[G. R. No. 39969. July 11, 1934]

KISAJIRO OKAMOTO, CAPTAIN OF THE JAPANESE MOTOR FISHING SAMPAN, HOSHO MARU, PLAINTIFF AND APPELLEE, VS. THE INSULAE COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.

D E C I S I O N

HULL, J.:

About noon of December 14, 1932, revenue cutter *Arayat* sighted a Japanese fishing boat named the *Hosho Maru*, anchored a short distance away from Salomague Island, a small island off the coast of Northern Luzon. A boarding party was put aboard the fishing vessel and found seven bags of rice, three sharks, three tunas, and three trays of bait, with fishing tackle but no articles of commerce or passengers.

Upon a report being made to the Insular Collector of Customs, that official directed the seizure of the *Hosho Maru* and, after administrative proceedings, decreed the forfeiture of the vessel and directed its sale at public auction for the benefit of the Government, due to the violation of customs and quarantine laws and regulations.

The captain appealed the case to the Court of First Instance of Manila, where additional evidence was taken. That court held that the *Hosho Maru* took refuge in Philippine waters on account of stress of weather, that the *Hosho Maru* was not engaged in the importation of merchandise in any Philippine port, and that nothing had been found indicating that the fishing vessel unlawfully violated any customs or quarantine law or regulation. Therefore the order of confiscation and forfeiture was reversed and the vessel ordered returned to its owner, with costs against the Insular Collector of Customs.

The Solicitor-General brings this appeal and asks this court to reverse the judgment of the Court of First Instance of Manila and affirm the decision of the Insular Collector of Customs.

Our attention has not been called to any statute authorizing the Collector of Customs to order the forfeiture of this boat. Both in England and in the United States confiscation of a vessel for violation of a customs law cannot be had administratively but only by court proceedings. Section 1363 of the Administrative Code provides for the forfeiture of vessels engaged in certain specified illegal actions, none of which apply in this case. It therefore must be held that the Collector of Customs was without authority to order the forfeiture of the vessel.

In this kind of appeal the lower court had the right to take additional evidence and is not limited to the administrative record as in cases of immigration and deportation of aliens. The rule in this kind of case is correctly set forth in Smith, Bell & Co. *vs.* Collector of Customs (37 Phil., 87).

The right of asylum from stress of weather is a right well recognized by international law and is in accordance with the dictates of Christianity. The only limitation is that the weather must be such as to create an honest belief in the mind of a skillful and firm mariner.

As the Solicitor-General is unable to point out the specific law or regulation that he claims the *Hosho Maru* violated, further proceedings are deemed unnecessary.

The judgment appealed from is therefore affirmed with the modification that costs in both instances will be *de oficio*. So ordered.

Malcolm, Villa-Real, Abad Santos, Imperial, Butte, Goddard, and *Diaz, JJ.,* concur.

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