# VICENTE GOTAMCO, PETITIONER, VS. BEN F. WRIGHT, INSULAR AUDITOR FOR THE PHILIPPINE ISLANDS, RESPONDENT.

*G.R. No. 22739. November 05, 1924*

Ponente: OSTRAND, J.

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**OSTRAND, J.:**

This is a petition for a writ of mandamus to compel the respondent to countersign a warrant drawn by the Insular Collector of Customs on the Philippine Treasury in favor of the petitioner.

It appears from the record and from the evidence presented that on October 6, 1920, four Chinese women, relatives of the petitioner, arrived at the port of Manila from Amoy, China, on the steamship Taisang and were temporarily released under the general bond of a firm of immigration brokers. According to the testimony of witnesses for the petitioner, the immigrants on several occasions went to the immigration division of the Bureau of Customs and asked that their applications for entry be heard, but owing to the great congestion of cases which were of a preferential character, the hearing of their cases was postponed from time to time.

On April 11, 1922, the bond of the immigrants was changed into four "cash bonds" of P500 each, the bondsman, the petitioner herein, depositing the money in the "guarantee fund" of the Bureau of Customs, entering at the same time into an undertaking in the following form for each of the immigrants :

"The Insular Collector of Customs,

> "Manila.

"Sir:

"I respectfully request the temporary release of Ong Buan, Chinese woman, ex S/S Taisang, Oct. 9, 1920, and I deposit herewith the sum of five hundred pesos (P500) Philipine currency, as security, and agree to produce the said person at any time that I may be called upon on twenty-four hours' notice.

"I undertake that said person will not leave the City of Manila or its immediate vicinity without the permission of the immigration authorities, and in case of failure to produce her at the time and place and on the date demanded, the Insular Collector of Customs may declare forfeited the whole or any part of the deposit herewith made; it being clearly understood that such forfeiture does not release me from my obligation to produce the said person for deportation at a later date.

"All right to a re-hearing except for the production of documentary evidence or expert testimony as to issue of fact is hereby expressly and voluntarily waived.

> "Photograph to be furnished.
>
> "Respectfully,
>
> (Sgd.) "V. GOTAMCO"

On March 7, 1923, the Insular Collector of Customs made a formal demand upon the petitioner for the production of the four immigrants, within fifteen days, before the board of special inquiry of the Bureau of Customs in order that their right to admission into the Philippine Islands might at last be determined, with the warning that in case of failure to comply with said demand the cash bonds above-mentioned would be forfeited. The petitioner failed to produce the immigrants, apparently paying no attention to the demand, and on April 13, 1923, the Insular Collector of Customs declared all of the cash bonds forfeited in favor of the Philippine Government.

The petitioner received notification of the forfeiture on April 15, 1923. Two days later the four immigrants left the Philippine Islands for China on the steamship Kumsang, without appearing before the customs authorities. It appears, however, that the petitioner notified the chief of the immigration division of the Bureau of Customs and requested the latter to send an inspector to the ship to identify them, giving as a reason for the request that one of the immigrants was "too old to go to the office of the Bureau of Customs and the others were ashamed to go there and be accompanied to the boat by a customs inspector as if they were criminals."

By virtue of the order of forfeiture the amount of the four bonds was taken up as receipts of the Bureau of Customs and was, with the approval of the Insular Auditor, transferred from the "guarantee fund" to the general unappropriated fund of the Insular Treasury on April 28, 1923, in accordance with section 573 of the Administrative Code. (See Exhibits 12, 15, 17, and 18.)

On April 30, 1923, the petitioner filed a protest with the Bureau of Customs against the forfeiture of the bonds and on June 1, 1923, the Insular Collector of Customs acknowledged receipt of the protest and advised the petitioner that his request for refund would be given due consideration upon the production of satisfactory evidence of the departure of the aforesaid immigrants.

After separate investigation both by the immigration division and the customs secret service as to the truth of the claim of the petitioner that the immigrants had left the Philippine Islands on April 17, 1923, the Collector of Customs on June 5, 1924, advised the attorneys for the petitioner that the cash bonds would be refunded; and on June 10 the collector attempted to revoke the order of forfeiture and directed the cashier of the Bureau of Customs to draw a warrant on the Philippine Treasury in the amount of P2,000 in favor of the petitioner by way of refund of the bonds. The Insular Auditor refused to countersign the warrant on the ground that the action of the Collector of Customs in revoking the order of forfeiture and authorizing the refund of the amount of the bonds forfeited was not well taken, and on the further ground that the funds had reverted to the unappropriated surplus of the Insular Government, in accordance with section 573 of the Administrative Code, at the end of the year 1923, and could therefore not be withdrawn from the Insular Treasury without legislative appropriation.

The present action was thereupon brought, the petitioner alleging that the revocation of the order of forfeiture lay within the discretion of the Insular Collector of Customs; that, therefore, the Insular Auditor was legally bound to honor and countersign the treasury warrant drawn in pursuance of the order revoking the order of forfeiture; and that in refusing to do so the Insular Auditor exceeded his powers and neglected to perform a duty specially enjoined upon him by the law.

That the Insular Collector of Customs has the power, within reasonable limits, to revoke his own orders of forfeiture of cash bonds and may order the refund of the money deposited as long as the funds remain in the guarantee fund under his control, is not disputed, but it is obviously otherwise when the funds have passed beyond his control and have reverted to the general unappropriated fund of the treasury. Section 3 of the Organic Act expressly provides that "no money shall be paid out of the Treasury except in pursuance of an appropriation by law." Neither the Insular Collector of Customs nor any other official of the Government is authorized to order the expenditure of unappropriated funds, and it necessarily follows that it is not only the right but the duty of the


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Insular Auditor to withhold his approval of such expenditures.

But counsel argues that in this case the funds in question were transferred to the general unappropriated funds of the Insular Treasury without the petitioner's consent and that he therefore has been deprived of his property without due process of law. There is no merit in this contention. In depositing the amount of the cash bonds the petitioner expressly agreed that the deposits might be forfeited at any time upon his failure, on demand, the produce the persons for whom the bonds were given.

If the forfeiture was legal the title to the funds deposited passed directly to the Government immediately upon the declaration of the forfeiture and the further disposal of the funds was no longer subject to the petitioner's approval or consent. He could assert no legal right to the funds and any relief from the forfeiture would be merely a matter of grace.

That the forfeiture was legal admits of no doubt. The petitioner received fifteen days' notice of the demand for the production of the immigrants; under the terms of the bonds he was entitled only to twenty-four hours' notice. Notwithstanding the ample notice given, the petitioner disregarded the demand and did not even show the customs authorities the courtesy to explain his failure to produce the immigrants or to ask for an extension of the time. Though the demand was made on March 7, 1923, the forfeiture was not declared until April 15th and the funds in question were not transferred to the general fund of the treasury until thirteen days later. During all this time the petitioner had ample opportunity to present his request for relief from the forfeiture and might possibly have recovered his money, but he appears to have preferred to treat both the customs authorities and the laws of the country with contempt and must now suffer the consequences. His attitude has caused the agents of the Government no little trouble and annoyance and his loss does therefore not seem wholly unmerited.

The petition for a writ of mandamus is denied with the costs against the petitioner. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.


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