

KUENZLE & STREIFF, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

G.R. No. 10710. December 11, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record it appears that the plaintiff and appellant imported into the Philippine Islands a quantity of merchandise, which was invoiced as "cases roast coffee, chicory, cereals." Said merchandise was classified by the department of customs as "Bonanza mixture." Against that classification the plaintiff, through its attorney, protested, alleging "that the mixture is a product and manufacture of the United States, in chief value of the growth of the United States; the shipment came direct, was accompanied by the proper certificate of origin; the goods should have been passed free of duty as American products, under section 5 of American Tariff of 1909."

Said protest was duly considered by the Insular Collector of Customs, who decided that: "This claim for the free entry of certain 'bonanza mixture' as a manufacture of the United States, under section 12 of the Philippine Tariff Law of 1909, is overruled and denied, for the reasons stated in the decision of this office, on protest 7298 of the same importers (copy attached), which decision has been affirmed by the Court of First Instance of Manila, in customs appeal No. 125."

Said decision on protest 7298 above referred to, by the Collector of Customs is as follows:

"The claim in this case is for the free entry of certain 'bonanza mixture,' as a 'manufacture of the United States under section 12 of the Tariff Revision Law of 1909.

"The article under consideration is composed mainly of coffee originally imported into the United States, in a green state, and then roasted, ground and mixed with other materials which had received similar treatment.

"The question of 'manufacture' was discussed at length by this office in Tariff Decision Circular No. 940, and in accordance with the rule defined therein, the undersigned is of the opinion that this article (bonanza mixture) has not been changed from one thing to another by any process of manufacture, and that it is the same article somewhat changed in condition by adulteration.

"It is bought, sold and used as coffee and must be classified as adulterated coffee, in accordance with its true commercial nature, Protest No. 7298 is therefore, for the foregoing reasons, overruled and denied.

"H.B. McCoy,
"Insular Collector of Customs."

The decision of the Court of First Instance in customs appeal No. 125, on said protest No. 7298, held that the "bonanza mixture" could not be admitted free of duty into the Philippine Islands, under section 12 of the Tariff Law. The plaintiff in that case was the plaintiff in the present case. No appeal was taken from that decision.

From the decision of the Insular Collector of Customs in the present case, the plaintiff appealed to the Court of First Instance. In the Court of First Instance the attorneys for the respective parties agreed upon the following

stipulation of facts: "It is hereby stipulated and agreed by and between the parties to the present case that the article, the subject of this controversy, which was at the time of importation labeled 'Bonanza mixture' is a mixture of coffee, cereals and chicory; that the coffee of which it is composed was originally imported into the United States in the bean and was there roasted, ground and mixed with the other materials; that the chicory and cereals are products of the United States; that a sample of these goods was submitted to the Bureau of Science which returned the same with the following report: Lab. No. 19610.—Bureau of Science.— Chemical Laboratory.—Report on analysis, date submitted, December 22, 1914.—Date reported, December 24, 1914.— Sample of bonanza mixture.—Submitted by Kuenzle & Streiff, Ltd.—Report: Chemical and microscopical examinations of 'bonanza mixture' show it to be about 50 per cent real coffee. Such determination can only be approximate (limit of error &-10 per cent).—(Signed H. H. Wells, H. C. B. Analyst).—That the mixture is an imitation of and intended to be used as a substitute for coffee, but that under the Pure Food Law it is not allowed to be branded either as 'coffee' or as 'blended coffee;' that in respect to an importation formerly made of the article in question and which was labeled 'coffee' the Bureau of Health compelled the relabeling of all the packages in order to prevent the designation in the trade of the Philippine Islands of said mixture as 'coffee' or as 'blended coffee;' that the importation in question was accompanied by a certificate of origin, which purported to show the article to be the growth, product or manufacture of the United States, and which certificate was in so far as form is concerned, in accordance with the laws, rules and regulations prescribing same as regards its applicability to importations of American products into the Philippine Islands; that said mixture is entitled to free entry, provided a mixture composed as above described can properly be held to be a product of manufacture of the United States within the meaning of section 5 of the United States Tariff Law of 1909, which section was in force at the time, of the importation in question."

Upon said stipulation of facts, the cause was submitted to the Honorable Jose C. Abreu, of the Court of First Instance of the city of Manila, for his decision. After a consideration of said facts, said judge in part rendered the following decision:

"It is, then, a fact stipulated by the parties that the article called by its importers 'bonanza mixture' is a mixture of coffee, cereals and chicory; that the coffee it contains was originally imported into the United States in the bean, and was there roasted, ground and finally mixed with the chicory and cereals which are, nevertheless, products of the United States.

"According to the report of the Bureau of Science, the proportion of the mixture is about 50 per cent of real coffee and the rest is chicory and cereals.

"Plaintiffs demand free entry into the Philippine Islands for this article called 'bonanza mixture' on the ground that it is a product and manufacture of the United States.

"The mere fact of the coffee being roasted and ground and afterwards mixed with other substances, does not constitute any fabril or manufacturing process within the meaning of the Tariff Law—much less when the proportion of the coffee entering the mixture is greater than that of the other two components, to wit, chicory and cereals.

"The customs authorities acted in accordance with law in levying duty on this article 'Bonanza Mixture' inasmuch as Rule 12 of the Tariff Law of 1909 provides as follows:

"On any article, not enumerated in this Act, manufactured of two or more materials, duty shall be assessed at the rate at which the same would be dutiable if composed wholly of the component material thereof of chief value; and the words "component material of chief value" wherever used in this Act, shall be held to mean that component materials which shall exceed in value any other single component material of the article; and the value of each component material shall be determined by the ascertained value of such material in its condition

as found in the article.'

"The decision of the Collector of Customs is hereby affirmed, and the protest is overruled. So ordered."

From that decision the plaintiff, after presenting a motion for a new trial which was denied, appealed to this court. In this court the plaintiff makes the following assignments of error:

"First. The trial court erred in holding that the customs authorities, in passing upon the article known as 'bonanza mixture,' were or should have been governed by section 12 of the Tariff Law of 1909.

"Second. In holding that the roasting, grinding, and mixing of coffee, with cereals and chicory, products of the United States, did not constitute the resulting article a product or manufacture of the United States.

"Third. In affirming the decision of the Insular Collector of Customs and overruling plaintiff's protest."

The appellant, in support of its first assignment of error, alleges:

First. That "reference to Tariff Law of 1909, will be sufficient to demonstrate that the trial judge erred in the application thereof;" and

Second. That "there is no evidence as to which is the component material of chief value."

Said section 12 of the Tariff Law of 1909, (August 5th, 1909) provides: "That all articles, except rice, the growth, product, or manufacture of the United States and its possessions to which the customs tariff in force in the United States is applied and upon which no drawback of customs duties has been allowed therein, going into the Philippine Islands shall hereafter be admitted therein free of customs duty when the same are shipped directly from the country of origin to the country of destination. * * *"

By virtue of said section 12, all articles (merchandise), except rice, which are the growth or product or manufacture of the United States, are admitted into the Philippine Islands free of customs duties, under the conditions mentioned therein. If then the "bonanza mixture" is not rice and is a product or manufacture of the United States, it may be admitted into the Philippine Islands free of duty. The record shows that the "bonanza mixture" is a mixture of three articles: (a) coffee; (b) chicory; (c) cereals. It is admitted that the coffee is not the growth or product of the United States; that it is imported into the United States and there roasted, ground, and mixed with chicory and cereals. The record shows that 50 per cent of the merchandise in question (the coffee) is not the growth or product of the United States. Thus it is shown that the "bonanza mixture" is not wholly of the growth or product of the United States. It can not be admitted free of duty, therefore, upon that theory. Is it a "manufacture of the United States or its possession?" That question raises the question whether or not the roasting, grinding, and mixing of coffee with chicory and cereals constitutes a manufacture.

Said law (Philippine Tariff Law of August 5th, 1909) in paragraph 242 provides for a duty upon coffee. Said duty depends upon the condition of the coffee or the manner of its packing. Paragraph 243 provides for a duty on chicory. Paragraph 215—218 provide for duty upon various classes of cereals. There is no express provisions in the law for a duty upon a mixture of said articles.

With reference to whether the "bonanza mixture" is a manufacture or not, it may be said that in some of the tariff laws there is a definition of what constitutes a manufacture as well as who is a manufacturer. For example, section 141 of Act No. 1189 defines who is a manufacturer. In such a case the courts are governed by the statutory definition. In the said Act of Congress, the word "manufacture" is used many times, but it does not attempt to define what constitutes a manufacture. Said law also mentions numerous times "manufactured" and "unmanufactured" articles, but does not attempt to define said terms. In such a case it becomes the duty of the courts to determine whether or not, in a particular case, the merchandise is manufactured. In order, to ascertain the

ordinary meaning of these words, resort may be had to the definitions given by well-recognized lexicographers. Webster, in his valuable International Dictionary, defines manufacture as—"The operation of making wares or any product by hand, by machinery, or by other agencies; anything made from raw material, by the hands, by machinery, or by art, as clothes, iron utensils, shoes, machinery, saddlery, etc." Black, in his valuable Law Dictionary, defines manufacture as—"Any useful product made directly by human labor, or by the aid of machinery directed or controlled by human power, and either from raw materials or from materials worked up into a new form. Also the process by which such products are made or fashioned." Bouvier, in his Law Dictionary, defines manufacture—"To make or fabricate raw materials by hand or by machinery, worked into forms convenient for use;" and, when used as a noun, "anything made from raw materials by hand or by machinery or by art. Making fish lines, ropes, etc. from raw materials is a manufacture, as is also the making of cordage, rope and twine. Cutting ice and storing it in a building is not." These definitions are too general in their terms to be of much value in determining and deciding particular cases.

This court has held, in the case of *Castle Bros., Wolf & Sons vs. McCoy* (21 Phil. Rep., 300), that "the roasting and grinding of coffee does not constitute manufacture, within the meaning of section 12 of the Tariff Law of 1909."

In the case of *State vs. American Sugar Refining Co.* (51 La. Ann., 562, 25 Southern Reporter, 447, 453) it was held that the refining of sugar is not a process of manufacture. The courts have also held that "the baking of bread is not a manufacture." (*States vs. Eckendorf*, 46 La. Ann., 131, 14 Southern Reporter, 518; *Hartman vs. Weigman*, 121 U. S., 609; *Tide Water Oil Co. vs. U. S.*, 171 U. S., 210.)

In the United States Treasury Decisions Nos. 15404 and 17579, it was held that the grinding of coffee is not a manufacture. Said decision overruled a former decision by the same department (No. 9126) in which it was held that the grinding of coffee was a manufacture.

The application of labor to an article, either by hand or by mechanism, does not make the article necessarily a manufactured article within the meaning of that term as used in the tariff laws, unless the application of such labor is carried to such an extent that the article suffers a species of transformation and is changed into a new and different article, having a distinctive name, character or use. (*U. S. vs. Semmer*, 41 Fed. Rep., 324; *Hartman vs. Weigman*, 121 U. S. 609; *Baumgarten vs. Magone*, 50 Fed. Rep., 69; *Tide Water Oil Co. vs. U. S.*, 31 Court of Claims Reports, 90; 171 U. S., 210.)

The article of merchandise in question, the "bonanza mixture," is made up of ground coffee, ground chicory, and ground cereals. If the grinding of coffee does not constitute a manufacture, then it would seem to be clear that the grinding of chicory or of cereals would not constitute a manufacture. If the grinding of the different component parts of the merchandise in question does not constitute manufacture, would the mere mixture of the various parts, after having been ground, constitute manufacture? It is a fact well known that merchants dealing in coffee frequently mix different grades of coffee, for the purpose of meeting the demands of their customers. Different grades of tea are also mixed for the same purpose. The mixture in the present case of the coffee, the chicory, and the cereals, is for the purpose of making a kind of coffee for drink or a substitute for pure coffee. If the mixing of the different kinds of ground coffee or different grades of tea does not constitute manufacture, then it would seem to be reasonable to say that the mixture simply of ground coffee with other ground materials or articles, such as chicory and cereals, would not constitute a manufacture (*People et al. vs. Roberts*, 146 N. Y., 375; *City vs. Coffee Company*, 46 La. Ann., 87).

Courts and lexicographers have differed in their definitions of what constitutes a manufacture. The courts have been obliged to formulate their definitions in order to give effect to the purpose of legislative enactments, while

lexicographers have been free to define said term upon the pure etymology of the word. Courts have been obliged to define the term in order to make it applicable to practical affairs. It is the duty of the court to give the Tariff Law a strict interpretation, which will give force and effect to such law. The primary purpose of the law is to produce revenue. (Castle Bros., Wolf & Sons vs. McCoy, 21 Phil. Rep., 300.)

While the merchandise in question bears a name entirely different from the different products which enter into it (coffee, chicory, and cereal), in fact all of the articles entering into the composition of said merchandise are either coffee or are or have been, at various times, sold and used as a substitute for coffee. Chicory is grown and produced solely for the purpose of using it as a substitute for coffee; the flavor and essence of this plant are very similar to coffee. The merchandise in question has not a distinctive character, or use from that of ground, coffee. In fact, it is used in the place and stead of coffee. It is intended to be used as coffee; it is, in fact, a substitute for coffee. It is a fact well known that chicory and cereals are some times roasted, ground, mixed and used as a substitute for coffee. The name which the importers have given it, in no way indicates its component parts. It is not a distinctive name, resulting from the mixture. The mixture of the articles has not produced a separate and distinctive article. Another importer or merchant might mix the same articles, in the same proportions, for trade purposes alone, giving the mixture another and distinctive name—for instance Rizal, or any other name which might suit the purpose or object of the particular merchant or importer. Generally a manufactured article, by reason of the fact that it is a manufactured article and not by reason of any particular fancy of the owner or to meet some particular trade purpose, is known as an article entirely distinctive from its component parts. It is generally admitted that the grinding of wheat is a manufacture because it produces a product known as flour, but the flour is not the only result of the grinding. It goes through other processes after the grinding, before it is known distinctively as flour. The grinding of coffee, however, produces no different product—the ground coffee is coffee still. The grinding of chicory produces no new product, it is chicory even though ground. The same is true with cereals that are ground for the purpose of being used as a substitute for coffee. And moreover they do not have to be ground to be used as coffee; they can be used as coffee without being ground. The grinding and mixing is simply for the purpose of making it more convenient for use.

The appellant cites a number of specific cases, some of which appear to be contrary to our conclusions in the case of Castle Bros., Wolf & Sons vs. McCoy, above cited. The most of them, however, show that the labor that was performed upon the particular article produced an article entirely different from the original and which was used for an entirely different purpose, in its new form, from that for which it was used in its original form. For instance—glass, ground or powdered, has been held to be a manufactured article. It requires no argument to show that glass pulverized is used for an entirely different purpose from glass in its original state. What is said with reference to glass ground may also be said with reference to most of the other instances cited by the appellant to sustain his argument that the mixture "bonanza mixture" is a manufactured article.

The appellant alleges that "There is no evidence as to which is the component material of chief value." He has evidently forgotten the facts stated in the stipulation of facts, signed by himself, through his attorney and the Attorney-General. An examination of said stipulation shows that the Bureau of Science made a report in which was given the component parts of said mixture.

In view of what we have said in answering the first assignment of error, we deem it unnecessary to further discuss the second assignment of error.

From all of the foregoing we are of the opinion and so hold, that the "bonanza mixture" is not a manufactured article. Therefore the judgment of the Collector of Customs, as well as that of the Court of First Instance, should be and is hereby affirmed, with costs against the plaintiff. So ordered.

Arellano, C.J., Torres, Carson, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

Judgment affirmed.

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