

RUFINO TAN GUAN SIEN, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.

G.R. No. 9983. March 31, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record it appears that on the 1st day of February, 1910, the plaintiff arrived at the port of Manila and asked permission to enter the Philippine Islands upon the ground that he was a citizen. His right to enter was inquired into by the Bureau of Customs, which found that he was without right to enter. From the conclusion of the board of special inquiry, an appeal was taken to the Collector of Customs, where the same was affirmed.

Later an application was made to the Court of First Instance of the city of Manila for the writ of habeas corpus, which court, after hearing the respective parties, denied the same. No appeal was taken from the decision of the Court of First Instance. The record does not show whether the plaintiff was deported under said order or not.

The plaintiff, in the year 1912, again tried to enter the Philippine Islands upon the theory that he was a merchant. His right to enter was examined into by the Bureau of Customs and was again denied. The record does not show what occurred between the denial of his right to enter at that time and the month of July, 1912.

On the 17th day of July, 1912, a petition was presented on his behalf in the Supreme Court for the writ of habeas corpus. (R. G. No. 8094; not reported.) While the petition was presented in the Supreme Court on the 17th day of July, 1912, it, in fact, bears date of and was sworn to on the 1st day of December, 1911. The petition presented in the Supreme Court was denied on the 19th day of July, 1912.

Nothing further seems to have been done until some time on or about the 1st day of October, 1912, when the plaintiff evidently asked permission of the Bureau of Customs to present further proof upon the question of his right to enter the Philippine Islands as a resident merchant. To that request, the Acting Insular Collector of Customs replied as follows:

"In reply to yours dated the first inst. (October, 1912) requesting permission to present, evidence before the board of special inquiry to show Rufino Tan Guan Sien to be a merchant, I have to request information as to the date when you claim his status as a merchant originated; that is, do you claim him to have been a merchant at the time of his arrival here in February, 1910, or that he has since become a merchant?"

To that letter the plaintiff seems to have made some reply. Exactly what it was, the record does not show.

On January 10, 1914, however, we find that the Honorable B. Herstein, Insular Collector of Customs, sent to the attorney for the plaintiff the following letter:

"In reply to your various letters regarding Rufino Tan Guan Sien, I have to inform you that after a careful consideration of this entire matter it has been determined that this Bureau is without authority to do anything more than to enforce the decision of the Supreme Court of the Philippine Islands in this case. You are, therefore, requested to produce him for deportation not later than February 15, 1914. You are further informed

that a failure to produce him on or before that date will result in this office taking such action as may be necessary to secure his arrest and deportation and will result in the forfeiture of the bond given by him for his temporary release, and the confiscation of the amount deposited on said bond."

Nothing further seems to have been done until the 24th day of February, 1914, when the plaintiff presented a petition in the Court of First Instance of the city of Manila for the writ of habeas corpus. The Collector of Customs was ordered to produce the body of the plaintiff. The cause was finally brought on for hearing before the Honorable A. S. Crossfield, judge, who, without taking into consideration the proceedings theretofore had in the Bureau of Customs, and the fact that the Bureau of Customs had denied the right of the plaintiff to enter the Philippine Islands, which decision had been affirmed by the Court of First Instance of the city of Manila, and also the fact that the petition for the writ of habeas corpus had been denied by the Supreme Court, proceeded to take testimony upon the question of the right of the plaintiff to enter the Philippine Islands.

From said testimony it appears that the plaintiff, when he arrived in the Philippine Islands in the year 1910, was 31 years of age. His testimony was given on the 4th day of March, 1914. On that date he stated that he had been a merchant in the Philippine Islands "since last year" (1913). In answer to the question how he acquired an interest in a mercantile business in the Philippine Islands, he replied: "While I was in China, I sent money here for an interest in that business." It thus appears that after he had been denied the right to enter the Philippine Islands, first as a citizen, and again as a merchant, and during the pendency of the question of his right to enter, and while he was remaining in the Philippine Islands, awaiting the decision of that question, he became a merchant. Certainly the law does not contemplate that Chinese persons may, by one method or another, gain an entrance into the territory of the United States, without the "section six certificate," and after such entrance become a merchant, and then as such, insist upon his right to remain.

The question of the right of the plaintiff to enter the Philippine Islands as a citizen has been settled, not only by the Bureau of Customs and the courts, but his right to so enter has been abandoned by him.

The right of the plaintiff to enter as a merchant has been denied also both by the customs authorities, as well as by the courts. After the decision of that question had become final, and at the time the authorities were attempting to enforce the same, the plaintiff again presented a petition for the writ of habeas corpus, thereby attempting to remain in the Philippine Islands, after having been denied that right.

The judgment of the lower court allowing the plaintiff to enter the Philippine Islands as a merchant, might be denied upon the ground that there is no showing, nor even an attempt to show, that the Bureau of Customs abused the power and discretion conferred upon it. It might also be reversed upon the further ground that there is no provision of law which permits a Chinese person, belonging to the prohibited class, to gain admission into territory of the United States, upon facts which arose during the consideration of the question of his right to enter. His right depends upon the facts at the time of his application. If he is not a merchant at that time, he is not permitted to enter upon the theory that he became a merchant during the time he was waiting for the decision of the proper authorities. (*Juan Co vs. Rafferty*, 14 Phil. Rep., 235; *U. S. vs. Ju Toy*, 198 U. S., 253, 263.)

For the foregoing reasons the judgment of the lower court is reversed and it is hereby ordered that the record be returned to the court whence it came, with direction that a judgment be entered in accordance herewith, and that the plaintiff be returned to the Bureau of Customs for deportation, in accordance with the order heretofore rendered by said department, 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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