

**THE CHINA BANKING CORPORATION, PLAINTIFF AND APPELLEE,
VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND
APPELLANT.***G. R. No. 25369. September 29, 1926*

Ponente: JOHNSON, J.

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This appeal presents a question of first impression in this jurisdiction. The question is: Are the average daily amounts of balances of deposits of money resulting from the clearances between the banks in the Philippine Islands, subject to the payment by check or draft, or represented by certificates of deposit, or otherwise, subject to the tax of one-eighteenth of 1 per centum each month provided for in paragraph (b), section 1499 of Act No. 2711 (Administrative Code) ? The same question may be put in another way: Are such balances subject to payment by check or draft? The facts in the present case are not disputed and may be stated as follows:

During the first semester of the year 1923 the amount of the averages of the daily balances due from the China Banking Corporation to other local banks, as the result of transactions between said banks, was P2,139,242.34. Upon that amount the Collector of Internal Revenue demanded the payment of the tax provided for in paragraph (b) of said section 1499, which amounted to P1,187.47, which the China Banking Corporation paid under protest.

The present action was brought for the purpose of re- covering said tax. The question was submitted to the Honorable Pedro Concepcion, one of the judges of the Court of First Instance of the City of Manila, and by him decided that said tax had been illegally collected, and the amount was ordered to be repaid. From that judgment the defendant appealed, and now contends that the lower court committed an error in holding that the sum of the monthly averages of the daily bank balances in the possession of the plaintiff credited to the other local banks, as a result of the banking operations described in the first paragraph of the agreed statement of facts, does not constitute deposits within the meaning of paragraph (b) of section 1499 of the Administrative Code as amended by Act No. 3199.

It may be noted at the outset that Act No. 3199 in no way affects the question presented. Said amendment refers to paragraph (d) of section 1499 only and has no reference whatever to said paragraph (b). By reference to said paragraph (b) we find that a tax of one-eighteenth of 1 per centum may be collected "upon the average amount of deposits (in the banks) of money, subject to payment by check or draft, or represented by certificates of deposit or otherwise." It will be noted that said deposits of money, in order to be subject to the tax, must be "subject to payment by check or draft, or represented by certificates of deposit or otherwise." There is no contention that the deposits in question were represented by certificates of deposit. We may deal, therefore, with the deposits of money subject to payment by check or draft. If the deposits of money are not subject to payment by check or draft, then said deposits are not subject to the tax imposed by said paragraph (b).

The deposits in question represent the average daily balances of the plaintiff bank in its transactions with other banks. Said alleged deposits arose in the following manner according to the agreed statement of facts. A draws a

check, for example, upon his bank, the International Banking Corporation, payable to B, for P1,000, dated September 1, 1926. B presents said check for collection to his bank, the China Banking Corporation, on the same date. B may either receive the P1,000 from his bank in cash, or have the same passed to his credit. If he receives the cash on his check, then the amount of the deposits of the China Banking Corporation for September 1 is reduced by P1,000, which reduction would diminish the daily or monthly average deposits of said banking corporation. If he decides to have the check passed to his credit, then in that case the amount of the deposits of the China Banking Corporation would neither be increased nor diminished, for the reason that it has not yet received the cash on said check from the International Banking Corporation. It is purely a paper transaction of September 1.

It is admitted by the agreed statement of facts that it is the custom of the plaintiff as well as of the other banks, under transactions such as we have related, not to present A's check to the bank upon which it is drawn until the following morning or, in our example, September 2, when the actual cash is paid by the International Banking Corporation upon said check to the China Banking Corporation. Until the P1,000 in our example is actually transferred from the International Banking Corporation to the China Banking Corporation, is the deposit of the latter increased and that of the International Banking Corporation decreased? During all of the day of September 1 in our example the P1,000 in question is still charged to the daily balances of the International Banking Corporation. The P1,000 is still a deposit in the International Banking Corporation. If the theory of the appellant is tenable, then the same P1,000 is chargeable to the average daily deposits of the appellee as well as to the International Banking Corporation. It must result therefore that the P1,000 in question is charged to both banks for September 1, which would result in a double taxation of the P1,000. That result was certainly not intended by the Legislature.

If a further illustration were necessary to demonstrate that said paragraph (b) is not applicable to banking transactions like the one before us, we might give the following: A on the 1st day of September issued a check upon the International Banking Corporation, payable to B, for the sum of P2,139,242.34. B on the same day presents the check to the China Banking Corporation. The China Banking Corporation may (a) pay to B the amount of said check, which would reduce the deposits of the China Banking Corporation by that amount, or (b) it may pass the amount of said check to the credit of B, or (c) it may simply hold said check for collection, to be passed to the credit of B when collected. It will be noted that in the transaction of September 1 between B and the China Banking Corporation the actual deposits in the China Banking Corporation have not been increased or perhaps actually diminished by the amount of P2,139,242.34. By the agreed statement of facts, it is the custom of the banks for the holder of checks like the one in this example to present the same for payment to the bank upon which it was drawn, or in this example, to the International Banking Corporation, on the following morning, or September 2. On September 2, if the check is honored by the International Banking Corporation, the amount of it is paid to the China Banking Corporation, thereby reducing the amount of deposit of the International Banking Corporation on September 2, and increasing or balancing the deposits in the China Banking Corporation on the same day. Thus, it is clearly seen that by this transaction the deposits of the China Banking Corporation on September 1 were not increased by the amount of said check and possibly diminished by the amount of the check. It will also be seen that on September 1 the deposits of the International Banking Corporation were not diminished. The amount of said check was counted as a part of the average deposits of the International Banking Corporation for September 1 and upon which the International Banking Corporation would pay the tax provided for in said paragraph because said amount was subject to a draft or check during that day. If the amount of the check was taxable as a deposit in the International Banking Corporation for September 1st it certainly could not be charged to the average deposits of the China Banking Corporation for the same day without a violation of the well settled rule of law that double taxation is not allowed. The amount of said check in this example was not

subject to draft or check in the China Banking Corporation on September 1. The amount of said check was not there on deposit. It still remained in the vaults of the International Banking Corporation.

From all of the foregoing it must follow from the facts and the law: (a) That said clearance balances are not subject to "draft or check;" (b) that they are not deposits at all in the credit bank until an actual transfer of the deposit is made from one bank to the other; and (c) that to allow the collection of the tax imposed by the Collector of Internal Revenue would be to permit a double collection of taxes, which is not permitted by the law. We are fully persuaded that it was not the intention of the Philippine Legislature to collect the percentage tax upon deposits in cases like the present.

We find no reason nor justification for changing or modifying the decision of the lower court. The same is, therefore, hereby affirmed. So ordered.

Avanceña, C. J., Villamor, Johns, Romualdez, and Villa- Real, JJ., concur.

CONCURRING
OSTRAND, J.:

I concur in the result but cannot quite agree with some of the statements made in the decision of the court.

The only question considered and voted upon by the court in the present case is whether clearing balances between banks are deposits within the meaning of subsection (b) of section 1499 of the Administrative Code. The pertinent provisions of that section read as follows:

"SEC. 1499. Tax on capital, deposits, and circulation of banks.—Subject to the exemptions herein made there shall be collected from banks the following taxes on capital, deposits, and circulation:

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposit, or otherwise, whether payable on demand or at some future day, for each month, one-eighteenth of one per centum."

As will be seen, subsection (b) speaks of deposits only. In relation to banks or banking a deposit is defined in the Standard Dictionary as "the act of placing, the amount placed, or the state of being placed, for safe-keeping or profit, as in a bank; anything given as a security or pledge." It seems obvious that this definition does not cover a clearing balance, which is nothing but an ordinary debt. It is true, as stated by the Attorney-General, that a deposit is also a debt of the bank to the depositor, but it is self-evident that not all debts are deposits. If A bank cashes a check drawn against the drawer's deposit in B bank, it becomes the latter bank's creditor to the extent of the amount of the check, but it has deposited nothing there; it has simply paid B bank's debt to the drawer of the check and is entitled to a credit therefor. As a matter of courtesy, B bank may honor a check or draft drawn by A bank against that credit, but it is not bound to do so, and the credit is, therefore, strictly speaking, not subject to check or draft and does not come under sub- section (b), *supra*. If we place a different construction on the law and hold that the word "deposit" includes clearing' balances, the result, as very clearly shown in the opinion of the court, will inevitably be double taxation, which cannot have been contemplated by the Legislature.

DISSENTING

STREET, J.: :

To make my dissent intelligible, only a few words of explanation are needed. There is no clearing house association in the City of Manila, and the few banks that are established here observe the practice of sending checks on other banks which they respectively accumulate during the day to the several banks upon which the checks are drawn. The checks so received by the drawee banks are placed to the credit of the respective banks from which received. The result is that the books of the various banks show from day to day certain balances to the credit of other banks. As to the manner in which these balances have been commonly used and the funds gotten out by the creditor bank we are not left in doubt; for Mr. Wing, manager of the plaintiff bank, testifying as a witness for the plaintiff in this case, stated that during the period covered by the balances now in controversy, said balances were retired by means of checks.

Well, then, more than twenty years ago the Philippine Commission imposed a tax of one-eighteenth of 1 per centum each month "upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposit, or otherwise, whether payable on demand or at some future day, made with any person, bank, association, company, or corporation engaged in the business of banking." Thus the law stood in the Internal Revenue Law of 1904 (Act No. 1189, sec. 111). On February 27, 1914, the Philippine Legislature passed the Internal Revenue Law of 1914 (Act No. 2339), which was a consolidation and condensation of the various laws then in existence relating to internal revenue. It is a matter of common knowledge that this Act was compiled by the Code Committee, being merely a segment out of the work which was later enacted as the Administrative Code. A comparison of the Internal Revenue Law of 1914 with chapter 39 of the Administrative Code of 1916 (Act No. 2657), dealing with the Bureau of Internal Revenue, will show that this statement is true. Turning to the provision in the Internal Revenue Law of 1914 which corresponds with section 111 of Act No. 1189, we find that it reads as follows:

"Subject to the exemptions herein made there shall be collected from banks the following taxes on capital, deposits, and circulation:

* * * * *

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposit, or otherwise, whether payable on demand or at some future day, for each month, one-eighteenth of one per centum." (Act No. 2339, sec. 73.)

This provision was brought forward into the Administrative Code of 1916 in the same identical words (Act No. 2657, sec. 1654) ; and in the same form it was transferred to the present edition of the Administrative Code (Act No. 2711, sec. 1499). Upon comparison of the provision as it thus stands in the Administrative Code with the provision in the Internal Revenue Law of 1904 (Act No. 1189, sec. Ill), it will be found that the only change that has been made, apart from an immaterial inversion of the language, consists in the omission of the following words from section 73 of Act No. 2339 and later enactments, namely, "made with any person, bank, association, company, or corporation engaged in the business of banking." The words thus omitted are descriptive of the entities which were intended to be subject to the tax, and were evidently inserted by the author of the earlier statute (Act No. 1189) for the reason that the entities subject to the tax had not been enumerated in the preliminary part of section 111 of that Act. But in order to simplify the language, the author of the corresponding provision in the Internal Revenue Law of 1914 mentioned the entities to be taxed in the preliminary part of the section, using the word "banks" as equivalent to the more cumbersome and redundant expression "any person, bank, association, company, or corporation engaged in the business of banking." It is clear that the words referred to were omitted

from the later Act merely because they were considered to be superfluous and not with any intent to change the law. As is stated in the article on Statutes in Ruling Case Law, " * * * Upon a revision of statutes a different interpretation is not to be given to them without some substantial change of phraseology—some change other than what may have been necessary to abbreviate the form of the law. * * * " (25 R. C. L., p. 1066.)

Furthermore, it will be observed that the omitted words have reference exclusively to the entity or entities subject to the tax, and no question is made in this case as to the character of the plaintiff bank as a taxable entity. It results that the change of wording does not in any wise affect the issue before us; and it is undeniable that the provision which we are now considering has remained upon our statute books unchanged, so far as the present issue is concerned, for more than twenty-two years. During all this time the Collector of Internal Revenue has apparently collected from banks this tax upon their mutual daily balances, the same as upon other deposits; and until the present controversy arose no one ever questioned the propriety of his so doing.

Proceeding now to examine a little more closely the language of the provision in question, we note that the tax is imposed primarily upon "deposits of money." The trial judge seems to have fixed his attention principally on the word "money" in this expression, and he observed that as the balances in question did not result from the deposit of money, i. e., currency of the country, but from the deposit of checks, said balances could not be considered "deposits of money," within the meaning of the law. This literal interpretation of the expression seems to the writer to be strangely out of place in an age, like the present, where the immense commercial transactions necessary for the life of modern society are conducted so largely by means of checks, drafts and other forms of banking credit. Of course when a check is presented to the drawee bank and honored by it as a lawful obligation calling for the payment of money, the deposit of the check is equivalent to a deposit of money for all purposes. Again, it is scarcely necessary to point out that, if this interpretation of the expression be correct, then deposits made in banks by other persons than banks would in great part be free from the tax, since all persons who patronize banks are addicted to the same practice of depositing checks instead of metallic or paper currency.

The explanatory words immediately following the expression "deposits of money," in the provision now under consideration, are important, since these words were evidently added for the purpose of showing that the expression "deposits of money" is to be taken in the utmost latitude of its meaning. The tax is to be paid upon the deposits, so the statute declares, whether the money is subject to payment by check or draft, or represented by certificates of deposit, or otherwise, and whether payable on demand or at some future day. The author of the paragraph evidently exercised his wits for the purpose of assuring a broad construction of the expression "deposits of money" and, to prevent any attempt at refined distinctions. In particular, the expression "or otherwise" was intended to indicate that the deposits should be taxable regardless of the manner in which they arose or the manner in which the money is held.

The decision of the court will prove disturbing to a financial policy that has been long followed by the taxing authorities and creates a special exemption that in my opinion could not possibly have been intended by the Legislature. I therefore record my respectful dissent.

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