

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. WILLIAM ERNEST JOLLIFFE, DEFENDANT AND APPELLANT

*G.R. No. L-9553. May 13, 1959*

Ponente: CONCEPCION, J.

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### CONCEPCION, J.:

This is an appeal taken by defendant William Ernest Jolliffe from a decision of the Court of First Instance of Rizal, convicting him of a violation of Republic Act No. 265, and sentencing him to imprisonment for one (1) year, and to pay a fine of P2,000 and the costs, as well as decreeing the forfeiture, in favor of the Government, of four (4) pieces of gold bullion valued P35,305.46, and a travellers' check in the sum of \$100.00.

There is no dispute about the main facts, which are set forth in the decision appealed from in the following language:

"The accused, Mr. William Ernest Joliffe is a Canadian subject, born in China and residing permanently in Hongkong. He is the son of a former Chancellor of the West China Union University and had been Trade' Commissioner for. Canada in Shanghai and Hongkong, until 1948. The accused belongs to a good and reputable family and is quite well-known in Hongkong. The accused had made several trips to Manila, sometimes on business and three times to meet his wife and children passing thru Manila. He also came to collect the debt owed to him by one T. W. Woo, a prominent businessman in Hongkong. He came back to Manila on December 4, 1953 to try to collect the debt owed him by T. Y. Woo, although he had no idea how said debt was to be paid, whether in peso or in gold. He was paid in gold which he brought with him by messenger to his room in the Bay View Hotel. At about plane time he went back to his hotel room and carried his gold around his body underneath his shirt. When he was going towards the door leading to the runway he was accosted by a woman, Amada Arimbay, a secret service agent, and was told to go to the search room" (Quoted from the statement of facts in the memorandum for the accused.)

"When the accused was searched four pieces of gold bullion were found tied to his body a few inches above the waist. There was also found in his possession a \$100.00 travelers check issued by R. McGinty. While he was under arrest he made an offer to settle the case by offering to pay the agents who were then arresting him. He stated also that Mr. Manikan, Deputy Collector of Customs, told him during the search that the case could have been fixed had he told him before hand of his desire to export gold from the Philippines. Mr. Manikan, on the other hand, said that when the accused was about to be searched he offered him P30,000.00 provided the case be settled and forgotten. The Court accepts the testimony of Mr. Manikan as the true version of the incident because the accused himself said in the course of his testimony that Mr. Manikan told him that he could say anything in private to him after he (accused) had signed the written statement, Exhibit I, certifying to the things found in the possession, of the accused, among which, were the four pieces of gold bullion. These facts show that when Mr. Manikan consented to allow the accused to talk with him about the case after signing Exhibit I, there was no other desire on the part of Mr. Manikan but to give the accused every opportunity to explain his side of the case but not for any illegitimate purpose. Mr. Manikan's acts in this case are above board and the only logical steps that an honest official could take in the present case. But these minor incidents relating to the case are of no importance, taking into consideration the fact that the accused himself has

admitted that on December 7, 1953 when he was about to board in one of the planes of the Pan American World Airways he had with him four pieces of gold bullion of the approximate value of P35,305.46. This being a fact, the only question before the Court is purely a question of law."

Appellant alleges that:

"1. That the trial court erred in not ruling that Circular 21 of the Central Bank is the only law in point, and that, being a special law, it does not penalize attempted or frustrated violations thereof, but merely consummated violations and, therefore, under the facts of this case, the accused cannot be held liable;

"2. That the trial court erred in not ruling that even if attempted violation of Circular 21 is punishable, still the accused is not criminally liable because there was no wilful violation of said circular;

"3. That the trial court erred in ruling that mere possession of gold is made illegal by Circular 21 of the Central Bank, the truth being that the said circular in fact specifically authorizes sales of gold within the Philippines even without the benefit of license;

"4. That the trial court erred in not ruling that Circular 21 of the Central Bank is not a valid penal law, because it did not comply with the provisions of section 74 of Republic Act 265, in that:

(a) It was not approved by the President of the Philippines;

(b) In its promulgation, the Monetary Board exceeded the authority granted it by the Central Bank Act, because the context of the circular does not indicate that it was a temporary emergency measure;

(c) It can only be issued as an emergency measure or during crisis, and as issued, has no force and effect, because the emergency it seeks to remedy never existed or no longer exists;

(d) That the publications of the circular (original and amended) in the November 1951 and October 1952 issues of the Official Gazette are not the adequate publications required by law, because said publications on their faces showed them to be incomplete and defective;

(e) That granting, without admitting, that the power to promulgate it was granted to the Monetary Board by Republic Act 265, and granting without admitting, that the power to so promulgate was validly exercised, still it is invalid because it constitutes an invalid delegation of legislative power and, therefore, unconstitutional and void.

"5. That the trial court erred in ordering forfeiture of the four (4) packages of gold, Exhibits G-1, G-2, G-3 and G-4, in favor of the Government.

"6. That the trial court erred in ordering the forfeiture of the travellers' check for \$100, Exhibit K, in favor of the Government, in spite of the fact that the accused was acquitted on the charge of illegal possession of dollars under Circulars 20 and 42."

Appellant does not deny that he had no license to export the gold bullions above referred to. Under his first assignment of error, he maintains, however, that Central Bank Circular No. 21 requiring said license and section 34 of Republic Act No. 265, prescribing the penalty for violations of said Circular, refer to consummated exportation, not to "attempted or frustrated exportation." Section 4 of said Circular provides:

"Any person desiring to export gold in any form, including jewelry, whether for refining abroad or otherwise, must obtain a license from the Central Bank. Applicants for export licenses must present satisfactory evidence that the import of the gold into the country of the importer will not be in violation of the rules and regulations of such country."

This section explicitly applies to "any person desiring to export gold" and, hence, it contemplates the situation

existing prior to the consummation of the exportation. Indeed, its purpose would be defeated if the penal sanction were deferred until after the article in question had left the Philippines, for jurisdiction over it, and over, the guilty party, would be lost thereby.

Appellant's avowed ignorance of the necessity of license and of the illegality of the act performed by him, alleged in support of the second assignment of error, is belied by the fact that he had the gold bullions under his shirt; that by objecting, at first, to being searched, he tried to prevent that the presence of said articles upon his person be discovered ; and that he tried to bribe the public officers who searched him.

As regards the third assignment of error, it is not necessary for us to determine whether mere possession of gold bullions is illegal under Circular No. 21, for his conviction was due, not to such possession alone, but to the fact that appellant tried to export said gold bullions without the requisite license.

Let us now consider the fourth assignment of error which is based upon several grounds. The first is that the aforementioned circular has not merited the approval of the President of the Philippines,' which is required in section 74 of Republic Act No. 265. This pretense is untenable. It would appear from Exhibits S and S-I that the practice of the Monetary Board was to obtain said approval before the formal enactment and promulgation of circulars necessitating presidential sanction. Indeed, since it has no authority to subject transactions in gold to license, unless the President agrees thereto, it is, in effect, the duty of the Board to obtain the assent of the Executive to the policy of requiring said license at a particular time, either upon adoption of the resolution to this effect, or prior thereto. As a consequence, it must be presumed—in the absence of proof to the contrary, which is wanting—that such duty has been fulfilled in the case at bar.

"It is frequently said that a presumption of regularity attends the performance of administrative duties. That is, when an act has been completed, it is to be supposed that the act was done in the manner prescribed and by an officer authorized by law to do it. The presumption is of course a rebuttable one, but the bare allegation that there has been a failure to observe statutory requirements has been regarded as a mere conclusion of the pleader; where the administrative order is accompanied by a statement that there has been compliance and there is no showing of fact to the contrary, the presumption of regularity is ordinarily sufficient to support the official act of a public . officer." (Administrative Law—Cases and Comments by Gellhorn, pp. 315-316.)

Contrary to appellant's pretense, it is not essential that the administrative acts of the President be made in writing, unless the law says so. Thus, for instance, in *Ykalina vs. Oricio*, (93 Phil., 1076; 49 Off. Gaz., [12], 5431), this Court quoted approvingly the following passage from *Corpus Juris Secundum*:

"While the appointment of an officer is usually evidenced by a commission, as a general rule it is not essential to the validity of an appointment that a commission issue, and an appointment may be made by an oral announcement of his determination by the : appointing power."

In *U.S. vs. Fletcher* (148 U.S. 84, 89-90, 37 Law Ed. 378, 379-380), the Federal Supreme Court said:

"The presumption is that the Secretary and the President performed the duties devolved upon them respectively, and it would be unreasonable to construe the Secretary's indorsement as meaning that he had reviewed the proceedings for the action of the President in conformity with Article 65, and had approved them himself and ordered execution of the sentence in contravention of the article. \* \* \* While in the case on hand it is not said that the proceedings were submitted to the President, it is stated that they had been forwarded to the Secretary of War for the action of the President, and as that is followed by an approval and the direction of the execution of the sentence, which approval and sentence could only, emanate from the President, the conclusion follows that the action taken was the action of the President.

"We regard the certification of the Secretary of War \* \* \* as perceive no ground upon which the order of that date can be a sufficient certification of the judgment of the President, and treated as null and void for want of

the required approval."

What is more, in *Villena vs. Secretary of the Interior* (67 Phil., 451, 463), the majority of the members of this Court expressed the view that:

"After serious reflection, we have (decided to sustain the contention of the government in this case on the broad proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 19 section 21 Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments a/re assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive, presumptively the acts of the Chief Executive. (*Runkle vs. United States* [1887], 122 U.S. 543; 30 Law ed. 1167; 7 Sup. Ct. Rep. 1141; see also *U.S. vs. Eliason* [1839], 16 Pet. 291; 10 Law ed. 968; *Pones vs. U.S.* [1890], 137 U.S. 202; 34 Law ed. 691; 11 Supp. Ct. Rep. 80; *Wolsey vs. Chapman* [1880] 101 U. S. 755; 25 Law ed. 916; *Wilcox vs. Jackson* [1836], 13 Pet. 498; 10 Law ed. 264.)"

Needless to say, the cases cited by appellant herein refer to the presidential approval of legislative enactments, which the Constitution explicitly requires to be evidenced by the signature of the Executive (Art. VI, section 20 [1]) There is no similar provision in Republic Act No. 265.

It is urged, however, that the authority of the Monetary Board to suspend or restrict the sales of exchange by the Central Bank and to subject all transactions involving foreign exchange to license, is temporary in nature and may be exercised only during an exchange crisis, as an emergency measure to combat such crisis, and that the context of the circular in question, as amended, does not indicate that it was a temporary emergency measure. It is not necessary, however, for the legality of said circular that its temporary character be stated on its face, so long as the circular has been issued during an exchange crisis, for the purpose of combating the same. In the absence of evidence to the contrary, which has not been introduced or offered in the present case, it is presumed that the provision of section 74 of Republic Act No. 265, under the authority of which the aforementioned circular was issued, has authority of which the aforementioned circular was issued, has been complied with. Besides, the fact that there has been an exchange crisis in the Philippines and that such crisis, not only existed at the time of the issuance of said circular in 1949 and 1950, but, also, has remained in existence up to the present, may be taken judicial cognizance of.

Although, from a purely theoretical and legal viewpoint, the Monetary Board and the President could have specified in Circular 21 the period of its effectivity, their failure to do so did not necessarily impair its validity. As a measure taken under the police power of the state, said period had to be commensurate with the crisis that led to its adoption, and the duration of said crisis could not be anticipated with reasonable certainty. Upon the termination of the aforementioned crisis, as determined by competent authority, the circular would become inoperative. Thus, in *Rutter vs. Esteban*, (49 Off. Gaz., 1807), *Commercial Investment vs. Garcia* (49 Off. Gaz., 1801), *Salvador vs. Locsin*, (93 Phil., 225), and *Nicolas vs. Matias*, L-5250 (May 29, 1953), we held that, although the moratorium laws enacted in the Philippines, upon its liberation from the Japanese forces, could not be permanent in character and did not specify the duration thereof, it was Valid and effective until the emergency for which it was intended had already disappeared.

It is further argued that, as published in the Official Gazette, Circular No. 21, in its original, as well as in its amended form, did not bear the approval of the President and that, accordingly, said publication was not sufficient to give the effect contemplated by law therefore. This pretence is based upon false promise. The original circular subjecting to licensing by the Central Bank "all transactions in gold and foreign exchange", is Circular No. 20,

which, as approved and published, states, that, "pursuant to the provisions of Republic Act No. 265", it had been adopted by "the Monetary Board, by unanimous vote and with the approval of the President of the Philippines" What is more, the last paragraph of Circular No. 20, provides that "further regulations in respect to transactions covered by this circular will be issued separately." Thus, the President had approved not only the "licensing by the Central Bank" of "all transactions in gold and foreign exchange," but, also, the issuance, subsequently to the promulgation of Circular No. 20, of "further regulations in respect" of such transactions. Said further regulations were incorporated into Circular No. 21, which thus bears the stamp of presidential sanction, although this is not specifically required by law. It is only the decision of the Monetary Board to subject to license by the Central Bank all transactions in gold and foreign exchange that needs the approval of the President. Once the same has been given, the details in the implementation of said decision may be determined by said Board, through such regulations as may be promulgated from time to time. The assent of the President is not a prerequisite to the validity and effectivity of these regulations, as distinguished from the aforementioned decision thereby sought to be enforced or executed. The authority of the Monetary Board to make regulations is governed, not by section 74 of Republic Act No. 265, but by section 14 thereof, in the language of which:

"In order to exercise the authority granted to it under this Act the Monetary Board shall:

(a) Prepare and issue such rules and regulations as it considers necessary for the effective discharge of the responsibilities and exercise of the power assigned to the Monetary Board and to the Central Bank under this Act."

Lastly, the legality of Circular No. 21 is assailed upon the ground that the grant of authority to issue the same constitutes an undue delegation of legislative power. It is true that, under our system of government, said power may not be delegated except to local governments. However, one thing is to delegate the power to determine what the law shall be, and another thing to delegate the authority to fix the details in the execution or enforcement of a policy set out in the law itself. Briefly stated, the rule is that the delegated powers fall under the second category, if the law authorizing the delegation furnishes a reasonable standard which "sufficiently marks the field within which the Administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will." (*Yakus vs. United States*, 88 L. ed. 848.) Referring to the case at bar, section 74 of Republic Act No. 265 conferred upon the Monetary Board and the President the power to subject to licensing all transactions in gold and foreign exchange "in order to protect the international reserve of the Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such crisis." The Board is, likewise, authorized "to take such appropriate remedial measures as are appropriate" to protect the international stability of the peso, "whenever the international reserve is falling, as a result of payment or remittances abroad which, in the opinion of the Monetary Board, are contrary to the national welfare" (section 70, Rep. Act No. 265). It should be noted, furthermore, that these power must be construed and exercised in relation to the objectives of the law creating the Central Bank, which are; among others, "to maintain monetary stability in the Philippines," and "to promote a rising level of production, employment and real income in the Philippines." (Section 2, Rep. Act No. 265.) These standards are sufficiently concrete and definite to vest in the delegated authority the character of administrative details in the enforcement of the law and to place the grant of said authority beyond the category of a delegation of legislative powers (*Cardona vs. Municipality of Binangonan*, 36 Phil., 547; *Compañia General de Tabacos vs. Board of Utility*, 34, Phil., 136; *Rubi vs. Board of Mindoro*, 39 Phil., 660; *Alegre vs. Collector of Customs*, 53 Phil., 394; *People vs. Rosenthal*, 63 Phil., 328; *Antamok Gold Fields vs. C.I.R.*, 68 Phil., 340; *Calalang vs. Williams*, 70 Phil., 276; *Cervantes vs. Auditor General*, 91 Phil., 359; *Phil., Association of Colleges & Universities vs. Sec. of Education*, 97 Phil., 806; 51 Off. Gaz., (12), 6230; *Mutual Films Corp. vs. industrial Commission*, 276 U.S. 230; *Mulford vs. Smith*, 30/ U.S. 48; *National Broadcasting Co. vs. U.S.* 319 U.S. 225; *Yakus vs. White*, 321 U.S. 414; *Ammann vs. Maiione*, 332 U.S. 245).

Under the fifth assignment of error, appellant maintains that Article 45 of the revised Penal code authorizing the forfeiture of the proceeds of a crime and the instruments or tools with which it was committed, does not apply to the case at bar, the crime involved herein being covered by a special law. However, pursuant to section 10 of the Revised Penal Code, the provisions of said Code shall be "supplementary" to special laws, "unless the latter should specifically provide the contrary", and there is no such provision to the contrary in Republic Act No. 265 (U.S. vs. Parrone, 24 Phil., 29; People vs. Moreno, 60 Phil., 712; People vs. Ramayo, 61 Phil., 225; Copiaco vs. Luzon Brokerage, 66 Phil., 184).

The last assignment of error refers to the propriety of the order of confiscation of the traveller's check for P100, the lower court having found that the accused had no knowledge of the fact that it was in his physical possession, and that therefore, he had no criminal intent in connection therewith. We feel that this point is well taken, and that, accordingly, said travellers' check should not be forfeited to the Government.

With this modification, the decision, appealed from should be, as it is hereby affirmed, in all other respects, with costs against the defendant-appellant. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, and Endencia, JJ., concur.

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