

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, AND H. B. MCCOY,  
INSULAR COLLECTOR OF CUSTOMS, PLAINTIFFS, VS. THE HON.  
HERBERT D. GALE, JUDGE OF THE COURT OF FIRST INSTANCE OF  
MANILA...**

*G.R. No. 7065. January 17, 1913*

Ponente: CARSON, J.

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**CARSON, J.:**

This is an application for a writ of prohibition directed to the defendant judge of the Court of First Instance of the city of Manila, commanding him to cease any attempt to exercise his judicial authority to direct the destruction of certain lottery tickets; and praying at the same time for a restraining order to the clerk of that court, to prevent his carrying into effect an order entered by the Court of First Instance of the city of Manila, directing him to destroy these tickets.

It appears that these tickets were introduced in evidence in the course of a certain criminal proceeding had in the Court of First Instance; that the defendant in these proceedings, in whose possession these tickets were found, pleaded guilty on charge of "illegal importation", and was convicted on that plea; that upon conviction of the defendant, the trial judge ordered the destruction of the tickets; that counsel for the Insular Collector of Customs, in whose custody the tickets were at the time when they were offered in evidence, objected to their destruction and prayed for their return to him, on the ground that at the time when the tickets were introduced in evidence in the Court of First Instance, he, the Insular Collector of Customs, who had seized the tickets under the provisions of section 313 of Act No. 355, was engaged in the proceedings provided in that Act for the confiscation of these tickets and for their disposition thereafter in accordance with law; that these proceedings had been instituted prior to the filing of the criminal action in the course of which the tickets were offered in evidence; that the Insular Collector of Customs had assumed jurisdiction over the subject matter of these confiscation proceedings, that is to say, of the lottery tickets in question, at the time when the confiscation proceedings were instituted; and that the law imposed upon him the duty of passing upon and deciding, in the first instance, the question as to the forfeiture and further disposition of these lottery tickets.

Without entering upon or considering the question of the final disposition of these tickets, which is not properly before us at this time, we hold that the Insular Collector of Customs is entitled to have them returned to him for their proper disposition in the proceedings pending before him.

We do not question the right and the duty of a Court of First Instance, under ordinary circumstances, to issue the necessary orders for the confiscation and destruction of lottery tickets upon the conviction of one found with such tickets unlawfully in his possession or control. Judicial authority for the issuance of such orders is quite clearly deducible from the terms of the various Acts of the Philippine Commission looking to the suppression of lotteries and of traffic in lottery tickets; and there can be no doubt that under the general prohibitory and penalizing provisions of the law directed against lotteries and gambling in lottery tickets Courts of First Instance would

ordinarily be held to be acting within their jurisdiction in directing the destruction of lottery tickets in like manner and under like conditions as, under the provisions of articles 607 and 608 of the Penal Code, similar orders are issued for the confiscation and destruction of adulterated foods and drinks, false coins, light weights, paraphernalia used in prohibited gambling games and raffles, and the like. But we think that under the special circumstances of the case at bar, it was clearly the duty of the trial judge to refrain from taking jurisdiction to issue the order for the destruction of the tickets, and to leave the question as to their confiscation and future disposition to the Collector of Customs, who, under due authority of law, was engaged in the prescribed proceedings to that very end at the time when these tickets were submitted in evidence in the Court of First Instance.

The question whether the order for the confiscation and destruction of such property should issue in a particular case is, in the very nature of things, left to the sound discretion of the court. Article 608 of the Penal Code expressly provides that "The courts may in their discretion in view of the circumstances of the respective cases, order the forfeiture" of the "instruments and articles" the destruction of which is authorized in article 607. And we hold that in all cases wherein the authority to confiscate and destroy property is conferred upon a court as an incident to a criminal proceeding pending before it, the exercise of such authority is placed in the sound judicial discretion of the court. The ground upon which such confiscation and destruction rests is that, in their very nature, such "instruments and articles" cannot be used by their owner for any lawful purpose, and that their continued existence may prove detrimental to the public welfare. But we think that the arbitrary confiscation and destruction of such articles would constitute an abuse of the discretion conferred upon the court in a case where it is made to appear that, in the interests of justice, their preservation is demanded for some lawful purpose. Thus the destruction of counterfeit money, weapons, gambling devices and the like found on the person or in the possession of a convict, would not be justified in a case where it is made to appear that these articles may prove to be of vital importance as exhibits in the prosecution of other charges against the convict, or against other persons, in the same or some other court; and it will not be doubted that it would be a clear abuse of discretion if the destruction of exhibits of this nature, filed in a case pending in this court and temporarily loaned for use as exhibits in another case in a Court of First Instance, were arbitrarily and summarily ordered to be destroyed by the judge of that court at the conclusion of the trial had before him.

While the case under consideration is not exactly analogous, nevertheless the same rules of comity, the same regard for the orderly course of the proceedings in courts and tribunals duly constituted by law in these Islands, which would forbid the arbitrary destruction of the exhibits or the subject matter of the proceedings in one case, forbid it in the other. The Collector of Customs when sitting in forfeiture proceedings, as provided in Act No. 355, constitutes a tribunal upon which the law expressly confers jurisdiction to hear and determine all questions touching the forfeiture and further disposition of the subject matter of such proceedings, and since he had assumed jurisdiction over the lottery tickets in question it was clearly the duty of the Judge of the Court of First Instance to abstain from any attempt to invade that jurisdiction by ordering their destruction.

It is quite clear from the observations of the respondent judge in his rulings on the application for the return of the tickets and his answer to the order of this court to show cause, that the real ground on which he based his refusal to respect the jurisdiction of the Collector in the premises was that he believed that the law imposed the duty on the Collector to destroy the tickets in the event of their confiscation, and that he feared the Collector would not comply with the law if the tickets were returned to his possession. But if the Collector fails to comply with the law in the course of the proceedings pending before him, or if he undertakes to dispose of these tickets unlawfully in the event that he orders their confiscation, the proper remedy can then be invoked, and his action reviewed in an orderly proceeding by the proper authority; and the fear that he may misconstrue or misapply the law in no wise justified the respondent judge in invading his jurisdiction and ordering the destruction of the subject matter

of the proceedings pending before him.

It is a subversion of the judicial power to take a cause from a court having jurisdiction before its final decision is given. As was said in the case of *Mail vs. Maxwell* (107 111,, 554, 555), "Where one court has acquired jurisdiction, no other court, State or Federal, will, in the absence of supervising or appellate jurisdiction, interfere, unless in pursuance of some statute, State or Federal, providing for such interference."

Ten days hereafter let the writ issue in accordance with the prayer of the petition, the costs of the proceedings in this court de oficio.

Arellano, C. J., Torres, Mapa, Johnson, and Trent, JJ., concur.

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