

SIMEON ROQUE, PLAINTIFF AND APPELLANT, VS. JAMES J. RAFFERTY, AS COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

G.R. No. 12091. September 13, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

Paragraph 2 of section 106 of Act No. 2339 provides, among other things, that "whenever the amount of raw materials received into any factory exceeds the amount of manufactured or partially manufactured product on hand and lawfully removed from the factory, plus waste removed or destroyed, and a reasonable allowance for unavoidable loss in manufacture, the Collector of Internal Revenue may assess and collect the tax due on the products which should have been produced from the excess."

The plaintiff for sometime prior to the commencement of the present action was the owner of a tobacco factory in Betis, Guagua, in the Province of Pampanga, P. I., and from time to time purchased large quantities of tobacco for the purpose of manufacturing the same into chewing tobacco and cigarettes. When the raw material was purchased, it was placed in a bodega within the factory, and was removed therefrom as it was necessary for the purpose of manufacturing it into chewing tobacco and cigarettes. From time to time a representative of the Collector of Internal Revenue, for the purpose of collecting the tax due on the manufactured product in accordance with section 69 of said Act No. 2339, took an account of the amount of raw material on hand which had not been manufactured as above indicated. In the month of December, 1915, said representative made an invoice of the raw material purchased by the plaintiff and the amount of material manufactured out of the same; found that there was a difference, after making due allowance for unavoidable loss in manufacture, waste, etc., of 1,797 kilos; and that the tax due on said amount, had the same been manufactured, was the sum of P1,034.64. A demand for the payment of said sum (P1,034.64) was made upon the plaintiff. He paid said amount under protest, and now seeks to recover the same upon the theory that it had been illegally collected.

The lower court found that the plaintiff had purchased 1,797 kilos of tobacco more than he had accounted for; that the amount of tax which should have been paid on said amount was P1,034.64; and that, therefore, the tax had been legally collected and rendered a judgment dismissing the action, without any finding as to costs. If that finding is in accordance with the facts, then the judgment of the lower court should be affirmed.

In making the invoice the defendant allowed a loss of 2 per cent in the drying of the tobacco. The appellant claims that that allowance was not sufficient. The record contains no proof showing that 2 per cent was not a reasonable allowance for that purpose. The appellant further attempts to show that if there was a loss or shortage, he was not responsible for the same, for the reason that a representative of the defendant was in constant charge of the bodega in which the raw material was placed from time to time as it was purchased. He further asserts that the representative of the defendant had the only key for said bodega, and that no person could remove raw material therefrom without the consent of said representative. The fact is that the bodega was under the charge of a

representative of the defendant; that he had, so far as was known, the only key for the lock on a door leading into the bodega. The proof shows, however, that the lock was an ordinary lock; that the key was an ordinary key purchased in one of the tiendas in the place where the bodega was located. The proof further shows, however that it was possible for the raw material to be taken out of said bodega without the consent or knowledge of the representative of the defendant. That fact, taken in relation with Exhibit F which shows that upon the taking of other invoices in said bodega, the plaintiff had been short several times before in the quantity of tobacco which he should have had on hand, makes the conclusion irresistible that the plaintiff is responsible for the present shortage. Some of the shortages which were found existing on other occasions were much larger than the shortage found to exist at the time complained of in the present action.

Section 106 requires the manufacturers to keep books prescribed by the Collector of Internal Revenue. Said books showed that the plaintiff should have had on hand 33,267 kilos of raw material at the time of the invoice had he manufactured none of said material. Said books further show that he manufactured 30,163 kilos. The Collector of Internal Revenue allowed 2 per cent for unavoidable loss, or the amount of 1,307 kilos, making a total of 31,470 kilos. The difference, therefore, between what he should have had and what he actually had was the amount of 1,797 kilos, which was the shortage the defendant found to exist at the time of the last invoice.

After a careful examination of the evidence adduced we are of the opinion that none of the errors assigned were committed.

Therefore, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Arellano, C. J., Carson, Araullo, Street, and Malcolm, JJ., concur.

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