

IRINEO FACUNDO, PLAINTIFF AND APPELLANT, VS. JUAN POSADAS, JR., ACTING COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.*G.R. No. 23244. March 10, 1925*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-23244/>**STATEMENT**

After formal pleas, plaintiff alleges that on July 21, 1923, the defendant, as Acting Collector of Internal Revenue, unlawfully assessed and demanded of him P1,519.26, claiming that it was a merchant's sales tax and surcharge, which plaintiff should pay on certain sales alleged to have been made by the plaintiff to W. Kauffeldt for the second quarter of the year 1923. Plaintiff contends that no sales were made by him to Kauffeldt at any time, and that he was merely an employee of Kauffeldt, acting as manager of his provincial agents, with an annual salary of P7,500. That on January 21, 1924, plaintiff paid the amount under protest. That the defendant refused to return the money and that the assessment was illegal, and that the payment should be refunded, for which plaintiff prays a corresponding judgment.

For answer, the defendant admits the receipt of the money and alleges that during the year 1923, the plaintiff acted as a commission merchant with an establishment of his own for the keeping and disposal of goods, in which sales or exchanges were made, and in disposing of the copra to the amount of P81,025.03 in favor of Kauffeldt & Company. That on such amount the defendant levied, assessed and collected the P1,519.26 in question, which was paid under protest. Wherefore, defendant prays that the complaint be dismissed, with costs.

The case was tried upon the following agreed statement of facts made on July 19, 1924:

"Now come the parties to the above entitled case, and hereby submit same to this Honorable Court for decision on the following agreed statement of facts:

"I. That the plaintiff is of legal age and a resident of the City of Manila; and the defendant is the duly appointed, qualified and acting Collector of Internal Revenue of the Philippine Islands;

"II. That the plaintiff at all of the times referred to in the complaint herein and for sometime previous thereto was, and now is, a duly licensed commission merchant and commercial broker;

"III. That on June 7, 1923, the plaintiff was appointed by W. Kauffeldt manager of his copra purchasing agencies, the letter of appointment to that effect containing the following statements: 'Your duties will be to supervise and manage all the provincial agencies according to my instructions. You are to take full and complete charge of all the accounts which my agencies may render in delivering their copra here in Manila.'

"IV. That all the employees of the above mentioned provincial agencies have been appointed by the plaintiff with the consent and by authority from W. Kauffeldt. Said employees received their salaries from W. Kauffeldt through the plaintiff, and are responsible to said plaintiff as representative of said W. Kauffeldt. Said employees received instructions from the plaintiff as representative of said W. Kauffeldt who defrayed all the expenses of storage and delivery of the copra purchased by the agencies. The provincial agencies secured advances from W. Kauffeldt thru the plaintiff for those purchases and the plaintiff supervised the weighing and

checking of all copra delivered directly to the warehouse of said W. Kauffeldt. The latter credited the plaintiff with the value of copra received in Kauffeldt's warehouse and debited plaintiff with the money given to him (by Kauffeldt) for distribution among the provincial agencies. The copra buyers dealt with the plaintiff as representative of Kauffeldt, and they have been instructed by the plaintiff to buy copra for and in the name of W. Kauffeldt and to deliver same direct to the latter in Manila," except as to paragraph V, which reads in part as follows:

"During the second quarter of the year 1923, W. Kauffeldt, thru the plaintiff by means of the copra buyers specified below, bought copra, the amount and values of which are as follows:"

A statement is then made of nine different names as buyers and of their respective towns and provinces, and the number of sacks of copra bought and of their value, amounting to P61,025.03.

"VI. That the defendant, Collector of Internal Revenue, on July 21, 1923, assessed, levied, and demanded from the plaintiff the sum of one thousand five hundred nineteen pesos and twenty-six centavos (P1,519.26) as internal revenue taxes—together with 25 per cent surcharge for delay in payment—on the transactions specified in paragraph V hereof, which sum the plaintiff on January 21, 1924, paid to the defendant under protest.

"VII. The plaintiff has demanded from the defendant the refund of the amount mentioned in the preceding paragraph, but the defendant refused and still refuses to make the refund.

"VIII. That, with the approval of the court, it is hereby agreed that the plaintiff shall have fifteen days from the filing of this agreed statement of facts within which to file his memorandum, and the defendant likewise fifteen days after receiving copy thereof within which to file his reply."

And the following supplemental statement made July 23, 1924:

"I. That for discharging the duties set forth in paragraphs III and IV of the principal agreed statement of facts, the plaintiff was paid by W. Kauffeldt an annual salary of P7,500, payable annually, but with the privilege of withdrawing a portion thereof at any time of the year.

"II. That W. Kauffeldt has sold to other persons the copra mentioned in paragraph V of the principal agreed statement of facts and duly paid the internal revenue percentage tax on such sale.

"It is therefore prayed that the additional facts hereinabove stated be taken into consideration by this Honorable Court in deciding the above entitled case."

August 25, 1924, judgment was rendered for the plaintiff. August 27, 1924, the defendant filed a motion for a reconsideration. On September 2, 1924, the court rendered judgment for the defendant. September 22, 1924, plaintiff's motion for a new trial was overruled, resulting in this appeal, in which plaintiff makes the following assignment of errors:

"I. The lower court erred in not finding that the plaintiff was a mere employee of W. Kauffeldt and was not acting as a commission merchant or commercial broker in effecting the transactions between W. Kauffeldt and his provincial agencies.

"II. The lower court erred in finding that the plaintiff sold to W. Kauffeldt the copra for which sale the tax in question was paid under protest.

"III. The lower court erred in finding that the plaintiff had an establishment for the keeping and disposal of the copra of which sales were effected.

"IV. The lower court erred in not finding that W. Kauffeldt was the sole possessor and user of the establishment where the copra, bought by the provincial agents under the supervision of the plaintiff, was kept and disposed of."

JOHNS, J.:

It will be noted that it is stipulated that on June 7, 1923, the plaintiff was appointed by Kauffeldt as manager of his copra purchasing agents as follows:

"Your duties will be to supervise and manage all the provincial agencies according to my instructions. You are to take full and complete charge of all the accounts which my agencies may render in delivering their copra here in Manila."

That all of the employees of such provincial agencies were appointed by the plaintiff with the consent and authority of Kauffeldt, and that they received their salaries from Kauffeldt and are responsible to plaintiff as the representative of Kauffeldt. That such employees received their instructions from the plaintiff as representative of Kauffeldt "who defrayed all the expenses of storage and delivery of the copra purchased by the agencies." That they secured advances from Kauffeldt, through the plaintiff, for any purchases which they made, and that the plaintiff "supervised the weighing and checking of all copra delivered directly to the warehouse of said W. Kauffeldt." That Kauffeldt credited the plaintiff with the value of the copra received in Kauffeldt's warehouse, and charged plaintiff with the money given to him "for distribution among the provincial agencies." The copra buyers dealt with the plaintiff as representative of Kauffeldt, and they were instructed by the plaintiff to buy copra for and in the name of W. Kauffeldt and "to deliver same direct to the latter in Manila."

It is also stipulated that the plaintiff was paid by Kauffeldt an annual salary of P7,500, and that Kauffeldt has sold the copra so purchased, and that he has paid "the internal revenue percentage tax on such sale."

Under such stipulated facts, it clearly appears that, as to all of the transactions in question, the plaintiff was acting as the agent and representative of Kauffeldt. In legal effect that Kauffeldt had provincial agencies to purchase copra throughout the islands, and that when the copra was purchased by such agencies, it was shipped direct to and placed in, Kauffeldt's warehouse. That in truth and in fact, the plaintiff never purchased any copra. That his duties were confined and limited to the supervision and control of Kauffeldt's agents, and to the supervision of the weighing and checking of the copra purchased by such provincial agencies, all of which was "delivered directly to the warehouse of said W. Kauffeldt." All of the copra was purchased "for and in the name of W. Kauffeldt," and delivered directly to him in Manila. In other words, all the copra in question was bought in the name of Kauffeldt and paid for with his money, and was shipped direct to him in Manila, and was stored in his warehouse and in his own name. All that plaintiff did was to supervise the actions and conduct of the provincial agencies of Kauffeldt and to supervise the weighing and checking of the copra and to pay for it with Kauffeldt's money, for which he received an annual salary of P7,500 to be paid for by Kauffeldt.

In the final analysis, in all of such transactions, the plaintiff was acting for, and representing, Kauffeldt as his agent, and plaintiff never bought or sold any copra to Kauffeldt or any one else. All parties knew and understood that in all of such transactions, the plaintiff was acting for, and representing Kauffeldt, the purchaser of the copra from the provincial agencies and the real party in interest, and it is stipulated that the copra was "delivered directly to the warehouse of said W. Kauffeldt."

The lower court changed its decision on the strength of the opinion of this court in *Lee Chan Lam vs. Trinidad*, G. R. No. 21590.[1] There is a marked legal distinction between the facts of the two cases. Here, it is stipulated that the copra purchased by the provincial agents for Kauffeldt was delivered directly to his warehouse, and there is no evidence that the plaintiff had an establishment of his own "for the keeping and disposal of goods of which sales or exchanges are effected," or that plaintiff kept or disposed of any goods or that he effected any exchanges.

For aught that appears in the record, it was an ordinary business transaction in which the plaintiff acted for, and represented, Kauffeldt and where all of the copra purchased, through the provincial agencies, was delivered

directly to Kauffeldt's warehouse and there is no claim that there was any sham or pretense in their dealings with each other. Neither is there any evidence that in any of such dealings, the plaintiff was acting as a commission merchant.

The judgment of the lower court is reversed, and one will be entered here for the plaintiff as prayed for in his complaint, without costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

[1] Page 979, post.

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