

GUTIERREZ HERMANOS, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.

G.R. No. 13975. March 31, 1919

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal by the Government from a judgment of the Court of First Instance of Manila, reversing the decision of the Insular Collector of Customs assessing customs duty in the amount of P46,296.28, because of certain repairs made in a foreign port on the steamship Magallanes, pursuant to the provisions of the Philippine Tariff Act of 1909.

On March 14, 1916, Gutierrez Hermanos, the owners of the steamship MagaUanes, were required by the Philippine Customs authorities to have the tail shaft of the vessel renewed. One year later the owners were ordered to make certain other repairs upon the steamship. There is no question but that all of the repairs could have been effected in the Philippines, with the possible exception of the manufacture of the tail shaft. The vessel was taken to Hongkong and there had all of the repairs, including the installation of the tail shaft, done upon her at that port, at a cost of \$71,694.52 Hongkong currency.

Gutierrez Hermanos were made to pay an import duty of 50 per cent ad valorem upon the repairs made at the port of Hongkong upon the steamship Magallanes. The owners thereupon, through their attorneys, entered a protest before the Insular Collector of Customs, claiming exemption from duty by virtue of the provisions of paragraph 200, section 8, and paragraph 348, section 11, of the Philippine Tariff Act of 1909, and the decision of the Supreme Court in Fernandez Hermanos vs. Collector of Customs ([1915], 30 Phil., 50). The protest was overruled and denied. Following the filing of notice of appeal, the record was forwarded to the Court of First Instance of Manila in which the case came on for hearing. This court entered judgment condemning the Insular Collector of Customs to return to the plaintiffs the amount in question without express finding as to costs. The sole assignment of error of the Attorney General, predicated on this judgment, is that the trial court erred in reversing the decision of the Insular Collector of Customs and ordering a refund of the customs duties in this

The law to be construed with reference to the facts is that found in the following sections and paragraphs of the Philippine Tariff Act, namely:

"Sec. 8. That the rates of duties to be collected on articles, goods, wares, or merchandise imported into the Philippine Islands, or going into said Islands from the United States or any of its possessions except as otherwise provided in this Act, shall be as follows:

* * * * *

" 200. Boats, launches, lighters, and other water craft, set up or knocked down, imported into the Philippine Islands, and cost of repairs made in foreign countries to vessels, or to parts thereof, documented for the Philippine coastwise trade or plying exclusively in Philippine waters and for which repairs adequate facilities are afforded in the Philippine Islands, fifty per centum ad valorem.

"Provided, That upon proof satisfactory to the Collector of Customs that adequate facilities are not afforded in the Philippine Islands for such repairs, the same shall be subject to the provisions of paragraph three hundred and fortyeight of this Act:"

"Sec. 11. That the following articles shall be free of duty upon the importation thereof into the Philippine Islands upon compliance with regulations which shall be prescribed in accord with the provisions of each paragraph:

* * * * *

"348. Repairs to vessels documented in the Philippine Islands or regularly plying in Philippine waters, made in foreign countries, upon proof satisfactory to the collector of customs that adequate facilities for such repairs are not afforded in the Philippine Islands."

The steamship owners, the protestants, contend, and the trial court agrees with this view, that the Supreme Court has clearly and without equivocation answered, in the case of *Fernandez Hermanos vs. Collector of Customs*, supra, all of the questions here involved. The Insular Collector of Customs in his decision, and the Attorney-General in his brief, on the other hand, both attempt to differentiate the instant facts from those in the *Fernandez Hermanos* case.

The case cited involved the assessment of import duties on certain repairs made at Hongkong on the steamer *Islas Filipinas*, those relating to the boilers being impossible to be effected in the Philippine Islands, while the others could have been made in the Islands. The court held that the repairs which a vessel undergoes should not be divided into two parts; so that if all of them cannot be made in the Philippine Islands then all of them can be made in a foreign port and come into the Philippine Islands free of duty. The syllabus to this decision, presumably written by the writer of the opinion, Justice Moreland, condenses the propositions established by the appellate court, as follows:

"The Philippine Tariff Act provides: That the following articles shall be free of duty upon the importation thereof into the Philippine Islands upon compliance with regulations which shall be prescribed in accord with the provisions of each paragraph: * * * 348. Repairs to vessels documented in the Philippine Islands or regularly plying in Philippine waters, made in foreign countries, upon proof satisfactory to the Collector of Customs that adequate facilities for such repairs are not afforded in the Philippine Islands/ Under that statute, Held: (1) Facilities are not adequate unless, when required, all of the repairs necessary for the safe, convenient and economical operation of the ship can be made by the use of such facilities. (2) If all of the repairs necessary for the safe, convenient and economical operation of the ship cannot be made in the Philippine Islands, then, if made in a foreign port, they may come into the Philippine Islands free of duty. (3) The repairs referred to in the statute are to be regarded as a whole; and the repairs made in a foreign port at one time to a single ship cannot be divided into (a) those which could have been made in the Philippine Islands and (6) those which could not, and duty levied on that portion which could have been made here."

We are not disposed at this later date to discuss and resolve anew the questions presented in the *Fernandez Hermanos* case. We are, however, not inclined to extend principles which appear to have been carried to the utmost limit by this opinion so as to include thereunder cases that the law certainly did not contemplate. While the rights of the shipowner must not be neglected, so also must the public interest be protected. A Tariff Law intended to foster home industry must be permitted to serve its purpose.

The two cases are not the same. In the *Fernandez Hermanos* case there was no dispute that it was impossible to effect certain of the repairs in the Philippine Islands. In the case at bar there is likewise no dispute that the Philippine Islands had adequate facilities for all of the repairs with the exception of the manufacture of the tail shaft. The Government insists, and we think it is established, that the job could have been completed in the Philippine Islands if the tail shaft had been obtained elsewhere. If the parts and pieces necessary for the repair of

ships can be obtained in other ports and installed in the Philippine Islands the protective aims of the Tariff Law are fulfilled. If, however, a shipowner can on the slightest excuse have one small part made in a foreign port in order to have all the repairs made there, then the intent of the Legislature is frustrated.

Some doubt has arisen as to whether or not a completed tail shaft or the materials which go to make it could have been exported from Hongkong to the Philippine Islands. There was offered certain testimony, against the objection of the Attorney-General, to show that the ordinances of Hongkong would not permit of the exportation of the material used in the construction of ships. This proof is neither convincing nor authoritative.

Another phase of the Fernandez Hermanos case indicative of a difference between the facts in that case and those before us concerns the weight which the courts should give to the findings of the Insular Collector of Customs. The next to the last paragraph of the Fernandez Hermanos decision reads:

"The question of the control of the discretion of the Collector of Customs under the tariff law in determining whether or not there are adequate facilities in the Philippine Islands for the repair of a given ship is not involved in this case, inasmuch as it is admitted and the Collector has found that there were not adequate facilities in the Philippine Islands for the repair of the ship involved in the case, he declaring that some of the most important repairs could not be made here at all."

The next to the last paragraph of the decision of the Insular Collector of Customs in the case before us reads:

"This Office is therefore of the opinion and so decides, that there were adequate facilities in the Philippine Islands for doing all of the repair job in question to the steamship Magallanes and that all the repairs done upon said vessels in Hongkong can not be admitted duty free merely upon the showing that a single piece or part, used in making such repairs, could not be manufactured in the Philippine Islands, in the absence of a showing to the effect that reasonable diligence had been used to obtain the part required."

In the first case, therefore, the ruling of the Insular Collector of Customs was such as not to involve any reference to the home facilities for repairs, while in the second case he has made an express finding to the effect that upon proof satisfactory to him adequate facilities for the repairs are afforded in the Philippine Islands. In line with the repeated decisions of the courts, the confidence which the law imposes in the judgment of the Collector of Customs should not be unduly interfered with by the courts and the same shall be taken as prima facie controlling unless there is clear proof of abuse of discretion. Abuse of discretion by the Insular Collector of Customs is not established.

We find the decision in the Fernandez Hermanos case not to be applicable to the facts before us. The ruling of the Insular Collector of Customs should be sustained.

The protestants intimate that the duty levied was far in excess of that fixed by law. The Insular Collector of Customs and the Court of First Instance, in view of the turn which the case took, have had no opportunity to resolve such a protest. Reserving, therefore, to the plaintiff the right to challenge the amount of the duty, judgment is reversed and the decision of the Insular Collector of Customs on the protest shall stand, without special finding as to costs. So ordered.

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

CONCURRING

CARSON, J.,

I concur, but at the same time I desire to indicate expressly that I am in accord with the substance of the comment on the rulings in the case of Fernandez Hermanos vs. Collector of Customs (30 Phil. Rep., 50, 59), in the

concurring opinion filed by Justice Street.

CONCURRING

STREET, J.,

I concur but wish to express myself clearly upon the point that the decision in *Fernandez Hermanos vs. Collector of Customs* (30 Phil. Rep., 50), is in my opinion unsustainable in so far as it holds that all repairs made to a Philippine vessel in foreign port are to be treated as a unit and as exempt from customs duties when such repairs are necessary for the safe, convenient, and economical operation of the vessel. (30 Phil. Rep., 50, 59.)¹ Whether or not such repairs should be considered a unit is, I think, a question of fact to be determined with reference to the particular conditions and circumstances involved in each case.

DISSENTING

ARAULLO, J.,

I dissent from the opinion of the majority. My opinion is that the decision of the Court of First Instance revoking that of the Insular Collector of Customs and ordering the return to the plaintiffs of the customs duties in question should be affirmed,

The decision of this court in the case of *Fernandez Hermanos vs. Collector of Customs* (30 Phil., 50), is applicable to the facts of the present case. In my judgment the two cases are identical. The majority of this court did not so hold, because, according to them, in the *Fernandez Hermanos* case there was no dispute as to the point that it was impossible to make in these Islands certain repairs to the vessel *Islas Filipinos*, whereas, in the case at bar, there was no dispute in that these Islands had adequate facilities for making here all the repairs to the vessel *Magallanes* with the exception of the manufacture of the tail shaft. The latter was precisely the principal question and almost the only dispute in the instant case, because it was the object of proof and was passed upon by the Insular Collector of Customs as well as by the Court of First Instance and discussed also in the briefs submitted to this court by the parties. On this fact, witnesses Marine Surveyor Nelson, and Attorney Crossfield testified, before the customs authorities, and also Francisco de la Vara and Tomas Earnshaw, before the lower court. In my opinion it was established that it was impossible to bring from Hongkong or from abroad the tail shaft and that, if it were possible to bring one, it could have been placed in the vessel *Magallanes*. The testimony of the witnesses is convincing, especially that of Earnshaw, because, while the latter is an owner of a shipyard in this port, engaged in the construction of vessels, and hence interested in that the repairs to vessels be made in these Islands and not in a foreign country, declared against his own interests when he said that in the shipyards of these Islands a tail shaft for the vessel *Magallanes* could not have been made but that, if one manufactured elsewhere had been brought in, it could have been placed in his shipyard; and that they do not have in their shops a tail shaft of that class.

Therefore, the Insular Collector of Customs, in deciding the protest of *Gutierrez Hermanos*, should have applied the provisions of paragraph 200 of article 8, and paragraph 348 of article 11, of the Philippine Tariff Act, taking into account the doctrine established by this court in the abovesited case of *Fernandez Hermanos vs. Collector of Customs*, with relation to the said legal provisions. The Insular Collector of Customs, in not doing this, evidently abused his discretionary powers, because in view of the evidence adduced before him and of the clear and decisive precept of the law as well as of the doctrine established in the said decision, he could not have made any finding other than to admit the protest presented by *Gutierrez Hermanos* and to decide in favor of the latter. Neither could he hold, as is expressed in the majority decision of this court, from which I dissent, that there exist a

difference between the case of Fernandez Hermanos vs. The Collector of Customs and the instant case, as regards the use of that discretionary power, inasmuch as, if in the first case the parties had admitted the fact that there were no facilities in these Islands for making the necessary repairs to the vessel *Islas Filipinas*, in the case at bar, this fact was an object of proof and it was shown that there were no such facilities for the repairs or placing of the tail shaft. Therefore, the decision by the Insular Collector of Customs in either of these two cases should have been practically identical in so far as the said fact is concerned. Moreover, in order to be exempt from the corresponding customs duties, according to the cited sections of the Tariff Act, it is necessary in the instant case to prove satisfactorily to the Insular Collector of Customs that adequate facilities for such repairs are not afforded in the Philippine Islands, and, in view of the fact that a satisfactory proof was presented by the plaintiffs or protestants Gutierrez Hermanos with respect to this particular point, the Court of First Instance and also the Supreme Court have powers to determine whether or not the Insular Collector of Customs abused or made proper use of his discretionary duty in giving weight to such an evidence and in deciding the case, without taking into account its result and the provision of the law.

The greatest abuse of discretion that can be had consists in ignoring the precepts of the law and in not duly applying them, in view of the evidence.

Lastly, it is true that the Tariff Act has for its object the development of the industries of the country, which industries should be encouraged and protected, but it is equally true that the interests of maritime enterprises are worthy of the same protection and should not be neglected or prejudiced. In the present case, the repairs to the tail shaft of the vessel *Magallanes* could not be made in these Islands owing to the fact that no material for such repairs could be found nor any such material could be brought here from abroad because of the European War. For the Customs authorities to require that said repairs should necessarily be made here would, therefore, be tantamount to having the said vessel remain here tied down or cast anchor in this port without being able to make any voyage at all so long as the said repairs are not made, and, therefore, the development of the industry of shipbuilding and repairing would not be fostered but, on the contrary, serious and grave prejudices to the maritime enterprise owning the said vessel would be caused.

Therefore, I repeat that in my opinion the judgment of the lower court should be affirmed, thus revoking the decision of the Insular Collector of Customs.

Judgment reversed, and decision of Collector of Customs affirmed.

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