

JOAQUIN PEREZ, PLAINTIFF AND APPELLEE, VS. JAMES J. RAFFERTY, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G. R. No. 14211. September 11, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

The interesting question presented by this case is based upon the following facts:

The plaintiff was a licensed commission merchant. During the first three quarters of 1917 he acted as agent for certain hemp growers, under regular powers of attorney. As such agent he sold in Manila, for the said hemp growers, various quantities of hemp of the total value of P154,042. This whole amount he turned over to the respective consigners. He did not deduct therefrom any commission for his services, because he received from each of his said principals a fixed salary aggregating P3,860 per annum.

The defendant collected from the plaintiff (who paid under protest) the sum of P1,540.42 as a tax of 1 per cent of the total amount of said sales. The recovery of this sum is the object of this action.

The defendant claims that the tax was legal under section 1614 of Act No. 2657. The pertinent provisions of this section are as follows:

"All merchants * * * shall pay a tax of one per centum on the gross value in money of the commodities * * * sold * * * by them * * *."

"'Merchants,' as here used, * * * includes * * * commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected * * *."

Section 1615 of the same Act provides:

"In computing the tax above imposed transactions in the following commodities shall be excluded:

"(b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not."

It is upon this last-quoted provision (sec. 1615 [b]) that both parties base their respective contentions.

The question presented may be stated thus: Is a commission merchant who, as a salaried agent of a producer, sells the agricultural products of the latter, exempt from the payment of the 1 per cent tax imposed by section 1614, under the provisions of paragraph (b) of section 1615 of Act No. 2657?

The lower court decided that the plaintiff was exempt because he did not act as a commission merchant, inasmuch as he turned over the whole proceeds of the sale to the consignors and did not collect any commission but was content with the fixed salary which he received from them.

Under said paragraph (b) of section 1615 agricultural products are exempted from the tax in question only when they are sold by the producer or by any person other than a commission merchant. In the present case it is obvious that the producers appointed the plaintiff as their agent and paid him a fixed monthly or annual salary because he was a commission merchant and, as such, was in a position to sell their products advantageously. The mere fact that he received a fixed salary, instead of a commission, for his services did not, in our opinion, alter his capacity as a commission merchant. We believe the form in which the compensation is paid, whether by a fixed salary or by a certain per cent of the sale made, is immaterial, although the latter form is the more common.

As the Attorney-General contends, if a commission merchant, simply because he receives a fixed monthly compensation instead of a certain per cent of the proceeds of the sale, should not be obliged to pay the tax in question, then it would be very easy to evade the payment of said tax "and mock the law with merely collecting the commission in the form of a fixed salary or remuneration."

The question presented here was presented in a different form in the case of *Sarasola vs. Trinidad* (40 Phil., 252).

Therefore, the decision of the lower court should be and is hereby reversed and it is hereby ordered and decreed that the plaintiff recover nothing; and, without any finding as to costs, it is so ordered.

Mapa, C. J., Araullo, Malcolm, Avanceña, Moir and Villamor, JJ., concur.

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