

EDUARDO SUAREZ, ET AL., PLAINTIFFS AND APPELLEES, VS. MOUNT ARAYAT SUGAR CO. INC., ET AL., DEFENDANTS, MOUNT ARAYAT SUGAR CO. INC., LA CENTRAL AZUCARERA DE LA CARLOTA AND PAMPAN...*G.R. No. L-6435. March 31, 1955*

Ponente: REYES, J.B.L., J.

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This litigation is in the nature of a test case to determine the nature and alineability of the interest held by the owners of sugar cane plantations and of sugar mills, or centrals, in the production and marketing allowances (vulgarly known as "sugar quotas") fixed under the Philippine Sugar Limitation Act (No. 4166, as amended) and the various acts of the U. S. Congress limiting the amount of sugar that may enter the continental United States without payment of duties. Because of the amount involved, the case was directly appealed to us from the Court of First Instance of Manila.

The basic facts are not in dispute, and can be reduced to the following:

Plaintiff-appellee Eduardo Suarez owns a sugar cane plantation in Arayat, Pampanga, that was, by proper milling contract, adhered to the sugar central owned and operated by the defendant-appellant Mount Arayat Sugar Co. Inc. The milling contract provided for a division in stated proportions of the centrifugal sugar and molasses produced by the central from the sugar cane raised in the plantation.

In 1934 the United States government limited the quantity of duty-free sugar to be imported from offshore areas, including the Philippines, (Tydings McDuffie law of March 24, 1934; Agricultural Adjustment Act, [known as Jones Costigan Act] of 1934, 48 Stat. 672) to the yearly average of the years 1931, 1932 and 1933 and provided that the authorized amounts be allocated between the sugar producing mills and the planters of sugar cane (an arrangement subsequently confirmed by the U.S.-Philippine Trade Act of 1946); and the Philippine Legislature enacted in turn the Philippine Sugar Limitation Act (No. 4166) to conformably restrict our production of sugar cane and sugar and allocate the quantity of duty-free sugar among the producers. Under these laws and regulations issued thereunder (Exec. Orders Nos. 873, 885, 900, 901), the Suarez plantation was designated as plantation No. 1-302, Arayat Mill District; and both Suarez and the Mill District were assigned production and marketing coefficients that resulted in the following production allotment (sugar quota) for the Suarez plantation:

Export (A sugar)

207.12 piculs

Domestic (B sugar):

35.70 piculs

Reserve (C sugar).....

15.42 piculs

which sugar was shared before the war by Suarez and the Mount Arayat Sugar Co. Inc. in the proportions fixed by the milling contract.

The sugar mill and facilities of the Mount Arayat Sugar Co. Inc. were destroyed in December 1941 as a consequence of the Pacific War. As the mill was not reconstructed and placed in operation notwithstanding the liberation of the country and return to normalcy; some of the adhered planters decided to transfer their allotments to other sugar mills and districts.

In April 1949, the Mount Arayat Sugar Company, Inc. sold to Elizalde and Co. Inc. for the ultimate benefit of appellant, La Carlota Sugar Central, its "participacion de nuestra Central Arayat en las cuotas azucareras de las plantaciones detalladas en la ad junta Lista" (Exh. G) that included the Suarez plantation; and the transfer was submitted to and recorded by the defendant Sugar Quota Administrator, which credited the transferred share coefficients to plantation No. 22-A-17 of Elizalde & Co. Inc., adhered to La Carlota Sugar Central. This transfer was made without notice to, nor intervention or assent of, plaintiff Eduardo Suarez who, on September 13, 1949, sold the sugar quota allocated to his plantation No. 1-302, for the sum of P774.72, to plaintiff Jose A. Narciso, a planter" adhered to the Pampanga Sugar Development Co. However, the latter, as well as the Sugar Quota Administration, declined to admit and record the transfer unless the consent of the Mount Arayat Sugar Co. Inc., was first obtained; while the Arayat Sugar Co. refused to agree thereto because of the previous sale of its share in the plantation's sugar quota to Elizalde & Co. Inc.

Thereupon, the plaintiffs-appellees, Eduardo Suarez and Jose A. Narciso, initiated the present action to obtain resolution of the milling contract between Suarez and the appellant Mount Arayat Sugar Co., Inc.; to compel the defendants Administrator of the Sugar Quota Office, Mount Arayat Sugar Co., Inc. and Pampanga Sugar Development Co., to recognize and record in their books the sale from Eduardo Suarez to Jose A. Narciso of the entire sugar quota allocated to his sugar plantation, including the share of the Arayat Sugar Mill; and to annul the transfer made by Mount Arayat Sugar Co., Inc. to La Carlota Sugar Central, through Elizalde & Co. Inc., of its share in the allocation of sugar corresponding to the plantation of appellee Suarez. Plaintiffs-appellees contend that under section 9 of Act 4166, the sugar quota (production allotment) of the sugar cane plantation of plaintiff Suarez was an improvement attaching-to the plantation; and that the Arayat Sugar Central not being in operation, its sugar cane planters had the right to transfer their entire production allotment to an operating mill, without the consent of the Arayat Sugar Co., Inc.

The Sugar Quota Administrator pleaded that his action in the premises was in accord with the opinion of the Secretary of Justice dated April 2, 1948, that—

"* * * a mill company has a right in the production allowance entirely distinct and separate from that of the plantation owners, and that this right is not affected by the fact that it is not now in a position to operate, * * *".

Wherefore, the plantation owners can not transfer the whole allotment to an operating mill without the consent of the mill company to which they are adherent.

The defendants, Pampanga Sugar Development Co. and La Carlota Sugar Central, likewise pleaded an independent right of the sugar mills to their share in the sugar quota; that such right does not depend on their performance of the milling contracts; that the "allotment corresponding to each piece of land", spoken of in Section 9, of Act 4166, refers only to the share of the plantation owner, and that the failure of the sugar mill to operate does not work a forfeiture of its share in the sugar quotas of the adhered plantations.

The Court of First Instance having upheld the plaintiffs the defendants (except the Sugar Quota Administrator),

appealed to this Court on point of law.

The issue before us is whether a destroyed and non-operating sugar mill nevertheless retains its share of the sugar quota allocated to its adherent plantations and may assign such share to whomsoever it pleases, without providing for the milling of the sugar cane raised in the adherent plantations; or whether the planters may transfer the entirety of the quota to another planter or another mill where their cane can be processed into sugar.

The basic laws regarding the allocation of sugar were the Tydings McDuffie Act of 1934; the Philippine Sugar Limitation Act, i.e., Act No. 4166 of the Philippine Legislature; and, after the second world war, the provisions of the Philippine Trade Act (Bell Act) of 1946.

The Tydings McDuffie Act of 1934 provided in its Sec 6[d] that the amount or quantity of duty free articles—

"* * * shall be allocated to the producers or manufacturers * * * proportionately on the basis of their exportation to the U. S. in the preceding year; except that in the case of unrefined sugars the amount to be exported annually to the United States free of duty shall be allocated to the sugar producing mills of the Islands proportionately on the basis of their average annual production for the calendar years 1931, 1932 and 1933, and the amount of sugar from each mill which may be so exported shall be allocated in each year between the mill and the planters on the basis of the proportion to which the mill and the planters are respectively entitled."

Pursuant to authority granted by the Agricultural Adjustment Act (48 Stat. 672), the Governor-General caused a master record, called "Sugar Audit", to be made of all sugar producing mills and their adherent plantations, with their 1931 to 1933 production and percentage shares in the resulting sugar; while to conform to the Tydings McDuffie Act, the Philippine Legislature enacted on the same year Act No. 4166, avowedly in order to "limit the production of sugar cane and sugar in the Philippine Islands to such amount as would be sufficient to cover the quota allotted to the Philippine Islands under such laws and the needs of the local consumptions" plus certain reserves; and "to allot among mill and plantation owners the quantity of sugar which may be produced and marketed"; and for this purpose, the Act empowered the executive "to fix and determine by executive order or proclamation" the total amount of sugar permitted to be milled within any calendar or crop year" (Sec. 7), or the manufacture whereof may be permitted in any given year" (Sec. 8). In Section 9, the Act expressly provided that

"The allotment corresponding to each piece of land under the provisions of this Act shall be deemed to be an improvement attaching to the land entitled thereto. Such allotments shall be transferable only in accordance with rules and regulations".

that the Governor-General was authorized to issue. The second paragraph of the section reiterated that mill companies and plantation owners might sell, transfer or assign their allotments in accordance with such rules and regulations.

Executive Order No. 873, dated September 30, 1935, required, in case of voluntary transfers of quotas by the planters, "the consent in writing of the milling companies affected, except in cases of transfers to other plantations adherent to the same milling company".

In 1946, the U.S. Congress enacted the U.S.-Philippine Trade Relations Act vulgarly known as the Bell Act) which contained in connection with sugar quotas, the following provisions:

"Sec. 211. Absolute quota on sugars.

* * * * *

(d) Allocation of quotas for Unrefined Sugars.—The quota for unrefined sugars, including that required to manufacture the refined sugars, established by this section, shall be allocated annually to the sugar-producing

mills and plantation owners in the Philippines in the calendar year 1940 whose sugars were exported to the United States during such calendar year, or their successors in interest, proportionately on the basis of their average annual production (or in the case of such a successor in interest, the average annual production of his predecessor in interest) for the calendar years 1931, 1932, and 1933, and the amount of sugars which may be so exported shall be allocated in each year between each mill and the plantation owners on the basis of the proportion of sugars to which each mill and the plantation owners are respectively entitled, in accordance with any milling agreements between them, or any extension, modification, or renewal thereof.

(e) Allocation of quotas for Refined Sugars.—The quota, for refined sugars established by this section shall be allocated annually to the manufacturers of refined sugars in the Philippines in the calendar year 1940 whose refined sugars were exported to the United States— during such, calendar year, or their successors' in interest, proportionately on the basis of the amount of refined sugars produced by each such manufacturer (or in the case of isuch successor in interest, the amount of refined sugars produced by his predecessor in interest) which was exported to the United States during the calendar year 1940.

Sec. 216. Transfers and assignments of quota allotments:

The holder of any allotment under existing law, including his successor in interest, and the holder of any allotment under any of the quotas established by sections 211, 212, or 214, may transfer or assign all or any amount of such allotment on such terms as may be -agreeable to the parties in interest. If, after the first nine months of any calendar year, the holder of any allotment for that year, under any of the quotas established by such sections is or will be unable for any reason to export to the United States all of his allotment, in time to fulfill the quota for that year, that amount of such allotment which it is established by sufficient evidence cannot be so exported during the remainder of the calendar year may be apportioned by the Philippine Government to other holders of allotments under the same quota, or in such other manner as will insure the fulfillment of the quota for that year: Provided, That no transfer or assignment or reallocation under the provisions of this section shall diminish the allotment to which the holder may be entitled in any subsequent calendar year.

Under the sugar limitation laws and regulations (specially Executive Order No. 900 of 1935), the entire quota. of Sugar importable from the Philippines into the U.S. was proportionately distributed (allotted) among the various mill districts (each composed of one sugar mill or central and its adhered plantations) according to the ratio that the average production of each mill district for 1931-1933 bore to the total Philippine sugar production for the same period (Executive Order No. 900, sec. 1). This "portion of the quota" allotted to each mill district was termed "mill district U. S. production coefficient"; and expressed in tons of sugar, it was called "mill district production allowance" (sec. 2). Similarly, within the district, each plantation was given a "plantation owners U. S. production coefficient", representing the "portion of the A sugar quota" (Executive Order No. 900, sec. 3) corresponding to the plantation, in the same ration that the annual quantity of sugar manufactured from the plantation's sugar cane bore to the total quantity of sugar manufactured in the Islands for 1931-1933; and in terms of tons of sugar the coefficient was called "Plantation owner's U. S. production allowance" (sec. 4).

This production allowance was in. turn divided into "plantation owner's U. S. marketing coefficient" (and allotments) and "mill U.S. marketing coefficient" (and allotments) according to their respective percentage share in the sugar milled (Exec. Order No. 900, sees. 6-9) that pertained to the planter or to the mill according to contracts or usage.

It can thus be seen that the splitting of the production allowance into plantation owners' 'allotment and mill allotment is a direct consequence of the division of the resulting sugar between them, according to their respective contribution (cane and industry) in the production of the article. In principle, therefore, the quota or production allowance is single and indivisible until the sugar is actually produced. Hence, where the mill, as in the case at

bar, stops operations, the sugar allotment remains single and entire, and can only be transferred as one single unit. Any other interpretation would permit the separation of phases in the processing of sugar cane that the law considers as an indivisible operation, characterized by the common participation of the allottees (planter and central). This ultimate indivisibility of the production allotment or quota is confirmed by Exec. Order No. 873, sec. 3, to the effect that "lifting" or transfer of allotment from one plantation to another required the consent of the mill or central, "except in the cases of transfers to other plantations adherent to the same milling company", where the substituted cane is processed by the same mill.

Our conclusion is not controverted by the transferability of the allotments provided in the law (sec. 9, Act 4166), because the transferees merely substitute the transferors in the process of producing the sugar, and in the same allotment while the transferors cease to take part therein. Thus, section 4 of Ex. O. No. 900 speaks of sugar which may be manufactured by the milling company from sugar cane "delivered to the mill in substitution for that grown in the plantation" as coming under the plantation owner's production allowance; while the milling contract (sec. 27, Annex A) reserves the mill's right to have some other sugar mill substitute it in the work of producing sugar from the planter's cane. But there is nothing in the law or the regulations to indicate that they ever contemplated the individual marketing allotments to be separately transferable so as to destroy the unity of the production allowance, from which said marketing allotments were originally derived. Wherefore, it has been ruled that—

"In order to transfer the (quota) share of the mill, there must be, therefore, a corresponding transfer of its obligations or duties towards its planters. In other words, there must be a novation by the substitution of a new debtor in place of the original one. Such novation can not be made, however, without the consent of the creditors,—namely, the planters (Art. 1205) Civil Code.

In the light of the foregoing, the Cebu Sugar Company should, before effecting any transfer, negotiate first with the plantation owners for the purpose of securing their consent thereto." (Opinion of the Secretary of Justice, Jan. 8, 1947, Op. No. 14, ser. 1947).

The right to substitute another mill in its stead, reserved to appellant central in its milling contract (par. 27) refutes the contention of Suarez that the central's failure to operate justifies the resolution or cancellation of the contract, and forfeits its right to any allotment.

There being no reason to split the yearly production allotment into separate marketing allotments (planters and mill's where no sugar is being actually produced nor marketed, as in the case of the Mount Arayat Sugar Co., Inc., the conclusion must be that the said annual marketing allotment can only be assigned or transferred in its entirety, and as a unit, by the interested parties (planter and mill), upon such terms or conditions as said parties and the transferee or transferees may agree upon. Such annual transfer is subject to the regulations and approval of the Philippine Sugar Administrator, since the Government has a vital interest in the maintenance and distribution of the allotments and in preventing any accumulation of the production and marketing allowances that may be detrimental to the industry and the country as a whole.

Appellants contend that even nonproducing centrals should be allowed to retain and separately dispose of their marketing quotas because "the only condition necessary to entitle a (sugar) mill to a quota (allotment) is that the mill shall have produced and exported sugar to the United States in 1940", and cite in support sec. 211 of the Bell Act and the opinion of Secretary of Justice Ozaeta, dated April 2, 1948. We disagree. Such contention unwarrantedly assumes that the allocation provided in Section 211 of the 1946 Philippine Trade Act (Bell Act) is in the nature of a bounty or reward for past services in producing and exporting sugar to the United States on or before 1940. We see no reason for such construction. The reference to 1940 export in Section 211 (d) in our opinion merely purports to restrict future sugar exports to the Philippine sugar producers entitled to quotas in 1940, and to exclude those who entered the sugar production field at a later date. The plain terms of the section

indicate that it was designed to merely continue the original system of allocation between planters and sugar producing mills initiated in 1934 by the Tydings McDuffie Act, in recognition of the complementary roles and respective contributions of planters and processors to the production and manufacture of the sugar. It is to be observed, that both Acts (Bell and Tydings McDuffie) provides for allocation of the sugar quota in each year between the mills and the planters, thereby implying that the allocation could vary from year to year. No such variability could exist for a mill that had stopped producing sugar, for its quota could only be determined as of its last year of production.

Upon the other hand, we find no justification for the contention of the appellee planters, sustained by the Court below, that in the event that a sugar mill stops operations permanently, then the marketing allotments, both the share of the plantation and that of the central, should be considered owned by the planter, being attached to the plantation as an improvement thereof, within the purview of sec. 9, Act 4166. Neither Executive Order Nos. 497 and 512, issued prior to the Sugar Limitation Act (Act No. 4166), nor Executive Order No. 873 Series of 1935, issued to implement said Act, appears to have contemplated that the allotments in their entirety belong to the planter alone.

Under sec. 5 of the Executive Order Nos. 497 and 5124 Series of 1934, the plantation owner's allotment was determined by (1) dividing the mill district allotment among all plantations in the mill district on the basis of their average production for 1931 to 1933; and "(2) multiplying the quantity so obtained for each plantation by the plantation share, expressed in percentage."

The final provisions of Executive Order No. 873, Series of 1935, lead to the same conclusion:

"(1) The term 'plantation-owner's allotment' means the quantity of sugar of a stated class which is a given year may, in the case of A and B sugar be marketed, and in the case of C sugar be held as a reserve, by the owner and/or planters of the plantation concerned."

Plainly "the quantity of sugar * * * which in a given year * * * may be marketed * * * or held as reserve * * * by the planter concerned" can not refer to anything more than the planter's share (of allotment) of the sugar manufacture by the mill out of the planter's sugar cane; and in no case includes the mill's share of the sugar, nor the marketing rights connected with the latter.

Whatever interest the planter may claim in the mill's share of the marketing allotment must be based on the fact that plantation owners are not usually in a position to mill their cane and produce sugar therefrom independently of the centrals, and where a sugar mill or central ceases to operate, the adherent plantation owners are driven to either (1) stop planting sugar cane or (2) deliver the cane to another sugar mill for processing into sugar. Should the nonoperating mill (like appellants) be held entitled to retain and transfer to other entities its full share in the sugar quota allocated to the adhered plantations, and able to make such transfer independently of the planters, then the marketing allotment of the latter will be necessarily reduced, either in amount or in value; for other mills will not usually agree to process the planter's cane unless they receive a marketable share in the resulting sugar, or unless they are otherwise compensated for the processing of the cane.

To illustrate: Let us suppose that the quota for a given plantation is 100 piculs of exportable (A) sugar, of which 60 piculs correspond to the planter, and 40 piculs to the central. If the latter may retain and transfer its share of 40 piculs to whomever it pleases, even if it ceases to operate, then the planter would have to mill his cane with another central. But for the same amount of cane processed, only 60 piculs of the resulting sugar would be marketable under the law. Ordinarily, the new mill would not agree to process the planter's cane unless it could get a certain portion of marketable sugar for its pains. If this portion must come from and be deducted from the 60 piculs of the planter's quota, the planter will receive less than formerly. So that by discontinuing operations and

forcing the planter to look for another processor, the old mill to which the planter was originally adhered in effect reduces the planter's quota to less than his original share. Hence the planter could rightfully claim the right to transfer the old mill's quota to the new mill.

But if it can be shown that the new mill would agree not to diminish the planter's share of marketable sugar, the planter would have no justifiable claim to ask that the marketing allotment of the original mill should be transferred to the new one. In other words, the planter has the right to keep his quota share undiminished; but not to enrich himself at the expense of another's quota.

If the parties interested in the allotment should fail to agree, for any reason, and the allotment remain untransferred within the first nine months of the year, then in our opinion the Government has the right to step in and reallocate the vacant quota or allotment, in the exercise of the power reserved to it by sec. 216 of the Philippine Trade (Bell) Act of 1946:

"If after the first nine months of any calendar year, the holder of any allotment for that year, under any of the quotas established by such sections, is or will be unable for any reason to export to the United States all of his allotment, in time to fulfill the quota for that year, that amount of such allotment which it is established by sufficient evidence cannot be so exported during the remainder of the calendar year may be apportioned by the Philippine Government to other holder of allotments under the same quota, or in such other manner as will insure the fulfillment of the quota for that year: Provided, That no transfer or assignment or reallocation under the provisions of this section shall diminish the allotment to which the holder may be entitled in any subsequent calendar year."

While on its face applicable only to exports of A sugar, this law establishes a principle applicable to all classes of sugar in similar situation. The allocation of quotas under the sugar limitation laws and regulations was primarily established for public interest, and it is closely linked with the preservation of markets for our products, the dollar reserve conservation, and other economic policies in which the State has a paramount interest. The redistribution of allotments, therefore, can not be viewed as a matter of exclusively private interest, affecting only sugar centrals and planters, but one concerning the nation at large. It is but proper therefore, that it should be entrusted to the State in the interest of the people.

The cessation of operations of a sugar mill or central entail the inability, not only of the central, but also of its adherent planters, to meet the yearly quotas, by producing the sugar allotted to them; hence, it is the right of the Government, through the apposite instrumentality, the Philippines Sugar Administrator, to reapportion their allotments in such manner as may be required to insure the fulfillment of the quotas. It is ask that, by its complexity, can not be considered a proper subject of judicial determination, since it requires the consideration and balancing of numerous and variable factors with which the courts can not be expected to cope. Market and crop conditions, capacity of sugar mills, sugar quota deficiencies or surpluses in each district for each year and other data, both technical and complex, interlace and counteract each other to influence the adequate solution to be given. For this evaluation, the legislative and administrative branches, rather than the courts, are peculiarly fitted and have been entrusted by law with the task. To that purpose, they may make all necessary investigations and findings, and issue the rules and regulations required to make a just reapportionment.

In a similar case, the United States Court has said in *Secretary of Agriculture vs. Central Roig Hef. Co.*, 94 L. Ed. 392:

"It would be a singular intrusion of the judiciary into the Legislative process to extrapolate restrictions upon the formulation of such an economic policy from those deeply rooted notions of *jus cogens* which the Due Process Clause expresses. To fix quotas on

In conclusion, we declare and so hold:

- (1) That the Tights to each plantation sugar production allowance, and to the marketing allotments derived therefrom, constitute an indivisible whole before the sugar is actually produced thereunder;
- (2) That in the absence of sugar actually produced, the allotments are transferable only as a whole, by common agreement between the parties interested, planter and sugar mill;
- (3) That should the parties interested fail to come into agreement, the Government through the Sugar Administrator, may, after the first nine months of the calendar year, redistribute the unfilled allotment for that year among other quota holders;
- (4) That the transfers of allotments by Mount Arayat Sugar Co. to EHzalde & Co., and by Eduardo Suarez to Jose Narciso, of the allotments corresponding to plantation No. 1-302, Arayat Mill District, not being made by common consent of Suarez and the sugar company, are invalid and inoperative;
- (5) That no action lies to compel the Pampanga Sugar Development Co. and the Philippine Sugar Administrator to record the aforesaid transfers;
- (6) That in the absence of transfer by common agreement, the allotments involved are subject to reallocation by the Sugar Administrator under sec. 216 of the Philippine Trade Act of 1946.

Wherefore, the judgment appealed from is reversed and the complaint dismissed. Without costs. So ordered.

Paras, C.J., Pablo, Montemayor, Reyes, A., Jugo, Labrador and Concepcion, JJ., concur.

CONCURRING OPINION

BAUTISTA ANGELO, J., concurring and dissenting:

According to the majority opinion, "the splitting of the production allowance into plantation owner's allotment and mill allotment is a direct consequence of the division of the resulting sugar between them, according to their respective contribution (cane and industry), in the production of the article" and, therefore, as a matter of principle, "the quota or production allowance is single and indivisible until the sugar is actually produced. Hence where the mill, as in the case at bar, stops operations, the sugar allotment remains single and entire, and can only be transferred as one single unit." The majority opinion reaches the conclusion that "said marketing allotment can only be assigned or transferred in its entirety, and as a unit, by the interested parties (planter and mill), upon such terms or conditions as said parties and the transferee or transferees may agree upon." As a consequence, the majority opinion declares that the transfer by Mount Arayat Sugar Co. of its quota of marketing allotment to Elizalde & Co., not having been made with the consent of the planter Eduardo Suarez, is invalid and inoperative.

While I agree to the theory that while a sugar mill is in operation the quota or production allowance is single and indivisible within the scheme of the sugar limitation law implanted in the Philippines, I cannot set my mind at rest on the proposition that when the mill stops the marketing allotment can only be transferred as one single unit or in its entirety, or can only be effected upon such terms or conditions as planter and mill may agree. Otherwise, none can make the transfer with the result that the Government may then have the right to intervene and redistribute the whole quota allotment among oher quota holders in the manner provided for in Section 216 of the Philippine Trade of 1946. The above proposition not only ignores the basic policy concerning the mode of allocating to mills and plantation owners the quantity of sugar that may be produced in the Philippines under the sugar limitation law but disregards the express provision contained in the law concerning the transfer ability of the marketing

allotment corresponding to both mills and planters.

The basic policy concerning the allocation of the sugar quota to millers and planters is found in Section 3 of Commonwealth Act No. 416G which approved to implement the Tydings-McDuffie Law. Said policy is "to allot among mills and plantation owners the quantity of sugar which may be produced and marketed for direct consumption or held for reserve in the Philippine Islands, and, to make such allocation in such a way as to offset and ameliorate hardships and inequalities that may result from allotments made under the laws of the United States", which is reiterated in Section 6 wherein it is enjoined that the allotment shall be made "among the sugar plantation owners, sugar mills, and refining plants entitled thereto under the laws and regulations governing the same." It should also be noted that such policy is but a reflection of the express provisions of the Tydings-McDuffie Law which, in so far as may be pertinent, provides that "the amount of sugar from each mill may be so exported shall be allocated in each year between the mill and the planters on the basis of the proportion to which the mill and the planters are respectively entitled." Then again, after the liberation, the Philippine Trade Act of 1946 was approved wherein, with regard to unrefined sugar, it was provided that "the amount of sugar which may be so exported shall be allocated in each year between each mill and the plantation owners on the basis of the proportion of sugar to which each mill and the plantation owners are respectively entitled,"

It is clear from the above recital of the different provisions concerning the allocation of unrefined sugar that may be exported to the United States that the quotas as thus allocated belong not only to the plantation owners but likewise to the sugar mills concerned. And this is undoubtedly due to the fact that the sugar industry is the work both of the planters and sugar mills or the product of their cooperative efforts and individual investment. If the sugar quotas belong respectively to the mills and the planters to the extent of the amount allocated to them, why can they not assign or transfer them when their partnership or common venture has ceased to exist? Why cannot the mill transfer its allotment to another mill where it may be of use to the industry when it can no longer continue its operation for a cause beyond its control? Why declare its forfeiture to the Government for reallocation when neither the law nor regulation decrees such forfeiture? To hold that when a central or a sugar mill stops operation, even if the cause is force majeure, its market allotment should be subject to re-allocation by the Government would be tantamount to declaring its forfeiture which is not only unfair and unjust but not sanctioned by any law or regulation.

On the other hand, such interpretation would seem to run counter to what Commonwealth Act No. 4166 provides concerning transferability of market allotments. A cursory reading of Section of said Act would show that "such allotments shall be transferable only in accordance with such rules and regulations as may be issued by the United States Sugar Authority" (now Sugar Quota Office), and that "mill companies and plantation owners may sell, transfer or assign their allotments received under the terms of this Act only in accordance with such rules and regulations as may be issued by the United States Sugar Authority in the Philippine Islands", which means that either the mill or the planter may sell its or his respective allotment, one regardless of the consent of the other, provided that the sale be made in accordance with the rules and regulations adopted for the purpose.

There is no doubt that the Sugar Quota Office has on hand appropriate rules and regulations concerning the matter and as a matter of fact it is in pursuance of said rules and regulations that the transfer made by the Mount Arayat Sugar Co. of its allotment to Elizalde & Co. has been allowed and approved by said Office. It is for this reason, that I find unwarranted the conclusion reached in the opinion of the majority to the effect that the marketing allotments given by law to the mills and planters should be considered as a unit and cannot be transferred except with the consent of both parties even if the relationship has already terminated.

The opinion herein expressed is in line with the interpretation placed on the law concerning allocation of sugar quotas to the mills and planters and the transferability thereof from one mill district to another or from one planter

to another by the office called upon to implement the law—the Sugar Quota Office—which interpretation should be given weight and judicial sanction if we are to accord, as we must, due regard for the principle of comity that should exist between the three branches of our Government.

"This official ruling of the executive officials is now entitled to consideration by the courts. Courts will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby. (In re Allen (1903), 2 Phil., 630, following *Pennoyer vs. McConnaughy* (1890), 140 U. S., 363, *Government of Philippine Islands Ex. Rel. Municipality of Cardona vs. Municipality of Binangonan* (1916), 34 Phil., 518." (*Molina vs. Rafferty*, 37 Phil., 545, 555)

"At the same time, the contemporaneous construction of the law by two departments of the Government—one the legislative branch responsible for its enactment, and the other the executive branch responsible for its enforcement—while not controlling on the Judiciary, is entitled to our respectful consideration. For the orderly and harmonious interpretation and advancement of the law, the courts should, when possible, keep step with the other departments." (*Yra vs. Abiio*, 52 Phil., 380, 384.)

"And it is a rule repeatedly followed by this court that the construction placed upon a law at a time by the officials in charge of enforcing it should be respected." (*Guanio vs. Fernandez*, 55 Phil., 814, 819.)

This view also finds support in the opinion of the Secretary of Justice on a similar question which, under the same principle of comity, should be given due weight and cannot be lightly brushed aside. The pertinent portion of the opinion of the Secretary follows:

"The conclusion is inescapable that a mill company has a right in the production allowance distinct and separate from that of the plantation owners, and that this right is not affected by the fact that it is not now in a position to operate. It follows that the production allotment does not belong entirely to the plantation owners, and that they cannot transfer the whole allotment to an operation mill district without the consent of the mill company to which they are adherent." (R. A. p. 372)

I therefore, disagree with the opinion of the majority to the effect that the transfer made by the Mount Arayat Sugar Co. of its allotment to Elizalde & Co. having been made without the consent of its planters, is invalid and inoperative. It is valid for it received the approval of the Sugar Quota Office. In all other respects I agree, particularly with regard to the finding that when a sugar mill stops operations a planter does not acquire the share of the quota of the mill but only retains his own, and, therefore, it is the only share he can transfer with the approval of the Sugar Quota Office.

Bengzon, J., concurs.

Judgment reversed.

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