

PHILIP C. WHITAKER, PLAINTIFF AND APPELLEE, VS. JAMES J. RAFFERTY, AS COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLANT.

G.R. No. 11962. August 27, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented by this appeal is whether or not the appellee is a merchant and is therefore liable to pay the internal revenue tax imposed and collected by the Collector of Internal Revenue. The tax in question was paid under protest.

The facts important for a decision of that question are not in dispute. They are admitted and may be briefly stated as follows:

That on the first day of June, 1914, the appellee entered into a contract with "La Corporacion de Padres Agustinos Recoletos de la Provincia de San Nicolas de Tolentino en Filipinas," by virtue of which a contract of lease theretofore entered into between G. W. Daywalt was transferred to plaintiff; that said contract of lease granted to him the occupation of a certain hacienda or farm, including the cattle thereon; that on the 31st day of March, 1915, the plaintiff sold 1,000 head of the cattle acquired as a part of the lease of said hacienda, to one Ricardo E. Barretto. The Collector of Internal Revenue required the plaintiff to pay the merchandise tax upon the value of the sale of said cattle in accordance with the provisions of section 40 of Act No. 2339.

While it is admitted that the appellee owned and operated another farm besides the one from which the cattle in question were sold, and produced cattle and other classes of animals thereon, and sold some of said cattle upon the other farm from time to time, such sales were for the purpose of clearing his herds of undesirable stock.

Section 40 of Act No. 2339 provides for a percentage tax on the sales of all merchandise. It provides that 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.

Paragraph 3 of the same section defines who is merchant as that term is used in said section (section 40). The definition of a merchant as therein given is, " 'Merchant,' as here used, means a person engaged in the sale, barter, or exchanged of personal property of whatever character."

We are bound by that definition. The definition of lexicographers of the word "merchant" furnishes us with no aid in determining its exact meaning as used in said section. It is a statutory definition.

From said section it will be seen that a "merchant" in order to be subjected to the necessity of paying the tax, must be "engaged in the sale, barter, or exchange of personal property." The words in said section which are important for a proper understanding of the same are, "engaged," "sale," "barter," and "exchange." By the definition which the law gives us, a person to be a merchant must be "engaged, etc." To be "engaged" as the word is used here, a person must be occupied or employed in the sale, barter, etc., of personal property. We can hardly say that a

person is occupied or employed in the sale, barter or exchange of personal property when he has made one purchase and sale only.

A person who buys an automobile today and sells it tomorrow, because he has no further use for it, or because it no longer suits his convenience to keep it, can hardly be "engaged" in the sale, barter or exchange of personal property. We are not of the opinion that a person who comes into the possession of a farm, together with animals thereon, as purchaser or tenant, and sells such animals for the purpose of clearing his herd of undesirables and for other reasons, can be regarded as a merchant "engaged" in the sale, barter or exchange of personal property.

The proof in the present case fails to show that the plaintiff is a merchant engaged in the sale, barter, or exchange of personal property. The tax collected was therefore illegally collected and the plaintiff is entitled to a recovery of the same. Therefore, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Street, Malcolm, and Fisher, JJ., concur.

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