

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JAIME FILART AND HILARIO SINGSON, DEFENDANTS AND APPELLANTS.*G.R. No. 10263. March 13, 1915*

Ponente: MORELAND, J.

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This is an appeal from a judgment of the Court of First Instance of Ilocos Sur convicting the accused of a violation of Act No. 1757, known as the Gambling Law, and sentencing Jaime Filart to one month's imprisonment and to pay a fine of P500 and Hilario Singson to pay a fine of P500, and each to pay one-half of the costs. The judgment also confiscated the automobile which was the object of the lottery complained of, and the sum of P2,090 which was obtained from the sale of the tickets, each one of which represented a chance to win the automobile.

The information alleges: "That on or before the 31st day of May, 1914, in the municipality of Vigan, Province of Ilocos Sur, the said Jaime Filart and Hilario Singson, conspiring together and mutually aiding each other, and as instigators and promoters, voluntarily, maliciously, and illegally played, exploited, and took part in a lottery or raffle of an automobile, which was then and there the property of the said Jaime Filart, with the intention then and there to dispose of said automobile by chance for the sum derived from the sale of 450 tickets or numbers which the said accused distributed and sold in various municipalities of the Province of Ilocos Sur at the rate of P5 for each ticket or number."

It appears from the evidence in the case that the appellants entered into an agreement whereby they would jointly sell to the public 450 tickets successively numbered from one up, each number representing a chance on an automobile which was to be drawn by lot as a prize as soon as the tickets so numbered were sold. Of the 450 numbers 370 were sold for P5 each and the remaining 80 for P3 each.

The drawing for the prize took place on the evening of the 31st of May, 1914. The winner was determined in the following manner: The numbers composing the 450, each written on a separate piece of paper, were placed together in a box and thoroughly mixed. A boy was selected who placed his hand in the box and drew out a number. This he delivered to a person placed there for the purpose, who unfolded the paper and read the number in a loud voice while the appellant Jaime Filart, with a list of the 450 numbers referred to, struck from the list the number corresponding to that drawn from the box. This was repeated until all of the numbers were drawn from the box and stricken from the list. It was agreed that the last number drawn from the box should be the winning number and that the owner of that number should win the automobile. The last number drawn from the box was one which had been bought by Lucas Siping, who was duly and publicly proclaimed by Jaime Filart as the winner of the automobile. During the drawing of the numbers both of the appellants were present, as were about 40 other individuals.

We have no doubt from the record of the correctness of the finding of the trial court that the appellants in this case committed the acts with which they stand charged. The evidence is overwhelmingly in favor of the prosecution

and we find nothing which would justify us in reversing the decision of the trial court as to the facts.

Section 7 of Act No. 1757 provides, so far as material to the present case, as follows:

"The playing at and the conducting of any game of monte, jueteng, or any form of lottery or policy * * * is hereby prohibited, and any person taking any part therein * * * shall be punished as provided in section 3 hereof. * * *."

This section also provides that:

"It shall be no defense to any criminal action under this section that the defendant acted as the agent of another or that he had no interest in the result."

We are satisfied that the provisions of the section quoted cover the case in hand.

A lottery is said to be "a species of gaming, which may be defined as a scheme for the distribution of prizes by chance among persons who have paid, or agreed to pay, a valuable consideration for the chance to obtain a prize." It is also defined as "a scheme for the distribution of prizes by chance;" and "a scheme by which a result is reached by some action or means taken, and in which result man's choice or will has no part, nor can human reason, foresight, sagacity, or design enable him to know or determine such result until the same has been accomplished." It has also been stated that "where a pecuniary consideration is paid, and it is determined by lot or chance, according to some scheme held out to the public, what the party who pays the money is to have for it * * * it is a lottery." It has also been held that the word lottery "embraces the elements of procuring through lot or chance, by the investment of a sum of money or something of value, some greater amount of money or thing of greater value;" and that "where small amounts are hazarded to gain large amounts, and the result of winning or losing is determined by chance, in which neither choice nor skill can operate to influence the result, there is gambling by lot, or a prohibited lottery;" and "any scheme whereby one, on paying money or other valuable thing to another, becomes entitled to receive from him such a return in value, or nothing, as some formula of chance may determine" is a lottery. It was held in the case of *Equitable Loan Co. vs. Waring*, 117 Ga., 599, that three elements enter into a lottery scheme: (1) A consideration; (2) chance; (3) a prize, or some advantage or inequality in amount or value which is in the nature of a prize.

The facts of record place this case within the definition generally given of a lottery.

We are satisfied that the judgment should be affirmed so far as the criminal penalty is concerned but must be reversed as to the confiscation of the automobile and the money obtained from the sale of the tickets on the same. Section 1 of Act 2212 adds a section (13) to Act No. 1757, which is as follows:

"The court convicting a person of the violation of any of the provisions of this Act shall order the confiscation of the money, articles, instruments, appliances, and devices used in gambling. Articles, instruments, appliances, and devices capable only of being used for gambling shall be destroyed under the order of the court. Money and the proceeds of the sale of confiscated articles which are capable of being used otherwise than for gambling purposes shall be accounted for, accredited and disposed of in the same manner as the proceeds of fines imposed by the court. The provisions of this section shall be applicable in cases of conviction of the violation of municipal ordinances prohibiting gambling."

In the case before us neither the automobile nor the money obtained from the sale of tickets was in the possession of or before the court, or in the possession of any party to the action at any time during the trial or at the time the judgment of conviction and confiscation was rendered. We are of the opinion that, in cases where the court is authorized to confiscate property, the property to be confiscated must be before the court in such manner that it can be said to be within its jurisdiction. As we have said, neither the automobile nor the money was in the

possession of or before the court, or in the possession of any of the parties to the action at the time the order of confiscation was made. Rather, the automobile, as well as the money, was in the possession of persons claiming to own or have an interest therein and who were not parties to the action and over whom the court had no jurisdiction at the time.

The judgment of conviction and the sentence imposed thereunder are affirmed, with the exception of that portion confiscating the automobile and the money obtained from the sale of the numbers thereon, and as to such portion it is reversed. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

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