

**ATKINS, KROLL & CO., INC., PLAINTIFF AND APPELLANT, VS.
JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE,
DEFENDANT AND APPELLEE.**

G.R. No. 24484. November 28, 1925

Ponente: STATEMENT Plaintiff is a domestic corporation, with its principal office and place of business in Zamboanga. The defendant is the Collector of Internal Revenue. Plaintiff alleges that prior to July, 1924, it engaged Macleod & Co., Inc., a commission merchant, to purchase copra for the plaintiff at Davao, with funds to be furnished by the plaintiff, and to export it from the Philippine Islands, consigned to the representatives or correspondents of the plaintiff in the United States. That under the agreement, during the months of July, August and September, 1924, and with the money furnished by the plaintiff, Macleod & Co. purchased copra for and on account of the plaintiff of the value of P67,805.80, and exported it from the Philippine Islands, consigned to the representatives of the plaintiff in the United States. That Macleod & Co. declared for payment and paid to the defendant the lawful tax corresponding to the consignment abroad of said copra at the rate of 1½ per centum of the total value. That, notwithstanding the payment of this tax by Macleod & Co., the defendant unfairly and unlawfully demanded from the plaintiff the sum of P1,017.09, equivalent to 1½ per centum of the value of the copra, under the pretense that the money was due and payable on account of the consignment abroad of copra, which payment had been declared and made by Macleod & Co. That to avoid fines and penalties, the plaintiff paid the alleged tax under protest on October 20, 1924, and made a demand upon the defendant for its return. That its protest and demand were overruled, and the defendant refused to refund the money or any part thereof, and plaintiff asks for a corresponding judgment for the money against the defendant, with interest and costs. For answer the defendant made a general and specific denial, and prays that plaintiff's complaint be dismissed, with costs. At the trial of the case, the parties made the following agreed statement of facts: "The undersigned counsel for the plaintiff and the defendant hereby agree and stipulate that the following are facts pertinent to the issues involved in the case, and that they may be considered by the court as proven, without the production of evidence for that purpose. It being understood that this shall not be construed so as to preclude either party from producing legally admissible evidence of other facts that may be deemed by the party and the court to be pertinent to the case. "1. That the copra, upon the gross value of which the tax the plaintiff here seeks to recover was levied, was shipped by Macleod & Co. from Davao, P. I., on the steamship West Momentum on July 28, 1924, and the steamship Chattanooga City, on August 27, 1924, on bills of lading indorsed in blank by Macleod & Co., Inc., and by them delivered to the plaintiff for transmission to the plaintiff's representatives at the port of destination of the shipment. "2. That Macleod & Co., Inc., of Davao, P. I., declared and paid internal-revenue taxes on said copra at the rate of one and one-half per cent (1½%) of the gross value thereof, neither the declaration for payment nor the receipt for payment specifying whether the tax was on consignment or sale. "3. That the plaintiff, on demand of the defendant, and under protest, paid to the authorized representative of the defendant, on the same copra, the amount of P1,017.89 at the rate of one and one-half per cent (1½%) of the gross value thereof; and that under date of November 19, 1924, the defendant overruled and denied plaintiff's protest and refused to refund the amount collected from the plaintiff on this account," in addition to which, the plaintiff, offered some oral testimony. No evidence was offered by the defendant. The lower court rendered judgment for the defendant, from which the plaintiff appeals, and assigns the following errors: "1. In holding that Macleod & Co. was liable for the payment of the merchant's tax on account of commerce and industry. "2. In holding that the plaintiff was liable for the payment of the merchant's tax on account of the sale abroad of the copra in question. "3. In absolving the defendant from the demands of the complaint. "4. In failing to render judgment against the defendant and in favor of the plaintiff, as demanded in the complaint." JOHNS, J.: The testimony is conclusive that Macleod & Co. purchased the copra in question for and

on account of the plaintiff and as its agent. That the plaintiff fixed the price for the copra, and furnished the money to buy it, and that when and as the copra was bought by Macleod & Co. it was held and stored for and in the name of the plaintiff, which paid all insurance and storage charges and incidental expenses. It further appears that, although Macleod & Co. paid the 1½ per centum tax on the gross purchase price of the copra, the amount of it was charged up to and was paid by the plaintiff as a part of the expense incidental to the purchase. It further appears that under the agreement between them, Macleod & Co. was to have and receive "twenty centavos for each picul of copra purchased according to the weight thereof at the time of loading." In other words, the testimony is conclusive that under the agreement between the parties, the plaintiff was to furnish the money with which to purchase the copra, and was to pay all incidental expenses, and that the copra was to be purchased for and on account of the plaintiff, and as its copra, and that Macleod & Co. was to receive twenty centavos per picul net for its services. The testimony is also conclusive that Macleod & Co. never sold any copra to the plaintiff, and that all it did was to purchase for the plaintiff and store and ship it for and on account of the plaintiff as its agent. It further appears that the copra in question was shipped direct by Macleod & Co. from Davao on the steamship West Momegmentum and Chattanooga City on bills of lading which were delivered to and endorsed in blank by Macleod & Co., and by it delivered to the plaintiff "for transmission to the plaintiff's representatives at the port of destination of the shipment." That is to say, that after the purchase by Macleod & Co., the copra in question was loaded aboard a ship at Davao and taken to a foreign country, and that after its purchase by Macleod & Co., there never was any actual sale of the copra by Macleod & Co. or any one else, and that in the final analysis, nothing more was done with the copra after its purchase by Macleod & Co. than to ship and consign it abroad. Section 1 of Act No. 3065 provides: "All merchants, manufacturers, and commission merchants not otherwise specifically exempted according to the provisions of the present Internal Revenue Law shall in addition to similar taxes heretofore imposed pay an additional tax of one-half 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, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold." Under this provision, the tax is confined and limited to the value "of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad." In the final analysis, after its purchase by Macleod & Co., the copra was not sold, bartered or exchanged in the Philippine Islands by either plaintiff or Macleod & Co., and the only thing which was ever done with the copra after its purchase was to consign it abroad, and it is admitted that Macleod & Co. paid the defendant the 1½ per centum tax on the copra which it purchased, and the proof is conclusive that the amount of such tax was charged to and paid by the plaintiff as an expense incidental to its purchase. If the copra in question had been purchased by a member of its firm or one of its personal agents, and consigned abroad, it would not be contended that the government would then be entitled to collect a tax from the personal agent of the plaintiff or a member of the firm, and at the same time collect a tax for the same purpose from the plaintiff itself. On legal principle, what is the difference? Upon the facts disclosed in the record, the copra in question was purchased by Macleod & Co. for and on account of the plaintiff and as its agent, and from the date of its purchase, the copra legally became the property of the plaintiff, and no transfer of any kind was required to vest the title to the copra in the plaintiff. Hence, after its purchase, neither the plaintiff nor Macleod & Co. ever did anything more than to consign the copra abroad, and for that transaction, Macleod & Co. paid the tax to the government, and the only legal principle upon which the plaintiff could be required to pay the tax to the government would be upon the theory that there were two consignments abroad, one by Macleod & Co., and the other by the plaintiff. That contention cannot be sustained. In the very nature of things, there cannot be two different consignments abroad of the same thing by two different persons. There could be one consignment abroad only of the copra. The appellee relies upon the case of *Gil Hermanos vs. Hord* (10 Phil., 218), and *Munoz & Co. vs. Hord* (12 Phil., 624). The syllabus in *Gil Hermanos vs. Hord*, supra, is as follows: "INTERNAL REVENUE LAW; BUSINESS AND OCCUPATION TAXES.—The fact that the plaintiff, a mercantile partnership, consigned a certain quantity of merchandise to another firm for sale upon commission, and paid the percentage tax imposed upon its business by the Internal Revenue Law, does not relieve the commission merchant from the payment

of an occupation tax, nor does the payment by the latter constitute a double taxation against the plaintiff." The opinion says: "The only question is whether the complaint states a cause of action or not. It alleges in substance that the plaintiff, a mercantile partnership, paid internal-revenue taxes between the 13th of April, 1905, and the 2d of January, 1906, amounting to P2,175.52, and that those taxes were paid into the municipal treasury of Virac and amounted to one-third of 1 per cent of the value of certain hemp sold by the plaintiff. The hemp was sent by the plaintiff to Aldecoa & Co., in Manila, who afterwards sold it as commission merchants on behalf of the company; and upon making such sale they also paid one-third of 1 per cent upon its value. * * * " And it was held that the plaintiff was liable for the tax. It will be noted that there the hemp never left the Philippine Islands, and it was sold by the plaintiff "as commission merchants on behalf of the company," That is not this case. The opinion also says: " * * * There is no allegation in the complaint that the money paid by Aldecoa & Co. was the money of the plaintiff * * * ." And the opinion further says: " * * * It is true that the tax to be paid by commission merchants for carrying on their business and the tax to be paid by merchants for carrying on their business is determined in the same way, but that does not constitute in any sense double taxation." The syllabus in Muñoz & Co. vs. Hord, supra, says: "INTERNAL REVENUE LAW; STATUTORY CONSTRUCTION; TAX ON MERCHANTS AND MANUFACTURERS.—Sections 139, 140, and 142 of the Internal Revenue Law examined and construed." And the opinion says: "The issue thus raised is limited to a question as to the legislative intent in enacting section 139 of Act No. 1189 above cited, and the meaning which should be given to the words 'goods sold for domestic consumption' as used therein." Both of those decisions were founded upon the old statute which made no reference to consignments abroad. Plaintiff's cause of action is under Act No. 3065, which was enacted in 1923. The record shows that the tax was paid by Macleod & Co. under the construction which plaintiff placed upon the decision of this court in Murphy vs. Trinidad (44 Phil., 649), following which, the plaintiff refunded the tax to Macleod & Co. as its agent and as an incidental expense to the purchase of the copra. The record is conclusive that there was only one consignment abroad, and that the tax which Macleod & Co. paid was paid for and on account of that consignment, and that it was paid by Macleod & Co. for and on behalf of the plaintiff and as its agent, and that the plaintiff paid that tax to Macleod & Co. as an incidental expense to the purchase of the copra. We are clearly of the opinion that the government has no legal right to levy and collect the same tax from two different persons on one consignment abroad on one shipment of the same copra. In legal effect, any other construction, upon the facts in this record, would require a local exporter to pay a double sales tax, and would permit a foreign exporter to purchase copra in the Philippine Islands by the payment of one sales tax only. That was never the purpose or intent of the law. The judgment of the lower court is reversed, and one will be entered here in favor of the plaintiff as prayed for in its complaint, exclusive of interest and costs. So ordered. Malcolm, Ostrand, and Romualdez, JJ., concur. Avanceña, C. J., and Villamor, J., concur in the result. Johnson and Villa-Real, JJ., took no part in the consideration of this case. CONCURRING STREET, J.

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STATEMENT

Plaintiff is a domestic corporation, with its principal office and place of business in Zamboanga. The defendant is the Collector of Internal Revenue.

Plaintiff alleges that prior to July, 1924, it engaged Macleod & Co., Inc., a commission merchant, to purchase copra for the plaintiff at Davao, with funds to be furnished by the plaintiff, and to export it from the Philippine Islands, consigned to the representatives or correspondents of the plaintiff in the United States. That under the agreement, during the months of July, August and September, 1924, and with the money furnished by the plaintiff, Macleod & Co. purchased copra for and on account of the plaintiff of the value of P67,805.80, and exported it from the Philippine Islands, consigned to the representatives of the plaintiff in the United States. That Macleod & Co. declared for payment and paid to the defendant the lawful tax corresponding to the consignment

abroad of said copra at the rate of 1½ per centum of the total value. That, notwithstanding the payment of this tax by Macleod & Co., the defendant unfairly and unlawfully demanded from the plaintiff the sum of P1,017.09, equivalent to 1½ per centum of the value of the copra, under the pretense that the money was due and payable on account of the consignment abroad of copra, which payment had been declared and made by Macleod & Co. That to avoid fines and penalties, the plaintiff paid the alleged tax under protest on October 20, 1924, and made a demand upon the defendant for its return. That its protest and demand were overruled, and the defendant refused to refund the money or any part thereof, and plaintiff asks for a corresponding judgment for the money against the defendant, with interest and costs.

For answer the defendant made a general and specific denial, and prays that plaintiff's complaint be dismissed, with costs.

At the trial of the case, the parties made the following agreed statement of facts:

"The undersigned counsel for the plaintiff and the defendant hereby agree and stipulate that the following are facts pertinent to the issues involved in the case, and that they may be considered by the court as proven, without the production of evidence for that purpose. It being understood that this shall not be construed so as to preclude either party from producing legally admissible evidence of other facts that may be deemed by the party and the court to be pertinent to the case.

"1. That the copra, upon the gross value of which the tax the plaintiff here seeks to recover was levied, was shipped by Macleod & Co. from Davao, P. I., on the steamship West Momentum on July 28, 1924, and the steamship Chattanooga City, on August 27, 1924, on bills of lading indorsed in blank by Macleod & Co., Inc., and by them delivered to the plaintiff for transmission to the plaintiff's representatives at the port of destination of the shipment.

"2. That Macleod & Co., Inc., of Davao, P. I., declared and paid internal-revenue taxes on said copra at the rate of one and one-half per cent (1½%) of the gross value thereof, neither the declaration for payment nor the receipt for payment specifying whether the tax was on consignment or sale.

"3. That the plaintiff, on demand of the defendant, and under protest, paid to the authorized representative of the defendant, on the same copra, the amount of P1,017.89 at the rate of one and one-half per cent (1½%) of the gross value thereof; and that under date of November 19, 1924, the defendant overruled and denied plaintiff's protest and refused to refund the amount collected from the plaintiff on this account," in addition to which, the plaintiff, offered some oral testimony. No evidence was offered by the defendant.

The lower court rendered judgment for the defendant, from which the plaintiff appeals, and assigns the following errors:

"1. In holding that Macleod & Co. was liable for the payment of the merchant's tax on account of commerce and industry.

"2. In holding that the plaintiff was liable for the payment of the merchant's tax on account of the sale abroad of the copra in question.

"3. In absolving the defendant from the demands of the complaint.

"4. In failing to render judgment against the defendant and in favor of the plaintiff, as demanded in the complaint."

JOHNS, J.:

The testimony is conclusive that Macleod & Co. purchased the copra in question for and on account of the plaintiff and as its agent. That the plaintiff fixed the price for the copra, and furnished the money to buy it, and that when and as the copra was bought by Macleod & Co. it was held and stored for and in the name of the plaintiff, which paid all insurance and storage charges and incidental expenses.

It further appears that, although Macleod & Co. paid the 1½ per centum tax on the gross purchase price of the copra, the amount of it was charged up to and was paid by the plaintiff as a part of the expense incidental to the purchase. It further appears that under the agreement between them, Macleod & Co. was to have and receive "twenty centavos for each picul of copra purchased according to the weight thereof at the time of loading." In other words, the testimony is conclusive that under the agreement between the parties, the plaintiff was to furnish the money with which to purchase the copra, and was to pay all incidental expenses, and that the copra was to be purchased for and on account of the plaintiff, and as its copra, and that. Macleod & Co. was to receive twenty centavos per picul net for its services. The testimony is also conclusive that Macleod & Co. never sold any copra to the plaintiff, and that all it did was to purchase for the plaintiff and store and ship it for and on account of the plaintiff as its agent. It further appears that the copra in question was shipped direct by Macleod & Co. from Davao on the steamship West Momemtum and Chattanooga City on bills of lading which were delivered to and endorsed in blank by Macleod & Co., and by it delivered to the plaintiff "for transmission to the plaintiff's representatives at the port of destination of the shipment." That is to say, that after the purchase by Macleod & Co., the copra in question was loaded aboard a ship at Davao and taken to a foreign country, and that after its purchase by Macleod & Co., there never was any actual sale of the copra by Macleod & Co. or any one else, and that in the final analysis, nothing more was done with the copra after its purchase by Macleod & Co. than to ship and consign it abroad.

Section 1 of Act No. 3065 provides:

"All merchants, manufacturers, and commission merchants not otherwise specifically exempted according to the provisions of the present Internal Revenue Law shall in addition to similar taxes heretofore imposed pay an additional tax of one-half 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, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold."

Under this provision, the tax is confined and limited to the value "of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad." In the final analysis, after its purchase by Macleod & Co., the copra was not sold, bartered or exchanged in the Philippine Islands by either plaintiff or Macleod & Co., and the only thing which was ever done with the copra after its purchase was to consign it abroad, and it is admitted that Macleod & Co. paid the defendant the 1½ per centum tax on the copra which it purchased, and the proof is conclusive that the amount of such tax was charged to and paid by the plaintiff as an expense incidental to its purchase. If the copra in question had been purchased by a member of its firm or one of its personal agents, and consigned abroad, it would not be contended that the government would then be entitled to collect a tax from the personal agent of the plaintiff or a member of the firm, and at the same time collect a tax for the same purpose from the plaintiff itself. On legal principle, what is the difference?

Upon the facts disclosed in the record, the copra in question was purchased by Macleod & Co. for and on account of the plaintiff and as its agent, and from the date of its purchase, the copra legally became the property of the

plaintiff, and no transfer of any kind was required to vest the title to the copra in the plaintiff. Hence, after its purchase, neither the plaintiff nor Macleod & Co. ever did anything more than to consign the copra abroad, and for that transaction, Macleod & Co. paid the tax to the government, and the only legal principle upon which the plaintiff could be required to pay the tax to the government would be upon the theory that there were two consignments abroad, one by Macleod & Co., and the other by the plaintiff. That contention cannot be sustained. In the very nature of things, there cannot be two different consignments abroad of the same thing by two different persons. There could be one consignment abroad only of the copra.

The appellee relies upon the case of *Gil Hermanos vs. Hord* (10 Phil., 218), and *Munoz & Co. vs. Hord* (12 Phil., 624).

The syllabus in *Gil Hermanos vs. Hord*, supra, is as follows:

"INTERNAL REVENUE LAW; BUSINESS AND OCCUPATION TAXES.—The fact that the plaintiff, a mercantile partnership, consigned a certain quantity of merchandise to another firm for sale upon commission, and paid the percentage tax imposed upon its business by the Internal Revenue Law, does not relieve the commission merchant from the payment of an occupation tax, nor does the payment by the latter constitute a double taxation against the plaintiff." The opinion says:

"The only question is whether the complaint states a cause of action or not. It alleges in substance that the plaintiff, a mercantile partnership, paid internal-revenue taxes between the 13th of April, 1905, and the 2d of January, 1906, amounting to P2,175.52, and that those taxes were paid into the municipal treasury of Virac and amounted to one-third of 1 per cent of the value of certain hemp sold by the plaintiff. The hemp was sent by the plaintiff to Aldecoa & Co., in Manila, who afterwards sold it as commission merchants on behalf of the company; and upon making such sale they also paid one-third of 1 per cent upon its value. * * * " And it was held that the plaintiff was liable for the tax.

It will be noted that there the hemp never left the Philippine Islands, and it was sold by the plaintiff "as commission merchants on behalf of the company," That is not this case. The opinion also says:

" * * * There is no allegation in the complaint that the money paid by Aldecoa & Co. was the money of the plaintiff * * * ." And the opinion further says:

" * * * It is true that the tax to be paid by commission merchants for carrying on their business and the tax to be paid by merchants for carrying on their business is determined in the same way, but that does not constitute in any sense double taxation."

The syllabus in *Muñoz & Co. vs. Hord*, supra, says:

"INTERNAL REVENUE LAW; STATUTORY CONSTRUCTION; TAX ON MERCHANTS AND MANUFACTURERS.—Sections 139, 140, and 142 of the Internal Revenue Law examined and construed." And the opinion says:

"The issue thus raised is limited to a question as to the legislative intent in enacting section 139 of Act No. 1189 above cited, and the meaning which should be given to the words 'goods sold for domestic consumption' as used therein."

Both of those decisions were founded upon the old statute which made no reference to consignments abroad.

Plaintiff's cause of action is under Act No. 3065, which was enacted in 1923.

The record shows that the tax was paid by Macleod & Co. under the construction which plaintiff placed upon the decision of this court in *Murphy vs. Trinidad* (44 Phil., 649), following which, the plaintiff refunded the tax to Macleod & Co. as its agent and as an incidental expense to the purchase of the copra. The record is conclusive

that there was only one consignment abroad, and that the tax which Macleod & Co. paid was paid for and on account of that consignment, and that it was paid by Macleod & Co. for and on behalf of the plaintiff and as its agent, and that the plaintiff paid that tax to Macleod & Co. as an incidental expense to the purchase of the copra.

We are clearly of the opinion that the government has no legal right to levy and collect the same tax from two different persons on one consignment abroad on one shipment of the same copra.

In legal effect, any other construction, upon the facts in this record, would require a local exporter to pay a double sales tax, and would permit a foreign exporter to purchase copra in the Philippine Islands by the payment of one sales tax only. That was never the purpose or intent of the law.

The judgment of the lower court is reversed, and one will be entered here in favor of the plaintiff as prayed for in its complaint, exclusive of interest and costs. So ordered.

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

Avanceña, C. J., and Villamor, J., concur in the result.

Johnson and Villa-Real, JJ., took no part in the consideration of this case.

CONCURRING

STREET, J.:

I concur, but wish to add a few words explanatory of my personal point of view. I think that the opinion in the case of *Gil Hermanos vs. Hord* (10 Phil., 218), announces a rule which, if sound, should govern the present case, as the lower court believed. It is my opinion, however, that the case referred to was wrongly decided; and I think that in this case the court should have declared it to be overruled. The fundamental inconsistency between that case and this can be readily seen in the circumstance that while in the earlier case the court declared that when a sale of merchandise is effected by a commission merchant acting in behalf of a principal who is a merchant, both the commission merchant and his principal are separately liable for the tax, it is now declared that where a consignment of merchandise abroad is effected by a commission merchant acting in behalf of his principal who is a merchant, the tax can be collected only once. "We are clearly of the opinion," the court here says, "that the government has no legal right to levy and collect the same tax from two different persons on one consignment abroad on one shipment of the same copra." But when advertence is had to the language of section 1459 of the Administrative Code, it must be seen at once that there can be no possible difference in principle between a "sale" and a "consignment," so far as affects liability for the tax. That the court is right in its present pronouncement relating to consignments, and that it was wrong in the pronouncement relating to sales in *Gil Hermanos vs. Hord*, *supra*, is capable of easy demonstration.

In this connection it should first be noted that commission merchants are liable for the merchant's tax only by reason of the forced definition of commission merchant contained in the last paragraph of section 1459 of the Administrative Code. In other words, commission merchants are not taxed under a separate head of the law but are liable for the tax only by reason of their being merchants. For the purposes of the present exposition therefore the first part of section 1459, as amended, should be read as if expressed in the following language:

All merchants (including commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected) shall pay a tax of one and one-half per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned

abroad by them. The purpose of the old law (Act No. 1189, sees. 139 and 140) was to tax sales or exchanges of merchandise for domestic consumption in the Philippine Islands. The purpose of the present law is to tax sales, exchanges and consignments abroad; and the intention was that the tax should be paid by the person effecting the sale, exchange or consignment, and not that it should be paid twice on any sale or consignment made by a commission merchant acting in behalf of a principal who is a merchant. In *Gil Hermanos vs. Hord*, supra, a firm of commission merchants sold hemp in Manila for a merchant principal in one of the provinces. The court agreed that there was only one sale of hemp, and it held that the tax must be paid both by the merchant and the commission merchant. Underlying this ruling was the erroneous supposition that, if not held liable for the tax under the conditions presented in that case, the commission merchant would not be liable for any tax; and the court observed that it could not be presumed that there was an intention on the part of the Legislature to relieve commission merchants of the tax while other business men, like brokers and merchants, are liable to taxation. The fallacy involved in the reasoning is in the assumption that commission merchants would be free from taxation if not held liable as in that case; for the true intention of the Legislature was evidently that the merchant's tax should be paid by the merchant or commission merchant effecting the sale, exchange or consignment, though not by both in the particular case where a commission merchant acts for a principal who is a merchant. If the commission merchant is required to pay the tax when he effects the sale, exchange or consignment and the merchant is required to pay the tax when the sale, exchange or consignment is effected by himself either escapes taxation and the Government gets all to which it is justly entitled, namely, a tax once paid upon every transaction. This in my opinion is the true interpretation of section 1459 on this point.

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