

**CAMPOS RUEDA Y CIA., S. EN C, PLAINTIFF AND APPELLEE, VS.
WENCESLAO TRINIDAD, COLLECTOR OF INTERNAL REVENUE,
DEFENDANT AND APPELLANT.**

G. R. No. 17220. December 08, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented by this appeal is whether the plaintiff is, or acted as, a commission merchant in the transactions involved in the present case.

That question was presented to the lower court and decided by the Honorable Simplicio del Rosario, judge, in the negative.

There is no question about the facts. They are simple and may be stated as follows:

Some time prior to the commencement of the present action the plaintiff granted a credit of P15,000 to one Manuel Bahamonde for the purchase of copra. The plaintiff's office was in the city of Manila. Manuel Bahamonde was to purchase the copra in the provinces. Manuel Bahamonde purchased the copra and sold the same to various persons in the city of Manila. At the time the said credit was granted to Manuel Bahamonde by the plaintiff, it was agreed that when the copra was sold the plaintiff was to inspect the weighing of the same and collect the price therefor, for the purpose of guaranteeing, or securing the payment of, the said credit of P15,000, for which services the plaintiff received from Manuel Bahamonde a certain amount stipulated in their contract. The only connection which the plaintiff had with the purchase and sale of the copra in question was to see that it was properly weighed and the price therefor collected. The various purchases and sales made by the said Manuel Bahamonde covered the year, or practically all of the year, 1918. The defendant, as Collector of Internal Revenue, insisted that the plaintiff was a commission merchant and collected from him, under protest, the sum of P640.38. The present action is brought to recover that sum with costs.

The defendant collected the tax in question by virtue of the provisions of section 1459 of Act No. 2711, which provides among other things that "all merchants, not herein specifically exempted, shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares and merchandise sold, bartered, exchanged, or consigned abroad by them. * * *" In the present case the plaintiff neither sold, bartered, exchanged, nor consigned abroad the copra in question. The copra was purchased by Manuel Bahamonde and sold by him. The only intervention which the plaintiff had in the transaction was the inspection of the weighing of the same and the collection of the price therefor. Whatever the plaintiff did in the weighing and in the collection of the price was done simply to secure the payment of the credit of P15,000 granted by him to the said Manuel Bahamonde. The plaintiff neither acted as a merchant nor as a commission merchant in any way in the transactions. Therefore the tax was illegally collected. It was paid under protest. Plaintiff, therefore, is entitled to recover the same with costs.

Wherefore, the judgment appealed from is hereby affirmed, with costs. So ordered.

Araullo, C. J., Street, Avancena, Villamor, and Romualdez, JJ., concur.

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