

[G.R. No. 3037. March 27, 1907]

**INCHAUSTI & CO., PLAINTIFFS AND APPELLANTS, VS. JOHN S. HORD,
DEFENDANT AND APPELLEE.**

D E C I S I O N

ARELLANO, C.J.:

The object of the complaint herein is the restitution of P15,243.30, paid under protest by the plaintiff company to the provincial treasurer of Iloilo on the 15th of March, 1905, after an appeal to the Collector of Internal Revenue made on the 17th of said month, that resulted unfavorably to the plaintiff. Payment of the above sum was demanded by the aforesaid provincial treasurer on the 3d of the said month and year, on account of the plaintiff company having removed from their warehouse in the city of Iloilo, 215 liters of distilled spirits and 50,746 liters of manufactured liquors for consumption in the Philippine Islands without having paid the internal-revenue tax thereon.

The plaintiff company has its distillery in Tanduary, city of Manila, Philippine Islands.

The plaintiff company has no distillery, nor is it engaged in the business of distilling in the city of Iloilo.

The plaintiff company has a branch office in the city of Iloilo for the management of its business in said city, including the sale at wholesale of liquors and spirits distilled at its distillery at Tanduary, Manila.

The liquors and spirits in question were manufactured in the company's distillery in Tanduary, Manila, long before the 1st day of August, 1904; they had been removed from said distillery prior to the 1st day of August, 1904, and were in the possession and stored in the warehouse of the Iloilo branch on August 1, 1904.

The case was dismissed, and judgment was rendered against the plaintiffs and in favor of

the defendant for the costs of this action. The plaintiffs appealed therefrom.

“The only question raised,” state the appellants, “is whether or not spirits, distilled and removed from the distillery prior to August 1, 1904, and kept by the distillery as a part of its general business wherein is included the sale at wholesale of distilled spirits, said business being established in a place separate and at a great distance from the distillery, shall be subject to the payment of internal-revenue taxes under the Act of 1904.” (Par. 4.)

One of the provisions of the law (sec. 35) reads:

“All distilled spirits, manufactured or fermented liquors, * * * which shall severally still be in the hands of the manufacturers thereof at the time of the taking effect of this Act, shall be liable to the same taxes as are imposed herein on similar articles manufactured or partially manufactured after the time of the taking effect of this Act.”

The representative of the Government maintains that the articles on which the tax has been exacted were still in the hands of the person who manufactured them, while the appellants argue that they were not in the hands of the person who manufactured them; the commercial firm of Inchausti & Co., of Iloilo, in whose hands they were, is not the person who manufactured them; it has no distillery in Iloilo; they were manufactured in the distillery at Tanduay, Manila, prior to August 1, 1904, and before August 1, 1904, they had left the distillery or factory at Tanduay, Manila, and were in the hands of the said firm for its business in Iloilo.

It is evident that, if the said articles had been kept at the distillery at Tanduay on the 1st of August, 1904, they would have been subject to duty, inasmuch as “they were still in the hands of the person who manufactured them,” Inchausti & Co., of Manila, the owners of the factory or distillery of Tanduay.

It is also evident that, if these articles had been stored in the warehouse of any other merchant in the city of Iloilo engaged in the sale thereof, they would not have been subject to taxation, as they would not then have been “in the hands of the person who manufactured them.”

On August 1, 1904, they were in the warehouse of Inchausti & Co., of Iloilo, a firm engaged in the sale of such articles, as are other merchants of said city, and it is understood and construed that "they were still in the hands of the person who manufactured them." This amounts to considering Inchausti & Co., of Iloilo, who only engage in the sale of the said articles, as being the same persons as Inchausti & Co., of Manila, who are engaged in their manufacture, and who did actually manufacture them. In this unity, the whole difficulty of the case seems to lie.

The following are actual facts, susceptible of proof under the law, and which involve different juridical considerations:

1. That a manufacturer may have his factory in one locality and agencies in other places where he stores the products of his factory, without thereby effecting a sale, the said products to be sold as if at the factory;
2. That a manufacturer may have his factory in one locality and agencies in other places to which he ships his products, effecting a sale for account of the latter;
3. A commercial firm established in one locality having within its general lines of business an established industry, may have several branch offices for the furtherance of its commercial projects, but not its industry; and
4. Commercial firms may have branch offices in various places both for the conduct of their general business and for the disposition of the products of their industries, and in either case, as in the two former ones, shipping their goods to such agencies either on commission or as a sale to them.

In the case at bar it appears that the warehouses of the commercial firm of Inchausti & Co., of Iloilo, have been considered as the warehouses of the Tanduary distillery belonging to Inchausti & Co., of Manila, and the liquors removed from the first named warehouse for sale after the 1st of August, 1904, as if they had been removed for the same purpose from the warehouses of the Tanduary distillery after the said date.

Act No. 1189 (The Internal Revenue Law), was approved on July 2, 1904, to take effect on August 1, following. The period of time elapsing between the one date and the other, apart from the general purposes of every good law, is also to allow goods in stock to be disposed of without payment of the tax, on conditions perhaps already agreed upon, an increase in

the price of the goods from the 1st of July, 1904, by reason of the tax with which the same were to be burdened from said date not having been counted upon. In *U. S. vs. Pennington* (Pet. C. C. 113, Fed. Case No. 16,026), it is rightly said: "Had the duty been laid upon all sugar, which might be sent out after a certain day, it is scarcely to be believed that any refiner would have had sugar subject to the duty in his warehouse on that day; and consequently, a construction which admits the inefficacy of the law by the facility with which it might have been evaded, is not to be hastily adopted."

A deliberate intent to evade the reach of the new law with regard to everything that existed prior to its enforcement, would be fully in accord with the saving principle that the law is not retroactive in its effects; inasmuch as all laws apply to the *future*, they can only embrace that which is done and exists *after* their enforcement, or, at most, those matters in existence on the date of their enforcement, because then the intention of the party affected, to abide on that date by the newly created obligation, appears in an unquestionable manner. The withdrawal of an article not subject to the taxation with which it is threatened can not be a violation of the law, since it is not possible to violate a thing that does not exist; it is simply the exercise of a man's free will. It is not the intent of the law to embrace the greatest number of facts; it simply regulates acts done after its enactment and furnishes a rule of action; to avoid injury to rights, arising under the law and the facts existing at the time, the law gives due notice, as happened in this case, in order that rights thus created may be safeguarded.

There can be no question that, if the liquors had been shipped prior to the 1st day of August, 1904, by the Tanduary distillery to any person in Iloilo (or to any person in Manila even) on the same dates, in the same quantity, and under the same conditions as to its branch office in Iloilo, no tax would have been paid upon the removal and sale of the same after the said date, the date on which the liquors of Inchausti & Co., of Iloilo, were removed and sold, for the reason that no one could claim that they were "in the hands of the distiller or manufacturer thereof" on the 1st of August, 1904. For the mere fact that the person or firm having possession of the said articles on the 1st of August, 1904, bears the name of the owner of the Tanduary distillery (when it would have been so easy to substitute that of any other person), said goods are subjected to the tax because they are considered as "stock in the hands of the manufacturer." The circumstances being similar, such absurd and unjust results do not show a proper, or, at least, an equitable interpretation of the law. And the reason is, in our opinion, that a contrary sense is given to the language of the law, to the reality of things and to the just purposes that may be sought from its enactment.

In an analagous United States Statute of July 1, 1864, there is a similar provision; but there are two substantial differences between the one and the other which really illustrate the case. According to the first part of section 55, "the tax is imposed on all liquors distilled and sold, or distilled and removed for consumption or sale on or after the 1st day of July, 1864," and in its second part, "* * * and all liquors that may be in the hands of the distillery or in public or bonded warehouses on the 1st day of July, 1864, upon which no tax has been paid (that of the former law of 1862), shall be considered as if the same had been distilled on the 1st of July, 1864, and in consequence thereof shall be subject to the increased tax." In section 173, which repealed the former laws, it was provided that "all manufactured goods and products on which a tax had been established by any of the laws repealed by the present one, which might be in the hands of the manufacturer or producer, or of his agent or agents on the day when this law took effect, the tax established by the former law not having been paid, should be considered, for the effects of the law, as having been manufactured or produced subsequent to the said date." The difference is seen at once; the statute of the United States mentions the agents of the manufacturer or producer, a conception which does not appear in the text of the Philippine law. The statute of the United States turns upon the difference between the rate of the tax under the former law and the increased tax established by the subsequent law; in the Philippine law the question hinges upon what should be free from taxation and what should be taxed, between what has been manufactured or distilled, and removed prior to the 1st of August, 1904, when it was free, and what has been manufactured, distilled, or removed after the 1st of August, 1904, when it should be taxed.

The representative of the Government says: "The general sense, and the intent of the Internal Revenue Law of 1904, is to impose a tax only on such manufactured articles as are made in the future. Its imposition, as well as the penalties that are provided, are only applicable to future acts, as may be gathered from the several sections of the law. These being the general provisions of the law, if the provisions of section 35 had been omitted, in no case could there have been imposed any tax on distilled spirits which the distiller might have had in his hands on the 1st of August, 1904. Section 35 clearly imposes the tax on all spirits which *the distiller had in his hands no matter where, or in whatever form kept*. In his brief, the counsel for the appellant endeavors to read in the provisions of section 35 the words *at the distillery*." (Paragraphs 8 and 9.)

But in the next section, section 36, the law reads: "All taxes imposed under this Act on distilled, rectified, or manufactured spirits, fermented liquors, * * * manufactured in the Philippine Islands for domestic sale or consumption, shall be paid at the time of the removal

of such articles from the *manufactory, or other bonded warehouse.*” And section 28 reads: “The payment of all taxes imposed by this Act on articles manufactured and removed from the *place of production or manufacture or bonded warehouse,* for sale or consumption in the Philippine Islands, shall be made *at the time of such removal.*”

The articles in question were not removed from the *factory or bonded warehouse* at the time when the payment of the tax was required. The warehouse wherefrom the same were removed was neither a factory nor a bonded warehouse.

And it is not optional to take any warehouse as the *bonded warehouse* of which the law speaks; nor is it optional to take as a factory, such as the law refers to, any place from which said articles are removed. Words and phrases by which legal precepts are expressed count for something, above all in fiscal and revenue laws which must be strictly construed.

On the grounds stated above, in connection solely with the sufficiency of the complaint, which was dismissed in the court below, the judgment appealed from is hereby reversed in conformity with the prayer of the appellants, without any special ruling as to costs. So ordered.

Torres, Mapa, Willard, and Tracey, JJ., concur.
