

**THE ASIATIC PETROLEUM COMPANY (PHILIPPINE ISLANDS) LTD.,
PLAINTIFF AND APPELLEE, VS. JAMES J. RAFFERTY, COLLECTOR OF
INTERNAL REVENUE, DEFENDANT AND APPELLANT.**

G.R. No. 13051. August 10, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

The purpose, of this action is to recover of the defendant the sum of P3,033.20 with interest at the rate of six per cent per annum from the 23d day of February, 1916, and costs.

The sum of P3,033.20 was paid by the plaintiff to the defendant under protest. The facts under which said payment was made are not in dispute. They are as follows:

That the plaintiff on the 13th day of January, 1916, brought into the Philippine Islands a shipment of mineral oils from a country, other than the United States; that the plaintiff, with the approval of the defendant, entered said oils in bond, for storage in Internal Revenue Bonded Warehouse No. 59, in the city of Manila, and, with like approval and in like accordance, gave bond for the payment of all the internal revenue taxes and other government charges that might accrue upon said mineral oils; that thereupon the defendant issued a permit for the discharge of said mineral oils from the ship in which they were brought to the Philippine Islands into said bonded warehouse; that thereafter and on or about the 15th day of January, 1916, and during the transportation of said mineral oils, from the steamship to said bonded warehouse, pursuant to the permission thereunto granted, a part thereof, to wit, 2,485 cases of gasoline and 500 cases of kerosine, was wholly destroyed by an accidental fire, before arrival at said bonded warehouse; that thereafter and on or about the 18th day of February, 1916, the defendant required the plaintiff to execute applications for withdrawal from said bonded warehouse of said cases of mineral oils which had been destroyed, as aforesaid, and to pay to the defendant, under a penalty for failure so to do, the sum of P3,033.20; that said plaintiff complied with said demand of the defendant and paid, under protest, the said amount upon the 23d day of February, 1916.

The present action was instituted upon the 27th day of October, 1916, to recover said sum together with interest and costs, and a complaint was filed in the Court of First Instance of the city of Manila for that purpose. To the complaint the defendant demurred alleging that the facts set out in the complaint were insufficient to constitute a cause of action. The demurrer was overruled. The defendant answered and admitted that the facts above set out, as they were alleged in the complaint, were true. The cause was submitted to the lower court on said admitted facts for decision. The lower court reached the conclusion that under said facts the sum of P3,033.20 had been unlawfully exacted from the plaintiff, and ordered that a judgment be entered in favor of the plaintiff and against the defendant for said sum with interest from the 23d day of February, 1916. From that judgment the defendant appealed to this court.

The appeal presents a question of law only. Under the admitted facts, did the defendant have a legal right to compel the plaintiff to pay said sum as internal revenue taxes upon said mineral oils?

The appellant devotes practically his entire brief to an effort to show that the taxes which had been collected, attached and were due and payable as soon as the merchandise in question was imported, and that the importation was complete as soon as the vessel bearing the same came within the limits of the port of Manila for the purpose of discharging. Many cases are cited to support that doctrine. No contention can be made against the soundness of those decisions if the government desires to insist upon that rule. In the present case, and under the facts before us however, we have, by virtue of authorized rules and regulations, promulgated by and through the defendant, an entirely different situation to deal with.

We find, upon an examination of the record, that the defendant, by virtue of certain rules and regulations duly authorized and promulgated, has waived his right to collect internal revenue taxes at the time of the importation, and has provided that merchandise, like the present, may be deposited in bonded warehouses and that the tax need not be paid until immediately before the same is removed therefrom. Said regulations, by virtue of which imported merchandise is deposited in bonded warehouses upon condition that the internal revenue taxes shall be paid only when the same is about to be removed from said warehouses are not new regulations. An examination of the general internal revenue laws will show that such regulations are common and that importers are generally permitted to deposit their merchandise in bonded warehouses and to delay the payment of internal revenue taxes or import duty until same is about to be removed from said warehouse. Governments have found that such regulations are just and tend to promote trade and commerce.

By the particular regulation promulgated by the defendant he has attempted, equitably to place the importer upon an equal footing with the producers of similar merchandise in the country. Producers of merchandise in the Philippine Islands from whom an internal revenue tax is exacted need not pay the same until "immediately before removal from the place of production." (Section 56, Act No. 2339.)

Under said statutory regulations, suppose the merchandise should never be removed from the place of production, would the producer ever be liable to pay the internal revenue tax upon it? Suppose, before its removal, it should be destroyed by fire or otherwise, does the law authorize the Collector of Internal Revenue to collect the taxes in that case at all? The theory of the law, with reference to the internal revenue tax upon such merchandise, seems to be that the tax is not due and payable until it is about to be put into the commerce or trade of the country. The condition of the market at a particular time, or the situation in business generally, might cause the producer to withhold his merchandise and not allow it to be removed from the place of production for months, or even years; could he, under the above quoted provision of the law, be required to pay the internal revenue taxes until he saw fit to place his product upon the market? While the law permits the producer of taxable merchandise to delay the payment of the internal revenue tax until "immediately before removal of the same from the place of production," the duly authorized and promulgated regulation of the defendant himself permits the importer of taxable merchandise to deposit the same in a bonded warehouse and to delay the payment of internal revenue tax until the same is about to be removed therefrom. Suppose, for example, that the importer for reasons peculiar to his own interests decides to delay the removal of said merchandise from such bonded warehouse, may he not do so? Under such circumstances, might not he delay the removal for months, or even years? Under his contract with the government, by virtue of which the internal revenue tax is not payable until the same is about to be removed from such warehouses, may he be called upon and compelled to pay the internal revenue tax until that time? Certainly the payment of taxes cannot be enforced until they are due. If the Collector of Internal Revenue, by virtue of threats of pains and penalties, compels the payment of taxes before maturity, against the will of the owner of the merchandise, the collection is illegal and the sum so collected may be recovered. The payment under such conditions is a payment of something not due and the collection must, of course, be considered illegal. The defendant, himself, recognized that the taxes were not due and payable until the merchandise in question was about to be removed from said bonded warehouse, by requiring the plaintiff, under penalty, "to execute

applications for withdrawal of the same from said bonded warehouse," with full knowledge that at that time the merchandise in question had never been placed in said bonded warehouse, and, by reason of its destruction, knew that it never could be placed there.

We are fully persuaded that under the rules and regulations adopted by the defendant in pursuance of due authority, and the facts in the present case, the taxes in question have been illegally collected, and, therefore, the judgment of the lower court should be and is hereby affirmed, with costs.

Let a judgment be entered in favor of the plaintiff and against the defendant for the sum of P3,033.20 with interest at the rate of six per cent per annum from the 23d day of February, 1916, until paid, and costs. So ordered.

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

Street, J., reserves his vote.

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