

34 Phil. 493

[G.R. No. 11363. March 28, 1916]

BERNARDO MOLDEN, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

D E C I S I O N

JOHNSON, J.:

On the 17th day of April, 1915, the plaintiff presented a petition for the writ of habeas corpus in the Court of First Instance of the city of Manila. He alleged that he was being illegally detained and deprived of his liberty by the defendant.

To said petition the defendant made answer, in which he alleged that the plaintiff is a person of the Chinese race who arrived from foreign ports and entered the Philippine Islands on or about the 6th day of November, 1914, unlawfully, and in violation of the Act of Congress of February 20, 1907; that the petitioner is being held by virtue of an administrative warrant issued in accordance with the Act of Congress of February 20, 1907. A copy of said administrative warrant was made a part of the answer. Said administrative warrant (No. 160), under which the plaintiff was arrested and was being held at the time of the presentation of the petition for the writ of habeas corpus, was as follows:

“To the chief of the secret agents, or to any other officer of the Philippine customs service authorized to make arrests, greeting:

*“Whereas, it has been shown to the undersigned and the undersigned is satisfied that Bernardo Molden *alias*, and Faustino Molden *alias*, are aliens, and that the said Bernardo Molden *alias*, and Faustino Molden *alias*, entered the Philippine Islands from foreign ports on November 6, 1914, at the port of Manila, unlawfully and in violation of the Act of Congress approved February 20th, 1907, in that Bernardo Molden *alias*, and Faustino Molden *alias*, are Chinese persons not entitled to admission into the Philippine Islands, and are not natives of the*

Philippine Islands, as claimed and represented at the time of such entry; and

“Whereas, since such illegal entry and during all the time that the said Bernardo Molden *alias*, and Faustino Molden *alias* have been in the Philippine Islands, they have remained therein in violation of law and especially in violation of the Act of Congress approved February 20, 1907.

“Now, therefore, by virtue of the authority vested in me by the provisions of the Act of Congress approved February 20, 1907, entitled ‘An Act to regulate the immigration of aliens into the United States,’ you are commanded to forthwith apprehend the said Bernardo Molden *alias*, and Faustino Molden *alias*, take them into custody and bring them before a board of special inquiry sitting at the port of Manila, P. I., for a hearing to enable them to show cause, if any there be, why they should not be deported from the Philippine Islands, in accordance with the terms of said Act of Congress, approved February 20, 1907, as amended by the Act of Congress, approved March 26, 1910.

“Given under my hand and seal of office at Manila, P. I., this 15th day of April, 1915.

(Sgd.) “B. HERSTEIN,

“Insular Collector of Customs.”

Later, on the 26th of July, 1915, the petitioner presented a supplementary petition, in which he alleged additional facts to those alleged in the first petition, attempting to show that the Bureau of Customs had secretly and clandestinely and without notice to the detained, made certain investigations relating to the right of the defendant to deport him.

To said supplementary petition the defendant made a supplementary return, in which he admitted that he had made certain investigations concerning the right of the plaintiff to remain in the Philippine Islands; that after said investigations had been made by the representative of the defendant the cause was brought on for hearing before the board of special inquiry; that during said hearing the said representative of the defendant, Mygatt, testified giving a statement of what he had learned during his official investigation; that during the session of the board of special inquiry on said date (July 15, 1915) the official report of Mygatt, together with the declarations of eleven witnesses, was presented to the

board and considered by it in rendering its official decision; that the plaintiff was given an opportunity on said date (July 15, 1915) to produce before the board of special inquiry any additional evidence which he might consider necessary; that additional witnesses were examined in behalf of the plaintiff on said date.

Later the board of special inquiry, after hearing the evidence adduced before it on the 15th of July, 1915, reached the conclusion that the plaintiff was illegally within the Philippine Islands and should be deported upon the ground that he is a Chinese person who entered the Philippine Islands on the 6th of November, 1914, in violation of the Act of Congress of February 20, 1907.

On the 21st of July, 1915, the Insular Collector of Customs examined the recommendation of the board of special inquiry and after reviewing the record made by said board and the testimony taken before it, as well as the report of the special examiner, Mygatt, decided that the plaintiff, Bernardo Molden, is not the person he represents himself to be, and that he had landed in the Philippine Islands on the 25th of October, 1914, in violation of the Act of Congress of February 20, 1907, and ordered him deported.

Upon the issue thus presented the cause was submitted to the Honorable Jose C. Abreu, judge, who, after hearing some additional evidence, ordered the record in the case returned to the Insular Collector of Customs of the Philippine Islands, in order that he might take such steps in the premises as he might deem wise and necessary, to the end that the petitioner, Bernardo Molden, might have an opportunity to have a free, full, and fair hearing.

From that decision the plaintiff appealed to this court and made the following assignments of error: "First. That the court below erred in failing to find that the proceedings before the immigration officers, not being based on a precedent oath or affirmation, were null and void. Second. That the court below erred in refusing to pass upon the merits of the controversy. Third. That the court below erred in remanding the cause to the respondent, for further consideration."

Proceedings for the deportation of Chinamen constitute a civil and not a criminal action. The administrative warrant, upon which Chinamen who have illegally obtained entrance into territory of the United States are held, is not a warrant such as issue in criminal cases. It need not be under oath, when it is issued by the proper authorities. The Act of Congress of the 20th of February, 1907, as well as preceding Acts of Congress, expressly authorize the

issuance of such warrants by the proper administrative authorities. That being true, an alien who is unlawfully in the territory of the United States, who gained his entrance therein illegally and clandestinely, can not procure his discharge on a writ of habeas corpus, simply because the original order of his arrest was unauthorized. (*Ex parte Chin Him*, 227 Fed. Rep., 131.)

We believe that it is now definitely established by authority of the Supreme Court of the United States in many decisions that if the proper department of the Government has found that an alien is unlawfully in territory of the United States, a warrant of deportation can lawfully issue, provided a fair or even summary hearing has been given in ascertaining that fact, if there is any proof tending to sustain the charge. It is not open to the courts to consider either the admissibility or the weight of the evidence, and courts can not interfere if anything was offered which tends, although slightly, to sustain the charge, the decision of the proper department being, in such cases, binding upon the courts. (*Lewis vs. Frick*, 233 U. S., 291; *U. S. vs. Petkos*, 214 Fed. Rep., 978; *Ex parte Chin Him*, 227 Fed. Rep., 131.)

The main contention of the appellant in the present case is that there was no proof in the record, presented during the examination, which showed that he should be deported from the Philippine Islands. The fact is not disputed that upon the recommendation of Gregorio Nieva the petitioner and appellant was admitted into the territory of the United States. It is also admitted that Gregorio Nieva became convinced that a fraud had been perpetrated upon him; that he had been induced to recommend to the Collector of Customs the admission into the territory of the Philippine Islands the petitioner, under the belief that the petitioner was a Filipino boy, of Chinese parents, born in the municipality of Mogpog. The record contains a copy of the proceedings had not only before the Collector of Customs, but in the Court of First Instance as well.

The record also contains, in addition to the declaration of the petitioner, the declarations of a number of witnesses.

We have made an examination of such record and find that the following facts are undisputed: First. From the record of the department of customs made at the time the petitioner gained, as it is alleged, his entrance into the Philippine Islands fraudulently, we find the following facts:

“This case originally came up on December 3, 1913, when the parties were still in China (Faustino and Bernardo) ; witnesses appeared in this office and were

examined by the inspector, who recommended that they be not allowed to depart from China. It was believed that they were fraudulent and on the recommendation of the inspector they were detained in China at that time, by the consul, until the new regulations went into effect. The detained came to Manila in company with his alleged brother, on the 25th of October, 1914, on the steamship *Taisang*, and was finally landed on November 6, 1914, as Bernardo Molden, the son of a Filipina woman, entitled to land as a citizen of the Philippine Islands, claiming that he was born in the town of Mogpog, Island of Marinduque. The witnesses who appeared at that time were Wy Joco, Catalino Josuc, and Gregorio Madala. There was some doubt at that time as to the identity of the detained.

“Gregorio Nieva, Secretary to the Speaker of the Philippine Assembly, interested himself in their behalf and wrote a letter stating that he knew the boys (Faustino and Bernardo) and their father; and knew that they were born in Mogpog. Apparently on the strength of this letter the boys were allowed to land.

“Bernardo Molden, the detained, was registered on November 9, 1914. L. C. R. No. 10020, I. C. No. 12060.”

It will be remembered that at the same time the petitioner arrived he was accompanied by his alleged brother (Faustino), both of whom were mentioned in administrative warrant No. 160, and that one of them (Faustino) was not present at the hearing which took place upon said administrative warrant No. 160 for the reason that he had escaped or at least could not be found and for that reason the investigation related to Bernardo Molden only.

Second. That by reason of the fact that the petitioner represented at the time of their alleged fraudulent admission into the Philippine Islands that they were born in Mogpog, in the Island of Marinduque, and were the sons of a Filipina woman, P. G. Mygatt, immigration inspector, went to the municipality of Mogpog, for the purpose of making an investigation. This investigation was made after said administrative warrant No. 160 had been issued. During the examination of the facts stated in said administrative warrant, Mygatt was called as a witness and declared in the presence of the accused and of his attorney, as follows:

“Q. Did you go to Marinduque to investigate the case of Bernardo Molden some time ago?—A. Yes.

“Q. Will you give the data as near as you can?—A. I made my report to the Collector of Customs when I returned. I arrived in Mogpog on April 22, 1915.

“Q. What investigation did you make of this case; whom did you see?—A. The investigation was conducted at Mogpog on April 22d and 23d, and it was held in the office of the *presidente*, at which time I believe there were 11 different witnesses examined, regarding the two boys Faustino and Bernardo Molden. The result of the examination of these several witnesses was that Bernardo Molden, or the boy named Bernardo Molden, was at that time living in Mogpog; that he himself had never been in China. He had a brother by the name of Faustino, who appears to have been taken to China when he was about 3 or 4 years of age and it is reported that he died in China. He never returned to the Philippine Islands. The mother of the Molden boys is living in Mogpog and she appeared and testified as one of the witnesses. I took with me the certificates of residence of the two boys who were landed by the board in Manila last November as the Molden boys and the witnesses at Mogpog were shown these certificates of residence. They stated they weren't the Molden boys who were born in Mogpog. There, were several of these witnesses who, when shown these photographs attached to these certificates of residence, stated that they knew these boys as Chinese boys who were brought to Mogpog by the Chino Uy Joco, but weren't the original Molden boys born in Mogpog. The two witnesses who testified before the board of inquiry at Manila last November, named Gregorio Madia and Catalino Josuc, were called as witnesses at Mogpog and stated that they had testified before the board of inquiry in Manila in accordance with instructions they had received from the Chino Uy Joco; that they had neVer seen these boys prior to their coming to Manila and that they knew them as Chinese boys. They further stated that these expenses to and from Mogpog, and during their stay in Manila, had been paid by the Chino Uy Joco.

“Q. Did they admit that they had testified falsely before the board?—A. They admitted that they had testified falsely before the board.

“Question by Mr. RICE:

“Q. Did you show these photographs to the mother?—A. The mother Benita Molden, was shown the photographs attached to the two certificates of residence, Nos. 10020 and 10021, and she stated that these weren't her sons;

that she did not know who they were, and that she didn't know anything about these boys going to Manila.

'Question by Chinaman Northrup :

'Q. Did you see the real son of Benita Molden, Bernardo Molden, who was living in Mogpog?—A. Yes; he was present in the town and was called as a witness. He was also shown these photographs attached to landing certificates of residence already mentioned, and said that he didn't know them. It appears that this Bernardo Molden goes under the name of Bernardo or Alejandro. The explanation is that at the time of his birth he took the name of his godfather, Alejandro Navares, and that he was baptized under the name of Bernardo Molden. One of the other witnesses called in was the clerk who keeps the church records and he explained it that way; that he was baptized under the name of Bernardo Molden."

Later the petitioner, Bernardo Molden, was recalled as a witness and he admitted that when he traveled on the steamship *Carmen* he had given his name as "Ng Lun," and not as Bernardo Molden. During the examination he was requested to write his name and he wrote it as follows, all on one line: "Ng Lun," "Bernardo," "Mo Lun."

The record shows that the petitioner is nineteen years of age. It would seem that a young man of that age should have no difficulty in knowing his real name. The fact that he did not, at least casts some suspicion upon his identity.

While perhaps many of the statements made during the examination of Mygatt were not technically admissible, yet when we take into consideration the fact that they were presented in the presence of the petitioner and his lawyer, and that no objection was made by either, and that said declarations were presented primarily for the purpose of showing the parentage of the petitioner and the general reputation of that fact in the community in which he claimed he was born and reared, we are of the opinion and so hold that for that purpose they were sufficient proof to justify the conclusion of the department of customs "that the evidence now presented that the detained is not the Bernardo Molden who was born in Mogpog, but that he is a Chinese person who entered the Philippine Islands, October .25, 1914, unlawfully and in violation of the Act of Congress of February 20, 1907, as stated in the warrant of arrest."

In reaching this conclusion concerning the existence and sufficiency of such proof, we have not taken into consideration the affidavits presented nor the telegrams and letters of Gregorio Nieva. Said affidavits and letters should not be considered as proof for the reason that the petitioner did not have an opportunity to see or hear said person as a witness. (Chun Tung vs. Collector of Customs, R. G. No. 9860, decided October 14, 1914, not published; Loo Sing vs. Collector of Customs, 27 Phil. Rep., 491.) The petitioner and his attorney, however, had an opportunity to cross-examine Mygatt and had a right to call witnesses to disprove his statements and his declarations. The petitioner called no witnesses and made no effort to disprove the declarations of Mygatt. He preferred to rely upon a mere technicality rather than to attempt to show, by undisputable proof, that he was the son of a Filipino woman and was born in the municipality of Mogpog. If he was the person he claimed to be, it would have been easy for him to have called his parents and to have proved his allegations. The burden was upon him to show that he was the person he claimed to be.

Finding as we do that the department of customs had some proof before it, which justified its conclusions in fact and in law, we are without jurisdiction, in the absence of proof of abuse of authority, to change or modify those conclusions. Therefore we are of the opinion and so declare that the judgment of the Collector of Customs that the petitioner should be deported is hereby affirmed, with costs, and it is hereby ordered and decreed that the judgment of the court *a quo* be modified and that the record be returned to the court whence it came, with direction that a judgment be entered in accordance herewith. So ordered.

Torres, Trent, and Araullo, JJ., concur.

Moreland, J., voted for a denial of the writ on the ground that no error of law or abuse of discretion was shown by the applicant for the writ.