

THE INSULAR GOVERNMENT, PLAINTIFF AND APPELLEE, VS. LING SU FAN, DEFENDANT AND APPELLANT.

G.R. No. 5038. January 24, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

The present action is one to declare forfeited the sum of P20,600 Philippine currency, which the defendant attempted to export from the Philippine Islands, in violation of the provisions of Act No. 1411 of the Philippine Commission.

On or about the 20th of December, 1906, a criminal action was commenced against the present defendant for his attempt to export said Philippine currency, in violation of said law. Upon a full consideration of all of the evidence presented in the criminal action, this court decided that the defendant was guilty of a violation of said law and sentenced him to be imprisoned for a period of sixty days and to pay a fine of P200.[1] Later the Attorney-General of the Philippine Islands instituted the present action for the purpose of declaring forfeited to the Government, in accordance with the provisions of said Act No. 1411, the money which the defendant attempted to export from the Philippine Islands.

Upon the issues presented in said cause and after a stipulation by the respective lawyers that the evidence adduced during the trial of the criminal cause should be presented and accepted as proof in the civil cause, the lower court rendered the following decision:

"As the British steamer Taming had weighed anchor and was about to sail from this port for Hongkong, China, in the afternoon of the 12th of December, 1906, the sum of 20,600 pesos, Philippine silver currency, coined under authority of the Act of Congress of the United States of March 2, 1903, was found in the cabin occupied by Ling Su Fan, the comprador or purser of said steamer, by agents of the customs secret service, who immediately seized the money and reported the matter to the proper authorities.

"In view of the foregoing a criminal complaint was presented before this Court of First Instance on the 20th of said month of December, charging Ling Su Fan with attempting to ship Philippine silver currency out of the Philippine Islands, in violation of the provisions of Act No. 1411 of the Philippine Commission. The case proceeded to trial and evidence was adduced by the prosecution and by the defense. On the 15th of February, 1907, judgment was entered by this court in part 2, declaring Ling Su Fan guilty of the crime charged and sentencing him to imprisonment for sixty days and to pay a fine of P200, which judgment, the accused having appealed therefrom, was affirmed by the Supreme Court on the 10th of February of the present year 1908.

"The Insular Collector of Customs, who had been informed of the matter after the seizure following the discovery of the P20,600, as hereinbefore stated, acting under the provisions of Act No. 864, and after notifying Ling Su Fan, investigated the matter administratively at a hearing held on the 5th of January, 1907; at the hearing evidence was adduced by the parties, the evidence in the previously cited criminal case prosecuted in this court against Ling Su Fan was taken into account as stipulated between the parties, and a conclusion was arrived at on the 23d of said month of January, holding that the owner and agent of the money had

intended to export the same beyond the jurisdiction of the Philippine Islands to the port of Hongkong, a foreign country, and that the only circumstance that frustrated such intention was the seizure of the money by agents of the secret service of the Manila custom-house; in consequence thereof, the forfeiture or seizure of the said P20,600 was decreed, in accordance with the provisions of said Act No. 1411; it was thereupon directed that an order be immediately issued and that the money be retained subject thereto until the matter was finally disposed of; the order was issued on the same date, and the 20,600 pesos Philippine currency were formally deposited in the Insular Treasury where the money had been placed when it was seized by the agents immediately after it was found in the possession of Ling Su Fan, in hi 5 cabin on board the steamship Taming, The accused, Ling Su Fan, has interposed no appeal against the decision of the Insular Collector of Customs.

"On the same day, December 20, the Attorney-General on behalf of the Government of the Philippine Islands, filed with this court the complaint that has given rise to these proceedings, therein alleging the fact of the discovery and seizure of the P20,600 that were in the possession of the Chinese comprador on board the said steamship Taming, and the confiscation of said money by the customs authorities, as well as the intent on the part of the said Chinese comprador to export the money from the Islands, in contravention of the provisions of Act No. 1411 of the Philippine Commission; he then prayed the court to declare said sum forfeited and to direct the Insular Treasurer to dispose of said Philippine currency in accordance with the provisions of section 1 of said Act, and to sentence the defendant to pay the costs.

"Finally, on the 26th of March, 1907, an amended complaint was presented by said representative of the Insular Government, in which he made a more detailed statement of the facts previously set forth, as well as of the administrative proceedings taken by the Insular Collector of Customs in conformity with the provisions of section 313 [1] of said Act No. 864, of the hearing of the case before said officer, and of the decision rendered by him on January 9, 1907, and, presenting to the court below in compliance with the provisions of said section 313 the certified copies of said proceedings by the said Collector of Customs in connection with the confiscation of the money, finally prayed that judgment be entered as requested in the first or original complaint.

"The complaint was answered by the defendant, Ling Su Fan, and, as stipulated between the parties, the evidence adduced in the criminal cause mentioned above was also offered as evidence in this case by the representative of the defendant, together with the depositions taken from witnesses in the British colony of Hongkong; several documents connected with the testimony of said witnesses were presented, and even though a part of the evidence was objected to as immaterial by the representative of the plaintiff, the first and main question to be resolved in this case is whether or not this Court of First Instance has jurisdiction to try and to decide the matter on its merits, that is, whether it should consider the result of the evidence in order to render judgment, or, whether the court should limit its action to a review and to a decision upon the regularity of the proceedings before the Insular Collector of Customs, for the purpose of confirming the decision entered by him ordering the confiscation of the 20,600 pesos because of the violation of Act No. 1411, as pretended by counsel for the plaintiff.

"Section 1 of said Act prohibits the exportation from the Philippine Islands of Philippine silver coins, coined by authority of the Act of Congress approved March 2, 1903, or of bullion made by melting such coins, and provides that any of the aforementioned silver coins or bullion exported, or the exportation of which is attempted, subsequent to the passage of said Act, which was enacted on November 12, 1905, shall be liable to forfeiture by due process of law.

"Section 2 of the same Act declares that the exportation or the attempt to export Philippine silver coins or bullion made from such coins is a criminal offense and fixes the penalty with which, in addition to the forfeiture, said crime shall be punished.

"Section 3 thereof directs that the provisions of section 1 of said Act shall be enforced by the collectors of customs for the Philippine Islands, in accordance with the provisions of Acts Nos. 355 as amended, 864 as

amended, and 1405.

"As may be seen from section 3 of said Act No. 1411, collectors of customs for the Islands are authorized to try and to decide matters in connection with the violation of section 1 of said Act, and to declare or make rulings with respect to the forfeiture of the silver coins or bullion made from such coins, that may be exported or attempted to be exported from the Islands, following the procedure mentioned in said section 3, to wit, such as prescribed by Acts Nos. 355, 864, and 1405 cited therein.

"In these laws, the jurisdiction of the Court of First Instance - the court that succeeded the now abolished Court of Customs Appeals - over the proceedings of the Collector of Customs is clearly shown. In proper cases the latter files with the court a record of the proceedings, together with a petition relating the facts, asking, under section 313 of Act No. 355, as amended by section 5 of Act No. 864, the judgment of the court upon the issue of fine or penalty, or confiscation or forfeiture. The said section toward the end reads: 'The judgment of the court in such proceedings shall be limited to one in rem against the property seized.'

"Nothing contained in the said laws authorizes the Court of First Instance to hold a new trial, or to admit new evidence in connection with the facts determined and decided upon by the Collector of Customs, in order to render judgment in view of the result thereof, and by the provision in section 313 that the judgment of the court in such proceedings shall be limited to one against the property seized, it must be clearly understood that it is not the duty of the court to make any declaration of rights in the matter submitted to it, but merely to decide with regard to the confiscation or forfeiture ordered by the Collector of Customs, either affirming or reversing it in view of the procedure followed before the Collector.

"It appears in the present case that, after the confiscation of the P20,600 found in the possession of Ling Su Fan on the steamer Taming at the moment the steamer was about to sail for the port of Hongkong, apart from the criminal proceeding brought against Ling Su Fan for the punishment of the crime defined by section 2 of Act No. 1411, the Insular Collector of Customs took action in accordance with the provisions of law heretofore mentioned; that the matter was investigated and tried before said officer after the defendant Ling Su Fan, in whose possession the money was found, had been duly notified; that at the trial evidence was adduced by the defendant and, by stipulation of the parties, the proofs in the aforesaid criminal case were taken into account, and the allegations made by Ling Su Fan to the effect that the money did not belong to him but to Wong Tai of Hongkong, and was imported from said port to these Islands on the steamer Taming, were also considered; that in view of all of said allegations and of the evidence adduced the Insular Collector of Customs entered his decision ordering that said money be confiscated, and to this effect issued the order providing that the money be retained until the matter was finally settled; and, finally, it also appears that, notwithstanding the fact that the defendant was notified he has interposed no appeal whatever, for which reason, taking into account the regularity observed in the proceedings had before the Insular Collector of Customs, and the fact that the decision rendered by him has now become final, nothing remains to be done except to affirm the decision.

"Against such affirmation can not now be pleaded the fact that the defendant Ling Su Fan, as shown by the evidence, on being notified on December 20, 1906, that the trial would take place on the 22d of said month before the Insular Collector of Customs, and that he should appear and present his proofs, was informed that the P20,600 found in his possession on board the steamer Taming had been seized or confiscated on account of an alleged violation of Act No. 1042 of the Philippine Commission, as stated in Exhibit 10, and not of Act No. 1411 as appears in Exhibit A attached to the complaint, because, although a mistake were made in the notice giving the defendant to understand that he was charged with a violation of Act No. 1042, which prohibits the importation of Mexican currency, instead of Act No. 1411 which prohibits and punishes the exportation of Philippine coins, such defect was cured by the defendant's own act in consenting to said error by admitting that he was informed of the true meaning thereof when he appeared before the Collector of Customs at the trial, adducing evidence thereat, and stipulating for the admission therein of the evidence taken in the criminal case in which he was charged with the violation of Act No. 1411, and finally by admitting, through his own acts, that the charge made against him before the said Collector of Customs was for the violation of Act No. 1411

inasmuch as, in answer thereto, said proofs were made and presented; finally, he has waived all claims on account of such defect by not interposing any appeal whatever from the decision of the said Collector of Customs.

"Although in Exhibit A the number of the Act referred to in said notification appears to have been changed, the figures 1411 being placed over those which must have previously appeared in the document, the explanation given by counsel for the plaintiff as to how and why the alteration must have been made, and as to why, in the notification marked 'Exhibit 10' and offered in evidence by counsel for the defendant, No. 1042 appears and not No. 1411 as in said Exhibit A, shows that it must have all been due to a mistake which, according to the said counsel, an endeavor was¹ made to correct in due course, that is, before the trial by the Collector of Customs; but be that as it may, and without prejudging the fact alleged by the counsel for the defendant, that the said document, Exhibit A, has been falsified, a fact which may be investigated if the representative of the defendant should insist upon it, it is evident that the error committed in said notice, Exhibit 10, although it constituted an irregularity in procedure, such irregularity has practically ceased to exist because of the defendant's own acts; and since he did not in any manner protest against it, it can not now be considered for the purpose of annulling the proceedings before the Insular Collector of Customs and the decision rendered by him.

"However, the defendant has alleged in his answer that he had not attempted to export the said P20,600 outside of these Islands, but that, on the contrary, the money belonged to Wong Tai, a merchant of Hongkong, and was brought by him from said colony on the Taming for the purpose of exchanging the same for Spanish and Mexican silver coins; this allegation has already been made in the criminal proceedings brought against said defendant, and was considered in the judgment rendered therein, evidence having been adduced by the representative of said defendant in connection with these same facts and, by stipulation between the parties, proof submitted in the criminal case was also admitted as evidence in the present one. Lastly, the said Wong Tai has filed a motion to intervene in this action, alleging himself to be the owner of said money and asking that judgment be entered in his favor therefor, with legal interest thereon from the 11th of December, 1906; this motion was admitted by the lower court, notwithstanding the objection of the plaintiff's representative, because Wong Tai is an aider and abettor of the defendant and has a right to be heard in the proceedings. The result of said evidence therefore must be considered in this decision, for the purpose of also making the proper finding with respect to the decision entered in said case by the Collector of Customs.

"As was said in the beginning hereof, the evidence taken in criminal cause No. 2947, brought before this court against Ling Su Fan wherein judgment was rendered by the Hon. A. S. Crossfield of Part II of the same, constitutes a part of these proofs. The said judgment was affirmed by the Supreme Court on the 10th of February of the present year and was published in the Official Gazette of the 4th of March following. By reason of these said proofs the facts must be considered to have been proven that were so found by this court in its said judgment which reads as follows:

"That on the 12th day of December, 1906, an employee at the Manila custom-house found on board the steamship Taming in the bunk occupied by and in the exclusive use and control of the defendant, who was the comprador on board (said ship), 20,600 silver coins each of 1 peso, being coin made and issued by and under the direction of the Government of the Philippine Islands; that when the said coins were discovered as aforesaid and the defendant was confronted with the fact, he stated at first that he knew nothing about it, and afterwards that they had been brought on board by different Filipinos whom he did not know and had been stored in the place in which they were found for transportation to Hongkong; that those statements were made by the defendant voluntarily; that the steamship Taming, on which these coins were found, had already been cleared from the port of Manila for Hongkong and that she was about ready to sail, and that the coins were not manifested either in the incoming or outgoing voyage of the said vessel; that the finding of the coins on board the said steamship Taming, as before state'd, was admitted by the defendant at the trial; that the bullion value of the said coins at the time they were alleged to have left Hongkong was at least 9 per cent more than their

apparent face value in the Philippine Islands.'

"Concerning the said evidence the court said in the same judgment:

" 'Evidence was offered on the part of the defense to the effect that the said money was owned by a Chinaman in Hongkong, who shipped the same to the Philippine Islands by the defendant, for the purpose of purchasing Mexican silver coins and Spanish-Filipino silver coins, in accordance with an agreement made by the defendant with another person in Manila, under which for 82 Philippine pesos he was to receive 100 Spanish-Filipino pesos, and for 97 Philippine pesos he was to receive 100 pesos Mexican currency, and in corroboration of the shipment there was presented an insurance policy upon these coins, issued by an insurance company at Hongkong. The defendant testified that upon bringing the coins to Manila he ascertained that he could not purchase Mexican coins and Spanish-Filipino coins as advantageously as he had before agreed, and in accordance with his understanding with the owner of the Philippine silver coins, and so decided to take the Philippine coins back to Hongkong to the owner thereof.'

"For the purpose of proving these facts, counsel for the plaintiff has offered the second part of the evidence. This consists of the testimony given by Wong Tai in the same criminal case, the deposition of several witnesses taken in Hongkong, and the production of several documents in relation with their testimony, whereby it was attempted to show that Wong Tai had acquired in Hongkong from two Chinamen residing there, the 20,600 Philippine silver coins a few days prior to the sailing of the Taming from that port on the 4th day of December, 1906; that Wong Tai himself insured the money in a Japanese company of said city and received from said company an insurance policy therefor, of which he delivered one copy to Ling Su Fan when he gave him the money to be exchanged here in Manila for Spanish-Filipino and Mexican coins as stated above, and that all of said sum was shipped on the steamship Taming in gunny bags before the steamer's departure from the port of Hongkong, on the 4th day of December.

"In considering the value that should be attached to this testimony, and especially to that of those persons who testified in Hongkong, and in relation with said testimony to the documents produced together with said deposition, the following must be taken into account:

"First. That when the money, was found by the customs secret agents in the possession of Ling Su Fan on the afternoon of December 12, on board the steamship Taming, and upon the defendant being there and then examined as to the origin of the money, he said nothing regarding the policy of insurance, which according to him and to Wong Tai, was given him by the latter when the money was delivered to him in Hongkong; neither was the policy produced at the time, but only when he testified in the criminal proceedings on the 7th of January, 1907, to wit, twenty-five days after the seizure, in spite of the fact that he testified in said case that when the seizure was made he already had the policy in his possession.

"Second. That after the seizure of the money, Ling Su Fan returned to Hongkong on the same steamer Taming and had an interview and conversation with Wong Tai concerning said matter, and the latter then told him to explain the matter of the policy, and show it to the authorities here. (Folio 47 of the testimony in the criminal cause.)

"Third, That while Juan Ong King, the person who, according to Ling Su Fan, had agreed with him to exchange here the Philippine coins brought from Hongkong for Spanish-Filipino and Mexican silver coins, testified that the exchange was not effected because he wanted 86 pesos Conant for every 100 pesos of Spanish silver and 101 pesos Conant for every 100 pesos Mexican, Ling Su Fan mentioned only the former but not the latter, that is, of the exchange of 100 pesos Conant for 100 pesos Mexican, as the reason why the exchange was not made. (Folios 25 and 33 of the testimony in said criminal case.)

"Fourth. That the said Juan Ong King was unable to give the name or address of the Filipino who, according to

him, was to furnish the Mexican and the Spanish coins in exchange for the Philippine currency in the possession of Ling Su Fan, notwithstanding that Ling Su Fan said Juan Ong King knew him well and that the Filipino frequently called on him to talk over the matter.

"Fifth. That as already stated in the judgments of both the lower court and of the Supreme Court, the Philippine silver coins were worth in Hongkong, at the time when the money was seized on board the Taming - that is, at the period alleged by the defendant that it was shipped to this port - 9 per cent more as bullion than as currency. It can not therefore be understood how Wong Tai preferred to ship them to this port to be exchanged for Spanish and Mexican coins, incurring the risk of transportation, besides having to insure them as he claims to have done and without the certainty of obtaining the profit which without trouble or risk he could have obtained in Hongkong.

"Sixth. That it was not explained how and why, if according to the statement of Wong Tai the 20,600 pesos were taken from the city of Hongkong to the steamer Taming in gunny bags and in the daytime, neither the captain, the officers, or the crew of said steamer became aware of it, and that the said bags of money which formed a large bulk were kept concealed in the bunk of the defendant, Ling Su Fan, without being discovered by the officers and crew of the steamer. The matter may be explained, on the contrary, as being more worthy of credit, that the money was introduced in several small packets of 50 pesos each, such as were found on board the Taming during the steamer's sojourn in Manila Bay after its arrival from Hongkong.

"Seventh. That the testimony given in Hongkong by both the manager and the clerks of the insurance company that, according to Wong Tai, issued the policy of insurance on the money; the testimony of other Chinamen who have testified in favor of Wong Tai in the said colony of Hongkong ; the presentation of documents relating to the said insurance; and the alleged acquisition by Wong Tai in Hongkong of the 20,600 Philippine silver pesos took place on the 26th and 27th of March of this year - that is to say, one year and a few months after the facts had occurred, and after Wong Tai had alleged that he was the owner of the money - and that he had shipped here to Manila from Hongkong in charge of Ling Su Fan, in order to exchange it for Spanish and Mexican silver coins. It is quite reasonable, in view of the period of time that has elapsed, to doubt the veracity of said statements and the truth and authenticity of such documents, above all if it is taken into account that they are not official, and can not be accorded more consideration than as mere private documents.

"It can not therefore be considered proven that the said 20,600 pesos Philippine currency belonged to Wong Tai of Hongkong, nor that he had shipped them to these Islands by the defendant Ling Su Fan in order to purchase or exchange them for Spanish or Mexican silver coins, and that, not having attained his object, the defendant was carrying them back to Hongkong when they were seized in his bunk on the steamship Taming. On the contrary, as the defendant, Ling Su Fan, was the holder of said money, it being in his possession at the time the seizure was made, and as the explanations he endeavored to make to induce the belief that the money was not his are not satisfactory nor have in any manner been proven he must be considered to be the owner thereof, not Wong Tai, whose intervention is for this reason contrary to law, and in any manner in which it may be shown, as it has been, that an attempt was made to export said coins, or, rather, that they were being exported from these Islands for Hongkong on the steamer Taming on the afternoon of December 12, 1906, in violation of the provisions of section 1 of Act No. 1411, the confiscation of the same was properly decreed by the Collector of Customs and the same should be affirmed.

"It was finally alleged by counsel for the defendant that the said Act No. 1411 is null and void as being contrary to the provisions of paragraph 1, section 5, of the Act of Congress of July 1, 1902, and to the fifth amendment to the Constitution of the United States of America.

"In order to refute said allegation it is sufficient to cite the Supreme Court of these Islands, when dealing with the

same question in the decision rendered on February 10 of the present year, in the aforesaid criminal case No. 2927 against Ling Su Fan for violation of the said Act.

"In said decision, after stating that paragraph 1 of the Act of Congress of July 1, 1902, is almost exactly the same in its phraseology as a portion of the fourteenth amendment to the Constitution of the United States, it is further said:

" 'Paragraph 1 of section 5 of the said Act of Congress is as follows:

" ' "That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

" 'It will be noted that this amendment does not prohibit the enactment of laws by the legislative department of the Philippine Government depriving persons of life, liberty, or property. It simply provides that laws shall not be enacted which shall deprive persons of life, liberty, or property without due process of law. The question, then, is presented, is the Act under which the defendant is prosecuted here, and under which it is sought to deprive him of the money which it is alleged he attempted to illegally export, in accordance with due process of law?

" 'The Congress of the United States, on the 2d day of March, 1903, passed an Act entitled "An Act to establish a standard of value and to provide for a coinage system in the Philippine Islands."

" 'Section 6 of said Act is as follows:

" ' "Sec. 6. That the coinage authorized by this Act shall be subject to the conditions and limitations of the provisions of the Act of July 1, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," except as herein otherwise provided; and the Government of the Philippine Islands may adopt such measures as it may deem proper, not inconsistent with said Act of July 1, 1902, to maintain the value of the silver Philippine peso at the rate of one gold peso, and in order to maintain such parity between said silver Philippine pesos and the gold pesos herein provided for."

"In pursuance to the authority granted in said section 6, to wit, "the Government of the Philippine Islands may adopt such measures as it may deem proper, * * * to maintain the value of the silver Philippine peso * * *" the Civil Commission enacted Act No. 1411, dated November 17, 1905, which Act was entitled "An Act for the purpose of maintaining the parity of the Philippine currency in accordance with the provisions of sections one and six of the Act of Congress approved March 2, 1903, by prohibiting the exportation from the Philippine Islands of Philippine silver coins, and for other purposes."

" 'It will be noted that the Civil Commission expressly relied upon the Act of Congress of March 2, 1903, for its authority in enacting said Act No. 1411.

" 'Under the question above suggested it becomes important to determine what Congress intended by the phrase "due process of law." * * *

* * * * *

""Due process of law" is process or proceedings according to the law of the land. "Due process of law" is not that the law shall be according to the wishes of all the inhabitants of the state, but simply -

" '1. That there shall be a law prescribed in harmony with the general powers of the legislative department of the Government;

" '2. That this law shall be reasonable in its operation;

" '3. That it shall be enforced according to the regular methods of procedure prescribed; and

" '4. That it shall be applicable alike to all the citizens of the state and to all of a class.

" 'When a person is deprived of his life or liberty or property, therefore, under a law prescribed by the proper lawmaking body of the state and such law is within the power of said department to make, and is reasonable, and is then enforced according to the regular methods of procedure prescribed, and is applicable alike to all citizens or to all the citizens of a particular class within the state, such person is not deprived of his property or of his life or of his liberty without due process of law.

" 'When life, liberty, and property are in question there must be in every instance judicial proceedings, and that requirement implies a written accusation and hearing before an impartial tribunal with proper jurisdiction, an opportunity to defend, and a conviction and a judgment before punishment can be inflicted, depriving one of his life, liberty, or property. (Story on the Constitution, 5th ed., sees. 1943-1946; Principles of Constitutional Law, Cooley, 434.)'

" 'Such have been the views of able jurists and statesmen; and the deduction is that life, liberty, and property are placed under the protection of known and established principles which can not be dispensed with either generally or specially, either by courts or executive officers, or by legislators themselves. Different principles are applicable in different cases, and require different forms and proceedings; in some they must be judicial; in others the government may interfere directly and ex parte; but "due process of law" in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one being dealt with belongs. (Principles of Constitutional Law, Cooley, 224.)'

"As Act No. 1411 was enacted by the Philippine Commission by the express authority of the Congress of the United States of America, by virtue of the Act of said Congress approved March 2, 1903, and as said Act provides that upon due process of law such Philippine silver coins as may be exported or attempted to be exported after the passage of said law shall be subject to confiscation, it is clear and evident that said Act No. 1411 is not unconstitutional nor does it contravene the provisions of paragraph 1 of section 5 of the Act of Congress of July 2, 1902, and of the fifth and fourteenth amendments to the Constitution of the United States of America, and the seizure and confiscation of property therein ordered, if carried out upon due process of law, as in the case at bar, can not be illegal and null.

"For the reasons above set forth the court declares the said sum of P20,600 Philippine currency, which the defendant Ling Su Fan attempted to export from these Islands in violation of the provisions of Act No. 1411 of the Philippine Commission, to be confiscated, thus affirming the decision of the Insular Collector of Customs rendered January 29, 1907; the Insular Treasurer is hereby directed to dispose of the said Philippine silver coins in accordance with the provisions of section 1 of said Act; the court also dismisses the motion for intervention filed by Wong Tai and denies the claim for the return, of the 20,600 pesos to the defendant Ling Su Fan as made by him in his written answer, and finally sentences said defendant to pay the costs.

"So ordered."

From this decision the defendant appealed and made the following assignments of error:

- The court below had no jurisdiction of the subject of this contention.
- The conclusions of fact were openly and manifestly contrary to the weight of the evidence.
- Errors of law committed by the court below to the prejudice of the appellant;

- The judgment is contrary to law.

These four assignments of error may be considered under two heads:

- (1) That the lower court had no jurisdiction of the cause; and
- (2) That the facts proven during the trial were not sufficient to justify the conclusions of the lower court.

With reference to the first assignment of error, while it may be admitted that the proceedings in the commencement of the present action in the Court of First Instance were somewhat anomalous and not in strict conformity with the provisions of Act No. 1411 of the Philippine Commission, in its relations with Acts Nos. 355 as amended, 864 as amended, and 1405, yet, nevertheless, we are of the opinion and so hold that under said Acts the Courts of First Instance are given jurisdiction for the purpose of deciding the question of the forfeiture of Philippine silver coins, coined by authority of the Act of Congress approved March 2, 1903, where the same are exported or where there is an attempt made to export the same from the Philippine Islands.

Even admitting that the original complaint filed in said cause was not sufficient upon its face to give the court jurisdiction under the provisions of said Acts, yet the amended complaint certainly set out all of the facts necessary to give the court jurisdiction of said cause. No question of the lack of jurisdiction of the court was raised until after the presentation of amended complaint. That fact, of course, could not prevent the appellant from raising the question of the jurisdiction of the court over the subject-matter of the action.

Under the second assignment of error, the appellant contends that the proof was not sufficient to show that he exported Philippine coins or attempted to export Philippine coins from the Philippine Islands in violation of Act No. 1411. During the trial of the present case, by stipulation of the respective parties, all of the evidence adduced during the trial of the criminal cause against the defendant, Ling Su Fan, was admitted in evidence as a part of the proof in the present cause. That proof was before this court in an action in which Ling Su Fan was prosecuted criminally for his attempt to export the coins in question from the Philippine Islands. (*U. S. vs. Ling Su Fan*, 10 Phil. Rep., 104.) After a due consideration of the evidence presented in that cause, this court found the defendant guilty of an attempt to export the coins in question. Upon a reconsideration of that proof presented in the present cause, we find no reason for changing our findings of fact made in the criminal action. The additional evidence adduced during the trial of the present cause is not sufficient, in our opinion, to justify us in the conclusion that the defendant did not attempt to export the silver coins in question from the Philippine Islands in violation of said Act No. 1411. Neither is the additional evidence sufficient to justify a finding that the intervener in the present action, Wong Tai, had shipped the money from Hongkong to Manila for the purpose of purchasing "old coins" of certain Filipinos in Manila.

Upon a full examination of all of the evidence adduced during the trial and of the law applicable thereto, we are of the opinion and so hold that the judgment of the lower court should be and is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

[1] 10 Phil. Rep., 104.

[1] Sec. 5, amending sec. 313 of Act No. 355.

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