

GAN BUN CHO, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.

G.R. No. 9309. March 31, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that the plaintiff arrived at the port of Manila on the 19th day of November, 1912, on the steamship Taisang, and asked permission to enter the Philippine Islands.

To support his right to enter he presented the certificate known as the "section six certificate," dated July 25, 1912, which had been issued by the Chinese officials of Foochow, China, and properly countersigned by the consul of the United States Government. Upon said certificate he was permitted to enter. No question has been presented concerning his right to remain in the Philippine Islands.

Sometime after the plaintiff was permitted to enter, he made an application or request to the Insular Collector of Customs that there be issued to him the certificate of residence provided for under section 7 of Act No. 702. The Collector of Customs denied said application or request upon the ground that said section 7, even granting that the Philippine Commission had authority to adopt it, did not apply to Chinese who had entered the territory of the United States under the "section six certificate."

Later, on the 12th day of April, 1913, the plaintiff presented a petition in the Court of First Instance of the city of Manila, praying for the writ of mandamus, requiring and commanding the Insular Collector of Customs to issue to him the certificate provided for by section 7 of Act No. 702.

To said petition the Collector of Customs duly made answer, setting up the facts and denying the right of the petitioner to the remedy prayed for. The cause was later submitted to the court, and the Honorable George N. Hurd, judge, after hearing the respective parties, found that the petitioner was entitled to the remedy prayed for and issued the writ of mandamus, ordering, directing and commanding the Insular Collector of Customs to issue to the petitioner the certificate provided for by section 7 of Act No. 702.

From that decision the defendant appealed to this court and made the following assignments of error:

"First. The lower court erred in ordering the respondent to issue to the petitioner the certificate provided for by and in accordance with section 7 of Act No. 702."

"Second. The court erred in ordering that the petitioner have and recover his costs."

The facts upon which the present appeal is based are admitted. The only question which is now presented for our consideration and determination is one of law. The question is whether or not it is the duty of the Insular Collector of Customs, under the provisions of section 7 of Act No. 702, to issue to the plaintiff the certificate of residence.

The Attorney-General contends that said section 7 was adopted without authority on the part of the Philippine Commission. He further contends that Chinese persons, coming into the territory of the United States under the

"section six certificate," are not permitted to remain permanently therein; whereas, the "certificate of residence," provided for by said section 7, permits such persons to remain permanently in the territory of the United States; that if the Insular Collector of Customs should issue to a person holding the "section six certificate" the certificate provided for by said section 7, he would thereby acquire the right to remain permanently in the territory of the United States, contrary to the purpose and intent of the Act of Congress.

The question of the length of time a Chinese person may remain in the territory of the United States, who enters under the "section six certificate," seems never to have been brought directly before the Federal courts. There is considerable dicta, however, upon the question, most of which indicates that the "section six certificate" not only permits Chinese persons of the class entitled to enter, to enter the territory of the United States, but to abide therein during their pleasure. There are numerous decisions of the Federal courts to the effect that if a Chinese person is rightfully admitted into the territory of the United States, he may remain therein, even though subsequently he ceases to belong to the class to which he belonged at the time of entrance. It was not the purpose of the Act of Congress to exclude all Chinese persons from the territory of the United States. A certain class of Chinese persons, under the treaty between the United States and China, are permitted to enter without objection. The "section six certificate" was provided, not for the purpose of excluding the class entitled thereto, but simply for the purpose of facilitating their entrance. It simply requires the Chinese persons who are permitted to enter the territory of the United States to provide themselves, in advance, with the proper evidence of their right so to do. The "section six certificate" was not intended to be a restriction upon their right to enter. To hold otherwise would be to impute to Congress the purpose to disregard the treaty between the United States and China. Chinese persons holding the "section six certificate" are allowed to come and go, to enter and depart from the territory of the United States at their own free will and accord. No case has been called to our attention, and we believe there is none, which limits their going and their coming to any particular period of time. (*Lau Ow Bew vs. U. S.*, 144 U. S., 47.)

We agree with the contention of the Attorney-General that it was not the intention of the United States Philippine Commission to provide a certificate of residence to Chinese persons who enter the Philippine Islands under the "section six certificate." Whether the petitioner, under his "section six certificate," is permitted to remain permanently in the territory of the United States, we do not now decide. It is sufficient for the present to say that, in our opinion, he is not entitled to the certificate of residence provided for in said section 7.

The judgment of the lower court is therefore hereby reversed and the petition of the plaintiff is hereby denied, and without any finding as to costs, and without prejudice to the writing of a decision in which the questions here involved may be more fully discussed, it is so ordered.

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

Moreland, J., concurs in the result.

Trent, J., dissents.

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