

JOHN C. ROBB AND HERBERT H. HILSCHER, PETITIONERS AND APPELLANTS, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT AND APPELLEE.

G.R. No. 45866. June 12, 1939

Ponente: LAUREL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-45866/>

LAUREL, J.:

On December 14, 1935, R. W. Ring, John C. Robb, Herbert H. Hilscher and J. W. Chastek were prosecuted in the Court of First Instance of Manila for the violation of Act No. 2581, commonly known as the Blue Sky Law, in that on or about and during the period comprised between September 16, 1935, and December 10, 1935, in the City of Manila, Philippines, the said R. W. Ring, John C. Robb, Herbert H. Hilscher and J. W. Chastek, being then the president, vice-president, vice-president and broker, respectively, of the "Philippine Greyhound Club, Inc.," a domestic corporation, confederating and cooperating together and helping one another, did willfully, unlawfully and knowingly sell or cause to be sold, offer for sale, take subscriptions and negotiate for the sale of shares of stock of the said "Philippine Greyhound Club, Inc."—which shares of stock are speculative securities within the purview of section 1 of Act No. 2581—after the license to sell said shares had been cancelled by the Insular Treasurer on the 14th day of September, 1935, of which cancellation the said R. W. Ring, John C. Robb, Herbert H. Hilscher and J. W. Chastek were duly informed on September 16, 1935.

R. W. Ring appears to have surreptitiously departed from the Philippines and had not been placed under arrest,

J. W. Chastek, upon arraignment, pleaded guilty to the charge and was sentenced by the Court of First Instance of Manila to pay a fine of P100, with corresponding subsidiary imprisonment in case of insolvency, and one-fourth of the costs.

After trial in respect to John C. Robb and Herbert H. Hilscher, the Court of First Instance of Manila found each of them guilty of the offense charged and sentenced them to pay each a fine of P300, with corresponding subsidiary imprisonment in case of insolvency, and one-fourth of the costs.

In the Court of Appeals, to which Robb and Hilscher duly prosecuted an appeal from the judgment of conviction rendered by the Court of First Instance of Manila, they submitted the following assignment of errors:

"I. The trial court erred in holding that since the organization of the corporation, John C. Robb was managing director and Herbert H. Hilscher was treasurer.

"II. The trial court erred in holding that the defendants, Robb and Hilscher, should have known that the checks mentioned in Exhibits GGG, EEE and FFF represented proceeds of the illegal sale made by the defendants, Chastek and Ring, for the reason that they were interested parties regarding the income of the corporation.

"III. The trial court erred in holding that the defendants, Robb and Hilscher, derived personal benefit from the payment to the corporation of subscriptions to the capital stock after the company's permit to issue shares had been cancelled.

"IV. The trial court erred in holding that the defendants, Robb and Hilscher, are criminally liable for the sale of shares made by J. W. Chastek and R. W. Ring.

"V. The trial court erred in holding that the sending by the secretary of the corporation of the circular letters, Exhibits D, E, F, G, H, U and Y, to the shareholders of the corporation made the defendants Herbert H. Hilscher and John C. Robb a party to the illegal acts previously committed by the defendants, Chastek and Ring.

"VI. The trial court erred in holding that the shares of stock of the Philippine Greyhound Club were speculative securities within the purview of Act No. 2581."

When the case was heard in the Court of Appeals on oral argument, counsel for John C. Robb and Herbert H. Hilscher raised for the first time the question of the constitutionality of Act No. 2581 and that court, by resolution of March 18, 1937, allowed said counsel and the Solicitor-General to file memoranda of authorities in support or in refutation of the contention that Act No. 2581 is unconstitutional. On October 28, 1937, the Court of Appeals affirmed the judgment of the Court of First Instance of Manila, with costs against Robb and Hilscher, and, in relation to the constitutional aspect of the case for the first time brought to notice in the course of the oral argument in that appellate court, the latter tribunal inhibited itself from passing upon the question on the grounds (1) that said question falls within the jurisdiction of the Supreme Court and (2) that as appellants failed to raise the question in the Court of First Instance, they could not for the first time do so on appeal (*Yu Conor Eng vs. Trinidad*, 47 Phil., 385; *Laperal and G, de Laperal vs. City of Manila and Sioco Vda. de Escaler*, 34 Off. Gaz., 1330). This decision of the Court of Appeals is now sought to be reviewed and reversed in this court on certiorari, John C. Robb and Herbert H. Hilscher, petitioners-appellants, alleging that:

"1. The Court of Appeals erred in declaring that the question of constitutionality of a statute may not be raised for the first time in the appellate court.

"2. The Court of Appeals erred in denying petitioners' motion for reconsideration and in not setting aside its decision and forwarding the case to the Supreme Court for decision because of the constitutional aspect of the case.

"3. The Court of Appeals erred in convicting the petitioners,"

Apart from the local questions raised in their assignment of errors, appellants in this instance have exerted vigorous efforts in showing that there is not sufficient evidence in the record to sustain their conviction. We decline to disturb the findings of fact made by the Court of Appeals in these proceedings (sec. 2. Art. VIII, Constitution; sec. 145-F, Administrative Code, as amended by Commonwealth Act No. 3; Rule 47 [b], Supreme Court).

Defendants-appellants contend that "the Court of Appeals erred in declaring that the question of the constitutionality of a statute in a criminal proceeding may not be raised for the first time on appeal." In *People and Hongkong & Shanghai Banking Corporation vs. Vera and Cu Unjieng* (37 Off. Gaz., 164), we stated that, " * * * as a general rule, the question of constitutionality must be raised at the earliest opportunity, so that if not raised by the pleadings, ordinarily it may not be raised at the trial, and if not raised in the trial court, it will not be considered on appeal (12 C. J., p. 786. See also, *Cadwallader-Gibson Lumber Co. vs. Del Rosario*, 26 Phil., 192-195.)" This rule, which is subject to exceptions, is applicable to criminal cases. In so grave a matter, the constitutional issue should be raised and lodged in the case at the earliest opportunity that orderly procedure will admit under the circumstances. It is thereby that the foundation is laid for its presentation to this court and the issue becomes *lis mota* on elevation of the case to the Supreme Court, which is the only constitutional authority empowered to pass upon "all cases in which the constitutionality or validity of any treaty, law, ordinance, or

executive order or regulation * * *." (Sec. 2, Art. VIII, Constitution.) It is thereby also that the trial court and the parties are fully apprised of the importance of the question involved, and the submission of the evidence no less than the presentation of the attendant circumstances may be made to center around the serious issue thus ear-marked. As "general propositions do not decide concrete cases" (Justice Holmes in *Lochner vs. New York*, 198 II S., 45, 76; 49 Law. ed., 937, 949), factual presentation becomes the more important in the application of legal principles so that each case—borrowing from our own expression—may be considered in the light of its own peculiar legal environment. Unless, therefore, the constitutional question is thus, timely raised and presented, it will be considered waived, except in extraordinary cases noted in *People and Hongkong & Shanghai Banking Corporation vs. Vera and Cu Unjieng*, supra, or in exceptional cases where, in the opinion of this court, the question may be said to be fairly involved upon the face of the undisputed record.

In the present case, and as indicated in the narration of facts, the appellants did not raise the constitutional question in the Court of First Instance of Manila before which they were tried; upon conviction and on appeal neither was such question raised in their briefs; it was only during the oral argument and in the memoranda thereafter submitted by them that they challenged the constitutionality of the law. Under these circumstances, the Court of Appeals committed no reversible error in passing judgment upon the merits of the case.

But, even if we were to follow the rule which obtains in some jurisdictions that the question as to the constitutionality of a statute on which criminal prosecution is based may be raised for the first time at any stage of the proceedings, either in the trial court or on appeal, the same adverse result would follow.

It is contended by the appellants that Act No. 2581 violates the rule that no bill shall embrace more than one subject and that subject expressed in the title of the bill (citing sec. 3, Jones Law and sec. 12 [1], Art. VI, Constitution). The title of the Act reads: "An Act to regulate the sale of certain corporation shares, stocks, bonds and other securities", and it is argued that this title is broad enough to include partnerships and associations or non-corporate securities, and that "the Legislature was without power, under the subject rule of the Jones Law or the Philippine Constitution, to deal in the body of the Act with 'non-corporate' securities, as that class of securities was not 'embraced' in the title. (P. 15, brief for the appellants.) It is not denied, however, that the Philippine Greyhound Club, Inc. was a corporation organized in accordance with the laws of the Philippines and that the petitioners-appellants were officers of said corporation when they sold shares of stocks of the same after the authority therefor had been withdrawn by the Acting Insular Treasurer. On the hypothesis that the inclusion of "person", "partnership" and "association" in section 2 of Act No. 2581 is of doubtful constitutionality, the law need not be invalidated as to the sale of corporate shares (*Barrameda vs. Moir*, 25 Phil., 44; *U. S. vs. Rodriguez*, 38 Phil., 759).

It is next contended that Act No. 2581 delegates legislative power to the Insular Treasurer and confers arbitrary power upon this officer, and that said Act is vague and uncertain. We have already passed upon these points adversely to the appellants in *People vs. Rosenthal and Osmena* (G. R. Nos. 46076 and 46077, promulgated June 12, 1939).

The petition is dismissed with costs against the petitioners. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.