

TAN CHIN HIN, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G.R. No. 9808. August 20, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that Tan Seng, a Chinese boy of about 17 years of age, claiming to be the son of Tan Chin Hin, a resident merchant of the city of Manila, arrived at the port of Manila from China on the steamship Chinhita, on the 13th day of February, 1914. The customs authorities refused Tan Seng the right to enter the Philippine Islands. The question was referred to the board of special inquiry and an investigation was held, in which several witnesses testified. After hearing the evidence, two of the three members of the board of special inquiry found that the said Tan Seng was not, in their opinion, the legitimate son of the said Tan Chin Hin, and denied to Tan Seng the right to enter the Philippine Islands. The third member of the board, while he admitted that there were some discrepancies in the proof adduced before the board, held that the same were not of sufficient importance to refuse the said Tan Seng the right to land in the Philippine Islands.

From the decision of the board of special inquiry an appeal was taken to the Collector of Customs, the Honorable B. Herstein, who, upon an examination of the record sent to him, found that the said Tan Seng was not entitled to enter the Philippine Islands, and held as follows:

"It is claimed on behalf of this immigrant (Tan Seng) that he is the legitimate minor son of Tan Chin Hin, a resident Chinese merchant. He states that he is 17 years of age and that he has two younger brothers, aged 13 and 9, respectively. The witnesses presented on his behalf testified that they are acquainted with the father of this immigrant and his family and that the immigrant is such legitimate son, as claimed, but there appear to be discrepancies in their evidence as to the ages of the other children in the family. The board of (special) inquiry found that the applicant has the appearance of being considerably younger than seventeen and considering further the nature of the testimony of the witnesses as to the age of the other members of the (Tan Chin Hin's) family, concluded that the applicant is not the son of Tan Chin Hin, as claimed.

"From a careful review of the record in the case, the conclusions of the board of special inquiry appear to be reasonable and just and no reason is seen for reversing the decision made.

"The said Tan Seng is therefore refused landing, and it is hereby ordered that he be returned to his port of embarkation at the expense of the vessel bringing him, on the next sailing of any vessel of the same line."

Upon being informed of the foregoing decision of the Collector of Customs, the said Tan Chin Hin, on behalf of his alleged son, Tan Seng, presented a petition for a writ of habeas corpus in the Court of First Instance in the city of Manila. Upon a consideration of said petition, the judge of the Court of First Instance issued an order requiring the Collector of Customs to show cause why the writ of habeas corpus should not be granted as prayed for. In response to said order the Collector of Customs made a full and complete statement of the proceedings had before him in the department of customs, accompanying said report by a certified copy of all the proceedings, including the evidence taken before the board of special inquiry.

Upon the issue presented by said petition and return, the judge of the Court of First Instance, apparently without first determining that there had been an abuse of authority on the part of the customs department, proceeded to take testimony upon the question whether or not the said Tan Seng was entitled to enter the Philippine Islands. The right to determine, in the first instance, whether or not a Chinese alien has a right to enter the United States or the territories thereof to which the Chinese Immigration Laws have been extended, has been conferred by law upon a branch of the executive department of the Government. The judicial department of the Government has no authority or right to intervene in determining the right of aliens to enter the Philippine Islands, except and until it has been, proven and shown clearly that that branch of the executive department of the Government upon which the power to determine that question has been conferred by law, has abused its authority. In other words, until it is shown that the customs authorities have abused their authority in refusing Chinese aliens the right to land in the Philippine Islands, the courts are without authority to intervene. The decision of the customs authorities is final, unless it is shown that they have abused their authority. An abuse of authority exists when there is no proof presented to support the conclusions of the customs authorities or when they have misapplied a clear provision of the law. The customs authorities act more or less as a jury in determining the facts in the first instance. They have an opportunity to see and hear the witnesses and they are under no obligation to believe the declarations of a witness if his manner or conduct during the examination is such as to cause them to disbelieve him, even though his declarations are not disputed by any other witness. (*Ekiu vs. United States*, 142 U. S., 651; *Yamataya vs. Fisher*, 189 U. S., 86; *U. S. vs. Ju Toy*, 198 U. S., 253; *Lem Moon Sing vs. United States*, 158 U. S., 538; *Chin Low vs. United States*, 208 U. S., 8; *Lo Po vs. McCoy*, 8 Phil. Rep., 343; *Jao Igco vs. Shuster*, 10 Phil. Rep., 448; *U. S. vs. Williams*, 190 Fed. Rep., 6860 The admission of aliens into the United States is regulated by Acts of Congress. The supervision is confined to the department of immigration charged with the enforcement of laws regulating the admission. The final determination of all facts with relation to the qualification of aliens to enter the United States or their deportation is intrusted to the proper immigration officers, "whose decision is final, unless reversed on appeal to the Secretary of Labor" (in the Philippine Islands the Collector of Customs). By the Act of Congress these officers are made the sole and exclusive judges of the existence of the facts establishing qualification, and no other tribunal is vested with authority or power by Congress to reexamine and consider the sufficiency of the evidence on which these officers acted, until it is shown that such officers abused the authority conferred upon them by law. So long as the officers clothed with this authority act within the limits placed by Congress, courts have no right to interfere. The authority of the immigration officers and the jurisdiction of the courts depend upon the power conferred by Congress. It is a matter of legislation. No discretion is vested in the courts. Congress has the right to legislate upon the subject, prescribe rules, fix limits, and confer authority where it deems wise in legislating upon the subject at hand. Under the present law, the final authority, unless an abuse of authority is shown, is conferred upon the immigration officers. The only right of the courts to intervene is when and after it has been shown that such officers have abused their authority and that the parties have not been given a full, fair, and free hearing. (*Ekiu vs. U. S.*, 142 U. S., 651; *Lo Po vs. McCoy*, 8 Phil. Rep., 343; *Ex Parte Petkos*, 212 Fed., Rep., 275; *U. S. vs. Ju Toy*, 198 U. S., 253; *Ex Parte Joyce*, 212 Fed., Rep., 282.)

A mere refusal by the proper authorities to allow an alien to enter the territory of the United States is not an abuse of authority. The law permits the examining officer or board to examine the applicant for admission, and such other witnesses as may be presented, to hear their testimony and to decide upon such testimony whether or not the applicant is entitled to enter. The authority to examine into the facts relating to the right of the applicant to enter implies the discretion to decide upon such evidence, and unless it is clearly proved that this discretion was abused, the courts will refuse to take jurisdiction for the purpose of determining the questions of the right of the alien to enter. (*Lo Po vs. McCoy*, 8 Phil. Rep., 343.)

The attorney for the appellee in the present case asserts that there was no proof adduced against the right of the

said Tan Seng to land in the Philippine Islands. The burden is not upon the executive department of the Government to show that an alien immigrant has not a right to land in the territory of the United States. The burden is upon the alien seeking to land to show that he has a right to enter. Upon this branch of the case, therefore, it is our conclusion, there being some proof to support the conclusions of the customs authorities, that there was no abuse of authority and that the judge of the Court of First Instance was without authority in the present case to admit proof upon the right of Tan Seng to land in the Philippine Islands. The Court of First Instance had no jurisdiction even to consider the case in the first instance, further than to determine whether or not there had been an abuse of authority on the part of the customs authorities.

The attorney for the petitioner in his brief attempts to show that the Customs authorities of the Philippine Islands are without right to examine into the question of the right of Chinese aliens to land in the Philippine Islands. That question has been presented to this court in numerous instances and in each instance has been decided against his contention. (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.)

After fully considering all of the questions presented by the appellant as well as the appellee, we are of the opinion that the judgment of the Court of First Instance should be reversed and that the judgment of the Collector of Customs should be affirmed. It is, therefore, hereby ordered and decreed that the judgment of this court be entered reversing the judgment of the Court of First Instance and affirming the judgment of the Collector of Customs, and that the case be remanded to the Court of First Instance from whence it came and that a judgment be entered therein in accordance with the foregoing.

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

CONCURRING

MORELAND, J.

I agree to the result in this case.

I think, however, that, in order to avoid confusion and misunderstanding, attention should be directed to the fact that the present case reverses, or at least modifies, the rule laid down with respect to what constitutes an abuse of authority in the case of Ang Eng Chong vs. The Insular Collector of Customs (23 Phil. Rep., 614). In that case it was stated:

"An abuse of authority certainly exists:

" (a) When a person has been denied admission into the territory of the United States who does not belong to any of the excluded classes. For example: A citizen of the United States or any other person who has acquired a right to be in and to remain in territory of the United States. (U. S. vs. Go-Siaco, 12 Phil. Rep., 490; Muñoz vs. Collector of Customs, 20 Phil. Rep., 494; U. S. vs. Yu Kiao, 20 Phil. Rep., 307; U. S. vs. Gue Lim, 176 U. S., 459; 83 Fed. Rep., 136.)

" (b) When a person seeking admission has not been given a full, fair, and free hearing. For example, when he has not been given an opportunity to present all the material proof which he desires to present. (Ngo-Ti vs. Shuster, 7 Phil. Rep., 355; U. S. vs. Ju Toy, 198 U. S., 253; Lo Po vs. McCoy, 8 Phil. Rep., 343.)

"(c) When there is no proof at all presented against the right of the applicant seeking admission. (U. S. vs. Williams, 189 Fed. Rep., 915.)"

I declined to concur in the decision upon the ground that the statements in paragraphs (b) and (c) were not correct statements of the rules governing the respective cases.

First, with reference to (c):

As was observed by the court in the case of *United States vs. Williams* (203 Fed., 155, 158), the Chinese Immigration Acts put the burden of proof expressly upon the Chinaman, and contain no restriction whatsoever as to the kind of proof upon which the immigration authorities are to act. In the case of *Fong Yue Ting vs. The United States* (149 U. S., 698), the court said:

"If no evidence is offered by the Chinaman, the judge makes the order of deportation, as upon a default. If he produces competent evidence to explain the fact of his not having a certificate, it must be considered by the judge; and if he thereupon appears to be entitled to a certificate, it is to be granted to him."

This rule (c) is now modified by the present decision and the correct rule on the subject stated to be:

"The burden is not upon the executive department of the Government to show that an alien immigrant has not a right to land in the territory of the United States. The burden is upon the alien seeking to land to show that he has a right to enter."

Second, as to (b):

I am constrained to believe that the case cited does not correctly state the rule relative to the kind of hearing that must be given' to the alien, and that that error is carried into the present decision. It says: "The only right of the courts to intervene is when and after it has been shown that such officers have abused their authority and that the parties have not been given a full, fair, and free hearing."

As I understand the rule, it does not require a full or a "free" hearing. All that is required is a hearing. It does not have to have the elements of a formal trial and no formal complaint or pleadings are required and the want of them does not affect the authority of the judge, or the validity of the statute. (*Fong Yue Ting vs. The United States*, 149 U. S., 698, 729.)

In the *Japanese Immigrant Case* (189 U. S., 86) the kind of hearing which was accorded the immigrant is stated by the court as follows:

"Besides, the record now before us shows that the appellant had notice, although not a formal one, of the investigation instituted for the purpose of ascertaining whether she was illegally in this country. The traverse to the return made by the Immigration Inspector shows upon its face that she was before that officer pending the investigation of her right to be in the United States, and made answers to questions propounded to her. It is true that she pleads a want of knowledge of our language; that she did not understand the nature and import of the questions propounded to her; that the investigation made was a "pretended" one; and that she did not, at the time, know that the investigation had reference to her being deported from the country. These considerations cannot justify the intervention of the courts. * * * Suffice it to say, it does not appear that appellant was denied an opportunity to be heard. And as no appeal was taken to the Secretary from the decision of the immigration inspector, that decision was final and conclusive. If the appellant's want of knowledge of the English language put her at some disadvantage in the investigation conducted by that officer, that was her misfortune, and constitutes no reason, under the acts of Congress, or under any rule of law, for the intervention of the court by habeas corpus. We perceive no ground for such intervention— none for the contention that due process of law was denied to appellant."

Can such a hearing as this be held to be a "full, fair, and free hearing?" Nevertheless the court said it was sufficient, saying that while no person shall be deprived of liberty without an opportunity to be heard in respect of matters upon which that liberty depends, that does not necessarily mean "an opportunity upon a regular, set

occasion, and according to the, forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act." (Id.)

For these reasons, I am of the opinion that the rule as to a hearing stated in the decision of the court in this case is not the correct one.

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