

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHU LOY AND LEE KAM, DEFENDANTS. CHU LOY, APPELLANT.*G.R. No. 12954. January 31, 1918*

Ponente: JOHNSON, J.

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The only question presented by this appeal is whether or not an employee or a passenger on board a steamship passing through the port of Manila with opium in his possession is guilty of the crime of illegal importation of said drug, in the absence of proof that he intended to discharge the same or to actually bring it within the Philippine Islands. The important facts may be stated as follows:

That the steamship Castlefield, an English vessel, arrived at the port of Manila on the 15th day of August, 1917, from Saigon, Indo-China; that this was the first trip of said vessel to the port of Manila; that its accustomed trips were from Hongkong to Saigon and return; that it cleared for the purpose of sailing out of the port of Manila on the 17th day of August, 1917; that the appellant was chief cook on board said vessel and had been for three trips; that said trips had been between Hongkong and Saigon; that he did not know that the vessel was coming to the port of Manila when it left Saigon a few days prior to the 15th day of August; that the 60 tins of opium in question were delivered to him at Saigon to be turned over to some one at Hongkong; that said tins were kept by him in the kitchen of said vessel until it arrived in the Philippine waters, when they were delivered to the codefendant (Lee Kam) to be kept in the room of one of the officers of the vessel until after the same had sailed out of the port of Manila; that there was no attempt made to bring¹ said opium ashore nor to discharge it at Manila, notwithstanding the fact that the vessel had been in the port for two days prior to the time when they were found in the place above indicated; that the said tins were found as above indicated just before the said vessel sailed from the port of Manila on the 17th day of August, 1917. Under these facts, is the appellant guilty of the illegal importation of opium? He frankly admitted that the opium was in his possession and fully explained its origin as well as the purpose of his possession. Considering the fact that no effort was made by him to discharge said opium during the two days while the vessel was at anchor in the port of Manila, we are inclined to accept his statement that it was his intention to carry the opium in question to Hongkong and not to deliver it in the Philippine Islands, especially in view of the fact that when the vessel left Saigon he did not know that it was coming to Manila.

The rule, that the importation of merchandise for the purposes of the revenue department of the Government as well as for the other purposes is complete the moment the vessel enters the waters of the country, is so well established that the citation of authorities to support it seems almost unnecessary. (U. S. vs. Look Chow, 15 Phil. Rep., 573; *The Mary*, 16 Fed. Cases, 932; U. S. vs. Lyman, 26 Fed. Cases, 1024; *Perots vs. U. S.*, 19 Fed. Cases, 258; U. S. vs. Jose, 34 Phil. Rep., 840; U. S. vs. Ah Sing, 36 Phil. Rep., 978.)

However well that rule may be established by eminent authorities, it is necessarily limited in its scope of operation by another rule that is equally well established, and that is that the bringing of merchandise into the jurisdictional waters of the country must be with the intent to import it. If the fact was important, it perhaps could be proved that almost every vessel anchoring in Philippine waters has on board merchandise for other ports

outside of the Philippine Islands. It certainly cannot be successfully maintained that such merchandise, simply because it happened to be found upon a vessel within the Philippine waters, had been imported into the Philippine Islands. Neither do we believe that it can be successfully maintained that merchandise belonging to individuals on board a vessel passing through the ports of the Philippine Islands can be regarded as having been imported without; proof of an intention to import. The mere possession of merchandise on board a vessel in the Philippine waters is not of itself sufficient to amount to an importation of the same. There must be proof of an intent to import. (U. S. vs. Jose, 34 Phil. Rep., 840; U. S. vs. Ah Sing, 36 Phil. Rep., 978.)

It may be added, however, that if the goods found upon a vessel within the Philippine waters are really contraband then they are subject to be attached and confiscated. But even then there must be some proof that said merchandise was brought within Philippine waters for the purpose of discharging it. Certainly the Government would not attempt to confiscate, as contraband, merchandise which is found upon a foreign vessel within the Philippine waters when it is proved beyond peradventure that it was the intention of the owner to carry the same to some other port.

We are persuaded from all of the facts of the record that the defendant and appellant did not intend to import the said 60 cans of opium into the Philippine Islands, and is, therefore, not guilty of the crime charged in the complaint.

Therefore, and for the reasons above stated, the sentence of the lower court is hereby revoked; and it is hereby ordered and decreed that the complaint be dismissed and the defendant and appellant be discharged from the custody of the law, with costs de officio. So ordered.

Arellano, C. J., Torres, Araullo, and Avanceña, JJ., concur.

CONCURRING OPINION

CARSON, J., concurring:

I concur.

As I understand It, the rule as to importation is that proof that merchandise was found aboard a vessel in Philippine waters raises a presumption, prima facie, that such merchandise had been imported into the country at the moment when the vessel entered these waters, without further evidence as to intent. But this presumption may be overcome by proof to the contrary.

A mere preponderance of the evidence is sufficient for that purpose, in civil cases, and evidence sufficient to raise a reasonable doubt in criminal cases; but the burden of proof rests on the party who asserts that such merchandise was not brought within the jurisdictional waters of the Islands with intent to import it.

DISSENTING OPINION

MALCOLM, J., dissenting:

The trial court, the Hon. George R. Harvey, in the course of his decision, truly says:

"Chu Loy testified that he knew the package contained opium; that he knew the day after the vessel left Saigon that it was coming to Manila; that after arrival in Manila he delivered the package of opium to Lee Kam to keep for him. Therefore, it is clearly shown that Chu Loy willfully, unlawfully, and feloniously brought the opium as

unmanifested cargo in the Philippine Islands, and within the jurisdiction of the customs authorities and of this court, and he cannot be excused by reason of his claim that he did not intend to land the opium in Manila. Such a rule would open the door wide to illegal importation of opium and its derivatives into the Philippine Islands and render nugatory the efforts of the customs authorities to detect and bring to justice those who are engaged in the nefarious .business of bringing opium and its derivatives into the port of Manila, and planning and watching for opportunities to land it clandestinely."

Act No. 2381, in section 4, provides that:

"Any person who shall unlawfully import or bring any prohibited drug into the Philippine' Islands, or assist in so doing, shall be punished by imprisonment for a period of not less than two nor more than five years, and by a fine of not less than three hundred pesos nor more than ten thousand pesos. In case of the commission of a second or subsequent offense under this section, the delinquent may be deported if not a citizen of the United States or of the Philippine Islands."

Remembering the words of the court and the provisions of the law, hereinbefore quoted, it cannot admit of doubt that the law prohibits the unlawful bringing of opium into the Philippine Islands with or without the intention of landing it. Even granting, therefore, that the accused had no intention of landing the opium in these Islands, he has violated the provisions of the law. His intention or lack of intention cannot excuse his illegal acts. The judgment should be affirmed.

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