

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. SIA LAM HAN, DEFENDANT AND APPELLEE.

G.R. No. 9313. January 05, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that on the 24th day of July, 1913, a complaint was filed in the Court of First Instance of the city of Manila, alleging that the defendant and appellee, Sia Lam Han, is a Chinese laborer within the Philippine Islands, without the certificate of residence required by Act No. 702 of the United States Philippine Commission, and asked for his arrest, in order that the court might determine whether he had a right to remain in the Islands, and that he be deported if he be found without legal right to remain.

The order of arrest was issued, the respondent was arrested, brought before the court and tried. At the close of the trial the Honorable A. S. Cross field, judge, found from the evidence that the defendant is the son of a merchant ; that he came to the Philippine Islands when he was 14 years of age; that he was still a minor by several years when certificates of registration were issued; that he is now a merchant and has been a merchant for the five years last past, being a partner in a business with a capital stock of from four to five thousand pesos, and entered a judgment dismissing the complaint and discharging the respondent from custody, with costs de officio.

From that judgment the Solicitor-General appealed to this court and alleged (a) that the lower court erred in its finding of facts; and (b) that the lower court erred in dismissing the complaint and discharging the respondent.

An examination of the facts shows that the appellee was taken before the customs officials and examined. During that examination he testified that he was 27 years of age; that he was a merchant in the dry goods business; that he had about P2,000 invested in said business; that he was a Chinaman; that he came to the Philippine Islands about four years before the date of the examination (the examination was had on the 24th day of July, 1913) ; that he landed at Zamboanga; that he came to Zamboanga from Sandakan.

During the examination in the Court of First Instance, the appellee declared again in his own behalf and stated that he was a merchant doing business in the city of Manila; that he came to the Philippine Islands about thirteen years before; that he landed at Zamboanga; that he was 14 years old when he came; that he was 27 years old at the time of the examination; that his father was a merchant in China; that when he landed in the Philippine Islands he did not present himself to the immigration authorities; that he did not have the regular Chinese certificate permitting him to land in the Philippine Islands. He further stated that when he arrived in the Philippine Islands, the Spaniards were still governing the Islands.

Accepting the declaration of the appellee made before the Court of First Instance, it clearly appears that he was in the Philippine Islands during the years within which Chinese laborers were required to register under Act No. 702. There is no attempt on his part to show that he was a merchant during that period. One of the reasons why he was permitted to remain in the Philippine Islands by the lower court was the fact that he was the son of a merchant. That fact may or may not be true, but inasmuch as his father was not a merchant in the Philippine Islands, the fact

cannot avail the appellee or give him a right to remain here. Inasmuch as the record shows that the appellee was in the Philippine Islands during the period within which he was required by law to register under Act No. 702, and in view of the fact that he has failed to show that he was a merchant during that period, he has failed to show any right to remain in the Philippine Islands. (U. S. vs. Yu Wa, 28 Phil. Rep., 1.) It is not incumbent upon the Government to prove affirmatively that the appellee in the present case was a laborer and should have registered under the Act. The burden is by law expressly placed upon the alien to demonstrate that he was not within the class which was required by the Act to register. The law provides that every Chinese person found without the required certificate in the Philippine Islands, after the expiration of the time limited by law for registration, shall be presumed, in the absence of satisfactory proof to the contrary, to be a Chinese laborer and shall be subject to deportation as provided for by Act No. 702. The mere fact that he becomes a merchant after the expiration of the period within which the law required him to register, is not sufficient. The fact which determines whether or not he shall be deported is whether or not he obtained a certificate during the period required by law. (U. S. vs. Lim Co, 12 Phil. Rep., 703.) It is the status which he enjoyed during the period for registration which determines his right to remain. If he was a laborer during that period, and failed to register, the fact that he is a merchant now will not defeat his deportation. (Juan Co vs. Rafferty, 14 Phil. Rep., 235.) The appellee made no effort, in the present case, to show that he was a merchant during the period required for registration. He clearly admits that he was not. He claimed that he came to the Philippine Islands during the Spanish regime and that he had been a merchant only during the past three or four years.

In our opinion the judgment of the lower court should be and is hereby reversed, and it is hereby ordered that a judgment be entered directing that the cause be remanded to the court below, with direction that a judgment be entered ordering the appellee deported from the Philippine Islands. And without any finding as to costs, it is so ordered.

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

MORELAND, J., concurring:

I agree with this decision except that if the question were an open one I would doubt the right of the Government to appeal in cases of this character.

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