

VEGETABLE OIL CORPORATION, PLAINTIFF AND APPELLEE, VS. WENCESLAO TRINIDAD, COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLANT.

G.R. No. L- 21475. March 26, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

VEGETABLE OIL CORPORATION, PLAINTIFF AND APPELLEE, VS. WENCESLAO TRINIDAD, COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLANT. body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } .style1 {color: #FF0000}This action is brought to recover back merchants' percentage taxes to the amount of P19,975.70 levied on consignments under section 1459 of Act No. 2711 and paid by the plaintiff under protest. The pertinent portions of the section mentioned, which went into effect on October 1, 1917, read as follows:

"All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.

* * * * *

" 'Merchant,' as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

The case was submitted to the Court of First Instance upon the following agreed statement of facts:

"The parties hereto have agreed, and do agree, that the following facts shall be considered as having been proven in the above cause:

"(1) The plaintiff is a foreign corporation, duly licensed to transact business in the Philippine Islands and having its principal place of business therein in the City of Manila. Defendant is the duly appointed and acting Collector of Internal Revenue of the Philippine Islands.

"(2) The plaintiff at all times since the 1st day of April, 1922, has been, and is now, engaged in the purchase of copra, in the Philippine Islands, and the shipment of such copra to its mills in the United States of America for

manufacture into vegetable oil. Plaintiff during said period has been, and is now, engaged in no other business in the Philippine Islands. The cocoanut oil manufactured by the plaintiff is sold in the United States.

"(3) During the period from April 1, 1922, to June 30, 1922, the plaintiff purchased in the Philippine Islands, and shipped to its mills in the United States of America, copra of the value of two hundred and fifty-six thousand seven hundred and ninety-seven pesos (P256,797). The shipping documents covering the said copra were signed by the plaintiff. The copra so shipped was converted into vegetable oil by the plaintiff in the United States, and there sold.

"(4) Defendant, under the alleged authority of section 1459 of Act No. 2711, demanded of plaintiff a tax of one per centum (1%) of the value of the shipments of copra referred to in the preceding paragraph, or the sum of two thousand five hundred and sixty-seven pesos and ninety-seven centavos (P2,567.97). Plaintiff, on the 20th day of July, 1922, to avoid penalties and forfeitures for non-payment, paid to defendant the sum of two thousand five hundred and sixty-seven pesos and ninety-seven centavos (P2,567.97) under written protest, which protest defendant overruled.

" (5) During the period from July 1, 1922, to September 30, 1922, the plaintiff purchased in the Philippine Islands, and shipped to its mills in the United States of America, copra of the value of one million four hundred and two thousand, one hundred and sixty-nine pesos (P1,402,169). The shipping documents covering the said copra were signed by the plaintiff. The copra so shipped was converted into vegetable oil by the plaintiff in the United States, and there sold.

"(6) Defendant, under the alleged authority of section 1459 of Act No. 2711, demanded of plaintiff a tax of one per centum (1%) of the value of the shipments of copra referred to in the preceding paragraph, or the sum of fourteen thousand and twenty-one pesos and sixty-nine centavos (P14,021.69). Plaintiff, on the 16th day of October, 1922, to avoid penalties and forfeitures for non-payment, paid to defendant the sum of fourteen thousand and twenty-one pesos and sixty-nine centavos (P14,021.69) under written protest, which protest defendant overruled,

"(7) During the period from October 1, 1922, to December 31, 1922, the plaintiff purchased in the Philippine Islands and shipped to its mills in the United States of America copra of the value of three hundred and thirty-nine thousand and four pesos (P339,004). The shipping documents covering the said copra were signed by the plaintiff. The copra so shipped was converted into vegetable oil by the plaintiff in the United States, and there sold.

"(8) Defendant, under the alleged authority of section 1459 of Act No. 2711, demanded of plaintiff a tax of one per centum (1%) of the value of the shipments of copra referred to in the preceding paragraph, or the sum of three thousand three hundred and ninety pesos and four centavos (P3,390.04). Plaintiff, on the 18th day of January, 1923, paid to defendant the sum of three thousand three hundred and ninety pesos and four centavos (P3,390.04) under written protest, which protest defendant overruled." Upon the facts so stated the court below rendered judgment in favor of the plaintiff for the recovery of the full amount of the tax paid and the case is now before us upon appeal by the defendant from that judgment.

The case is not one of first impression. The questions involved have been passed upon repeatedly by this court in various cases and, so far, the court has been entirely consistent in its final disposal of all of them. But it often occurs due to the idiosyncracies of the writers of the decisions in several of these cases, dicta have crept into them which have tended to mislead the merchants and the Bar and to lay the court open to the charge of inconsistency.

In order to correct existing misconceptions, a brief resume of both the legislative and the judicial history of the merchants percentage tax in question may, perhaps, be useful.

The tax originated in section 139 of the Internal Revenue Act of 1904 (Act No. 1189) which, in part, reads as follows:

"Except as hereinafter specifically exempted, there shall be paid by each merchant and manufacturer a tax at the rate of one-third of one per centum on the gross value in money of all goods, wares, and merchandise sold, bartered or exchanged for domestic consumption in the Philippine Islands, and this tax shall be paid whether such commodities consist of raw materials or manufactured or partially manufactured products, and whether of domestic production or imported."

Section 142 of the same Act contains the following provisions :

"The following persons shall be exempted from the payment of the taxes imposed in section one hundred and thirty-nine:

* * * * *

"(b) Exporters, on the raw material and manufactured or partially manufactured products actually exported by them."

By Act No. 2339, entitled "An act revising and consolidating the laws relative to Internal Revenue," effective July 1, 1914, it was provided:

"SEC. 40. All merchants not herein specifically exempted shall pay a tax of one-third of one per cent on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered or exchanged by them, such tax to be based on the actual selling price or value at which the things in question are disposed of, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin.

"SEC. 41. In computing the tax above imposed transactions in the following commodities shall be excluded:

"(a) Merchandise actually exported by the vendor;

"* * * * *"

Section 5 of Act No. 2432, approved December 23, 1914, amended section 40 of Act No. 2339 by increasing the rate from one-third of 1 per cent to 1 per cent. Section 3 of Act No. 2541, effective from January 1, 1916, amended section 41 of Act No. 2339 by eliminating the clause "(a) Merchandise actually exported by the vendor."

As will be seen, up to this point the merchants' percentage tax was a domestic sales tax pure and simple and merchandise exported was specifically exempted from the tax. But section 3 of Act No. 2541, by eliminating the exemption in favor of commodities exported, placed a severe handicap upon the local merchants engaged in selling the products of the Islands for export who, in view of the fact that such sales are usually consummated here, were compelled to pay the sales tax, while the foreign firms, who maintained branches or agencies here, could ship directly to themselves without selling and thus escape the payment of the tax. This fact becoming obvious immediately after the passage of Act No. 2541, the Legislature at its next session passed Act No. 2622, effective January 1, 1916, which amended section 40 of Act No. 2339 by inserting the word "consigned" immediately after the word "bartered" therein. This section was ratified by Act of Congress of July 1, 1916.

The next legislation on the subject is contained in section 1614 of the Administrative Code of 1916, effective October 1st of the same year, which section is practically identical with section 1459 of Act No. 2711 quoted on the first page of the present decision. The latter section (1459) was expressly ratified and confirmed by the Congress of the United States in the Act of June 5, 1918 (40 Stat. at L., p. 594) in the following language:

"The taxes imposed by the Philippine Legislature in section fourteen hundred and fifty-nine of the Act Numbered

Twenty-seven hundred and eleven, enacted by that body on March tenth, nineteen hundred and seventeen, are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is legalized, ratified, and confirmed hereby as fully to all intents and purposes as if the same by prior Act of Congress specifically had been authorized and directed."

Apparently, through an oversight, section 1614 of the Administrative Code of 1916 was not included in the ratification.

Section 11 of Act of Congress of August 29, 1916, the so-called "Jones Law," prohibited the levying or collection of duties on exports from the Philippine Islands and on the strength of this provision a large number of actions were brought during the years 1917 and 1918 to recover back percentage taxes paid on consignments abroad.

Of these cases, the case of *Smith, Bell & Co. vs. Rafferty* is typical. In that case the plaintiff alleged that during the period from October 1, 1916 to December 31, 1917, it paid, under protest, the sum of P413,180.05 in percentage taxes on merchandise exported from the Philippine Islands and maintained that all of these taxes were in reality duties on exports and collected in violation of the Jones Law.

This court held, in substance, that the taxes levied under section 1459 of Act No. 2711 were legal by virtue of the ratification of that section by Congress, but that section 1614 of Act No. 2657 not having been ratified, the collection of taxes thereunder was illegal. (*Smith, Bell & Co. vs. Rafferty*, 40 Phil., 691.)

The case was taken to the United States Supreme Court by writ of certiorari and while it was there pending section 1614 of Act No. 2657 was ratified by Act of Congress of June 5, 1920, in substantially the same language as that employed in the ratification of section 1459 of Act No. 2711, and the United States Supreme Court accordingly declared the collection of taxes under both sections valid. (*Rafferty vs. Smith, Bell & Co.*, 257 U. S., 226.)

At the January term of 1923, in the case of *Murphy vs. Trinidad* (44 Phil., 649), this court was again called upon to interpret the provisions of section 1459. The facts in that case are thus stated in the decision of the court: "It appears from the pleadings and admitted facts that the American Import Company, of San Francisco, California, is extensively engaged in the exportation of embroideries from the Philippine Islands for sale in the United States; and the plaintiff, R. E. Murphy, during the period covered by the transactions now in question, was employed by said company as its supervising agent in these Islands, upon a commission of three per centum of the value of the labor expended in the embroidery work. It further appears that the company has adopted the plan of causing all its product from the Philippine Islands to be embroidered here by native workers under the supervision of the company's agent, and upon material supplied by the company from the United States. For the purpose of securing a uniform quality of work, even the thread used in the embroidery is supplied by said company to the embroiderers, but for this a charge is made at cost price. In his capacity as agent, the plaintiff receives from San Francisco the goods to be embroidered, supervises the manufacture of the embroidered product, and returns the same from time to time in a finished state to the company in San Francisco.

"In respect to the transactions thus conducted by the plaintiff for the American Import Company of San Francisco during the period of five years from July 1, 1916, to July 1, 1921, the said plaintiff made returns to the Collector of Internal Revenue, for the purposes of taxation under section 1459 of the Administrative Code, showing taxable transactions to the value of P339,544.59, consisting, first, of P36,691.94 the value of thread and damaged materials sold by the plaintiff in the Islands; and, secondly, of P302,852.65, the value of the labor expended upon the embroidery work prior to September of the year 1919. Upon these returns he was taxed accordingly and paid the tax without protest.

"From the foregoing it will be seen that in the returns upon which the plaintiff was thus taxed, no account was taken of the value of the goods used in the making of the embroideries, and after September, 1919, no account was taken even of the value of the embroidery work.

"It appears, however, that during the aforesaid period of five years the plaintiff caused to be embroidered cloth belonging to the American Import Company of a total value of P597,248.31, upon which there was expended labor of a total value of P931,823.30, all of which was returned to the American Import Company from time to time during the said period at its office in San Francisco, California. The freight and cartage on said shipments amounted to P670.42; and the plaintiff earned as his commission during the same time the sum of P28,785.04.

"In view of the facts stated in the preceding paragraph, the Collector of Internal Revenue, evidently assuming that the plaintiff had previously been underassessed, demanded payment of the tax of one per centum on the difference between the gross amount of P1,595,219.01 and the amount upon which the plaintiff had already been taxed (P339,544.59), that is to say, upon the amount of P1,255,674.41, thus claiming additional tax to the amount of P12,556.74, together with the statutory penalty of twenty-five per centum for delinquency, as prescribed in section 1458 of the Administrative Code, and a fine of P200, making in all the sum of P15,895.93. This amount the plaintiff paid under protest, and now sues to recover the same, under the authority granted in section 1579 of the Administrative Code."

In discussing the law of the case the court, speaking through Mr. Justice Street, said:

"At the inception of the discussion we should note the fact that in the section referred to a tax of one per centum is imposed upon the gross value of goods sold, bartered, exchanged, or consigned abroad. The expression 'consigned abroad,' as here used, means approximately the same as 'exported;' and under the organic law here in force the Philippine Legislature has no power, without the express approval of Congress, to make a law imposing a tax on exports. But the provision now in question has been three times ratified by different Acts of the Congress of the United States, that is to say, first, as it originally stood in Act No. 2541, as amended by Act No. 2622 of the Philippine Legislature ; secondly, as it now stands in section 1459 of the Administrative Code of 1917; and, thirdly and lastly, as it stood in section 1614 in the Administrative Code of 1916 (Acts of Congress of July 1, 1916; of June 4, 1918; and of June 5, 1920). There can therefore be no question as to the validity of said provision as it has stood at all times upon our statute books since its first enactment; and we may say that the Congressional Act of ratification of June 5, 1920, was passed by Congress after this court had decided the case of *Smith, Bell & Co. vs. Rafferty* (40 Phil., 691), and said decision was reversed by the Supreme Court of the United States, in so far as relates to the efficacy of section 1614 of the Administrative Code of 1916, solely because of said ratification by Congress pending the appeal.

"And now, upon the point of liability for the tax that has been collected, we note the contention in the appellant's brief that the plaintiff Murphy himself is not a 'merchant.' This contention is undoubtedly correct if the plaintiff is considered without relation to the master that stands behind him. Individually the plaintiff is no merchant. But he is the agent and representative in the Philippine Islands of the American Import Company of San Francisco; and that the latter is a merchant in the sense intended in section 1459 of the Administrative Code is obvious. "The term 'merchant' is there defined as a person engaged in the sale, barter, or exchange of personal property of whatever character, and it is declared that the term includes manufacturers who sell articles of their own production. The American Import Company fulfills every requirement of this definition because it is engaged in the manufacture of Philippine embroideries and exports the finished product for sale in the United States. The fact that the production and export of these embroideries is effected through the agency of the plaintiff Murphy and that the operations of the Company in these islands are conducted in his name in no wise alters the case. Nor is the further circumstance here material that the consignor, or shipper of the goods from these Islands is Murphy and

the consignee in the United States is the American Import Company. Where a consignment of goods is otherwise taxable, the tax should be assessed and collected regardless of the personality of the consignor or consignee. A shipment of goods abroad is no less taxable under this section, though consigned to the order of the shipper himself.

"* * * * *

"From any point of view the tax which was collected in this case was due to the Philippine Government from the American Import Company of San Francisco; and the circumstance that it has been collected nominally from the plaintiff Murphy should mislead no one. He has acted throughout as agent, and it is to be assumed, in the absence of proof to the contrary, that the money which went into the public coffers belonged to his principal. Besides, as consignor of the exported product, the plaintiff was apparently the person directly responsible to the Collector for the taxes due on the several consignments."

The court decided the case in favor of the defendant and held that the tax was lawfully collected. The close analogy between that case and the one at bar will be readily observed; the distinctions sought to be drawn between the two cases have, as far as we can see, no bearing whatever upon the legal principles involved. They are distinctions without differences.

During the July term of 1923, cases R. G. Nos. 20101 and 20400, *El Dorado Oil Works vs. Collector of Internal Revenue*,^[1] came before this court. In these cases the plaintiff also sought to recover back percentage taxes paid under protest on "consignments abroad," under section 1459. The court held that the taxes were improperly imposed and rendered judgment in favor of the plaintiff.

The opinion of the court was prepared by Mr. Justice Johns, who dissented in the *Murphy* case, and states the essential facts in the following language:

"* * * It will be noted that the plaintiff is a foreign corporation organized under the laws of the State of California, with its principal office and place of business in the City of San Francisco, where it is engaged in the manufacture and sale of cocoanut oil and its by products. Although it is duly licensed to transact business in the Philippine Islands, it has a resident purchasing agent only here. That under the terms and conditions by which the agent made all of the purchases in question, the copra was sold to the plaintiff, a foreign corporation f. o. b. ship, Manila Bay. That the merchants from whom it was purchased signed and executed all bills of lading for its shipment, and directed the shipment of the copra to the plaintiff at San Francisco, and that upon presenting the bills of lading thus prepared and signed, the merchants were then, and not before, paid for the copra by the resident purchasing agent. On all such copra the percentage tax of 1 per cent, payable under section 1459, was paid by the respective owners' and sellers prior to the date of the demand which was made by the defendant upon the resident purchasing agent for the tax in question."

Upon these facts no fault can be found with the disposal made of the case and if the writer of the decision had rested there, no possible misunderstanding could have arisen. The issues are clean-cut and clear: The plaintiff's local agent purchased the copra; the sales taxes were duly paid by the vendors, who also made out and signed the bills of lading and placed the copra aboard the ship. The vendors' thus became the consignors; the plaintiff's agent did nothing but to pay for the copra after it was consigned. Clearly, in such circumstances, the plaintiff was not the consignor and could not be required to pay the consignment tax. But, unfortunately, the subsequent pages of the decision contain dicta which tend to cloud the issues and to lead the Bar to believe that the case is on a parity with the one now before us, which belief, as will be readily seen, is without substantial foundation. Indeed, aside from the fact that in both cases the taxes in dispute were collected on consignments, there is no essential resemblance between the two.

In the present case it is not disputed that the plaintiff corporation was the consignor of the merchandise, but it is strenuously argued that inasmuch as it is not "engaged in the sale, barter, or exchange of personal property" in the Philippine Islands, it is not a merchant within the statutory definition of the term and therefore cannot be required to pay the consignment tax. Just upon what ground this assumption rests is not quite clear; so far no adequate explanation has been vouchsafed us. The statute itself does not provide that the sale, barter, or exchange must take place in the Philippine Islands in order to make a person engaged in such business a merchant.

But, presumably, the idea is the result of a misconception of the nature of the tax on consignments, confusing it with the tax on sales. That the consignment tax is not a sales tax is, however, too obvious for argument; the fact that it is provided for in the same section as the sales tax does not necessarily make it so. There is all the difference in the world between a consignment and a sale. As stated by counsel for the appellee, the tax on consignments is "a privilege tax pure and simple;" it is a tax on the business of consigning commodities abroad from these Islands. The definition of the word "merchant" as a person who is engaged in the sale, barter, or exchange of personal property is merely descriptive of the persons who are required to pay the tax and does not mean that, in order to exact from them the payment of the consignment tax, the Government must also be in position to impose taxes on their sales, barter, or exchange.

If the tax were one on sales, we would readily agree that the sales, in order to be taxable in the Philippine Islands, must be consummated there; the Philippine Government cannot, of course, collect privilege taxes on sales taking place in foreign countries no matter whether the vendor is a Philippine merchant or whether he is a foreign one. Neither can the Government impose such taxes on consignments from one foreign port to another. But, with the approval of Congress, it may legally levy taxes on consignments from Philippine ports. That is what has been done in the present instance. It has imposed the tax on local transactions; it does not seek to tax transactions carried out abroad. But when a foreign merchant, as the word "merchant" is defined in our statutes, comes to our shores and enters into transactions upon which a tax is laid, the Government can, and does, place him on an equality with domestic merchants and requires him to pay the same privilege taxes.

As we have seen, section 1459 provides that "All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise * * * consigned abroad by them." (Italics are ours.) It defines the word "merchant" as a person who is engaged in the sale, barter, or exchange of personal property, but does not say that he must be so engaged in the Philippine Islands in order to be considered a merchant. As far as may be gathered from the plain language of the statute, he may do his selling, bartering or exchanging wherever he pleases, but if he consigns merchandise abroad from the Philippine Islands he must pay the tax on his consignments. Had it been the intention of the Legislature to require only the local merchant to pay the tax, the definition of the word "merchant" in section 1459 would have read: " 'Merchant' as here used means a person engaged in the sale, barter or exchange of personal property of whatever character in the Philippine Islands." But it does not so read.

It is not disputed that the Legislature has the power to define the class of persons who must pay certain local taxes; in fact, the appellee's argument rests precisely on such a statutory definition. Neither can it be questioned that the Government may impose taxes on local business transacted by foreigners. In the absence of words of limitation or exemption in the statute, why must we then assume that, in defining the word "merchants," the class of persons required to pay consignment taxes, the definition applies only to domestic and not to foreign merchants?

Perhaps it will be argued that a statutory definition is only of local application and is of no legal effect beyond the boundaries of the country in which the statute is enacted. That is true, but has nothing to do with the present case. We are not here applying the definition in relation to the collection of a foreign tax; we are considering it in

connection with the tax on a local transaction.

To hold that only persons who engage in sales, barter or exchange in the Philippine Islands are to pay the tax on consignments would place the local merchants at a serious disadvantage in competition with the foreign merchants, and would defeat the very evident purpose of the tax. The language of the statute is perfectly clear and places the burden of the tax on all merchants alike. Are we then justified in exempting some of the merchants by reading non-existent provisions into the statute which would defeat its unmistakable intent and seriously handicap the local merchants, in some cases, perhaps, driving them out of business? We submit that to do so would violate every canon of statutory construction and would clearly amount to unwarranted judicial legislation.

It is also contended that merely shipping merchandise out of the country does not constitute consigning abroad. In answer to this, it is sufficient to call attention to the fact that in the Spanish text of section 1459 the term "consigned abroad" is rendered "enviado al extranjero" (sent or shipped abroad) and that under the provisions of Act No. 2717 of the Philippine Legislature the Spanish text prevails in the interpretation of Act No. 2711.

There is, however, no real conflict between the Spanish and the English versions. While formerly the verb "consign" may have had a more restricted signification, it is now, in shipping and commercial circles, used as the equivalent of the verb "ship" or "send." That this is the sense in which it is used in the section under discussion is quite obvious.

It has been suggested that the tax applies only to a consignment or shipment of merchandise destined for sale and that as it in this case appears that only the oil extracted from the copra and not the copra itself was to be sold, the tax on the consignment was unlawfully imposed.

We find nothing in the law justifying this conclusion. A shipment is a shipment no matter what its purpose may be and the only requisite for the collection of the tax upon it is that the consignor or shipper must be a merchant. It would, indeed, be unreasonable to require the tax collector to postpone the collection of the tax on a shipment until he could ascertain what had ultimately been done with the goods' shipped.

For the reasons stated, the judgment appealed from is hereby reversed and the defendant is absolved from the complaint, without costs. So ordered.

Araullo, C. J., Street, Avanceña, and Romualdez, JJ., concur.

MALCOLM, J., dissents.

[1] Page 1, ante.

DISSENTING

JOHN, J.:

The majority opinion is well reasoned and well written, but it is not fundamentally sound. It quotes very freely portions of the body of the majority opinion in *Murphy vs. Trinidad*.

It is very apparent that there is a marked difference between the facts of the two cases. In the *Murphy-Trinidad* case, the syllabus says:

"1. INTERNAL REVENUE; MERCHANTS' TAX; EMBROIDERY MATERIAL SENT FROM ABROAD.—The merchants' tax imposed by section 1459 of the Administrative Code must be paid by a person who sends material

to the Philippine Islands to be embroidered under the supervision of its local agent by whom the finished product is returned to the owner. The person so sending material to be embroidered and returned is engaged in the business of manufacture in these Islands and is a manufacturing merchant within the meaning of the Internal Revenue Law."

And in analyzing section 1459 of the Administrative Code in question, the opinion says:

"The term 'merchant' is there defined as a person engaged in the sale, barter, or exchange of personal property of whatever character, and it is declared that the term includes manufacturers who sell articles of their own production. The American Import Company fulfils every requirement of this definition because it is engaged in the manufacture of Philippine embroideries and exports the finished product for sale in the United States."

There is no claim or pretense that the plaintiff directly or indirectly ever manufactured anything in the Philippine Islands, or that it is a manufacturer within the Philippine Islands, as the word is defined in section 1459 of the Administrative Code.

It is stipulated that:

"(2) The plaintiff at all times since the 1st day of April, 1922, has been, and is now, engaged, in the purchase of copra, in the Philippine Islands, and the shipment of such copra to its mills in the United States of America for manufacture into vegetable oil. Plaintiff during said period has been, and is now, engaged in no other business in the Philippine Islands. The cocoanut oil manufactured by the plaintiff is sold in the United States."

The opinion in the Murphy-Trinidad case is expressly founded upon the fact that the American Import Company, whom the plaintiff represented, was a manufacturer within the meaning of section 1459 of the Administrative Code, and that because it was a manufacturer, the plaintiff was liable for the payment of the tax.

The majority opinion cites and quotes with approval a portion of the opinion of this court in R. G. No. 20101, *El Dorado Oil Works vs. Collector of Internal Revenue*, and says that the portion quoted is good law upon the facts therein stated, and then says:

"The subsequent pages of the decision contain dicta which tend to cloud the issues and to lead "the Bar to believe that the case is on a parity with the one now before us."

Suffice it to say that all of the material facts in the *El Dorado Oil Works* case were fully and fairly discussed in open court, voted and decided before the opinion was written. When written the opinion was first presented to the writer of the opinion in the *Murphy* case for his signature and approval, and that after giving the case his usual careful consideration, he signed the opinion as written, and it was then presented to the other members of the court, and that in turn it was signed by all of them who were then present. During the discussion, the legal distinction between the *El Dorado Oil Works* case and the *Murphy* case was clearly pointed out and well understood, and for such reason the opinion in the *El Dorado Oil Works* case, as it was written, was unanimously approved by the court. No member of the court, who signed the opinion, was misled or deceived by anything that was said in the opinion.

There is no claim or pretense that the plaintiff here is a manufacturer in the Philippine Islands within the meaning of section 1459 of the Administrative Code. The only question involved is whether or not it is a merchant within the meaning of that section. If it is a merchant within the meaning of that section, it is liable for the tax. If it is not a merchant, it is not liable, an important fact which is ignored and overlooked in the majority opinion.

The statute in question reads:

"All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of

the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold."

In other words, a person who is a merchant is liable for the tax in question, and a person who is not a merchant within the meaning of the section is not liable for the tax. The statute having specified that merchants only are liable for the tax, it must follow that a person who is not a merchant is not liable for the tax. The statute then says that: "'Merchant,' as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character."

There is no claim or pretense that the plaintiff ever sold, bartered or exchanged personal property of any kind within the Philippine Islands. The statute then says that the word

" 'Merchant' * * * includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

There is no claim or pretense that the plaintiff ever sold any articles of its own production within the Philippine Islands, or that it is a commission merchant within the Philippine Islands. But the majority opinion says that it is a merchant and a manufacturer in the United States, and because it buys copra within the Philippine Islands and consigns it to itself, it follows that it is and has been a merchant within the Philippine Islands.

The statute having defined the meaning of the word "merchant," this court has no legal right to enlarge upon the definition or give to it any other or different meaning than the statute itself gives. Yet, that is what the majority opinion does. It would have been a very easy matter for the Legislature, in defining the word "merchant," to have said that any person who buys copra or tobacco or hemp in the Philippine Islands to be consigned abroad is a merchant within the meaning of the act. The Legislature did not say that, but in legal effect that is what the majority opinion has said.

A statute ought not to be construed for or against the interests of resident merchants or anyone else.

The majority opinion says:

"To hold that only persons who engage in sales, barter or exchange in the Philippine Islands are to pay the tax on consignments would place the local merchants at a serious disadvantage in competition with the foreign merchants, and would defeat the very evident purpose of the tax."

In other words, the plain, ordinary language of the statute should be given an unnatural and strained construction to protect the interests of resident merchants. If the Legislature had intended that the word "merchant" to mean what the majority opinion says it does, it would have said, merchant, as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character, or one who purchases personal property within the Philippine Islands for consignment abroad.

Through judicial legislation, the majority opinion has supplied the missing definition of the word "merchant." That is a very dangerous thing for a court to do. It overlooks the fact that a merchant, as the word is defined by the act, and a merchant only, is liable for the sales tax on "merchandise sold, bartered, exchanged or consigned abroad by them," and that if you are not a merchant within the meaning of the act, you are not liable for the sales tax, and that the act defines the word "merchant" as "a person engaged in the sale, barter, or exchange of personal

property," no matter what the purpose may be, whether it is for local consumption or consignment abroad. There is no claim or pretense that the plaintiff ever sold, bartered, or exchanged any personal property of any kind within the Philippine Islands. It is admitted that the only thing which it ever did was to purchase copra for consignment abroad. How can you make a person, even though he be a merchant, liable for the payment of the tax for the purchase of property under a statute, which makes a merchant only, who is "engaged in the sale, barter or exchange of personal property," liable for the payment of the tax? Yet, the majority opinion makes a purchaser of property liable for a sales tax under a statute which provides that a merchant "engaged in the sale, barter or exchange of personal property is liable for the tax." It is a clear case of judicial legislation. The remedy should have been in the Legislature and not in the court.

I vigorously dissent.

Johnson, J., dissenting:

I agree with the argument and conclusions of Mr. Justice Johns.

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