

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JEAN L. ARNAULT, DEFENDANT AND APPELLANT.

G.R. No. 42262. July 01, 1935

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from a judgment of the Court of First Instance of Manila convicting the appellant of a violation of section 4 of the Gold Reserve Act of 1934, in that, according to the information, "the said accused with intent to ship away to a foreign port, namely, Hongkong, China, by the S. S. Empress of Britain, did then and there willfully, unlawfully, feloniously and without proper license or permit therefor place and cause to be placed on board, and export from the Philippine Islands, by the said boat which was then anchored at Pier 7, in said city, and scheduled to sail away, as in fact it sailed away, on the above-mentioned date" gold in various forms. Upon such conviction, the gold described in the information was declared forfeited to the United States, and appellant was sentenced to pay a fine of P76,482 and costs.

The facts are not disputed. This appeal raises only a question of law, and that is, whether under the Gold Reserve Act of 1934, gold in any form, other than United States gold coin, situated in the Philippine Islands, may be exported to a foreign country by persons not domiciled in the continental United States, without the necessity of obtaining a license therefor. While the lower court held that a license was required under the circumstances mentioned, appellant contends that no such license was contemplated by law. This latter view is concurred in by the Solicitor General who recommends that the judgment below be reversed and the defendant acquitted with costs de oficio.

The pertinent provisions of the Gold Reserve Act of 1934 are contained in section 3 which reads as follows:

"The Secretary of the Treasury shall, by regulations prescribed hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in the Philippine Islands or other places beyond the limits of the continental United States."

By virtue of the authority thus conferred upon him, the Secretary of the Treasury issued on January 30, 1934, certain regulations which are referred to in the record as "Provisional Regulations". These regulations were amended on January 31, 1934. The decision of the lower court was based on the theory that, under sections 12, 22, 31 and 84, of the Provisional Regulations, a license was required for the exportation to a foreign country of gold in any form, situated in the Philippine Islands, even though such gold is mined and exported by a person not domiciled in the continental United States. On the other hand, the contention of the appellant, with which the

Solicitor-General is in agreement, is based on section 15 of the Provisional Regulations, which reads as follows:

"Gold in any form (other than United States gold coin) situated in places subject to the jurisdiction of the United States beyond the limits of the continental United States may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for the account of persons other than residents of the continental United States, by persons not domiciled in the continental United States: Provided, however, That gold may be transported from the continental United States to the possessions of the United States only under license for export issued pursuant to sections 25 (3), 32, 33, or 34, or, if fabricated gold, subject to the conditions specified in section 16 (2)."

It should be observed that section 3 of the Gold Reserve Act of 1934 above quoted, expressly provides that the regulations issued thereunder by the Secretary of the Treasury may exempt from the provisions of said section, in whole or in part, gold situated in the Philippine Islands or other places beyond the limits of the continental United States. The question arises as to the intent and purpose of section 15 of the Provisional Regulations. A careful reading of said regulations would seem to compel the conclusion that section 15 thereof was intended to exempt from the provisions of section 3 of the Gold Reserve Act of 1934, gold situated in the Philippine Islands, other than United States gold coin. It follows that the provisions of said regulations as to the necessity of obtaining a license for the exportation of gold are not applicable to gold situated in the Philippine Islands, other than United States gold coin, provided that such gold is owned and exported by a person not domiciled in the continental United States. This view is justified upon other considerations.

The Provisional Regulations having been issued by the Secretary of the Treasury, it is obvious that the interpretation placed upon them by the Treasury Department should carry great weight, if, indeed, it be not taken as controlling. The Treasury Department has advised the Governor-General, through the Bureau of Insular Affairs "that, under section 15 of the Provisional Regulations issued under the Gold Reserve Act of 1934, gold (other than United States gold coin) which is situated in the Philippines may be exported therefrom to a foreign country without the necessity of obtaining a license therefor, provided that such gold is owned and exported by a person not domiciled in the continental United States." (Exhibit Y-I.)

In view of the conclusion we have reached, it is unnecessary to discuss the other points raised by this appeal.

The judgment appealed from is reversed and the defendant acquitted, with costs de oficio. The gold described in the information and declared forfeited to the United States by the judgment below shall be returned to the appellant. So ordered.

Malcolm, Hull, Vickers, Butte, Goddard, and Diaz, JJ., concur.

Judgment reversed and defendant acquitted.

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