

G. S. WEIGALL, PLAINTIFF AND APPELLEE, VS. W. MORGAN SHUSTER, COLLECTOR OF CUSTOMS OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLANT.

G.R. No. 1435. September 28, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

This is an old controversy recently revived by filing in this court the brief of the appellant, the appellee having renounced his brief.

On March 4, 1903, the defendant, who was collector of the port of Manila, and also Collector of Customs for the Philippine Archipelago, officially imposed a fine of \$200 United States money, upon the plaintiff, the captain of the British steamer Loonsang, for a violation of the Chinese Exclusion Law, in permitting the escape of an immigrant from his ship, and asserted a lien upon her, refusing clearance papers unless the master paid the fine. Instead of paying it, the plaintiff brought this action on March 5, and presented to Judge Ambler his complaint, together with other papers, upon which an injunction was issued, ordering the defendant to "absolutely desist and refrain from further proceeding in any way to levy upon or collect from the plaintiff the fine of \$200 mentioned in the plaintiff's complaint." This order having been duly served, the defendant released the vessel, entering at the time, however, into an agreement with her owners, Smith, Bell & Co., to pay the fine if sustained, the Collector apparently accepting this undertaking to do so in substitution for the vessel seized. He did not appear in this action, but was in default therein on April 1, on which day an order was entered making the injunction permanent, and ordering that a writ issue carrying it into effect,

On May 1, 1903, the United States, at the instance of the defendant, began an action in the Court of Customs Appeals against G. S. Weigall, Smith, Bell & Co., Limited, and the steamer Loonsang, setting up the facts as to the importation and escape of the Chinaman from the Loonsang, and relating the action of the defendant in the premises as follows:

"8. That thereafter, to wit, on or about the 4th day of March, 1903, as a penalty for said breach of the Chinese Exclusion Acts, the said Collector of Customs, did, duly, regularly, and lawfully, in his official capacity, impose administratively upon the said defendant, G. S. Weigall, a fine in the sum of \$200, United States currency, which said fine did then and there become a lien upon the said steamship Loonsang.

"9. That thereafter, in consideration of the forbearance of the said Collector to seize the said steamship, sell her and satisfy he said fine from the proceeds of such sale, the defendants, Smith, Bell & Co., Limited, did promise to pay the said fine.

"10. That since the imposition of said fine the said steamship Loonsang has departed from the Philippine Islands to foreign parts, and there is now no property within the control of the said Collector of Customs upon which the said fine may be a lien, and that the whole of said fine is to this day due, payable, and wholly unpaid.

"Wherefore, the plaintiff prays judgment against the defendant, G. S. Weigall, in the sum of \$200, together with the costs of this suit, and that this said defendant may be arrested and held in the custody of this honorable court until the said fine and costs be paid or otherwise satisfied.

"And further, the said plaintiff prays judgment against the said firm of Smith, Bell & Co., in the sum of \$200, together with the costs of this suit.

"And further, the said plaintiff prays judgment against the said steamship Loonsang that the said vessel may be arrested and sold, under the direction of this honorable court, and the proceeds of such sale applied in satisfaction of the fine aforesaid."

At apparently about the same time, in his own name as Collector of Customs of the Philippine Archipelago, he filed in the Court of Customs Appeals a petition in another proceeding, against Byron S. Ambler, who was the judge of First Instance by whom the injunction had been granted, and against the plaintiff, G. S. Weigall, praying for a writ of prohibition enjoining them from any further steps in this action. It seems that this writ was granted and served upon Judge Ambler as he was about leaving the Islands, but the defendant did not seek to further enforce it against him in any way.

Thereafter proceedings were taken in this action against this defendant for contempt in violating Judge Ambler's injunction order, in the course of which the following testimony was given by him:

"The Attorney-General did not advise me that I had no defense in regard to this injunction. I never discussed that with him. He did not advise me that I had no defense he advised me that I had no jurisdiction to impose the fine administratively.

"I consulted with the Attorney-General as to the propriety of my action in imposing this fine on the Loonsang administratively. He stated that his opinion had been that I was authorized and had been authorized to impose those fines; that that had been the opinion of Secretary Ide; that General Wright had had a different opinion on the question, and that the matter had never been settled between these members of the Commission except that he, Attorney-General Wilfley, had reached the conclusion that those fines could not be administratively imposed and that they should be enforced in court. I did not argue with him on the matter very long. I pointed out to him the fact that the Act of Congress of April 29 had failed to provide machinery for the enforcement of the laws thereby enacted, and I told him that my opinion was that those fines were enforceable administratively. We separated with that difference of opinion. * * * I would like to make a certain short statement to the effect that after the receipt of the preliminary injunction in this case, I immediately gave orders to my subordinates to release the vessel Loonsang from detention in which I was then holding her for the collection of this fine, with strict orders not to hold her or in any way interfere with her on, any of her subsequent arrivals at this port, so far as the collection of this fine might be concerned. * * * I will state that the steamer had been ordered detained by me some days prior to the receipt of the preliminary injunction. * * * The act of seizure simply means that the vessel can not leave these Islands without clearance. * * * Upon receipt of the preliminary injunction in this case, I consulted the Attorney-General as before stated, and I took other legal advice, to wit, the honorable Acting Secretary of Finance and Justice, who advised me that in his opinion the Court of First Instance, Judge Ambler in particular, was wholly without jurisdiction to issue said order; that the question of reviewing my acts as Collector of Customs lay solely with the Court of Customs Appeals, and he himself drew up a bill of exceptions which I had presented to the Court of Customs Appeals in the form of a petition for a writ of prohibition against the Hon. Judge Ambler, restraining him from interfering with me in the collection of that fine.

"I have taken further advice in the matter of my duties under the Customs Administrative Act and under Act No. 653 of the Commission, and have been advised that this honorable court was without jurisdiction to issue the temporary or permanent injunction which it did; that the Court of Customs Appeals had and has sole and exclusive jurisdiction over any exaction or attempted exaction by me as Collector of Customs. * * * In

pursuance of that advice, I instituted proceedings in the Court of Customs Appeals, a suit under Act No. 653 of the Commission. * * * I understood the judgment (in the present action) would go by default, and it was upon the advice of the Attorney-General that I should let it go by default and let the injunction become permanent."

Upon this testimony, and all the proceedings in the case Judge Sweeney, of the Court of First Instance made an order on May 18, 1903, adjudging the defendant in contempt of court, fining him the sum of 500 Mexican dollars, and directing him to dismiss the aforesaid two suits pending in the Court of Customs Appeals, or in the event of noncompliance, to be committed to prison until the order should be fulfilled.

The appellant challenges the validity of the order imposing the fine, claiming it to be wholly void for lack of power in the Court of First Instance over the subject-matter, so that he can not be punished for refusing to obey it. That an order, void for want of jurisdiction may be disobeyed without incurring contempt, appears to be settled by decisions of the Supreme Court of the United States. In *Ex parte Rowland* (104 U. S., 604), a case of disobedience by County Commissioners to a mandamus of the United States Circuit Court, a matter which lay within its general cognizance, Chief Justice Waite said, at page 612:

"* * * But if the command was in whole or in part beyond the power of the court, the writ, or so much as was in excess of jurisdiction, was void, and the court, had no right in law to punish for any contempt of its unauthorized requirements. Such is the settled rule of decisions in this court. *Ex parte Lange*, 18 Wall., 163; *Ex parte Parks*, 93 U. S., 18; *Ex parte Siebold*, 100 id., 371; *Ex parte Virginia*, id., 339."

For more recent authorities see: *Ex parte Fisk* (113 U. S., 713); *In re Ayers et al*, (123 U. S., 443); *In re Sawyer* (124 U. S., 200); *U. S. vs. Shipp* (203 U. S., 563).

We have, therefore, to inquire whether the court had jurisdiction. Under section 9 of the Act of Congress of July 1, 1902, the courts of record of the Philippine Islands were confirmed in such jurisdiction as they then possessed, together with such as might thereafter be given them by the Philippine Commission. Section 56 of Act No. 136, which was then in existence, read, in part, as follows:

"Courts of First Instance shall have original jurisdiction—

"1. In all civil actions in which the subject of litigations is not capable of pecuniary estimation;

"2. In all civil actions which involve the title to or possession of real property, or any interest therein, or the legality of any tax, impost, or assessment, except actions of forcible entry into, and detainer of lands or buildings, original jurisdiction of which is by this Act conferred upon courts of justice of the peace;

"3. In all cases in which the demand, exclusive of interest, or the value of the property in controversy, amounts to one hundred dollars or more;

* * * * *

"6. In all criminal cases in which a penalty of more, than six months' imprisonment or a fine exceeding one hundred dollars may be imposed."

Under this ample grant of jurisdiction in both general and specific terms, the Court "of First Instance may entertain this controversy unless its capacity to do so has since been taken from it by statute.

The appellant contends that such is the effect of the Chinese Exclusion Acts of Congress, as they stood in March, 1903, considered in connection with the laws of the Philippine Commission providing for their local enforcement in the Islands by customs officials and the late Court of Customs Appeals.

By Act No. 355 of the Philippine Commission, known as the Philippine Customs Administrative Act, passed February 6, 1902, it was provided that the general powers of the customs service should embrace the execution of

the laws relating to immigration. (Sec. 3, subdivision 9.) The Congressional Exclusion Act of May 6, 1882, amended in 1884, 1888, 1892, 1893, 1894, 1900, and 1901, and administered in the United States successively by the customs officers, by the Commissioner of Immigration, and by the Secretary of Commerce and Labor, was, by the Act of April 22 [29], 1902, expressly extended to the Island territory, section 2 providing that rules for its enforcement should be made by the Secretary of the Treasury.

In the absence of any such rules, the result of this legislation is that upon the Collector of Customs is cast the duty of carrying out both immigration and exclusion laws. (In re Allen, 2 Phil. Rep., 630; U. S. vs. Almond, 6 Phil. Rep., 306.) And the construction which the Collector appears to have adopted and acted upon was that, while the substantive law which he had to enforce was to be found in the Congressional Acts, his procedure was to be regulated by the customs laws of the Commission. The Congressional Act of May 6, 1882, as amended by the Act of July 5, 1884, reads in part as follows:

"SEC. 2. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land, or attempt to land, or permit to be landed any Chinese laborer, from any foreign port or place, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than five hundred dollars for each and every such Chinese laborer so brought, and may also be imprisoned for a term not exceeding one year.

"SEC. 10. That every vessel whose master shall knowingly violate any of the provisions of this act shall be deemed forfeited to the United States, and shall be liable to seizure and condemnation in any district of the United States into which such vessel may enter or in which she may be found.

"SEC. 11. That any person who shall knowingly bring into or cause to be brought into the United States by land, or who shall aid or abet the same, or aid or abet the landing in the United States from any vessel, of any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined in a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding one year.

"SEC. 16. That any violation of any of the provisions of this act, or of the act of which this is amendatory, the punishment of which is not otherwise herein provided for, shall be deemed a misdemeanor, and shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment."

It must be noted that this Act remained in force, notwithstanding its conditional repeal in the Act of September 13, 1888, for two reasons, first, the condition of that repeal, which was the ratification of the treaty then pending, was never fulfilled because of the nonacceptance of that treaty by China, and, second, it was expressly recognized and continued by section 3 of the subsequent Act of October 1, 1888. On the other hand, while certain sections of the intervening Act of September 13, 1888, have been recognized and restored by the Act of April 22 [29], 1902, it has been authoritatively held that section 12, making the decision of the Collector final as to certain matters, never went into effect. (Li Sing vs. U. S., 180 U. S., 486.) Moreover, section 1 of the Act of April 22 [29], recognizing the Act of September 13, 1888, also in terms reenacts and continues the other Chinese exclusion laws then in force, which necessarily includes the Act of July 5, 1884. But if this were not so and the latter was repealed by the Act of September 13, 1888, we find in that Act provisions substantially equivalent to those in the Act of 1884 for the prosecution of misdemeanors.

From the Philippine Customs Administrative Act, upon which the defendant relies for his justification, he cites numerous sections many of which it is unnecessary to consider for the reason that they are inapplicable to the present case, being by their terms restricted to the subject-matter dealt with therein, chiefly relating to "imported merchandise" and the "importers" thereof, or to "customs duties;" or to "fines, penalties and forfeitures"

prescribed in that Act. (Secs. 286, 287, 288, and 313.) Section 290, however, which is in more general terms, sufficing to fairly raise the question, reads as follows:

"Whenever a collector of customs shall administratively impose any fine or penalty, or decree any forfeiture or confiscation, the person against whom such fine, penalty, or forfeiture or confiscation has been adjudged by the collector may appeal therefrom to the Collector of Customs for the Philippine Archipelago, and his decision, either as collector of the port of Manila, or on appeal, shall be final, except in cases wherein the amount of the fine or penalty, or the value of the property forfeited or confiscated, shall exceed five hundred dollars, in which case an appeal may be taken therefrom to the Court of Customs Appeals in the manner provided in the three preceding sections. In case of such appeal, the Court of Customs Appeals shall proceed to determine the issue, as is provided in case of other appeals in the preceding sections."

Obviously, this section can have no application to the fine upon this plaintiff, and can afford no defense or excuse to the defendant, unless that fine was one to be imposed administratively.

In the view we take of this case, it is unnecessary to go into the question of the constitutionality of such fines to be imposed, enforced, and collected by an executive officer without the intervention of the courts. But by passing over the point we do not mean to be understood as intimating that such a procedure constitutes due process of law. The Chinese exclusion acts afford the most extreme instances of final administrative adjudication sustained as such process, and a number of apposite examples may be found in the decisions cited in the case of the United States vs. Ju Toy (198 U. S., 253).

The fine to be imposed upon the plaintiff and his vessel in the present instance was not one for administrative action because it had to be laid and enforced in accordance with the laws of Congress in which it had its being and which had authorized no such action. The error of the defendant had root in the notion, expressed in his testimony "that the Act of Congress of April 29 had omitted to provide machinery for the enforcement of the laws thereby enacted." That notion overlooked the fact that the usual machinery for the enforcement of the laws is found in the regularly constituted courts, and involved the strange assumption that the terms of the Acts of Congress adequate to the home territory of the United States were not specific enough to be carried out in these Islands. Those acts did, impliedly, if not explicitly, provide for the manner of their enforcement, and in that respect were not open for amendment by the Philippine Commission, and we assume that it was no part of the intention of that Commission to amend them or supplement them by any legislation at variance with them.

It is impossible to read sections 2 and 10 of the Act of 1884, hereinbefore quoted, or section 9 of the Act of September 13, 1888, and entertain a doubt that they contemplate the action of the courts. The phrase "a conviction for misdemeanor" in section two, as well as the words "a condemnation" in section 10 of the Act of 1884, can have no other application as there is no oilier way known to the law of securing a conviction for a misdemeanor or a condemnation in a United States district. These provisions enter into the nature of the offense declared by the Act, and are inseparable from it. They define the prohibited acts as misdemeanors, which always are punishable in the courts, and refer to convictions and condemnations therein. To qualify them by transferring the jurisdiction under the statute from the courts in which they were vested to administrative officers, would be to essentially change them, to affect the nature of their penalties, and in varying, to contradict the terms of the statute. Our jurisprudence has not yet recognized the jurisdiction of a collector or any other administrative officer, to punish for misdemeanor.

The contention of the appellant requires that we should give in substance this effect to the Customs Act of the Commission, but this we are unable to do. Misdemeanors under the Congressional Act were punishable, and its forfeitures were enforcible, only in the way therein directed, in the regularly constituted courts of law having jurisdiction in the Islands, and it was not competent for the local legislature to change in this respect the scheme

of Congress. Consequently, the appellant had no power to impose the fine or seize the vessel. His act in doing so was an illegal one which the Court of First Instance had the right to restrain, and its injunction was binding upon him.

It is contended, however, that the objectionable administrative feature of the scheme was done away with by Act No. 653 of the Commission, passed on the very day of the seizure of the Loonsang. Prior to its passage, sections 344 and 345 of the Philippine Customs Administrative Act provided for a report by "the collector to the proper prosecuting officer," of "all fines, penalties, and forfeitures * * * not collectible by him by reason of the nature of the statutory provision authorizing the same or by reason of there being no property under the control of the collector" * * * and for a prompt suit or prosecution therefor by such officer.

Act No. 653, in section 1, amending section 344, omitting the report of the prosecuting officer, adds the words—

"In such cases the decision of the collector upon the question of whether there is or is not property under his control upon which the lien for such liability can be enforced shall be final."

Section 2 amends section 345 so as to read as follows:

"SEC. 345. The Collector of Customs for the Philippine Archipelago, upon receiving such report of the collector, shall cause suit or prosecution to be commenced without delay for the fines, penalties, and other forfeitures by law in such cases provided in the Court of Customs Appeals, which court is hereby given jurisdiction to enforce the fines, penalties, and forfeitures against the persons upon whom the same were imposed by ordering imprisonment at hard labor of the guilty person until such fines, penalties, or forfeitures have been paid or otherwise lawfully satisfied. The sentence shall provide that, if the fine, penalty, or forfeiture is not paid, the imprisonment shall continue a sufficient number of days to pay the same, with lawful costs, at the rate of not less than twenty cents, in money of the United States, per day, for each day's imprisonment. The costs of prosecution shall be added to the fine, penalty, or forfeiture ordered. The rate to be allowed for each day's imprisonment shall, be fixed by the court in its judgment."

It is urged that this amendment transferring from the Collector to the Court of Customs Appeals final jurisdiction in such cases operated to restore them to the cognizance of the courts, thus ridding the procedure of its administrative character and simply constituting another court for their prosecution. Such must have been the revised view of the defendant, as shortly thereafter, instead of proceeding to administratively enforce his fine, seizure, and forfeiture, he began an action, in his official character, for that purpose in the newly constituted tribunal. This court, of unique constitution and power, has long since passed out of existence. During its short life, however, it appears to have been endowed with amply authority, in general, so far as the same lay within the gift of the Philippine Commission, to entertain such a controversy as the defendant thus brought before it. (Act No. 355, secs. 289 and 290, and Act No. 653.)

The defect of the argument of the defendant is that it loses sight of the incident that the fine was not imposed by the court, but in the first instance by the Collector, and it was to enforce his fine, already laid, and his seizure, that suit was brought in the Court of Customs Appeals. The original administrative act imposing the fine having, as we have already seen, been invalid, the proceeding based upon it can not stand. This customs court might have been given power to enforce the provisions of the Chinese Exclusion Act in accordance with the law of Congress, but such was not the scope of the acts of the Commission, nor such the procedure attempted in this case.

In order to justify his contemptuous act, it did not suffice for the defendant to show jurisdiction in the Court of Customs Appeals over the subject-matter, but in addition thereto that the grant thereof was exclusive; otherwise, the Court of First Instance would not have been deprived of its preexisting statutory power. It can not be denied that such was the purport of Act No. 653, which, if it could, be sustained, would have ousted Courts of First

Instance in these Islands of their jurisdiction over customs cases, which they possessed at the time of the passage of the Act of Congress. That, however, it was not competent for the Philippine Commission to do. The powers of the courts of record as fixed by the Act of Congress lay beyond its reach. Under the law, the Philippine Commission might increase, but it could not decrease them. The gift of Congress the local legislature can not take away. Section 9 of the Act of July 1, 1902, above referred to, reads, in part, as follows:

"That the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by the Government of said Islands, subject to the power of said Government to change the practice and method of procedure."

It is too plain for argument that a law stripping the Supreme Court and Courts of First Instance of their jurisdiction in a particular class of cases goes far beyond a change in practice and method of procedure.

Therefore, so much of Act No. 653 of the Commission as attempts to confer upon the Collector of Customs of the Court of Customs Appeals exclusive jurisdiction over any cases theretofore cognizable in the courts of record, was ineffective. As already pointed out, preexisting Acts gave the Collector and the Customs court no such exclusive jurisdiction in Chinese exclusion cases which were cognizable in the ordinary tribunals of justice, and for this reason, as well as because it was not competent for the Philippine Commission to change the Act of Congress by substituting an administrative for a judicial procedure, the Court of First Instance had power to impose its order of May 18, 1903, and the defendant is in contempt for his violation thereof.

The order enjoined upon him to absolutely desist and refrain from further proceeding in any way to levy upon or collect from the plaintiff the fine of \$200 mentioned in the plaintiff's complaint. Although the defendant testifies that after this order he directed the vessel released, nevertheless he thereafter instituted the two actions in the Court of Customs Appeals, in one of which the seizure and fine were made the basis of the relief prayed for, and judgment was prayed against the firm of Smith, Bell & Co. who could have been made liable only by virtue of their agreement, substituting their personal responsibility for the vessel seized. Moreover, the testimony of the defendant shows that he took his stand upon the validity of this fine, which he asserted and continued to enforce.

The maintenance of public order and the existence of the commonwealth itself, depend upon the enforcement of the mandates of the courts and require prompt obedience to them, not only by private citizens, but in a special manner by the Government officers who are particularly charged with a knowledge of the law and with the duty of obeying it. Were this a case of recent origin or of existing vitality, we should deem the fine imposed by the lower court a scant vindication of the law. The controversy, however, hits lost its present interest. The Court of Customs Appeals has been abolished, the customs laws have been amended, and the trouble arose at a time when, in the organization of the local government, great confusion existed as to the rights and duties of officials under the untried and sometimes conflicting statutes of the new sovereignty. Taking these circumstances into consideration, and also the fact that the defendant, in apparent good faith and at the instance of a superior officer, was endeavoring to carry out his duty as he understood it, we reduce the fine imposed upon him to P200, to be paid within twenty days. The Collector is also ordered within that time to do any acts necessary to release his lien upon the vessel Loonsang, or his claims against the substitute sureties therefor, and to discontinue any proceedings or actions pending for the enforcement thereof. So ordered.

Torres, Mapa, Carson, and Willard, JJ., concur.

Arellano, C. J., having been ex officio member of the Court of Customs Appeals did not take part in this decision.

ON MOTION FOR REHEARING**NOVEMBER 14, 1908.****TRACE Y, J.:**

The appellant presents a petition for a rehearing, supported by a lengthy brief signed by the Solicitor-General, now appearing for the first time in the case, in which the principal ground of the motion is stated as follows:

"The court erred in holding that the Court of First Instance of Manila had jurisdiction to review in any form the official acts of the Insular Collector of Customs, in view of the plain wording of Act No. 355 of the Philippine Commission, enacted February 6, 1902, giving said jurisdiction exclusively to the Court of Customs Appeals created thereby, which said Act No. 355 was subsequently confirmed by Act of the Congress of the United States of July 1, 1902, known as the Philippine Bill."

First The argument is based upon the fact that inasmuch as the Philippine Customs Administrative Act was already in existence when the Act of Congress of July 1, 1902, was passed, the confirmation by that Act of the preexisting powers of Courts of First Instance was subject to such qualifications thereof as were already contained in the Customs Act.

This argument entirely misses the point of this part of the decision, which was to the effect that the exclusive powers of review in Chinese exclusion cases were conferred upon the Court of Customs Appeals, not by the original Customs Act of February 6, 1902, but by the amendatory Act No. 653, passed March 4, 1903. The contention of the appellant to the contrary rests upon the extension of the words "exactions other than duties," and, "all fees and exactions of whatever character," in sections 286 and 287 of the Customs Administrative Act, so as to include exactions made by the Collector not only in customs cases but in those arising under the exclusion laws. This, the decision held, was not an admissible construction, for the reason that the general words quoted must, according to settled rules of statutory interpretation, be referred to the subject-matter of the sections in which they occur, and these sections were concerned with duties, charges, and exactions upon imported merchandise only, and did not even touch upon immigration or exclusion matters, nor refer to fines, penalties, and forfeitures. What the collector imposed in this case comes under the head of "fines, penalties, and forfeitures," which are regulated, not by sections 286 and 287, but by section 344 of the Act.

Under the original Act, his procedure pursuant to this section was not exclusive either in himself or in the Court of Customs Appeals, but, on the contrary, as pointed out in the decision, the facts constituting an alleged offense were required to be referred by him "to the proper prosecuting officer of the district in which such fines, penalties, or forfeitures were incurred or imposed," to be prosecuted by him in the courts. The extent of the exclusive jurisdiction of the Court of Customs Appeals prior to the passage of Act No. 653 is defined in section 288 as follows: "The remedy by appeal to the Court of Customs Appeals is exclusive of all other remedies upon all questions arising relating to the customs duties, or the administration thereof." Consequently, the jurisdiction of the collector and the Court of Customs Appeals, to the exclusion of the Courts of First Instance in Chinese exclusion cases, was not the law of the Archipelago on the date of the passage of the Act of Congress of July 1, 1902.

Second. The motion appears to overlook that ground of the decision which is therein stated to be, "that it was not competent for the Philippine Commission to change the Act of Congress by substituting an administrative for a judicial procedure" and "that the fine was not imposed by the court, but in the first instance by the Collector and it was to enforce his fine, already laid, and his seizure, that suit was brought in the Court of Customs Appeals. The original administrative act imposing the fine having * * * been invalid, the proceeding based upon it can not

stand."

Third. The motion of the learned Solicitor-General assumes that Act No. 355 of the Philippine Commission was subsequently confirmed by the Act of Congress of the United States of July 1, 1902.

That Act of Congress confirms certain specified actions of the President of the United States in relation to the Islands, and among them the adoption of the original tariff under the order of July 32, 1898, with its amendments. To this is added the clause, "and the actions of the authorities of the Government of the Philippine Islands, taken in accordance with the provisions of said order and subsequent amendments are hereby approved: Provided, That nothing contained in this section shall be held to amend or repeal an Act entitled 'An Act temporarily to provide revenue for the Philippine Islands, and other purposes,' approved March eighth, nineteen hundred and two."

This approval of the actions of the authorities of the Islands, "taken in accordance with the provisions of said order and subsequent amendments," falls far short of a ratification of the legislative details of the independent Act known as "The Philippine Customs Administrative Act." The specification of certain actions of the President of the United States and of the actions of local officers in compliance therewith excludes any assumption of general approval of the legislative Acts of the Commission by this Act of Congress upon the principle "inclusio unius est exclusio alterius"

Fourth. As a partial justification for a reduction of the fine originally imposed upon the appellant we adverted to "the apparent good faith" of the Collector and to the circumstance that he was acting "at the instance of a superior officer."

He now presents this in the light of a finding of fact, on the strength of which he claims to be exonerated from all responsibility. Even if viewed as a finding of fact, it must be read in relation with the other facts recited in the decision as quoted therein from his own testimony, from which it appears, among other things, that in imposing and enforcing this fine he deliberately injected the advice of the Attorney-General, the legally constituted counsel of State officers in such matters, and that he was aware of the obligation of the injunction. It may be added that upon the hearing this additional question was put to him:

"Did the Attorney-General express the opinion to you that that final order was binding upon you?"

To this he answered:

"I do not recall that he expressed his opinion in those words. It was not discussed with the Attorney-General, because I considered myself just as well aware of the binding effect of an order as the Attorney-General is. I never doubted that it was binding upon me, so I do not believe the question came up."

This statement leaves nothing to inference in respect of the knowledge and deliberation with which Judge Sweeney's injunction was violated.

The case fairly presents a Federal question and therefore may be carried to a higher tribunal, but this court finds no reason for changing its opinion heretofore expressed. The motion for a rehearing is denied, but without costs.

Torres, Mapa, Carson, and Willard, JJ., concur.

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