will be remembered that the board of special inquiry, in its first decision, made the statement that it "is satisfied that Leong Guen is misrepresenting his age." During the first examination before the board of special inquiry the plaintiff testified that he was 19 years of age; that his father's name was Leong Tu Woo; that his mother's name was Lao Ham.

The plaintiff's father, Leong Tu Woo, was called as a witness and testified that he was a Chinaman and a merchant doing business in the city of Manila; that the plaintiff was his son; that the name of his wife, the mother of the plaintiff, was Ham Chaw.

Liong Seng, another Chinese witness, was called by the plaintiff, who testified that he knew the father and mother of the plaintiff; that the name of the mother was Leong Hiam.

We have, as will be noticed above, the testimony of the son, the father, and a third person, who each give a different name for the mother of the plaintiff. It is difficult to understand how the father and son, if the son is a legitimate child, could be mistaken as to the name of the mother. The difference in their declarations upon that particular point was sufficient to cast some doubt upon their credibility in the mind of the members of the board of special inquiry. We find much conflict in the testimony of the witnesses relating to the age of the plaintiff. The plaintiff himself testified that he was 19 years of age; the father testified that the plaintiff was 19 years of age. The father further testified that he was 31 years of age when he was married. The statement, according to the record,

was quickly changed by saying 36. He further testified that the plaintiff was born "a little over one year" after he was married. The proof shows that the father was 56 years of age. If the father was 31 years of age, as he first stated, at the time of his marriage, and if the plaintiff was born within one year thereafter, then, considering the present age of the father, the plaintiff would be 24 years of age. The father offered no explanation why he made the two statements with reference to his age at the time of his marriage. The age of the plaintiff, based upon the statement of the father, conforms with the age of the plaintiff as given by the witness Ko Hin. Ko Hin testified that he knew the father of the plaintiff and knew the time he was married; that he was married, according to the Chinese calendar, in the fourteenth year of Kwong Su. The record contains a note, which is not disputed, that the fourteenth year of Kwong Su is equivalent to 1888 and January, 1889, of the Gregorian calendar. If that is correct, and it is not disputed, then, according to the statement of Ko Hin, the plaintiff would be 24 years of age, which corresponds exactly with the statement of the father.

In view of the statement of the appellant that the sole question presented to this court was one relating to the age of the plaintiff, and having found that the record contains proof supporting the conclusion of the Collector of Customs, and without discussing the numerous assignments of error presented by the plaintiff and appellant, we are of the opinion, and so hold, that the judgment of the lower court should be affirmed, with costs. So ordered.

Arellano, C. J., Torres, Carson, Trent, and Araullo, JJ., concur.

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