

**M. EARNSHAW & COMPANY, PLAINTIFF AND APPELLANT, VS.
THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND
APPELLEE.**

G.R. No. 10537. January 27, 1916

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal by the plaintiff from a judgment rendered by the Court of First Instance of Manila in four cases entitled M. Earnshaw & Co. vs. The Insular Collector of Customs, and numbered Customs Appeal cases 188, 189, 190, and 191. By agreement of the parties, for the purposes of this appeal, the four cases were united in one and will be considered together.

The facts, as agreed upon, are as follows: All the materials imported and in controversy in the four cases, except certain specified steel wrenches, were intended at the time of their importation to be used in the construction of a marine railway at the port of Manila, and all such materials, with the exception noted, have been actually used for that purpose. Some of the articles could not be used to advantage, if at all, for any other purpose and some could be used with equal advantage for other purposes.

The sole question presented is whether the goods thus imported should be admitted free of duty under sections [paragraphs] 307 and 349, or either of them, of the Tariff Law of 1909. These sections [paragraphs] read:

"307. Articles, including anchors, binnacles, propellers, and the like, the character of which, as imported, prevents their use for other purposes than the construction, equipment, or repair of vessels, and life preservers and life buoys.

"349. Articles and materials actually used in the construction, equipment, or repair within the Philippine Islands of vessels, their machinery, tackle, or apparel, subject to such restrictions, conditions, and regulations as the Insular Collector of Customs shall prescribe."

According to the plain and unambiguous language used in the above sections [paragraphs], the only articles admitted free of entry are articles used in "the construction, equipment, or repair of vessels and life-preservers and life buoys" or "used in the construction, equipment, or repair within the Philippine Islands of vessels, their machinery, tackle, or apparel." All of the articles were used "in the construction of a marine railway." It is not contended that a marine railway is an integral part of a vessel. But it is urged that as a marine railway is essential to the repair of vessels, the material constituting it should, for that reason, be admitted free of duty. The sections [paragraphs] above quoted do not justify this conclusion. It depends upon the dockyard whether a marine railway is at all essential or not. In some instances such a railway is not used at all. In others it is. The plaintiff company has found it more convenient to construct a marine railway to aid in the repairing of vessels than to construct its yard without this railway. The sections [paragraphs], under which free entry is claimed, make no reference to marine railways. Consequently, the rulings of the Collector are correct.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Moreland, JJ., concur.

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