FREDERICK C. FISHER, PLAINTIFF AND APPELLEE, VS. WENCESLAO TRINIDAD, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 21186. February 27, 1924

Ponente: JOHNS, J.

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JOHNS, J.:

October 19, 1920, the plaintiff, a resident of the City of Manila, filed a complaint against the defendant as Collector of Internal Revenue, in which he alleged that he was a shareholder in the Philippine-American Drug1 Company, a domestic corporation; that in the year 1919, he received from the drug company certificates of shares of the par value of P24,800, as his proportionate share of a stock dividend, duly and lawfully declared by the company; that the defendant erroneously and unlawfully, and against the will and protest of the plaintiff, required him to pay an income tax on such stock dividend in the amount of P899.91; that plaintiff paid the tax under protest, and made a written demand upon the defendant for its return, which was refused, and plaintiff prays for judgment for the amount, with interest and costs.

A demurrer was filed to the complaint upon the ground that it "does not state facts sufficient to constitute a cause of action," which was sustained by the trial court, and the plaintiff, refusing to plead further, the complaint was dismissed. From which ruling the plaintiff appealed to this court where the decision of the lower court was reversed by this court,[1] and the case was remanded to the lower court for further proceedings not inconsistent with the opinion.

The defendant filed an answer, denying all of the material allegations of the complaint, and as a further and special defense, alleged that the stock dividend in question "represented and was declared and paid out of the earnings and profits earned by and accrued to the said Philippine-American Drug Company since March 1, 1913, and distributed by said corporation among its stockholders;" that the par value of the stock "did not exceed the amount of the earnings and profits actually earned by the corporation;" and that by reason thereof the defendant levied the tax in question, which was paid under protest.

The case was tried and submitted upon an agreed statement of facts, and the court rendered judgment in favor of the plaintiff for the amount of P899.91, without interest and costs, from which decision the defendant appeals, contending :

"I. The court below erred in holding that the Philippine Legislature had no power to tax a stock dividend as income in an income tax law.

"II. The court below erred in not passing on the constitutional question raised.

"III. The court below erred in rendering judgment for the plaintiff."

JOHNS, J.:

December 14, 1923, after the appeal was perfected, the plaintiff wrote the defendant a letter in which he said: "Please be advised that I hereby withdraw the protest heretofore made by me on the 30th day of March, 1920, in connection with income tax in the amount of P899.91 assessed by you on shares of the Philippine-American Drug Company of the par value of P24,800."

This was later confirmed by another letter addressed to this court stating in substance that the plaintiff had withdrawn and did not rely upon his protest because he had since sold the stock in question. Notwithstanding that fact, the Attorney-General insists upon a decision by this court on the merits, and in particular as to the constitutionality of the law and the legal right of the defendant to levy and collect the tax in question.

The plaintiff contends that the record now presents a moot case, and for such reason there is nothing left for this court to decide. That contention must be sustained. The payment of the money under protest was the basis of plaintiff's action, without which it could not be sustained. His protest is now withdrawn. The legal effect of it is to withdraw his complaint and to place the whole matter in the same position as if no protest had ever been made. It must be conceded that in the absence of a protest the action could not be maintained. In other words, the plaintiff is now in court seeking to recover money which was not paid under protest. It is true that the plaintiff obtained judg- ment against the defendant in the lower court, but in legal effect the withdrawal of the protest was a waiver of all of plaintiff's rights under that judgment. For such reason, there is nothing left for this court to decide.

Without passing upon the merits of the question involved or the constitutionality of the act or the right of the defendant to levy the tax in question, the judgment of the lower court is reversed, and plaintiff's complaint is dismissed, with judgment for costs in both this and the lower court against the plaintiff and in favor of the defendant. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Ostrand, and Romualdez, JJ., concur.

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