

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. NGAN TE, DEFENDANT AND APPELLANT.

*G.R. No. 42574. December 12, 1935*

Ponente: AVANCEÑA, C.J.

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### AVANCEÑA, C.J.:

The appellant was sentenced by the Court of First Instance of Manila for a violation of section 4 of the Gold Reserve Act of Congress of January 30, 1934, to pay a fine of P1,104, with forfeiture of the gold found in his possession.

On March 17, 1934, in the City of Manila, the appellant was arrested by the customs employees while in the act of going on board the boat Anking which was then about to leave port for China. The appellant was placed under arrest because the customs' employees noted that he was nervous, and suspecting that something illegal was about to be committed, they proceeded to search his person and found inside his shoes gold money of the United States in the amount of P3,480 and eight foreign money (Spanish and English). The appellant's shoes were purposely made to conceal the money.

The prosecution presented evidence to the effect that after the arrest of the appellant, he admitted before the customs' authorities that he intended to export the money to China. It is assumed that the appellant did not have any license to export said money. The prosecuting officer on appeal is of the opinion that the appellant is guilty of a frustrated violation of the aforesaid Congressional Act.

Section 4 of this Act reads:

"Sec. 4. Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of this Act or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of this Act or of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred."

As may be seen from the wording of the Act, what is penalized is not the attempted, but the consummated exportation of gold

Section 565 of the Revised Statutes of the United States provides:

"Sec. 565. Verdicts; Less offense than charged.—In all criminal causes the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offense so charged, if such attempt be itself a separate offense" (U. S. C. A., Title 18.)

Interpreting this provision in the case of *United States vs. Lucas* (D. C. Wash. [1925], 6 Fed. [2d.], 327, 328), the

court held:

"The act provides a penalty for any one who 'exports any arms or munitions of war in violation of section 1.' etc. It seems clear that this section has relation only to the consummated offense. There is no penalty for attempting to export. The 'attempt' is not 'itself a separate offense/ and hence not within section 1035, R. S. (Comp. St., sec. 1701), which provides that a party charged with the commission of a crime 'may be found guilty of an attempt to commit the offense so charged, provided, that such attempt be itself a separate offense "

Wherefore, the proven facts in this case, which do not constitute the consummated exportation of gold according to the prosecuting officer, do not fall within the purview of the Act of Congress of January 30, 1934.

We find no merit in the prosecuting officer's contention that the appellant can be sentenced for a frustrated violation of the Act of Congress by applying the Revised Penal Code. The Philippine Legislature cannot alter this Act of Congress by extending its scope beyond that which Congress intended, and this not only on grounds of principle, but because in its section 16, Congress expressly reserved its right to alter, amend, or repeal the same.

For the foregoing considerations, the appealed decision is reversed, and the appellant acquitted, but for the other purposes of the Act of Congress of January 30, 1934, it is ordered that the money of the United States found in appellant's possession be turned over to, and placed at the disposal of, the proper authority, and that the other foreign money be returned to the appellant, with costs de officio. So ordered.

Abad Santos, Hull, Vickers, and Diaz, JJ., concur.

Judgment reversed and defendant acquitted.

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