

YAM KA LIM, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.*G.R. No. 9906. March 05, 1915*

Ponente: JOHNSON, J.

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It appears from the record that on or about the 15th day of December, 1913, the said Yam Ka Lim, a person of Chinese race and descent, arrived at the port of Manila from the port of Hongkong and sought admission into the Philippine Islands, as the legitimate minor son of Yam Long Sai, a resident Chinese merchant. His right to enter the Philippine Islands was inquired into by the board of special inquiry which board, after hearing the testimony of witnesses and considering the evidence submitted by the applicant, refused to permit him to land upon the ground that they did not believe him to be the legitimate son of the said Yam Long Sai, as he claimed.

Due notice was given of said decision to Yam Long Sai, as well as to his representative, William Tracey Page, who were informed that they had two days in which to appeal to the Insular Collector of Customs, should they feel dissatisfied with the decision of said board. Later a bond was given for the release of the plaintiff. No appeal was taken from the decision of the board of special inquiry to the Insular Collector of Customs. The decision of the board of special inquiry appears to have been rendered on or about the 15th day of December, 1913. Nothing further seems to have been done by the plaintiff until on or about the 17th day of February, 1914, when he presented his petition for the writ of habeas corpus. Upon the presentation of the petition for the writ of habeas corpus, the Honorable A. S. Crossfield granted the same and ordered the Insular Collector of Customs to produce the body of the plaintiff herein. The Insular Collector of Customs, through the Attorney-General, made answer to said petition and accompanied the same by all of the proof adduced during the hearing before the board of special inquiry.

Without having first decided whether the Collector of Customs had abused his authority, the lower court proceeded to hear evidence upon the question whether or not the said Yam Ka Lim was the legitimate minor son of Yam Long Sai. After hearing the evidence and taking into consideration the laws of China, without any proof as to what they were, the lower court decided that the said Yam Ka Lim was the legitimate son of the said Yam Long Sai and ordered him to be released from the custody of the Collector of Customs and that he be permitted to enter the Philippine Islands and that the said bond theretofore given be canceled.

From that decision the Attorney-General appealed to this court and made the following assignments of error:

First. The Court erred in holding that it had jurisdiction to review the decision of the immigration authorities in this case.

Second. The court erred in taking judicial notice of the laws of China relative to marriage and child legitimacy, which differ from those in force in the Philippine Islands.

Third. The court erred in finding that there had been an abuse of discretion and authority on the part of the

immigration officials, which warranted the setting aside of their decision in this case.

Fourth. The court erred in ordering the petitioner discharged from the custody of the Insular Collector of Customs.

With reference to the first assignment of error, it may be noted:

First. That the right to determine whether or not Chinese aliens may enter the territory of the United States is conferred exclusively upon a branch of the executive department of the Government.

Second. That the courts have no right to interfere in determining the question of the right of said aliens to enter the territory of the United States until after the executive department of the Government has concluded its investigation of that question.

Third. That the courts, even after the executive department has concluded its investigation, have no right to intervene until it is shown that the executive department of the Government has abused its power and authority.

In the present case the petitioner did not exhaust all of the remedies afforded him by the executive department of the Government. He had the right of appeal to the Insular Collector of Customs, which he did not exercise. It has been frequently decided that until an alien has exhausted his remedy in the executive department of the Government, he is without right to appeal to the judicial department in a case like the present. The appellee not having exhausted his remedy in the executive department of the Government, the courts are without jurisdiction to consider his claim.

What has been said with reference to the first assignment of error is sufficient to show that the courts are without jurisdiction to consider the present case and to justify a reversal of the judgment rendered.

With reference to the second assignment of error, it is quite clear that the lower court committed an error in taking judicial notice of what the laws of marriage in China are. The statutes of other countries must be pleaded and proved the same as any other fact. In the absence of such pleading and proof the laws of a foreign state will be presumed to be the same as our own.

There was ample proof in the record to show, or at least to convince the board of special inquiry, that the said Yam Ka Lim was not the legitimate minor son of the said Yam Long Sai.

The petitioner, not having exhausted the remedies offered to him by the executive department of the Government, had no right to appeal to the courts.

For the foregoing reasons the judgment of the lower court is hereby revoked and it is hereby ordered that the record be returned to the lower court, with direction that an order be issued returning the plaintiff to the custody of the Insular Collector of Customs, to the end that he may be deported in accordance with the order of the said Collector of Customs. And without any finding as to costs, it is so ordered.

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

Moreland, J., concurs in the result.

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