

**YU GOAT ALIAS TASIO YOUNG, PLAINTIFF AND APPELLEE, VS.
RESTITUTO HUGO, DEFENDANT AND APPELLANT.***G.R. No. L-4842. August 20, 1953*

Ponente: PADILLA, J.

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This is an action for replevin. Plaintiff pleads that he is the owner of 40 cartons of "Camel" and 66 cartons of "Chesterfield" cigarettes valued at P746.40 which he had purchased in Butuan, province of Agusan; that on 23 October 1950 the defendant seized the cartons and retained possession thereof without any legal cause; that on 26 October, after ordering their forfeiture, the defendant directed that at 9:00 a.m. of 22 November the cigarette cartons be sold at public auction in the Customs House at Tacloban, Leyte. He further states that the defendant refused to return the cigarette cartons and would proceed to sell the same unless a writ of preliminary injunction be issued; and that he has no other speedy and adequate remedy than the present action. He prays that upon the filing of a bond in such amount as the Court may fix and require a writ of preliminary injunction be issued; that the forfeiture of the cigarette cartons be held illegal; that the defendant be directed to return the 196 cigarette cartons to the plaintiff and to pay the costs. Upon the filing of a P200 of preliminary injunction prayed for was issued.

On 5 December 1950 the defendant filed his answer stating that he, as acting Collector of Customs at the port of Tacloban, Leyte, seized the American cigarettes referred to in the complaint, because the same being of foreign origin were subject to control pursuant to an Act of Congress known as the Import Control Law; that the plaintiff failed to show that the cigarette cartons had been imported legally into the Philippines, there being no internal revenue stamps affixed to the packages, as required before any imported merchandise could be released from the custody of the customs authorities; that for that reason the 106 cartons of American cigarettes were subject to forfeiture pursuant to section 1363 (m-1) of the Revised Administrative Code, as amended: and that the forfeiture thus made and reported, as provided in section 1378 of the Revised Administrative Code, was approved by the Commissioner of Customs on 2 November 1950. The answer filed by the defendant was withdrawn by the provincial fiscal and in lieu thereof he filed a motion to dismiss the complaint. In the motion to dismiss the provincial fiscal states that the Court of First Instance of Leyte has no jurisdiction over the action, on the ground that the seizure and forfeiture of the cartons of American cigarettes in question made by the Collector of Customs at Tacloban were duly approved by the Commissioner of Customs on 2 November 1950 in accordance with sections 1363 e, f, g and m(1) and 1379 of the Revised Administrative Code; and that for plaintiff's failure to remove or to have the case removed to the Court of First Instance of Manila as provided for in section 1383 of the Revised Administrative Code for review of the decision of the Commissioner of Customs of 2 November referred to, said decision became final and executory after 15 days from notice thereof served on the plaintiff on 7 November pursuant to section 1385 of the Revised Administrative Code. The Court ruled that the motion to dismiss having been made after the answer to the complaint had been filed by the defendant came late and set the case for hearing. On 23 December the provincial fiscal in behalf of the defendant filed a pleading entitled "amended answer" where he prayed for the dismissal of the complaint upon the same ground set forth in motion

to dismiss, to wit: that the Court has no jurisdiction over the case, the Court of First Instance of Manila being the one to which the plaintiff should have appealed within 15 days from notice of the decision of the Commissioner of Customs approving the seizure and forfeiture of the cartons of American cigarettes made by the defendant as acting Collector of Customs at the port of Tacloban, Leyte. The Court admitted the last pleading and set the case for hearing on 20 January 1951. On 20 January the motion to dismiss the complaint made in open court by the provincial fiscal was denied. On 1 February the provincial fiscal moved for reconsideration. Acting upon this motion the Court required the fiscal to present evidence to justify the seizure of the cartons of American cigarettes but the fiscal stated that he was not in a position to do so. Whereupon the Court denied the motion. From the denial to dismiss the complaint and to reconsider it this appeal has been taken.

Without deciding whether the Court of First Instance of Leyte has jurisdiction over the case, as claimed by the plaintiff, or the Court of First Instance of Manila, as contended by the defendant, the latter cannot appeal from an interlocutory order. The denial of a motion to dismiss a complaint does not entitle the party whose motion is denied to appeal therefrom.

Appeal is dismissed, without costs.

Paras, C.J., Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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