

PHILIPPINE SUGAR CENTRALS AGENCY, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.

G.R. No. 27761. December 06, 1927

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STATEMENT

This case had its origin in the Court of First Instance of Manila where it was tried and submitted upon the following stipulation of facts:

"Come now the parties, plaintiff and defendant, in the above-entitled cause, by their undersigned attorneys, and respectfully submit to this Honorable Court the following statement of facts, which the court may find as true and enter judgment thereon:

"I. That the plaintiff at all times and in all transactions herein mentioned have always acted as representative and attorney-in-fact of the Ma-ao Sugar Central Co.

"II. That in May, 1926, the plaintiff herein shipped at Pulupandan, Occidental Negros, on the steamship Hannover 5,124,416 gross kilos of centrifugal sugar consigned to the United States.

"III. That said sugar was laden through a wharf built, owned and maintained solely by the Ma-ao Sugar Central Company, a domestic corporation, on a foreshore public land at Pulupandan, Occidental Negros, leased to it by the Government of the Philippine Islands.

"IV. That the defendant herein through the collector of customs of the collection district of Iloilo, assessed and collected wharfage dues on the sugar mentioned in paragraph II hereof at P2 per thousand gross kilos or a total amount of P10,248.84.

"V. That the plaintiff paid, under protest, the said amount of P10,248.84 but its protest was overruled by the defendant.

"VI. It is further agreed by the parties herein that Pulupandan through which the sugar in question was exported, was at the time of the shipment, and is now, a port of entry of the Philippine Islands, having been declared as such by Act No. 3106."

In which judgment was rendered for the plaintiff for P10,248.84, the amount of plaintiff's claim, without costs.

On appeal the defendant assigns the following errors:

"I. The lower court erred in declaring that the plaintiff was not bound to pay duty as a charge for wharfage on the goods exported through Pulupandan, a port of entry of the Philippine Islands, since the wharf used by the plaintiff for shipping said goods did not belong to the Government.

"II. The lower court erred in ordering the defendant to return to the plaintiff the sum of P10,248.84 in question instead of dismissing the complaint with costs against the plaintiff.

"III. The lower court erred in not granting a new trial."

JOHNS, J.:

As tersely stated by the trial judge, the question at issue is whether or not the Government of the Philippine Islands can legally collect the duty of \$1 per gross ton of 1,000 kilos as a charge for wharfage on goods, wares and merchandise exported through a port of entry of the Philippine Islands or shipped therefrom to the United States, where it appears that the Government does not own the wharf and that the sugar in question was loaded from a wharf which was the sole property of a private person.

Section 16 of the original Customs Tariff of November 15, 1901, is as follows:

"There shall be levied and collected upon goods of all kinds exported through the ports of entry of the Philippine Islands a duty of seventy-five cents (\$0.75) per gross ton of 1,000 kilos, as a charge for wharfage and for harbor dues, whatever be the port of destination or nationality of the exporting vessel."

That law was enacted by the United States Philippine Commission by the authority of the President of the United States, and with the approval of the Secretary of War. It was reenacted in section 16 of an Act of Congress of the United States of March 3, 1905, entitled "An Act to revise and amend the tariff laws of the Philippine Islands and for other purposes," as amended by the Act of Congress of February 26, 1906, entitled "An Act to amend an Act entitled 'An Act to revise and amend the Tariff laws of the Philippine Islands, and for other purposes,' approved March third, nineteen hundred and five."

August 5, 1909, the Congress of the United States passed what is known as the "Philippine Tariff Act of 1909," entitled "An Act to raise revenue for the Philippine Islands, and for other purposes," section 14 of which, under the head of "Wharfage," is as follows:

"That there shall be levied and collected upon all articles, goods, wares, or merchandise, except coal, timber and cement, the product of the Philippine Islands, exported through ports of entry of the Philippine Islands, or shipped therefrom to the United States or any of its possessions, a duty of one dollar per gross ton of one thousand kilos, as a charge for wharfage, whatever be the port of destination or nationality of the exporting vessel: Provided, That articles, goods, wares, or merchandise imported, exported, or shipped in transit for the use of the Government of the United States, or of that of the Philippine Islands, shall be exempt from the charges prescribed in this section."

By a comparison, it will be seen that the law of 1909 changes the duty of seventy-five cents (\$0.75) per gross ton of 1,000 kilos to \$1 per gross ton, and that the words "as a charge for wharfage and for harbor dues" now read "as a charge for wharfage." That is to say, that the words "and for harbor dues," found in the Customs Tariffs of 1901 and 1905, were omitted from the Tariff Act of 1909.

The question now before the court is the meaning of the words "as a charge for wharfage," as those words are used in section 14 of the Tariff Act of 1909.

The law in question is an Act of Congress, and it is a revenue law for the Philippine Islands.

In Words and Phrases, volume 8, page 7435, it is said:

"Wharfage is a charge or rent for the temporary use of a wharf.

"Wharfage is the fee paid for tying vessels to a wharf, or for loading goods on a wharf or shipping them therefrom.

"Wharfage is money due or money actually paid for the privilege of landing goods upon or loading a vessel, while moored, from a wharf.

"Wharfage or keyage is a toll or duty for the pitching or lodging of goods upon a wharf, or pay for taking

goods into a boat and from thence."

By the same author and in the, same volume, on page 6997, the word

" Tonnage' is denned to be the cubical contents or burden of a ship in tons, or the amount of weight which one or several ships will carry."

And on page 6998, it is said:

"A 'duty on tonnage' is a duty or tax or burden imposed under the authority of the state, which is, by the law imposing it, to be measured by the capacity of the vessel, and is in its essence contribution claimed for the privilege of arriving and departing from a port of the United States."

And on page 6999, it is said:

"A duty on tonnage is a duty on a vessel for the privilege of entering a port, and does not prohibit wharfage.

"A 'duty of tonnage,' within the constitutional provision that no state shall, without the consent of Congress, lay any 'duty of tonnage is a charge, tax, or duty on a vessel for the privilege of entering a port; and though usually levied according to tonnage, and so acquiring its name, it is not confined to that method of rating the charge. It does not include a charge for wharfage."

In the syllabus to the case of *Cincinnati, Portsmouth, Big Sandy and Pomeroy Packet Company vs. Board of Trustees of the Town of Catlettsburg, Kentucky* (26 Law. ed., 1169), the Supreme Court of the United States laid down this rule:

"3. A city or town, situated on navigable waters, may build and own a wharf suitable for vessels to land at, and exact a reasonable compensation for the facilities thus afforded to vessels by the use of such wharves, and this is no infringement of the constitutional provisions concerning tonnage taxes and the regulation of commerce.

"4. Appropriate regulations prescribing places for the landing of vessels and placing the matter under the control of a wharfmaster or other officer, whose duty it is to look after it, are valid and constitutional, and the States may prescribe them until Congress assumes to do so."

And on page 1170 of the opinion, it is said:

"The effort of the pleader, undoubtedly, is to bring the case within the constitutional prohibition of a tax upon tonnage.

"If, however, the Trustees of the Town had a right to compensation for the use of the improved landing or wharf which they had made, it is no objection to the ordinance fixing the amount of this compensation that it was measured by the size of the vessel, and that this size was. ascertained by the tonnage of each vessel. It is idle, after the decisions we have made, to call this a tax upon tonnage. (*Cannon vs. New Orleans*, 20 Wall., 577 [87 U. S., XXII, 417]; *Packet Co. vs. St. Louis*, 100 U. S., 428 [XXV, 690]; *Packet Co. vs. Keokuk*, 95 U. S., 80 [XXIV, 377]; *Guy vs. Baltimore*, 100 U. S., 442 [XXV, 746].)

"Still less ground exists for holding that the penalties imposed for a refusal to obey the rules for places of landing and the orders of the wharf master on that subject, are taxes on tonnage.

"Nor is there any room to question the right of a city or town situated on navigable waters to build and own a wharf suitable for vessels to land at, and to exact a reasonable compensation for the facilities thus afforded to vessels by the use of such wharves, and that this is no infringement of the constitutional provisions concerning tonnage taxes and the regulation of commerce, see cases above cited."

And on page 1171, it is said:

"We are not aware that in any instance Congress has attempted to exercise it. If it be a regulation of Commerce under the power. conferred on Congress by the Constitution, that body has signally failed to provide any such regulation. It belongs, also, manifestly, to that class of rules which, like pilotage and some others, can be most wisely exercised by local authorities, and in regard to which no general rules, applicable alike to all ports and landing places, can be properly made. If a regulation of commerce at all, it comes within that class in which the States may prescribe rules until Congress assumes to do so. (Cooley vs. Board of Wardens, 12 How., 299; Gilman vs. Philadelphia, 3 Wall., 727 [70 U. S., XVIII, 100] ; Crandall vs. Nevada, 6 Wall., 42 [73 U. S., XVIII, 746]; Pound vs. Turck, 95 U. S., 462 [XXIV, 526].)

"There is, probably, not a city or large town in the United States, situated on a navigable water, where ordinances, rules and regulations like those of the Town of Catlettsburg are not made and imposed by authority derived from state legislation, and the long acquiescence in this exercise of the power, and its absolute necessity, are arguments almost conclusive in favor of its rightful existence."

In the syllabus to the case of Parkersburg and Ohio River Transportation Company vs. City of Parkersburg (27 Law. ed., 584), the Supreme Court of the United States laid down this rule:

"2. The ordinance in this case imposed certain rates of wharfage on vessels 'That may discharge or receive freight, or land on or anchor at or in front of any public landing or wharf belonging to the city, for the purpose of discharging or receiving freight;' held, that the ordinance only intended to charge for the use of a wharf, and not for entering the port, or lying at anchor in the river.

"3. Wharfage is a charge for the use of a wharf, made by the owner therefor by way of rent, or compensation; a duty of tonnage is a tax or duty charged for the privilege of entering, or loading or lying in, a port or harbor, and can only be imposed by the government.

"5. That, although wharves are related to commerce and navigation as aids and conveniences, yet being local in their nature, and requiring special regulations for particular places, in the absence of Congressional legislation on the subject, the regulation thereof properly belongs to the States in which they are situated."

And on page 586 of the opinion, it is said:

"But whether a charge imposed is a charge of wharfage or a duty of tonnage must be determined by the terms of the ordinance or regulation which imposes it. They are not the same thing; a duty of tonnage is a charge for the privilege of entering or trading or lying in a port or harbor; wharfage is a charge for the use of a wharf. Exorbitant wharfage may have a similar effect as a burden on commerce as a duty of tonnage has; but it is exorbitant wharfage and not a duty of tonnage; and the remedy for the one is different from the remedy for the other. The question whether it is the one or the other is not one of intent, but one of fact and law; of fact, as whether the charge is made for the use of a wharf, or for entering the port; of law, as whether, according as the fact is shown to exist, it is wharfage or a duty of tonnage."

And on page 587, it is said:

"When the Constitution declares that 'No State shall, without the consent of Congress, lay any duty of tonnage;' and when Congress, in section 4220 of the Revised Statutes, declares that 'No vessel belonging to any citizen of the United States, trading from one port within the United States to another port within the United States, or employed in the bank, whale or other fisheries, shall be subject to tonnage, tax or duty, if such vessel be licensed, registered or enrolled;' they mean by the phrases, 'duty of tonnage,' and 'tonnage tax or duty,' a charge, tax or duty on a vessel for the privilege of entering a port; and although usually levied according to tonnage, and ,so acquiring its name, it is not confined to that method of rating the charge. It has nothing to do with wharfage, which is a charge against a vessel for using of lying at a wharf or landing."

And on page 588, it is said:

"Now wharves, levees and landing places are essential to commerce by water, no less than a navigable channel and a clear river. But they are attached to the land; they are private property, real estate; and they are primarily, at least, subject to the local state loss. Congress has never yet interposed to supervise their administration; it has hitherto left this exclusively to the States. There is little doubt, however, that Congress, if it saw fit, in case of prevailing abuses in the management of wharf property, abuses materially interfering with the prosecution of commerce, might interpose and make regulations to prevent such abuses. When it shall have done so, it will be time enough for the courts to carry its regulations into effect by judicial proceedings properly instituted. But until Congress has acted, the courts of the United States cannot assume control over the subject as a matter of federal cognizance. It is the Congress, and not the judicial department, to which the Constitution has given the power to regulate commerce with foreign Nations, and among the several States. The courts can never take the initiative on this subject."

That is to say, it is the law of the land that even a municipality has the legal right to pass and enforce an ordinance requiring a vessel to pay wharfage tax for the use of a wharf on a navigable stream within the city limits, and such reasonable charge is not a duty or charge on United States commerce. But in the instant case, we have an Act of Congress which specifically authorizes the levying of the duty in question "as a charge for wharfage." In construing the meaning of those words as used in that law, we must take into consideration the relative situation and the conditions existing at the time the law was enacted. That is to say, it is the law of the land that even a municipality on a navigable river in a State of the United States has the legal right to pass and enforce an ordinance to require a vessel to pay wharfage tax for the use of a wharf within the city limits, and that a tax even by a city for such a purpose does not interfere with, and is not a charge on, United States commerce.

It is also the law of the land that the United States Congress in its discretion has the power to levy and collect a tonnage tax even though it would interfere with the United States commerce. But in the instant case, we have an Act of Congress which specifically authorizes the Government of the Philippine Islands to levy and collect the duty in question "as a charge for wharfage."

It is vigorously contended that by reason of the fact that the sugar in question was loaded from a private wharf and not from a Government wharf, that the Government has no legal right to levy and collect the duty "as a charge for wharfage." In construing the law now in question, we should take into consideration its history, relative situation and the conditions existing at the time it was enacted.

As stated, the original Customs Tariff of 1901 was enacted by the Philippine Commission under the authority from the President of the United States. At the time of its enactment, it is a matter of common knowledge that the Government of the Philippine Islands did not have, own or operate a pier or wharf anywhere or at any place, a fact which must have been known to the Commission which enacted the law.

It is stated in the brief for the Attorney-General and not denied in the brief for the appellee, that the two oldest piers of the Insular Government, Nos. 3 and 5, were first opened in the year 1910. That prior to that time, and because there were no wharves or piers, export cargoes by means of lighters were brought to the sides of vessels that were anchored in Manila Bay.

Notwithstanding that fact the wharfage tax in question has been continuously levied and collected from 1901 up to the present time. That is to say, in 1901 the Philippine Commission, which enacted the law, knew or must have known that there was not a single pier or wharf in the Philippine Islands, and yet without such wharves or piers, the Government has at all times levied and collected the tax in question, and it is fair to assume that from and out of the money derived from such sources, it has since erected and constructed piers and wharves in all of the large cities of its principal ports of entries at a cost of millions of pesos, and it is a matter of common knowledge that pier 7 recently constructed in the City of Manila cost about P12,979,824.99, and that it is reputed to be the most

modern, best and finest dock in the Orient.

It further appears from our own records and reports that during all of this time the tax in question has been paid without any protest or objection, and that the first time that the law now in question was ever presented to this court was in the case of *Compañía General de Tabacos vs. Collector of Customs* (46 Phil., 8), in which an attack was made on the constitutionality of the law, and its validity was sustained by this court. The question now presented was not then decided because it did not appear from the agreed statement of facts that the articles upon which the defendant collected the duty had or had not passed through a Government wharf. That case was decided on April 7, 1924.

The instant case is the first and only case in which the question now under consideration was ever presented. Hence, we have a law which since 1901 has been construed by its officials to mean that the Government of the Philippine Islands is entitled to levy and collect a duty of \$ 1 per gross ton "as a charge for wharfage" upon all articles, goods, wares and merchandise exported through the ports of entry of the Philippine Islands, and that construction has been acquiesced in and accepted, and the money paid without any protest or objection for twenty-six years, for many years of which the Government never even owned or operated a wharf.

It also appears that Pulupandan, the place from which the sugar was shipped, was made a port of entry of the Philippine Islands on March 17, 1923, and that on January 19, 1925, the Legislature appropriated P750,000 for improvements made and to be made in that port, which were to consist not only of the building of a wharf, but the construction of breakwaters, sea walls and the dredging of the harbor.

When we consider that the tax in question has at all times for twenty-six years been levied and collected by the Government both before it owned or operated any wharf, and that it has spent millions of pesos in the construction of wharves in its principal ports of entries, and that from the recent port of Pulupandan and for sugar that was shipped from that port on the steamship *Hannover* in the year 1926 only the tax in question amounted to P10,248.84, the importance of the instant case and its far reaching effect upon the finances of the Government of the Philippine Islands stands out in bold relief and becomes very apparent, and this court is now called upon to overthrow that long continued construction, and in legal effect to hold that, because the sugar was shipped through a private owned wharf, the government is not entitled to collect the money in question "as a charge for wharfage." The long acquiescence in its construction and the far reaching effect of such a decision makes it imperative for this court to sustain the law, if there are any reasonable grounds upon which it can be done.

This rule is well stated in *Sutherland on Statutory Construction*, volume 2, page 889, where it is said:

"The practical construction given to a doubtful statute by the department or officers whose duty it is to carry it into execution is entitled to great weight and will not be disregarded or overturned except for cogent reasons, and unless it is clear that such construction is erroneous." Citing numerous decisions.

In the case of *Kelley vs. Multnomah County* (18 Ore., 356, 359; 22 Pac, 1110), the Supreme Court of Oregon said:

"In all cases where those persons whose duty it is to execute a law have uniformly given it a particular construction, and that construction has been acquiesced in and acted upon for a long time, it is a contemporary exposition of the statute, which always commands the attention of the courts, and will be followed unless it clearly and manifestly appears to be wrong."

Following which, on page 890, *Sutherland* says:

"The legislature is presumed to be cognizant of such construction, and after long continuance, without any legislation evincing its dissent, courts will consider themselves warranted in adopting that construction."

The same author, on page 883, says:

"Surrounding facts and conditions—Mischief to be remedied.—In order to ascertain the purpose or intention, if it is not clearly expressed in a statute, or that such purpose or intention may be carried into effect, the court will take notice of the history of its terms when it was enacted. It is needful in the construction of all instruments to read them in view of the surrounding facts. To understand their purport and intended application, one should, as far as possible, be placed in a situation to see the subject from the maker's standpoint and study his language with that outlook. Statutes are no exception. The court may look to the surrounding circumstances."

And on pages 885 and 886, he says:

"The mischief intended to be removed or suppressed or the cause of necessity of any kind which induced the enactment of a law are important factors to be considered in its construction. The purpose for which the law was enacted is a matter of prime importance in arriving at a correct interpretation of its terms."

In the case of *Cameron vs. Chicago, Milwaukee & St. Paul Ry. Co.* (63 Minnesota, 384), on page 387 of the opinion that court said:

"This statute has been in force for nearly 20 years, and attorney's fees have been repeatedly allowed to the plaintiff in actions brought under it. Two such cases have been heard on appeal in this court (see *Coleman vs. St. Paul, M. & M. R. Co.*, 38 Minn., 260; 36 N. W., 638; *Scott vs. Minneapolis, St. P. & S. Ste. M. R. Co.*, 42 Minn., 179; 43 N. W., 966); and, so far as we are advised, this is the first time any question as to the constitutionality of the provisions of this statute allowing reasonable attorney's fees has ever been suggested. This acquiescence, without question, of bench and bar, in the validity of the statute, is significant; and it is entitled to controlling weight if the question as to the validity of the statute is doubtful."

The same principle is laid down in *Molina vs. Rafferty* (38 Phil., 167), on page 169 in which, this court makes the following quotation from *Cooley on Taxation*, volume 1, 3d ed., p. 450:

"The underlying principle of all construction is that the intent of the legislature should be sought in the words *Philippine Sugar Centrals Agency vs. Collector of Customs* employed to express it, and that when found it should be made to govern, * * * if the words of the law seem to be of doubtful import, it may then perhaps become necessary to look beyond them in order to ascertain what was in the legislative mind at the time the law was enacted; what the circumstances were, under which the action was taken; what evil, if any, was meant to be redressed; * * *. And where the law has contemporaneously been put into operation, and in doing so a construction has necessarily been put upon it, this construction, especially if followed for some considerable period, is entitled to great respect, as being very probably a true expression of the legislative purpose, and is not lightly to be overruled, although it is not conclusive."

And on page 173 of the opinion, it is said:

"During the many years that the statute before us has been in existence, since it first appeared, substantially in its present form, in section 142 of Act No. 1189, passed in 1904, no attempt has been made, until this case arose, to construe it as not applying to fish grown in ponds, and much weight should be given to this long continued administrative interpretation."

See also *In re Allen* (2 Phil., 630), where it is held that:

"Courts will give weight to the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it, and, unless such interpretation is clearly erroneous, will ordinarily be controlled thereby."

The purpose of the law was to authorize the Government of the Philippine Islands to levy a duty of \$1 per gross ton "as a charge for wharfage." Being an Act of Congress, the law would be valid if it did not specify the purpose

for which the duty was to be levied and collected. Without such a provision it would then be construed as a duty on tonnage, and Congress would have a right to enact that kind of a law. The omission from the Act of 1909 of the words "and for harbor dues" in the previous law is very significant and would clearly indicate that it was not the intent of Congress under the Act of 1909 that a duty should be levied on tonnage.

In view of the fact that in 1901 there were no wharves or piers in the Philippine Islands, and of the conditions then existing and the enactment of the law in 1901 under the same conditions, and its reenactment by Congress in 1905 under similar conditions, and of the present law of 1909 and of the continuous construction of the law placed upon it by the Government officials, and the further fact that the duty in question has been paid without any protest or objection for twenty-six-years, during which time the Government has expended millions of pesos in the construction of wharves, and that it now owns and operates large and extensive wharves in all of its principal ports of entry, and that Congress has never seen fit to repeal the law of 1909, we are forced to the conclusion that it was the purpose and intent of the act in question to give the Government of the Philippine Islands authority to levy and collect such a duty of \$1 per gross ton, and that the money derived from such sources should be used, deemed and treated as a trust fund, for the purpose of acquiring and constructing wharves by the Government of the Philippine Islands. In truth and in fact, that is what has been done in all of its principal ports of entry.

Pulupandan was made a port of entry on March 17, 1923. It further appears that in line with its policy, the Legislature on January 19, 1925, made an appropriation of P750,000 for improvements made and to be made in that port, which were to consist not only of the building of a wharf, but the construction of breakwaters, sea walls and the dredging of the harbor.

Based on the conditions existing in 1901 and as they exist now, we have a legal right to assume that the money derived from such sources has been appropriated and used by the Government for the erection and construction of wharves and the improvement of its harbors.

The construction for which plaintiff contends would over-throw and destroy the whole system of the Government, in and by which millions of pesos have been levied and collected and expended in the construction of Government wharves, and it would have defeated the construction of the Government wharf at Pulupandan. The law in question could have been repealed or changed at any time by an Act of Congress. In view of the long continuous construction which has been placed upon it by the government officials, and for which they now contend, the very fact that Congress has not seen fit to repeal or change the law is a very potent argument in favor of sustaining that construction. The language of the Act could have been made more specific and certain, but in view of its history, its long continuous construction, and what has been done and accomplished by and under it, we are clearly of the opinion that the Government is entitled to have and receive the money in question, even though the sugar was shipped from a private wharf.

The judgment of the lower court is reversed, with costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, and Villa-Real, JJ., concur.

JOHNSON, J., dissenting:

I regret that the facts in this case and the law applicable to them will not permit my conformity with the conclusions of my associates. The facts in this case are not in dispute. They were stipulated in the court below. The important facts for consideration in this appeal are as follows:

- (1) That in the month of May, 1926, the plaintiff loaded on the steamship Hannover at Pulupandan, Occidental Negros, 5,124,416 gross kilos of sugar, on which there was collected by the collector of customs, as a charge

for wharfage, P2 per thousand gross kilos, amounting to P10,248.84;

(2) That said sugar was loaded from a wharf built, owned and maintained solely by the Ma~ao Sugar Central Company, a domestic corporation;

(3) That at the time of payment of said sum a formal protest was made, upon the ground that said collection, as "a charge for wharfage," was illegal and not authorized by law.

On the 8th day of May, 1926, the acting collector of customs of Iloilo overruled and denied said protest. On May 14, 1926, an appeal was taken by the plaintiff to the Insular Collector of Customs. On May 20, 1926, the Insular Collector of Customs confirmed the decision of the acting collector of customs of Iloilo and denied said protest. From the decision of the Insular Collector of Customs an appeal was taken to the Court of First Instance of the City of Manila, where the same was submitted upon an agreed statement of facts.

After a consideration of the admitted facts the Honorable Simplicio del Rosario, judge, in a very carefully prepared opinion, decided that the law did not permit the Government to collect wharfage dues on products loaded from private wharves, and revoked the decision of the Insular Collector of Customs, and ordered the return of the money collected, without any finding as to costs. From that decision the Insular Collector of Customs appealed.

The only question presented by the appellant, as stated by himself, is "Whether or not the Government of the Philippine Islands can legally collect a duty of P2 per gross ton of one thousand kilos as a charge for wharfage, * * * when the wharf used for loading said goods does not belong to the Philippine Government"

The provisions of law upon which the Government insists that it has the right to charge the wharfage in question is found in section 14 of the Philippine Tariff Act of 1909 as amended by the Tariff Act of October 3, 1913. Said section reads:

"That there shall be levied and collected upon all articles, goods, wares, or merchandise, except coal, timber and cement, the product of the Philippine Islands exported through ports of entry of the Philippine Islands, or shipped therefrom to the United States or any of its possessions, a duty of one dollar per gross ton of one thousand kilos, as a charge for wharfage, whatever be the port of destination or nationality of the exporting vessel."

The important questions to decide under said statute are: (a) What are wharfage charges, and (b) may the Government collect wharfage from the owner of a wharf on his own merchandise loaded therefrom?

WHARFAGE DEFINED

The majority opinion contains some definitions of "wharfage" as "a charge or rent for the temporary use of a wharf; the fee paid for tying vessels to a wharf, or for loading goods from a wharf or shipping them therefrom; money due or money actually paid for the privilege of landing goods upon, or loading vessels while moored, from a wharf." It will be noted from said definitions that "wharfage charges" are charges made for the use of a wharf.

From said definitions it appears that "wharfage charges" are made by the owner of a wharf against another person who uses the wharf. Applying said definitions to the facts in the present case, we find that the plaintiff is the owner of the wharf and that the Government has charged him P10,248.84 for the use of his own wharf. It is difficult to understand how the definitions given in the majority opinion can be applied to the facts in the present case. The definitions given in the majority opinion, however, are in harmony with the definitions given by lexicographers. Many other definitions might be given similar to the ones quoted, under both the common law and civil law. Said definitions are as old as the custom of transporting freight from one point to another upon the high seas or navigable waters.

Taking into consideration the fact that said definitions of "wharfage charges" are charges by the owners of the wharf against the person who uses it, it is difficult to understand upon what theory the legislature at the time of the adoption of the law in question intended that it should be applied to a case like the present, where the owner of the wharf paid to the appellant the sum of P10,248.84 for the use of his own wharf. We cannot bring ourselves to believe that the lawmaking body intended that any such application of the law should be made. But we find in the majority opinion the statement that simply because a similar law has been enforced since 1901 in the Philippine Islands and has not been questioned, that, of course, the legislature intended to collect wharfage dues from people who use their own wharf. There is not a word in the record justifying that assertion. We also find in the majority opinion the statement that "at the time of its enactment it is a matter of common knowledge that the Government of the Philippine Islands did not have, own or operate a pier or wharf anywhere or at any place, a fact which must have been known to the Commission which enacted the law." In the first place there is nothing in the record from which any such inference can be drawn, and in the second place we confidently assert that no such statement would have been made by the writer of the majority opinion had his knowledge of the conditions in the Philippine Islands in 1901 been more intimate. Even in 1898, at the beginning of the American occupation of the Philippine Islands there were miles of wharves which had been constructed by the former sovereign.

A considerable portion of the majority opinion is devoted to making a distinction between wharfage charges and tonnage dues. Again we assert that there is nothing in the record which raises any question concerning tonnage dues. That discussion therefore has no place in the decision of the question presented to this court.

The majority opinion asserts that the "wharfage tax in question has been continuously levied and collected from 1901 up to the present time." There is not a sentence, a phrase, a word nor a syllable in the record which justifies that statement. There is nothing to show that a tax, like the present one, has ever been collected by the Government.

It is asserted in the majority opinion that "out of the money derived from such sources it has since erected and constructed piers and wharves in all of the large cities." Again there is not a word in the record justifying that statement. Neither is there anything in the record which justifies the statement that the City of Manila has recently constructed a pier at a large cost; and even though it were, it could have no bearing on the present case.

We agree that whenever the Government has for a number of years given a particular interpretation of a particular statute, the courts should follow that interpretation. But in the present case there is nothing in the record which justifies the statement that the Government has for "many years given the law the interpretation contended for in the majority opinion." The majority opinion contains no cited authority in support of the legality of the statute under discussion. The fact that no authorities have been cited in the majority opinion in support of the conclusion is no proof, however, that no authorities exist upon the question. We find many decisions holding that no "wharfage charges" can be collected where the person or entity attempting to collect the same furnishes no "artificial facilities whatever in the nature of wharf." (*Sweeny vs. Lizzie E.*, 30 Fed., Rep., 876; *Shreveport vs. Red River & Coast Line*, 37 La. Ann., 562; [55 Am. Rep., 504]; *New Orleans vs. Wilmot*, 31 La. Ann., 65; *Dubuque vs. Stout*, 32 Iowa, 47; *Cape Girardue vs. Campbell*, 26 Mo. Ap., 12; [70 L. R. A., 194].)

In the case of *Sweeny vs. Lizzie E.* the Federal court held that the City of New Orleans could not collect wharfage from vessels it furnished "no facilities whatever."

In the case of the *City of Shreveport vs. Red River & Coast Line* (37 La Ann., 562) the Supreme Court of Louisiana said that the right to collect wharfage depends upon the "facilities for landing, for receiving and discharging merchandise, furnished by the plaintiff for the use or advantage of the ships or vessels sought to be made liable for such duties." (Wharfage is a charge or claim for services rendered. *Cannon vs. New Orleans*, 20

Wallace [U. S.], 577; Packet Co. vs. Keokuk, 95 U. S., 88.)

In the case of Packet Co. vs. Keokuk the Supreme Court of the United States said that a city cannot, by ordinance or otherwise, charge or collect wharfage for merely enter ing its port or stopping therein, or for the use of that "which is not a wharf but merely the natural or unimproved shore of navigable river. (Cannon vs. New Orleans, 87 U. S., 577; Transportation Company vs. Parkersburg, 107 U. S., 691.)

In the case of New Orleans vs. Wilmot (31 La. Ann., 65) the Supreme Court of Louisiana held that the City of New Orleans is not entitled to impose wharfage and levy duties upon vessel moored in the river, at a point where the city has "constructed no wharves, made no landing place and expended no money."

In the case of Dubuque vs. Stout (32 Iowa, 47) the Supreme Court of Iowa held that a city which has provided no wharf or designated places for use, is not entitled to recover of "one who uses his own premises for the reception of merchandise," although it has authority by charter to establish wharves and regulate their use and fix the rate of wharfage. (Cape, etc. Co. vs. Campbell, 26 Mo. Ap., 12.)

The rule announced in the foregoing cases has been the rule for eight hundred years. (See English cases: Hasborn vs. Willis, 2 Keble, 624; 1 Vent, 71; 1 Modern Reporter, 47.)

The law providing that the harbor master of a port may demand for every vessel that may enter the port, to load or unload or make fast to any wharf, certain fees, whether earned by services rendered or not, is a tax on the regulation of commerce in violation of the Constitution of the United States. (Webb vs. Dunn, 18 Fla., 721; St. Louis vs. Consolidated Coal Co., 158 Mo., 342; Davison, 102 Fed. Rep., 1006 [70 L. R. A., 193].)

Many other cases, in addition to the above, might be cited, to the effect that "wharfage cannot be collected where the party charging and collecting the same is not the owner of the wharf." Wharfage is a payment for services rendered by a wharf. It must follow therefor that where there is no wharf belonging to the party collecting the wharfage, he is collecting without rendering service. Such a charge, in our judgment, is not authorized by law and amounts, in effect, when the goods are to be exported, "to an export tax, which is prohibited by the Jones Law." The judgment appealed from should be affirmed.

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