

WALTER E. OLSEN & CO., PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.

G.R. No. 11426. December 18, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

The principal question presented by this appeal is whether or not an importer may present one question to the department of customs, by protest, for solution, and, on an appeal to the Court of First Instance, present another question entirely different.

It appears from the record that on or about the 30th of July, 1914, the plaintiff imported into the Philippine Islands, from the city of New York, forty-three ladies' watches and forty-four gentlemen's watches, the total value of said watches, as stated in the invoice, being \$1,520. The invoice did not indicate the value of each watch of either class. The appraiser of the department of customs fixed the value of each of the ladies' watches at \$3.50 and the value of each of the gentlemen's watches at \$6, and assessed the duty upon said watches, in accordance with article [paragraph] 184 of the Tariff Law of 1909, at 25 per cent ad valorem.

On the 26th of August, 1914, the importer having received notice of the amount of duty imposed, presented the following protest:

"MANILA, August 26, 1914.

"The COLLECTOR OF CUSTOMS,

"Manila, P. I.

"Sir : Protest is hereby entered against the action of the Collector of Customs for the port of Manila in assessing and collecting duty on certain watches under paragraph 184 at 25 per cent ad valorem, instead of returning same free as a product or manufacture of the United States.

"It is requested that this protest be held four months to enable us to obtain documentary evidence from the manufacturers.

"Reliquidation and corresponding refund is requested.

(Sgd.) "A. B. CRESAP,

"Attorney in fact for Walter E. Olsen & Co."

Upon the 5th of April, 1915, the Insular Collector of Customs, upon a consideration of said protest, overruled and denied the same, in the decision following:

"The claim in this case is against the assessment of duties on certain watches under paragraph 184 at 25 per cent ad valorem instead of free under section 12 of the Tariff Law of 1909, as manufactures of the United States.

"On March 4, 1915, the protestants withdrew their claim as to free entry of this merchandise, and agreed to pay duties on the invoice price. The shipment in question consists of 43 ladies' watches appraised at \$3.50 each, and 44 gentlemen's watches appraised at \$6 each, no prices being given in the invoice. Upon investigation, however, it is found that their correct value is \$5 for gentlemen's size, and \$5.50 for ladies' size.

"As regards the statement made at the hearing of this case that 'the purchase was made by the American Tobacco Co., in a lot we are informed of half a million watches,' which probably accounts for the low invoice price, the undersigned finds that while such may be the case, it is nevertheless true that such invoice price does not represent the market value of the article or its wholesale price as bought and sold in usual wholesale quantity as provided in Rule 13 (a) of the Philippine Tariff Law of 1909, or as same is freely offered for sale to all purchasers as defined in section 18 of the same tariff.

"Protest No. 10387 is therefore, for the foregoing reasons, overruled and denied. The merchandise in question will be reappraised at the value above stated, the entry reliquidated accordingly, and additional duties collected.

(Sgd.) "B. HERSTEIN,

"Insular Collector of Customs."

On April 9, 1915, the plaintiff filed a notice of his appeal to the Court of First Instance, and the record was forwarded to said court.

On the 19th of July, 1915, the cause was brought on for hearing in the Court of First Instance. After hearing the respective parties, the Honorable Simplicio del Rosario, judge, on the 20th of October, 1915, rendered the following decision reversing and modifying the decision of the Collector of Customs:

"It is a fact proved by the testimony of the witnesses who have declared for the petitioner, which testimony is not contradicted, that the watches in this case (Exhibits A and B) worth, respectively, \$3.75 and \$4.75 gold, when bought at wholesale in America, from which they were imported by the plaintiffs, not for the purpose of selling them in the local market but only to distribute them as presents to the consumers or customers who purchase the products the 'American Tobacco Company' sells. The watch Exhibit A, is for gentlemen. The watch Exhibit B, which is smaller in size, is for young ladies.

"The appraisement made by the officers of the customhouse at the rate of \$5 gold for every gentleman's watch, and \$5.50 for every young lady's, is, therefore, improper. The said appraisement was confirmed by the Insular Collector of Customs in his decision, which is the object of the present appeal.

"The decision rendered by the said Collector of Customs is hereby reversed, and

"It is ordered that a new appraisement be made of the watches imported by the petitioner at the rate of \$3.75 gold for every gentleman's (Exhibit A) and \$4.75 gold for every young lady's watch (Exhibit B).

"Manila, P. I., October 20, 1915.

(Sgd.) "S. DEL ROSARIO, judge."

From that conclusion of the Court of First Instance the defendant appealed to this court.

The Attorney-General, representing: the defendant and appellant, made the following assignments of error:

First. The court erred in deciding this case upon allegations not contained in the protest.

Second. The court erred in admitting evidence not tending to prove the allegations of the protest.

Third. The court erred in ordering a revaluation of the goods imported.

Upon an examination of the record, it is difficult to understand upon what theory an appeal was taken to the Court of First Instance from the decision of the Collector of Customs of the 5th of April, 1915. The record shows that on the 4th of March, 1915, the plaintiff expressed his willingness to pay the duty on said watches in accordance with the conclusions of the appraiser of the department of customs, in the following letter:

"MANILA, P. I., March 4th, 1915.

"COLLECTOR OF CUSTOMS,

"Manila, P. I.

"SIR: In answer to your letter of March 2d, upon File No. 65, we beg to state that we conform to the payment of duty on all these watches at the price specified on the invoice received from the United States. Our Protest No. 10353 * * * was made for the purpose of establishing a precedent in the matter of these valuations. It is requested that the valuation decided upon in the above protest be made applicable to former and subsequent importations of like nature.

"Very respectfully.

"LUZON BROKERAGE COMPANY, INC.,

"by (Sgd.) A. B. CRESAP, for

"WALTER E. OLSEN & CO."

It will be remembered that the appraiser of the department of customs fixed the value of each of the watches imported. From an examination of the evidence taken in the Court of First Instance it will be observed that the only question raised thereby related to the value of the watches in question and not to the question of the alleged error committed by the Collector of Customs in collecting 25 per cent ad valorem, in accordance with article [paragraph] 184 of the Tariff Law of 1909. The protest was based upon the ground that the Collector of Customs should have admitted said watches free of duty under section 12 of the Tariff Law of 1909. No question was presented to the Collector of Customs with reference to the value of the watches. No question was presented to the Court of First Instance relating to the alleged error of the Collector of Customs in not admitting said watches free. The only question presented to the Court of First Instance was: What was the value of each of the watches imported? Thus it will be seen that the plaintiff and appellee presented one question to the Collector of Customs and quite a different question to the Court of First Instance on his appeal. That is the principal error complained of by the Attorney-General.

In accordance with section 286 of the Customs Administrative Act (No. 355) (section 14, Act No. 1235; section 1, Act No. 1405), the decision of the Collector of Customs as to the amount of duty chargeable upon imported merchandise, is final and conclusive, unless the importer "within five days" after paying the duty shall "give notice in writing to the Collector of Customs, setting forth distinctly and specifically and in respect to each entry or payment, the reason for his objections thereto." The law makes the decision of the department of customs final and conclusive, unless the importer, within five days after paying the duty, shall give notice in writing, in the manner prescribed. That rule of law must mean that the decision is final upon the questions presented. It can not refer to questions not presented. In other words, the appeal when taken to the Court of First Instance must be based upon the final decision of the department of customs, and not upon some question not presented. If the question had not been presented then, of course, there has been no decision and certainly no final decision. The decision of a question relating to imports is conferred, under the Law, upon the department of customs. The law makes his decision final, unless an appeal is taken within the time prescribed by law. The courts are without authority or jurisdiction to consider a question relating to imports until and after the department of customs has

been given an opportunity to pass upon the same. That question has been so fully discussed by this court in the case of Behn, Meyer & Co. vs. Collector of Customs (17 Phil. Rep., 388) that we deem it unnecessary to extend the discussion here. In that case we held that the importer, after filing his protest, can not change, enlarge, or modify the basis of his protest.

Without discussing the other assignments of error, for the reason that we deem our conclusions upon the first one conclusive as to the right of the court to pass upon the question presented, we are of the opinion that the judgment of the lower court should be revoked, and without any finding as to costs, it is so ordered.

Therefore let a judgment be entered directing and requiring the lower court to enter an order revoking its judgment theretofore entered in this cause, and to enter a judgment confirming the order of the department of customs in which the protest in question was denied.

Torres, Carson, Trent, and Araullo, JJ., concur.

CONCURRING OPINION

MORELAND, J.:

I agree to the result reached by the court in this case, namely, the reversal of the order of the Court of First Instance and the affirmance of the assessment of the Collector of Customs.

I do not agree, however, to the greater part of the discussion in the opinion either as to fact or law. The opinion of the court says:

"Upon examination of the record, it is difficult to understand upon what theory an appeal was taken to the Court of First Instance from the decision of the Collector of Customs of the 5th of April, 1915. The record shows that on the 4th of March, 1915, the plaintiff expressed his willingness to pay the duty on said watches in accordance with the conclusions of the appraiser of the department of customs, in the following letter:

" 'MANILA, P. I., March 4th, 1915.

" 'COLLECTOR OF CUSTOMS,

" 'Manila, P. I.

" 'SIR: In answer to your letter of March 2d, upon File No. 65, we beg to state that we conform to the payment of duty on all these watches at the price specified on the invoice received from the United States. Our Protest No. 10353 * * * was made for the purpose of establishing a precedent in the matter of these valuations. It is requested that the valuation decided upon in the above protest be made applicable to former and subsequent importations of like nature.

" 'Very respectfully,

" 'LUZON BROKERAGE COMPANY, INC.,

" 'by A. B. CRESAP, for

" 'WALTER E. OLSEN & Co.'"

I believe that the statement "The record shows that on the 4th of March, 1915, the plaintiff expressed his willingness to pay the duty on said watches in accordance with the conclusions of the appraiser of the department

of customs, in the following letter," is inaccurate. This letter shows that the appellee did not express willingness to pay the duty "in accordance with the conclusions of the appraiser of the department of customs." It shows, on the contrary, his willingness to pay the "duty on all these watches at the price specified on the invoice received from the United States." Consent to pay duty on watches as invoiced is quite a different thing from consent to pay the duty as assessed by "the appraiser of the department of customs." If the statement of the court is correct that the appellee consented to pay the duties assessed by the appraiser, there would have never been a controversy. The difference between the parties arises wholly from the fact that the appellee refused, not consented, to pay the duties assessed by "the appraiser of the department of customs" on the ground that that appraisal was wrong, and appealed from that appraisal to the Collector of Customs. The outstanding fact is that appellee's first protest, which referred exclusively to the assessment of "the appraiser of the department of customs," was based on the ground that the watches should have been entered "free as a product and manufacture of the United States," instead of being assessed for duty by the appraiser. According to the facts, then, as I view them, there was no consent to pay the duties as assessed by "the appraiser of the department of customs."

I am of opinion, therefore, that the appellee never consented to pay the duties as assessed by "the appraiser of the department of customs," but, on the contrary, the controversy in this case was initiated by the protest of the appellee against the assessment of "the appraiser of the department of customs."

Nor can I conform to the suggestion contained in the statement that "it is difficult to understand upon what theory an appeal was taken to the Court of First Instance from the decision of the Collector of Customs of the 5th of April, 1915." If the appraiser of the department of customs and the Collector of Customs, on appeal from the action of the appraiser, refused to accede to either of the demands of the appellee, namely, (a) that the watches be admitted free of duty, or (b) that they be assessed at the value shown by the invoice from the United States, it is clear that the appellee's protest was denied and it had a right to appeal on the theory that it had been denied a legal right—which is the theory and the only theory on which all appeals are taken. The error involved in this statement of the court arises from the fact, already stated, that the court finds that the appellee consented to pay the duty as assessed by the appraiser of the department of customs when, as a matter of fact, admitted by the appellant as well as the appellee, he simply consented to pay the "duty on all these watches at the price specified on the invoice received from the United States." This, as we have seen, appears from the letter quoted in the opinion.

I cannot agree to the following statement in the opinion:

"The protest was based upon the ground that the Collector of Customs should have admitted said watches free of duty under section 12 of the Tariff Law of 1909. No question was presented to the Collector of Customs with reference to the value of the watches. No question was presented to the Court of First Instance relating to the alleged error of the Collector of Customs in not admitting said watches free. The only question presented to the Court of First Instance was: What was the value of each of the watches imported? Thus it will be seen that the plaintiff and appellee presented one question to the Collector of Customs and quite a different question to the Court of First Instance on his appeal. That is the principal error complained of by the Attorney-General."

It is true that the original protest was based on the ground that the watches should be admitted free of duty; but that does not mean that "no question was presented to the Collector of Customs with reference to the value of the watches." The fact is, as I view the record, that the only question presented to the Collector of Customs was the value of the watches. The Collector of Customs himself says so. In his decision on the appeal from the assessment of the appraiser appears the following:

"On March 4, 1915, the protestants withdrew their claim, as to free entry of this merchandise, and agreed to pay duties on the invoice price. The shipment in question consists of 43 ladies' watches appraised at \$3.50 each, and 44 gentlemen's watches appraised at \$6 each, no prices being given in the invoice. Upon investigation,

however, it U found that their correct value is \$5 for gentlemen's size, and \$5.50 for ladies' size.

"As regards the statement made at the hearing of this case that 'the purchase was made by the American Tobacco Co., in a lot we are informed of half a million watches which probably accounts for the low invoice price, the undersigned finds that while such may be the case, it is nevertheless true that such invoice price does not represent the market value of the article or its wholesale price as bought and sold in usual wholesale quantity as provided in Rule 13 (a) of the Philippine Tariff Law of 1909, or as same is freely offered for sale to all purchasers as defined in section 18 of the same tariff."

This shows that the question and the only question before the Collector of Customs on the appeal from the appraiser's assessment was the value of the watches. Indeed, that that was the only question presented to the Collector is shown by the fact that the only thing the Collector did was to review the finding of his appraiser in which the value of the watches was placed at \$3.50 and \$6 and to reverse that finding by substituting in place thereof \$5 and \$5.50. He also discussed appellee's claim that the value at which they should be appraised should be that stated in the invoice from the United States, and disagreed with such value declaring it not to be the real market value of the watches. The value of the watches was the only question finally presented to the Collector, was the only question considered, was the only question discussed, and was the only question decided. The Collector expressly says that "the protestants withdrew" the other claim or question. This being so I cannot agree with the statement in the opinion of the court that "No question was presented to the Collector of Customs with reference to the value of the watches."

The statement of the court that "thus it will be seen that the plaintiff and appellee presented one question to the Collector of Customs and quite a different question to the Court of First Instance on his appeal" is one with which I cannot agree. As I have already remarked the original protest filed by the appellee was based on the claim that the watches should be admitted free of duty. This protest was withdrawn, however, and another protest substituted in its place. This second protest is found in appellee's letter of March 4, quoted in the opinion, wherein appellee states: "We beg to state that we conform to the payment of duty on all these watches at the price specified on the invoice received from the United States." While not in the technical language of a protest, and the statute does not require technical language, this letter was accepted as such by the Collector of Customs and acted upon as a new or substituted protest. Indeed, it was the only protest considered or acted on by him. He says in his decision: "On March 4, 1915, the protestants withdrew their claim, as to free entry of this merchandise, and agreed to pay duties on the invoice price." The Collector, immediately following the words quoted, proceeded to discuss the question, and, as I view it, it is the only question considered, discussed or decided, whether the values contained in the invoice from the United States were the correct values of the watches. He found that they were not; and proceeded to reject the claim of the appellee that the invoice from the United States set out the correct value of the watches. This is all that the Collector did. He did not touch in the remotest way the first protest except to say that it had been withdrawn and was not before him. He clearly accepted appellee's letter of March 4th as a new or substituted protest, acted upon it as such, and decided the question which it presented and not the question which the first protest presented. The fact is that this whole case is based upon that letter as a protest and not on the first protest. I cannot, therefore, follow the court when it says that, because the original protest was based on a claim of free entry and the question presented to the trial court was not based on a claim of free entry, there was one question presented "to the Collector of Customs and quite a different question to the Court of First Instance on his appeal." Between the two steps, namely, the protest based on free entry and the presentation of the question to the Court of First Instance, there occurred another event, and the only event which, in my humble judgment, has the slightest bearing on this case, namely, the presentation and acceptance by the Collector of Customs of a new protest calling in question simply the value of the watches. This is the step which gave rise to this controversy and is the sole reason for the existence of this case; and yet this is the very step which the court fails to note or give any

importance to. The statement in the opinion that there was one question presented to the Collector of Customs and quite a different question presented to the Court of First Instance is, to my mind, therefore, without foundation as the sole origin of this controversy was the question of value. It was the only question presented to the Collector of Customs, was the only question considered and decided and was the only question raised by the appeal to the Court of First Instance, and was the only question considered and decided by that court. It is, therefore, the only question before us.

As a necessary result of the foregoing, the statement in the opinion relative to the decisions of this court holding that an importer cannot, after he has once filed a protest, change the nature thereof and present a new and different question, is, to my mind, without force. Those decisions proceeded upon the theory that the change in the basis of the protest was without the consent or approval of the Collector of Customs. As I understand the law, the Collector of Customs may permit a protest to be amended or withdrawn and a new protest filed, if he believes that the ends of justice will be subserved thereby. That is precisely what he did in the case at bar. The collector consented to a withdrawal of the original protest and the substitution of a new one raising an entirely different question; and he not only consented to the change but he took up and discussed only the question raised by the second protest. (See his decision on appeal.) Both the appellee and the appellant having acted upon that theory; and, the whole case having been tried with that sole question as the basis of the controversy, it is, in my judgment, illegal and unjust to change at this time, without notice to either party or opportunity to be heard, the whole theory upon which the case was tried, to substitute new and different issues of which the parties were not advised and never dreamed, and to decide the case on that theory and on those issues.

That the court bases its decision exclusively upon the fact that the first protest presented no question of value and that therefore no value was presented to the Court of First Instance and none is presented here is shown by the portion of the decision which says:

"Without discussing the other assignments of errors, for the reason that we deem our conclusions upon the first one conclusive as to the right of the court to pass upon the question presented, we are of the opinion that the judgment of the lower court should be revoked, and without any finding as to costs, it is so ordered."

This conclusion or decision, as I have attempted to show, bears no relation to the question presented to and decided by the Collector of Customs, has no connection with the question presented to and decided by the Court of First Instance; and it is outside of the issues framed by the protest not only before the Collector of Customs but in the Court of First Instance also. Not only that, it is, in my opinion, illogical. The court here bases its judgment of reversal, as it says, on the sole ground that "the plaintiff and appellee presented one question to the Collector of Customs and quite a different question to the Court of First Instance on his appeal." That is to say, that, inasmuch as the question presented to the Collector of Customs, namely, that of whether the watches should come in free, was not presented to the Court of First Instance, that court had no right or authority to decide the question actually presented to it, namely, the value of the watches, and its judgment is accordingly reversed. The reversal is not based on the ground that the judgment of the trial court as to the value of the watches was wrong; it is based exclusively on the ground that the court had no power to decide any question but that raised by the first protest, namely, the right to free entry of the watches, although the opinion admits that that question was never presented to the trial court. The court expressly refuses even to discuss any other ground for reversal.

I have already attempted to show the lack of foundation of the claim and assertion that no question of value was presented to the Collector of Customs; and have sought to demonstrate that, as a matter of fact, that was the only question that was presented to him and the only question considered and decided by him, the protest based on the claim of free entry having been abandoned by the appellee and another based on the value of the watches substituted in its place, and that abandonment and substitution having been acquiesced in by the Collector who

took up and decided the question presented by the second protest utterly ignoring that presented by the first protest except to state that it had been abandoned and another and different claim made in its place.

I now desire to consider the judgment of the court, as expressed in the quotation last above made, from the other aspect, namely, the reversal on the ground that the trial court did not decide the question presented to the Collector of Customs, admitting for the sake of the discussion that that is true. Note that there is no claim that the court below did not decide and decide correctly the question actually before it. The sole ground of reversal is that it did not decide the same question that was decided by the Collector of Customs; and having no authority to decide any other question its judgment was without authority and illegal.

That is a new doctrine to me. It is the first time I have heard the proposition advanced that a court has no authority or power to decide the only question submitted to it by the parties—always assuming, of course, that it has jurisdiction over the subject-matter and parties. How is it possible for a court to decide any other question than the one submitted to it? As I view it, the rule laid down by the Supreme Court in this case is the exact opposite of the general rule on the subject. Far from having no authority to decide the only question submitted to it, that is precisely the only authority it does have. If a court cannot decide the very question submitted to it by the parties, what can it do? Certainly it has no authority to decide any other. Both parties in this case submitted to the trial court as the sole question for decision the value of the watches. This the Supreme Court affirmatively states when it says: "The only question presented to the Court of First Instance was: What was the value of each of the watches?;" and "from an examination of the evidence taken in the Court of First Instance it will be observed that the only question raised thereby related to the value of the watches in question and not to the question of the alleged error committed by the Collector of Customs in collecting 25 per cent ad valorem, in accordance with article 184 of the Tariff Law of 1909." This being so by what process of reasoning can it be held that the Court of First Instance had no authority to decide that question? And if it could not decide that question, what question could it decide? To reverse a judgment on the ground that the court rendering it could not decide the only question submitted to it but should, instead, have decided a question it never heard of, is, in my judgment, to declare strange law.

But this court goes one step farther. It not only reverses the judgment of the Court of First Instance but affirms the decision of the Collector of Customs. But the opinion of this court says that the question of value was never presented to the Collector of Customs; that the only question presented was that arising from the claim of free entry. In this connection the opinion reads: "The protest was based upon the ground that the Collector of Customs should have admitted said watches free of duty under section 12 of the Tariff Law of 1909. No question was presented to the Collector of Customs with reference to the value of the watches." I have already shown, as I believe, that this statement is not in accordance with the facts set out in the very opinion in which the statement occurs, as I understand them. But, laying this to one side, let us accept for the purpose of discussion the statement of the court that no question of value was presented or submitted to the Collector of Customs and see to what results it leads us. The decision of the Collector of Customs, quoted in the opinion of this court, demonstrates at a glance that, whatever may have been the question submitted to him, the fact is that the only question discussed and decided by him was the value of the watches. He expressly states in his decision that every other claim and question had been withdrawn. There being, then, according to the opinion of this court, no question of value before the Collector of Customs, but only the question of free entry, and the Collector having refused to decide the question presented, viz., the right to free entry, but decided one not presented, viz., that of the value of the watches, why is not the Collector of Customs in the same position as this court holds the Court of First Instance to be in, that of deciding a question not before it? It is to be remembered that this court holds the only question raised throughout the proceedings below was that of free entry; and that the Court of First Instance decided not that question but that of the value of the watches. But does it not hold the same thing with regard to the Collector

of Customs? Certainly. It holds that no question of value was before the Collector, only the question of free entry; and yet the only question considered or decided by him was the value of the watches, he expressly stating that the question of free entry had been withdrawn. Therefore, it must necessarily follow that, according to the holding of this court, the Court of First Instance and the Collector of Customs were in exactly the same position, that of having decided a question not presented or submitted. Why, then, should the same rule not apply to both? Why reverse the Court of First Instance for deciding a question not before it and affirm the Collector of Customs for doing the same thing? Logically the Collector of Customs must also be reversed.

Let us now for a moment recur to the actual facts as I view them. It is stated in the opinion of this court, and it is the fact, that the only question presented to the Court of First Instance was that of the value of the watches. The undisputed facts as I find them, those stated in the opinion itself as I read it, show that the question of value was the only question before the Collector of Customs, although the opinion asserts the precise contrary. The decision of the Collector of Customs deals with nothing else but the value of the watches, expressly declaring that the claim of the right of free entry had been withdrawn. So that we have, according to the opinion of this court, the Collector of Customs deciding a question not presented or submitted to him for decision by the parties interested and the Court of First Instance taking and deciding the only question presented to it by the parties interested; yet strangely enough, this court reverses the judgment of the Court of First Instance and affirms that of the Collector of Customs.

I am of the opinion that too much stress has been laid by this court on the necessity of filing a protest in the strict and formal sense of the word. As a matter of fact, the section of Act No. 355 which deals with the procedure in cases where an importer objects to the appraisal or assessment of duties by the Insular Collector acting as Collector of Customs for the port of Manila does not require the presentation of such a protest (section 288 [287]). It simply provides that: "If the decision of the Insular Collector, acting * * * as Collector of Customs for the port of Manila, * * * shall be adverse to the claim of the owner, importer, consignee, or agent of the merchandise, * * * the owner, importer, consignee, or agent * * * may, within five days, exclusive of Sundays and holidays, * * * appeal therefrom to the Court of First Instance for the city of Manila; and the Collector of Customs for the Philippine Islands, upon the taking of such appeal, shall forthwith certify and transmit to the clerk of the Court of First Instance for the city of Manila such notice of appeal together with the entry, invoices and exhibits, and all other papers connected therewith and his decision thereon." As is clear there is no provision of this section requiring a formal protest in case the owner or importer is dissatisfied with the assessment of duties by the Insular Collector acting as collector of the port for the city of Manila. The provision of law which requires a protest and upon which the decisions of this court with reference thereto had always been based (*Behn, Meyer and Co. vs. Collector of Customs*, 17 Phil. Rep., 388) is section 286 which does not deal at all with the acts of the Insular Collector of Customs or with the procedure to be followed when an owner or importer is dissatisfied with the duties levied, but refers exclusively to the procedure in subports of the Philippine Islands where the collector of one of those subports has made an assessment of duties with which the owner or importer is dissatisfied. In such case "the decision of the collector of customs at a subport of entry as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to the dutiable value of merchandise, and as to all fees and exactions of whatever character, shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, having first paid all duties, fees, and charges and exactions, within five days, exclusive of Sundays and holidays, after such payment, as well in cases of merchandise entered in bond as for consumption, if dissatisfied with such decision, give notice in writing to the collector of customs, setting forth distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto." It should be noted clearly that this provision applies only to the collector of customs of the subports; and that the

words "collector of customs" refer to the collector of customs of those ports and not to the Insular Collector of Customs or the collector of customs for the port of Manila. The second paragraph of section 286 speaks of both the collector of customs and the Insular Collector, clearly distinguishing the collector of customs from the Insular Collector, the former being the collector of customs of the subports while the Insular Collector is the collector of customs for the whole Philippine Islands and the collector of customs for the port of the city of Manila. (See sections 10, 11, 12 and 13 of Act No. 355.)

It is clear, therefore, that the provisions of Act No. 355 requiring a protest which shall set forth distinctly and specifically the reasons for the objections thereto refer only to the collector of customs of the subports and do not refer to the collector of the port of the city of Manila, styled in the Act, the Insular Collector. There is no provision whatever in Act No. 355 with respect either to objection to the assessment of the Insular Collector acting as collector of customs for the port of Manila or to its form or nature. The only objection spoken of there (section 287) is the dissatisfaction which the importer manifests when he takes his appeal to the Court of First Instance. No provision is made for a protest to the Insular Collector such as is mentioned in section 286 in connection with the collector of customs of the subports, and no procedure is specified with relation thereto. As we have seen, section 287 simply provides that, if the decision of the collector shall be adverse to the importer, the latter may take an appeal in the manner therein provided. This indicates of course, that there has been some controversy between the Insular Collector and the importer in which the importer has objected to the assessment of the Insular Collector and his objection has been overruled. It does not mean, however, that the importer filed the protest specified in the preceding section of the Act (section 286), or that he must do so in each case. The reason why such detail and strictness was required in protests directed to collector of customs of subports was that an appeal lay under sections 286 and 287 from the decisions of those collectors to the Insular Collector; and, in order that he might intelligently review the case on appeal, it was necessary that a proper record be prepared for him by the collectors of customs of the subports. To that end a complaint by the importer was required setting forth specifically the grounds of his objections and the particular items to which the objections were directed. This same reason was not present when the objection was made by the importer to an assessment by the Insular Collector. In that case the Insular Collector himself, who is the highest authority in the Islands on the subject, decided the case and his decision was the decision of the highest authority outside of the courts. For that reason there was no necessity for the same strictness and detail in cases arising before him that were required in cases of protests before the collector of customs of the subports.

That it was not intended that the same formality in the protest should be required, where objection was made to an assessment by the Insular Collector of Customs as where it was made to the assessment of the collector of customs of a subport, is shown by the fact that Act No. 1405, which deals with appeals from the Collector of Customs to the Court of First Instance, provides that the only papers, documents, and proceedings which shall be transmitted by the Insular Collector to the Court of First Instance in such appeals are "notice of appeal, together with the entry, invoices and exhibits and all other papers connected therewith and his decision thereon." This Act also provides that "the Court of First Instance for the city of Manila shall proceed, upon notice by the appealing party and the AttorneyGeneral, to examine the case submitted." In all cases of appeals it is necessary, of course, that there be issues framed in order that the parties may know the questions to be decided by the Insular Collector and the court on appeal. When that requirement is fulfilled the provisions of the law have been complied with and all necessities of the Act met. And it should be noted here that the decisions of this court holding that the importer cannot change the nature of his protest after the matter has been dealt with by the collector of customs are based upon the principle not that the statute requires, in cases of assessment of duties by the Insular Collector of Customs, a formal and technical protest of the character required in cases arising before collectors of subports, but that in no controversy before any official or court may the party, after that controversy has terminated and an

appeal taken, change the issues.

It should be noted that the case of *Behn, Meyer and Co. vs. Collector of Customs* (17 Phil. Rep., 388) is a case which originated with a collector of a subport.

The provisions of the Administrative Code passed since this proceeding was instituted expressly require protests in all cases including those where objections are made by importers to the assessment of duties by the Insular Collector of Customs. Even in that Code there is some confusion in the use of the words "customs officers" and "Insular Collector" and "collectors of ports;" but it would seem upon the whole that the intention was to make formal protests necessary in all cases.

It having been demonstrated that formal protests are not expressly required by law in cases where objections are made by importers to assessments of duties by the Insular Collector, it would appear that the strictness with which this court in its decision in this case adheres to the original protest made in this case and refuses to allow it to be changed even though it was expressly withdrawn and another substituted in its place with the specific approval of the Insular Collector who based his decision upon the substituted protest and not the original, is not justified. This is especially true when we note that, in the appeal to the Court of First Instance, the question raised by the new protest and expressly decided by the Insular Collector was the only question submitted to and decided by that court.

I believe, therefore, that I am entirely within the bounds of law and justice when I say that the nature of the protest can be changed at any time while it is in the control of the Insular Collector provided he consents thereto and takes up and decides the question which the amended protest presents. To hold otherwise would be to limit the powers of the Insular Collector beyond all precedent and to make the proceedings before him so technical and strict as to defeat the ends of justice.

I base my vote for a reversal of the decision of the Court of First Instance and for affirmance of the decision of the Collector of Customs on the ground that the letter of appellee of March 4 was accepted and acted upon by the parties as a substitute for the original protest, that that letter raised the question of the market value of the watches only, that the Collector of Customs based his decision on the appeal from the assessment of the appraiser exclusively on that letter and the new claim presented thereby, namely, the value of the watches, discussed exclusively that question, and found what the value of the watches was; and the value so assessed not having been impugned or impeached in any manner which the law permits must stand as the value upon which duties must be assessed. (*Lim Quim vs. Collector of Customs*, 25 Phil Rep., 509.)

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