

**ILLUH ASAALI, HATIB ABDURASID, INGKOH BANTALA, BASOK
INGKIN, AND MOHAMMAD BANTALLA, PETITIONERS, VS. THE
COMMISSIONER OF CUSTOMS, RESPONDENT.***G.R. No. L-24170. February 28, 1969*

Ponente: FERNANDO, J.

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Our decision of December 16, 1968, sustaining the action taken by respondent Commissioner of Customs, the case reaching us in view of its affirmance by the Court of Tax Appeals, upholding the validity of the seizure of the vessels and cargo in question, done outside our territorial jurisdiction, a decision intended, according to our opinion, to lend support to the governmental "policy relentlessly adhered to and unhesitatingly pursued to minimize, if not to do away entirely, with the evil and corruption that smuggling brings in its wake," is under fire from petitioners. In their printed motion for reconsideration, dated January 14, 1969, substantially a rehash of the points previously raised by them, there is an insistence on the alleged lack of jurisdiction of the Customs authorities justifying such seizure on the high seas. It may not be amiss, therefore, to give further thought to such a jurisdictional issue.

According to our decision of December 16, 1968, petitioners, "owners of five sailing vessels and the cargo loaded therein declared forfeited by respondent Commissioner of Customs for smuggling," raised the principal question of "the validity of their interception and seizure by customs officials on the high seas, the contention being raised that importation had not yet begun and that the seizure was effected outside our territorial waters." The answer to such a question depended on the finding of facts of the Court of Tax Appeals, well nigh decisive in its effect. For we are bound by what was found by the Court of Tax Appeals, the case having reached us in a petition for the review of its decision of November 19, 1964, the opinion being penned by the late Associate Judge Augusto M. Luciano.

As noted in our decision: "The facts according to the above opinion 'are not controverted.' Thus: 'It appears that on September 10, 1950, at about noon time, a customs patrol team on board Patrol Boat ST-23 intercepted the five (5) sailing vessels in question on the high seas, between British North Borneo and Sulu while they were heading towards Tawi-tawi, Sulu. After ordering the vessels to stop, the customs officers boarded and found on board, 181 cases of 'Herald' cigarettes, 9 cases of 'Camel' cigarettes, and some pieces of rattan chairs. The sailing vessels are all Philippine registry, owned and manned by Filipino residents of Sulu, and of less than thirty (30) tons burden. They came from Sandakan, British North Borneo, but did not possess any permit from the Commissioner of Customs to engage in the importation of merchandise into any port of the Sulu sea, as required by Section 1363(a) of the Revised Administrative Code. Their cargoes were not covered by the required import license under Republic Act No. 426, otherwise known as the Import Control Law.' "

It should not escape notice that the jurisdictional question was vigorously pressed before the Court of Tax Appeals. It was not deemed persuasive. As noted in its opinion: "'We perfectly see the point of the petitioners but

considering the circumstances surrounding the apprehension of the vessels in question, we believe that Section 1363(a) of the Revised Administrative Code should be applied to the case at bar. It has been established that the five vessels came from Sandakan, British North Borneo, a foreign port, and when intercepted, all of them were heading towards Tawi-tawi, a domestic port within the Sulu sea. Laden with foreign manufactured cigarettes, they did not possess the import license required by Republic Act No. 426, nor did they carry a permit from the Commissioner of Customs to engage in importation into any port in the Sulu sea. Their course announced loudly their intention not merely to skirt along the territorial boundary of the Philippines but to come within our limits and land somewhere in Tawi-tawi towards which their prows were pointed. As a matter of fact, they were about to cross our aquatic boundary but for the inter-vention of a customs patrol which, from all appearances, was more than eager to accomplish its mission.”

As a matter of fact, our decision likewise quoted the vigorous language employed by the late Judge Luciano in rejecting such a plea, one that must have been prompted by his sense of realism. 'As he so emphatically expressed it: "To entertain even for a moment the thought that these vessels were probably not bound for a Philippine port would be too much a concession even for a simpleton or a perennial optimist. It is quite irrational for Filipino sailors manning five Philippine vessels to sneak out of the Philippines and go to British North Borneo, and come a long way back laden with highly taxable goods only to turn about upon reaching the brink of our territorial waters and head for another foreign port."

We did point out that our decision affirming that of the Court of Tax Appeals could be based correctly on such a finding. No other outcome could be expected. It is rare, as was noted, for us to substitute our own discretion for the Court of Tax Appeals. Certainly, the situation before us was not one of them.

Both the appreciation of the relevant facts and the appraisal made cannot be impugned. Nonetheless, we gave more than a passing consideration to the allegation of absence of jurisdiction and upheld the action of the Commissioner of Customs as affirmed by the Court of Tax Appeals. Why we did so was explained in our opinion thus: "It is unquestioned that all vessels seized are of Philippine registry. The Revised Penal Code leaves no doubt as to its applicability and enforceability not only within the Philippines, its, interior waters and maritime zone, but also outside of its juris-diction against those committing offense while on a Philippine ship * * *. The principle of law that sustains the validity of such a provision equally supplies a firm foundation for the seizure of the five sailing vessels found thereafter to have violated the applicable provisions of the Revised Administrative Code."

There was an added reason for the conclusion reached by us. Thus: "Moreover, it is a well-settled doctrine of Inter-national Law that goes back to Chief Justice Marshall's opinion in *Church v. Hubbard*, an 1804 decision, that a state has the right to protect itself and its revenues, a right not limited to its own territory but extending to the high seas. In the language of Chief Justice Marshall: "The authority of a nation within its own territory is absolute and exclusive. The seizure of a vessel within the range of its cannon by a foreign force is an invasion of that territory, and is a hostile act which it is its duty to repel. But its power to secure itself from injury may certainly be exer-cised beyond the limits of its territory."

Petitioner, undeterred, would, invoking Section 1141 of the Revised Administrative Code, press anew the jurisdictional question. Thus: "The seizure of the said vessels and their cargoes, on the high seas, by the Collector, under whose direction it was effected, constitutes a gross misuse of govern-ment powers, which is not only not legally justified in our system of government, but in violation of our laws. Even under the present stress brought upon our government by the serious problem of smuggling said misuse of government powers is condemned by the very system of our government."[1]

Section 1141 of the Revised Administrative Code insofar as pertinent provides: "For the due and effective

exercise of the powers conferred by law in the Bureau of Customs, and to the extent requisite therefor, said Bureau shall have the right of supervision and police authority over all seas 'within the jurisdiction of the Government of the Republic of the Philippines and over all coasts, ports, harbors, bays, rivers, and inland waters navigable from the sea.'"[2] The present legal statutory provision is found in the Tariff and Customs Code in the Philippines in almost identical language except for the explicit reference to jurisdiction being exercised over airports.[3]

The above section, while apparently lending support to the contention of petitioners in their motion for reconsideration, should not be given a restrictive significance, especially one which would negate the power exercised by the Commissioner of Customs in this case in view of the undeniable fact of smuggling. If, under the circumstances disclosed, the government would be rendered powerless and its effort to protect itself from the evils of smuggling nugatory, then a competence, the existence of which as above pointed out in *Church v. Hubbard*[4] is not subject to doubt in accordance with an accepted International Law doctrine, would be taken away from it. We should be loathe to arrive at such a result, repugnant as it is, to the constitutional precept that among the basic postulates of our policy is the adoption of "the generally accepted principles of international law as part of the law of the nation." [5]

There may be need of a more extensive citation from the opinion of Justice Marshall in *Church v. Hubbard*. Thus: "That the law of nations prohibits the exercise of any act of authority over a vessel in the situation of the *Aurora*, and that this seizure is, on that account, a mere marine trespass, not within the exception, cannot be admitted. To reason from the extent of protection a nation will afford to foreigners to the extent of the means it may use for its own security does not seem to be perfectly correct. It is opposed by principles which are universally acknowledged. The authority of a nation within its own territory is absolute and exclusive. The seizure of a vessel within the range of its cannon by a foreign force is an invasion of that territory, and is a hostile act which it is its duty to repel. But its power to secure itself from injury may certainly be exercised beyond the limits of its territory. * * * These means do not appear to be limited Within any certain marked boundaries, which remain the same at all times and in all situations." That *Church v. Hubbard* is a leading case is attested by its being cited almost textually in such leading case books as *Hudson*, [6] *Fenwick* [7] and *Briggs*. [8]

There is an equally valid ground for so construing the Administrative Code provision in question as to justify the seizure herein made. So it would necessarily follow from the decisive facts as found by the Court of Tax Appeals. Considering, as the language of the late Judge Luciano so emphatically stressed, that even for "a simpleton or a perennial optimist" the thought that these vessels "were probably not bound for a Philippine port," would be "quite irrational" for Filipino sailors "manning five Philippine vessels [would not] sneak out of the Philippines and go to British North Borneo, and come a long way back laden with highly taxable goods only to turn about upon reaching the brink of our territorial waters * * *." There is thus more than ample justification for indulging in the legal fiction that the seizure conducted under such peculiar circumstances could be considered as having taken place within Philippine waters. Any other view would render nugatory a conceded governmental power.

In the recent case of *Tayag v. Benguet Consolidated, Inc.*, [9] in order to frustrate an attempt of the domiciliary administrator, the County Trust Company of New York, from refusing to honor a valid order of a probate court, we held that the shares of stocks in the possession of such domiciliary administrator could be considered as lost contrary to the admitted fact so that new shares of stocks of the Benguet Consolidated, Inc. could be issued in their place for delivery to the ancillary administrator in the Philippines. As we pointed out in our opinion: "It may be admitted of course that such alleged loss as found by the lower court did not correspond exactly with the facts. To be more blunt, the quality of truth may be lacking in such a conclusion arrived at. It is to be remembered however, again to borrow from Frankfurter, 'that fictions which the law may rely upon in the pursuit of legitimate

ends have played an important part in its development.' " Nor did we stop there. Thus: "Speaking of the common law in its earlier period, Cardozo could state that fictions 'were devices to advance the ends of justice [even if] clumsy and at times offensive.' Some of them persisted even to the present, that eminent jurist, noting 'the quasi contract, the adopted child, the constructive trust, all of flourishing vitality, to attest the empire of 'as if' today. He likewise noted 'a class of fictions of another order, the fiction which is a working tool of thought, but which at times hides itself from view till reflection and analysis have brought it to the light.'"[10]

The other point raised regarding the denial of due process was already passed upon by us in our decision. After quoting the applicable statutory prescriptions, we stated in our opinion: "From the above recital of the legal provisions relied upon it would appear most clearly that the due process question raised is insubstantial. Certainly, the facts on which the seizure was based were not unknown to petitioners-appellants. On those facts the liability of the vessels and merchandise under the above terms of the statute would appear to be undeniable. The action taken then by the Commissioner of Customs was in accordance with law." There is nothing in the motion for reconsideration that should call for a different conclusion.

Our decision closed on this note: "It is thus most evident that the Court of Tax Appeals had not in any wise refused to adhere faithfully to controlling legal principles when it sustained the action taken by respondent Commissioner of Customs. It would be a reproach and a reflection on the law if on the facts as they had been shown to exist, the seizure and forfeiture of the vessels and cargo in question were to be characterized as outside the legal competence of our government and violative of the constitutional rights of petitioners-appellants. Fortunately, as had been made clear above, that would be an undeserved reflection and an unwarranted reproach. The vigor of the war against smuggling must not be hampered by a misreading of international law concepts and a misplaced reliance on a constitutional guaranty that has not in any wise been infringed." We reiterate such a view. Authority, reason and policy are in unison in support of the decision thus reached.

WHEREFORE, the motion for reconsideration is denied.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Castro, Capistrano, Teehankee, and Barredo, JJ., concur.
Sanchez, J., no part.

[1] Motion for Reconsideration, p. 10.

[2] Section 1141, Revised Administrative Code. The second paragraph thereof speaks of a seizure of a vessel by reason of an act done in Philippine waters, the pursuit of which could continue beyond the maritime zone into the high seas. This paragraph has no application on the case at bar because the question involved is of a vessel that was seized before reaching our territorial waters.

[3] Section 603, Republic Act No. 1937 (1957).

[4] 2 Cranch 187 (1804).

[5] Article II, Section 3, Constitution of the Philippines.

[6] Cases on International Law, 3d ed. 354 (1951).

[7] Cases on International Law, 2d ed. 544 (1951).

[8] The Law of Nations, 336 (1947). Cf. Jessup, The Anti-Smuggling Act of 1935, 31 AJIL 101 (1937).

[9] G.R. No. L-23145, November 29, 1968.

[10] In addition to Professor Gray, cited in connection with the above portion of the opinion, reference may likewise be made to Vaihinger, writing on juristic fictions. Thus: "The basis for this method is as follows: since laws cannot include within their formulae all particular instances, certain special examples of an unusual nature are treated as if they belonged to them. Or else, because of some practical interest, an individual instance is brought under a general concept to which it does not really belong. Anyone conversant with the method of jurisprudence will easily understand how important this artifice is for legal practice. It is just as essential for law as for mathematics." (The Philosophy of; 'As 'If', 33 [1935]). Also: "In the fictio juris, too, something that has not happened is regarded as having happened, or vice versa, or an individual case is brought under an analogous relationship violently in contradiction with reality. Roman law is permeated throughout by such fictions, and in modern countries it is in England especially that juristic fictions have undergone additional development." (Ibid., p. 34).

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