

44 Phil. 233

[ G. R. No. 19808. December 23, 1922 ]

**VALHALLA HOTEL CONSTRUCTION COMPANY, PLAINTIFF, VS. V. CARMONA, AS  
INSULAR TREASURER, DEFENDANT.**

**D E C I S I O N**

**MALCOLM, J.:**

Early in the year 1922, the Valhalla Hotel Construction Company, a domestic corporation, requested of the Insular Treasurer a permit to issue and sell in the Philippine Islands, one thousand two hundred bonds, with a face value of P100 each, and bearing interest at the rate of 6 per cent per annum. No fixed date was set for the maturity of the bonds, but their redemption was to be determined by drawings in the manner following:

“The bonds will be redeemed by drawings, according to the premium plan here below printed, at the offices of the aforesaid trustee in presence of a notary public and a representative of the obligor company. The first drawing will be held five days after the notification date above-mentioned and the bonds bearing the drawn number will be paid five (5) days thereafter and subsequent drawings and payments will be made in the same manner, until all bonds have been drawn and redeemed.

*“Premium Plan*

Draw No.	No. B.	No. D.	Amounts at which redeemed
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1	1,200	6	1@P2500	2@P	3@P300	-----	-----
2	1,194	114	1@P2,00	2@P	3@P250	9@P150	99@P110
3	1,080	120	1@P1,800	2@P	3@P225	9@P145	105@P110
4	960	120	1@P1,600	2@P	3@P200	9@P140	105@P110
5	840	120	1@P1,400	2@P	3@P175	9@P135	105@P110
6	720	120	1@P1,200	2@P	3@P150	9@P130	105@P110
7	600	120	1@P1,100	2@P	3@P150	9@P125	106@P110
8	480	120	1@P800	2@P	1@P150	6@P125	110@P110
9	360	120	1@P600	2@P	3@P135	-----	114@P110
10	240	120	1@P400	1@P	-----	-----	118@P110
11	120	120	1@P1,000	-----	-----	-----	119@P110

ABBREVIATIONS: Draw. No.=Number of drawing; No. B.=Number of outstanding bonds; No. D.=Number drawn.

“At the first drawing six (6) numbers will be drawn, the bond bearing the first number will be redeemed at two thousand five hundred pesos (P2,500) taken up and cancelled ; the next two will be redeemed at six hundred pesos (P600) a piece taken up and cancelled; the next three (3) at three hundred pesos (P300) each. At the second drawing one hundred fourteen (114) numbers will be drawn from the remaining numbers the first receives two thousand pesos (P2,000) and so on, the last ninety-nine (99) will be redeemed at one hundred and ten pesos (P110).”

The Insular Treasurer, acting pursuant to authority conferred on him by the Philippine Blue Sky Law, refused to issue the permit on the ground that the bond plan of the hotel company constituted a lottery in violation of the Gambling Law. On appeal to the Secretary of Finance, the action of the Insular Treasurer was sustained.

Hence, this action in mandamus praying that judgment issue against the defendant as Insular Treasurer, requiring him to give to the plaintiff a permit to dispose of the bonds in question in accordance with the plan hereinbefore described. Hence, also, the demurrer of the Attorney-General on behalf of the defendant. And hence, the issue in the case.

Act No. 2581, our Blue Sky Law, is an Act to regulate the sale of certain corporation shares, stock, bonds, and other securities. It is made unlawful therein for any person, partnership, association, or corporation, directly or indirectly, to sell or cause to be sold in any manner

whatsoever, except as provided by law, “any speculative securities in the Philippine Islands other than those expressly exempted without a written permit from the Treasurer of the Philippine Islands. \* \* \*” (Sec. 2.) Whenever the Insular Treasurer “is satisfied, \* \* \* that any person, partnership, association or corporation is entitled to the right to offer its securities as above defined and provided for sale in the Philippine Islands, he shall issue to such person, partnership, association or corporation a certificate or permit. \* \* \*” The Treasurer, furthermore, has authority “whenever in his judgment it is in the public interest, to cancel said certificate or permit.” (Sec. 5.)

Act No. 2581 confers authority on the Insular Treasurer which should not be interfered with by the courts unless an abuse of discretion by this official is alleged and proved. Our previous decisions with reference to the power of the Insular Auditor and other public officers apply with equal force to the Insular Treasurer and to the situation before us. We have then to determine if the Insular Treasurer has exceeded or abused his discretionary power in refusing the permit requested by the Valhalla Hotel Construction Company.

The contention of the Government has been, and is, that the bonds of the Valhalla Hotel Construction Company are speculative securities within the meaning of Act No. 2581, that the premium plan attached to the bonds which the hotel company proposes to issue is a “form of lottery” prohibited and penalized by section 7 of the Gambling Law (Act No. 1757), and that a public officer cannot be compelled by mandamus to issue a permit for the doing of an illegal act. Recalling what we have said about the discretionary power of the Insular Treasurer, let us see if this position of the Government is tenable.

As above intimated, section 7 of the Gambling Law, Act No. 1757, provides that “The playing at and the conducting of any game of *monte*, *jueteng*, or any form of lottery or policy or any banking or percentage game or the use of any mechanical invention or contrivance to determine by chance the winner or loser of money or of any representative of value or of any valuable consideration or thing, is hereby prohibited. \* \* \*” In at least three cases, this provision of law, in so far as it makes specific reference to lotteries, has been interpreted and applied by this court.

In the case of *United States vs. Filart and Singson* ([1915], 30 Phil, 80), a raffle for an automobile was held to be a lottery within the meaning of the Gambling Law, and the persons promoting the same were found guilty of a violation of that law. In the later case of *United States vs. Olsen and Marker* ([1917], 36 Phil., 395), the court took somewhat a different stand with reference to the law. In the case cited, it was held, in synthesis, that a

scheme whereby Walter E. Olsen & Co., placed in every five hundred packages of cigarettes a coupon entitling the fortunate person to receive from the company a gold watch, was not a lottery within the meaning of the Gambling Law. In the still later case of *United States vs. Baguio* ([1919], 39 Phil., 962), a *turnuhan* scheme in vogue in the Province of Laguna was found to be a lottery in violation of the law.

Without attempting to harmonize or differentiate the doctrines of the three cases just cited, although undoubtedly this could be done, we only note that all agree that three elements enter into a lottery scheme: (1) a consideration; (2) a chance; (3) a prize or some advantage or any inequality in amount or value which is in the nature of a prize. (Following *Equitable Loan & Security Co. vs. Waring* [1903], 117 Ga., 599.) The decision in the *Baguio* case also took into account the case of *Horner vs. United States* ([1892], 147 U. S., 449), which we will refer to in a moment.

Turning to the representative American authorities, the decision of the Maryland Court of Appeals in the case of *Ballock vs. State* ([1890], 73 Md., 1; 25 A. S. R., 559; 8 L. R. A., 671), is noteworthy both because of the close analogy between its facts and the instant facts, and because the decision was subsequently indorsed by the United States Supreme Court. In the Maryland case it appeared that the appellant sold to another for the sum of \$95 an instrument called an "Austrian Government Bond," which provides that the Austrian Government will pay to its bearer the principal sum of 100 gulden (Austrian value) in accordance with its condition set forth on the back of the instrument, together with one-fifth part of any such sum of money as may be allotted to the prize number of the bond, and which sum must amount to at least 120 gulden (Austrian value) with interest semi-annually on the bond until the same is drawn at the rate of 5 per cent per annum; and by the rules and regulations concerning the drawing and redemption of these bonds, indorsed on the instrument in question, it is, in substance, provided that the bonds issued on the loan of March 15, 1860, are divided into 20,000 equal series, and each series to the amount of 10,000 gulden is subdivided into twenty numbers, marked from 1 to 20. Each of the bonds contains on its left heading the number of the series, and on its right its prize number; the drawing of the series numbers it is provided shall take place on the 1st day of February and August in each year; that of the prize number on the 1st day of May and the 2d day of November in each year. For the purpose of the drawing of the series 20,000 numbers are deposited in a wheel from which the fixed number of series to be redeemed for the half year is drawn.

The series numbers so drawn are then deposited in a second wheel to await the next

drawing of prize numbers. On the day when the drawing of prize numbers takes place twenty numbers, from 1 to 20, are deposited in a separate wheel, whereupon the wheel wherein the series numbers are deposited is unlocked, and one number drawn therefrom. This number designates the series of the bond which is entitled to the highest prize. Thereupon the number from the wheel containing the twenty prize numbers is to be drawn, and this number designates the bond which is entitled to the highest prize. In this manner the drawings are to be continued until all the prizes above 600 gulden are exhausted. All other bonds receive the principal and interest, 20 per cent, in addition.

At every drawing the following prizes are drawn: First one of 300,000 gulden, one of 50,000 gulden, one of 25,000 gulden, two of 10,000 gulden, fifteen of 5,000 gulden, and thirty of 1,000 gulden. Drawn bonds are to be paid three months after the drawing. The holder of a bond receives in any event the face value thereof with interest at 5 per cent up to the drawing and a premium prize of 20 per cent. He has also the chance to draw one of the highest prizes. The chance varied from 60,000 to 200 gulden.

The opinion of the court contains the following:

“Webster defines a lottery to be ‘a distribution of prizes by lot or chance,’ and Worcester says ‘it is a distribution of prizes and blanks by chance/ ‘a game in which small sums are ventured for the chance of obtaining a larger value.’ It has been strenuously and ably contended” that because there are no blanks in the wheel, but something of value must always come to the holder of any particular number it is no lottery ticket. Such does not seem to be the legal acceptance, and under our law it certainly cannot be. \* \* \* It has been vigorously argued that, because the money ventured must all come back, with interest, so that there can be no final loss, it cannot be a lottery, even within the meaning of our law. At some uncertain period, determined by the revolution of a wheel of fortune the purchaser of a bond does get his money repaid; but we do not think this deprives the thing of its evil tendency, or robs it of its lottery semblance and features. The inducement for investing in such bonds is offered of getting some ‘*bonus,*’ *large or small,* in the future, *soon or late,* according to the chances of the wheel’s disclosures. The investment may run one year or it may run thirty years, according to the decision of the wheel. It cannot be said this is not a species of gambling, and that it does not tend in any degree to promote a gambling spirit and a love of making gain through the chance of dice, cards, wheel, or other

method of settling a contingency. It certainly cannot be said that it is not in '*the nature of a lottery,*' and that it has no tendency to create desire for other and more pernicious modes of gaming. Our statute does not justify a court, expressly directed to so construe the law as to prevent every possible evasion, whether designedly or accidentally adopted, in deciding a thing is not a lottery, simply because there can be no loss, when there may be very large contingent gains, or because it lacks some element of a lottery according to some particular dictionary's definition of one, when it has all the other elements, with all the pernicious tendencies, which the State is seeking to prevent. Striking at the root of the evil, and to prevent all its possible mischiefs, the statute lays down a different rule from that applied to the construction of other criminal statutes, which is a rule of *strict construction*. Instead of that rule the law says this statute is to be construed *liberally* in order to prevent the introduction and use of *anything* in the *nature of a lottery*, for the making of money or securing property.

\* \* \*

"Our State has such a well-defined policy respecting lotteries, and regards them or anything in the nature of them so detrimental to public and private morals, and so much in the way of the certain and substantial thrift of its citizens, that it has forbidden the dealing in *anything* partaking of their nature. \* \* \*"

In the case of *Horner vs. United States*, supra, the question was whether bonds of the Austrian Government issued for the purpose of obtaining a loan by which that Government obligated itself to pay the principal with interest and a premium named, and also any additional sum which the holder might become entitled to in case the number of his bond drew a prize in a drawing to be had as specified, represented a lottery or similar scheme within the meaning of the United States Revised Statutes. In the opinion of the court delivered by Mr. Justice Blatchford, the cases upon the subject of a definition of a lottery were carefully collated and criticised and it was held that the term "lottery" embraces all schemes for distribution of prizes by chance, such as policy playing, gift exhibitions, prize concerts, raffles at fairs, etc., and various forms of gambling. The Justice then continued:

"Although the transaction in question was an attempt by Austria to obtain a loan of money to be put into her treasury, it is quite evident that she undertook to assist her credit by an appeal to the cupidity of those who had money. So she

offered to every holder of a 100-florin bond, if it was redeemed during the first year, 135 florins, if during the second year, 140 florins, and so on, with an increase of 5 florins each year, until the sum should reach 200 florins; and she also offered to the holder, as part of the bond, a chance of drawing a prize varying in amount from 400 florins to 250,000 florins. Every holder of a bond has an equal chance with the holder of every other bond of drawing one of such prizes. Whoever purchases one of the bonds, purchases a chance in a lottery, or, within the language of the statute, an 'enterprise offering prizes dependent upon lot or chance.' The element of certainty goes hand in hand with the element of lot or chance, and the former does not destroy the existence or effect of the latter. What is called in the statute a 'so-called gift concert' has in it an element of certainty and also an element of chance; and the transaction embodied in the bond in question is a 'similar enterprise' to lotteries and gift concerts."

Reference' is subsequently made in the opinion in *Homer vs. United States* to the case of *United States vs. Zeisler* ([1887], 30 Fed., 499), where it is said that "the fact that the purchasers of the bonds were, by the drawing plan, to get back their principal, and in the aggregate what is equivalent to a very small rate of interest upon that principal, does not, as it seems to me, change the character of the transaction, or relieve it from the characteristic features of a lottery;" to *Ballock vs. State*, *supra*, which is quoted with approval; to cases in England; and to "the only case of importance to the contrary," that of *Kohn vs. Koehler* ([1884], 96 N. Y., 362), which was distinguished.

Testing the plan for the issuance of speculative securities which is before us by the principles announced by the Court of Appeals of Maryland, the United States Supreme Court, and other courts, we find present in the investment scheme the elements of consideration, chance, and prize, which are always denounced as a lottery.

From an examination of the more recent authorities, it appears that any bond scheme which contains the elements of chance and prize will be condemned as a lottery. While ingenuity is continually at work to evolve some scheme which is within the mischief but not quite within the letter of the law prohibiting lotteries, whenever the ingredient of chance is the evil principle which the law seeks to eradicate, however it may be clothed and however it may conceal itself in a fair exterior, we propose to go beyond the shell to the substance and to condemn the same. (See 17 R. C. L., 1228; *State vs. Lipkin* [1915], 169 N. C., 265.)

In resume, we hold that the Insular Treasurer did not abuse the discretionary power lodged in him by Act No. 2581 in refusing to issue a permit to the Valhalla Hotel Construction Company, a domestic corporation, for the sale of bonds pursuant to the plan described in the complaint. Accordingly, the demurrer is sustained, and unless the petitioner shall within five days so amend its complaint as to state a cause of action, the case will be dismissed, with costs. So ordered.

*Araullo, C. J., Street, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.*

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