

JACINTO MOLINA, PLAINTIFF AND APPELLEE, VS. JAMES J. RAFFERTY, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 11988. April 04, 1918

Ponente: FISHER, J.

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FISHER, J.:

After the publication of the decision announced under date of February 1st., 1918,[1] counsel for appellee presented a petition for a rehearing. This petition was granted and oral argument of the motion was permitted. Two of the members of the court, as constituted at the time of the argument on the motion for a rehearing, were not present when the case was first submitted and did not participate in the original decision.

Upon the facts, as correctly stated in the original majority decision, a majority of the members of the court as now constituted is in favor, of setting aside the original decision and affirming the judgment of the trial court.

Plaintiff contends that the fish produced by him are to be regarded as an "agricultural product" within the meaning of that term, as used in paragraph (c) of section 41 of Act No. 2339 (now section 1460 of the Administrative Code of 1917), in forced when the disputed tax was levied, and that he is therefore exempt from the percentage tax on merchants' sales established by section 40 of Act No. 2339, as amended.

The provision upon which the plaintiff relies reads as follows:

"In computing the tax above imposed transactions in the following commodities shall be excluded: * * * (c) Agricultural products when sold by the producer or owner of the land where grown, whether in their original state or not." (Act No. 2339, sec. 41.)

The same exemption, with a slight change in wording, is now embodied in section 1460 of the Administrative Code of 1917.

The question of law presented by this appeal, as we view, is not whether fish in general constitute an agricultural product, but whether fish produced as were those upon which the tax in question was levied are an agricultural product.

As stated by Judge Cooley in his great work on taxation:

"The underlying principle of all construction is that the intent of the legislature should be sought in the words employed to express it, and that when found it should be made to govern, * * *. If the words of the law seem to be of doubtful import, it may then perhaps become necessary to look beyond them in order to ascertain what was in the legislative mind at the time the law was enacted; what the circumstances were, under which the action was taken; what evil, if any, was meant to be redressed; * * *. And where the law has contemporaneously been put into operation, and in doing so a construction has necessarily been put upon it, this construction, especially if followed for some considerable period, is entitled to great respect, as being very probably a true expression of the

legislative purpose, and is not lightly to be overruled, although it is not conclusive." (Cooley on Taxation [Vol. 1] 3d. Ed., p. 450.)

The first inquiry, therefore, must relate to the purpose the Legislative had in mind in establishing the exemption contained in the clause now under consideration. It seems reasonable to assume that it was due to the belief on the part of the law making body that by exempting agricultural products from this tax the farming industry would be favored and the development of the resources of the country encouraged. It is a fact, of which we take judicial cognizance, that there are immense tracts of public land in this country, at present wholly unproductive, which might be made fruitful by cultivation, and that large sums of money go abroad every year for the purchase of food substances which might be grown here. Every dollar's worth of food which the farmer produces and sells in these Islands adds directly to the wealth of the country. On the other hand, in the process of distribution of commodities to the ultimate consumer, no direct increase in value results solely from their transfer from one person to another in the course of commercial transactions. It is fairly to be inferred from the statute that the object and purpose of the Legislature was, in general terms, to levy the tax in question, significantly termed the "merchant's tax," upon all persons engaged in making a profit upon goods produced by others, but to exempt from the tax all persons directly producing goods from the land. In order to accomplish this purpose the Legislature, instead of attempting an enumeration of exempted products, has grouped them all under the general designation of "agricultural products."

It seems to require no argument to demonstrate that it is just as much to the public interest to encourage the artificial propagation and growth of fish as of corn, pork, milk or any other food substance. If the artificial production of fish is held not to be included within the exemption of the statute this conclusion must be based upon the inadequacy of the language used by the Legislature to express its purpose, rather than the assumption that it was actually intended to exclude producers of artificially grown fish from the benefits conferred upon producers of other substances brought into the store of national wealth by the arts of husbandry and animal industry.

While we have no doubt that the land occupied by the ponds in which the fish in question are grown is agricultural land within the meaning of the Acts of Congress and of the Philippine Commission under consideration in the cases of *Mapa vs. Insular Government* (10 Phil. Rep., 175) and others cited in the original majority opinion, it does not seem to us that this conclusion solves the problem. A man might cultivate the surface of a tract of land patented to him under the mining law, but the products of such soil would not for that reason, we apprehend, be any the less "agricultural products." Conversely, the admission that the land upon which these fishponds are constructed is not to be classified as mineral or forest land, does not lead of necessity to the conclusion that everything produced upon them is for that reason alone to be deemed an "agricultural product" within the meaning of the statute under consideration.

"Agriculture" is an English word made up of the Latin words "ager" a field, and "cultura," cultivation. It is defined by Webster's New International Dictionary as meaning in its broader sense, "The science and art of the production of plants and animal useful to man * * * "

In *Dillard vs. Webb* (55 Ala., 468) it is held that the words "agriculture" includes "the rearing, feeding, and managing of live stock." The same view was expressed in the case of *Binzel vs. Grogan* (67 Wis., 147).

Webster defines "product" to be "anything that is produced, whether as the result of generation, growth, labor, or thought * * *," while "grow" is defined in the Century Dictionary as meaning "to cause to grow; cultivate; produce; raise * * *."

While it is true that in a narrow and restricted sense agricultural products are limited to vegetable substances

directly resulting from the tillage of the soil, it is evident from the definitions quoted that the term also includes animals which derived their sustenance from vegetable growths, and are therefore indirectly the product of the land. Thus it has been held that "The product of the dairy and the product of the poultry yard, while it does not come directly out of the soil is necessarily connected with the soil * * *" and is therefore farm produce. (District of Columbia vs. Oyster, 15 D. C., 285.)

In the case of *Mayor vs. Davis* (6 Watts & Sergeant [Penn. Rep.], 269) the court said:

"Swine, horses, meat cattle, sheep, manure, cordwood, hay, * * * vegetables, fruits, eggs, milk, butter, lard * * * are strictly produce of the farm * * *"

Without attempting to further multiply examples, we think it may safely be asserted that courts and lexicographers are in accord in holding that the term "agricultural products" is not limited in its meaning to vegetable growth, but includes everything which serves to satisfy human needs which is grown upon the land, whether it pertain to the vegetable kingdom, or to the animal kingdom. It is true that there is no decision which as yet has held that the fish grown in ponds are an agricultural product, but that is no reason why we should not so hold if we find that such fish fall within the scope of the meaning of the term. Of necessity, the products of land tend constantly to multiply in number and variety, as population increases and new demands spring up. In California there are farms devoted to the growth of frogs for the market. In many places in North America foxes and other animals usually found wild are reared in confinement for their fur. In Japan land is devoted to the culture of the silkworm and the growth of the plants necessary for the food of those insects. Bees are everywhere kept for the wax and honey into which they convert the vegetable growths upon which they depend. We think it is not doing violence to the term to say that the frogs, fox pelts, raw silk, and honey which the land is made to produce by those engaged in these occupations are "agricultural products" in the same sense in which poultry, eggs, and butter have been held to be agricultural products.

Now, if the purpose of agriculture, in the broader sense of the term, is to obtain from the land the products to which it is best adapted and through which it will yield the greatest return upon the expenditure of a given amount of labor and capital, can it not be said that it is just as much an agricultural process to enclose a given area of land with dykes, flood it with water, grow aquatic plants in it, and feed fish with the plants so produced as to fence in it and allow poultry to feed upon the plants naturally or artificially grown upon the surface? In the last analysis the result is the same—a given area of land produces a certain amount of food. In the one case it is the flesh of poultry, in the other the flesh of fish. It has been agreed between the parties that an important article of diet consumed by fish grown in a pond consists of certain marine plants which grow from roots which affix themselves to the bottom of the pond. In a real sense, therefore, the fish are just as truly a product of the land as are poultry or swine, living upon its vegetable growths, aquatic or terrestrial. Thus, land may truly be said to produce fish, although it is true that the producer is not a fisherman. Neither is one who grows foxes for their pelts a hunter. As contended by counsel, the inquiry is not whether fish in general constitute an agricultural product, but whether fish artificially grown and fed in confinement are to be so regarded. Honey produced by one who devotes his land to apiculture might be so regarded, even if we were to admit that wild honey gathered in the forest is not. Pigeons kept in domestication and fed by the owner would fall within the definition. Wild pigeons obtained by a hunter would not. Firewood gathered in a natural forest is not an agricultural product, but firewood cut from bacauan trees planted for that purpose has been held to be such a product, and its producer exempt from the merchant's tax. (*Mercado vs. Collector of Internal Revenue*, 32 Phil. Rep., 271.) Other comparisons might be made, many of which will be found in the opinion in which two of the members of the court expressed their dissent from the original majority opinion, but enough have been given to make our position clear.

During the many years that the statute before us has been in existence, since it first appeared, substantially in its

present form, in section 142 of Act No. 1189, passed in 1904, no attempt has been made, until this case arose, to construe it as not applying to fish grown in ponds, and much weight should be given to this long continued administrative interpretation. The opinion of the Attorney-General, cited by Justice Malcolm, will be found on examination to have no bearing upon the present inquiry, as in that case the question was, not whether fish grown and fed in ponds were agricultural products, but whether "* * * fishermen, shell and pearl gatherers * * *" were liable to the occupation tax. There is nothing in the opinion to indicate that the word "fishermen" was used to mean men growing fish in ponds, and it must, therefore, be assumed that it was used in its proper grammatical sense to designate persons engaged in catching fish not artificially produced.

The decision in the case of *The United States vs. Laxa* (36 Phil. Rep., 670) is not controlling, as the reasoning upon which it is based was not concurred in by four members of the court. Furthermore, the *Laxa* case might be distinguished from the one now under consideration, were it necessary to do so, in that it has been stipulated in this case that fish cultivated in ponds subsist largely upon aquatic plants which grow from roots which attach themselves to the bottom of the pond, and are therefore in a real sense a product of the land, while in the *Laxa* case the evidence was that they subsisted solely upon free floating algae.

We are therefore of the opinion, and so hold, that the decision heretofore rendered herein must be set aside, and the judgment of the lower court affirmed. So ordered.

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

Araullo, J., dissents.

[1] 37 Phil. Rep., 545.

CONCURRING OPINION

STREET, J., concurring:

At the original hearing, I became quite firmly convinced, as I supposed, that the product of a fishery maintained in the manner shown in this case ought not to be considered an agricultural product, within the meaning of the provision of the Internal Revenue Law which exempts agricultural products from the merchant's tax. Upon fuller reflection, and further consideration of the arguments advanced at the rehearing in favor of the other contention, I have come to the conclusion that I was wrong. I therefore take this opportunity to recede from my former position and to express my conformity with the opinion which now becomes the opinion of the majority of the court.

My conformity with the opinion first written was based on the conviction that the term "agricultural products," as used in this statute, had reference to articles produced by purely agricultural processes, more especially by the tillage of the fields. As I now view the case, this conception of the meaning of agricultural is too narrow. It must be admitted that poultry, eggs, pigs, and other ordinary produce of farm and country are agricultural products within the meaning of the statute; and no sufficient reason is discernible for excluding fish produced under the conditions revealed in this case.

DISSENTING OPINION

CARSON, J., dissenting:

I dissent.

As I understand them, the contentions of counsel in support of the motion for a rehearing and reconsideration are substantially identical with those adduced in the briefs and the oral arguments when the case was originally submitted.

I have heard nothing which would lead me to modify my views or my vote when the case was decided and the decision promulgated.

DISSENTING OPINION

MALCOLM, J., dissenting:

This case well illustrates how on the same facts, the same law, and the same authorities, judges can arrive at diametrically opposed conclusions.

Take the facts. They are stipulated. The only difference is that possibly unconsciously, in order to fortify the conclusion, the decision of the majority on reconsideration would stress the point that an important article of diet consumed by fish grown in a pond consists of certain marine plants which grow from roots which affix themselves to the bottom of the pond, while the original decision as well as the decision in the Laxa case,[1] possibly also in order to fortify their conclusions, would stress the scientific fact that the food of the bangus includes marine plants, that these algae are of seven classes, that one of these plants is rooted, that some of the others are very loosely attached to the ground but not rooted, and that generally the algae float on the water.

Or take the law. The section in dispute is made up of a few simple words. In reality, the meaning of the phrase, "agricultural products," is only to be ascertained. The primary duty of the court is, of course, to ascertain legislative intention. But here again the two decisions radically differ. The decision of the majority on reconsideration in a laudable endeavor to encourage commercial development would make this the purpose of the law and would follow this idea consistently to the end. On the other hand, the original decision would start with the same presumption but finding that to so construe the law would result in judicial amendment must then necessarily reach a different result; if the Legislature had intended to exempt all classes of domestic products which would include fish, it would undoubtedly have done so in plain language.

Or take the authorities. The Supreme Court of Georgia (Davis vs. Mayor [1879], 64 Ga., 128) would confine "agricultural products" to the yield of the soil, as corn, wheat, rye, hay, etc.. Possibly this court was right. The supreme courts of Alabama and Wisconsin (Dillard vs. Webb [1876], 55 Ala., 468; Binzel vs. Grogan [1886], 67 Wis., 147) would go further and would include as "agricultural products" the rearing, feeding, and management of live stock. In this construction, these courts may have been right for, as one example, it is merely a matter of comparative profit to the farmer whether he markets his corn in the ear or on the hoof in the shape of swine. The Supreme Court of Pennsylvania (Mayor vs. Davis [1843], 6 W. & S., 269) would go still further and would include as "agricultural products" swine, horses, meat, cattle, sheep, manure, cord wood, hay, poultry, vegetables, fruit, eggs, milk, butter, and lard, that is, domestic animals and products of the farm. Possibly, this court was right. And now the Supreme Court of the Philippine Islands in granting the motion for reconsideration would go even further and would include in the term "agricultural products" frogs, foxes, bees, pigeons, silkworms, silk, honey, and fish. Possibly, this court is right. Try as I may, for I am gratified to have this the decision of the court, I

cannot bring myself to this view. Without giving way to the temptation to use ironical and facetious language because of this result, let me merely make the observation that where the limit will be reached is beyond my poor mind to comprehend. Another court could very well instead of prolonging the examples ad infinitum merely judicially repeal the word "agricultural" and include everything which would fall under the word "products."

My views and those of three other members of the court are fully set out in the first decision. Restatement or reargument will avail nothing. Suffice it to say that the argument on motion for reconsideration and the decision of the majority have failed to convince me that fish—or to accede to the critical suggestion of the majority—that fish produced as were those upon which the tax in question was levied, are an agricultural product. The administrative ruling of the Attorney-General, the decision of this court in *United States vs. Laxa* ([1917], 36 Phil. 670), and the original decision in the instant case should not be overturned by granting this motion.

[1] 36 Phil. Rep., 670.

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