

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 27766. December 06, 1927

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STATEMENT

Plaintiff is a corporation organized and existing under the laws of the Kingdom of Spain, duly licensed to transact business in the Philippine Islands, with its principal office in the City of Manila. The defendant is the Collector of Internal Revenue.

Plaintiff alleges that during the year 1922 it exported from the Philippine Islands and sold in the United States certain quantities of centrifugal sugar, manufactured tobacco, copra and coconut oil, at a net profit of P400,324.85. That the defendant, acting and pretending to act under the provisions of Act No. 2833, as amended by Act No. 2926, unlawfully and illegally levied and assessed against the plaintiff a tax of 3 per centum on the amount of such profit during the year 1922 amounting to P12,009.75, which plaintiff paid under written protest on the ground that the profit which it obtained from the sugar and tobacco sold by it in the United States was subject to the income tax levied by the government of that country. That no part of plaintiff's profit was derived from sources within the Philippine Islands. That plaintiff's protest was overruled and denied, and defendant has refused to return the amount of such tax. Wherefore, it prays for a corresponding judgment, with costs.

For answer the defendant made a general and specific denial of all of the material allegations of the complaint, except that which is specifically admitted. Defendant admits paragraphs 1, 2, 3 and 5 of plaintiff's complaint, except as to the amounts, and alleges that the taxes which plaintiff seeks to recover were lawfully levied, assessed and collected under the provisions of Act No. 2833, as amended by Act No. 2926, and defendant prays that plaintiff's complaint be dismissed, with costs.

The case was tried and submitted upon the following "Agreed Statement of Facts:"

"I. That plaintiff is a corporation duly organized and existing under the laws of the Kingdom of Spain, duly licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila.

"II. That defendant is the duly appointed, qualified, and acting Collector of Internal Revenue for the Philippine Islands.

"III. That plaintiff is the owner of several 'haciendas,' sugar and oil mills and tobacco factories located in the Philippine Islands destined to the production or manufacture of tobacco, sugar, copra, and coconut oil for sale therein and in foreign countries; and has been and is still engaged, in the Philippine Islands, in the shipping business and in the buying and selling of tobacco, sugar, copra, and oil and in the exportation of the same, and that its business has been, and is being done mainly in the Philippine Islands.

"IV. That the Philippine branch of the plaintiff corporation on various dates during the year 1922 exported

from the Philippine Islands a quantity of centrifugal sugar, of which ten per centum was produced and ninety purchased by it in the Philippine Islands, and which was sold in the United States by the agency therein of the plaintiff's Philippine branch, the sale being subject to confirmation and absolute control as to price and other terms and conditions thereof, by the plaintiff's Philippine branch; and that from such transactions on centrifugal sugar during said year 1922, the plaintiff made a profit of P114,226.80, Philippine currency.

"V. That, likewise, the plaintiff's Philippine branch on various dates during said year 1922, exported from the Philippine Islands a certain quantity of manufactured tobacco produced by it in the Philippine Islands which was sold in the United States by the agency therein of the plaintiff's Philippine branch, the sale being likewise subject to confirmation and absolute control as to price and other terms and conditions thereof, by the plaintiff's Philippine branch, deriving from such transactions a profit of P296,341.19, Philippine currency.

"VI. "That, likewise, the plaintiff's Philippine branch on various dates during the said year 1922, exported from the Philippine Islands a certain quantity of copra and a certain quantity of coconut oil, produced, purchased, or manufactured by it in the Philippine Islands, which were sold in the United States by the agency therein of the plaintiff's Philippine branch, such sales being likewise subject to confirmation and absolute control as to price and other terms and conditions thereof, by the plaintiff's Philippine branch, and that from such transactions on copra and coconut oil the plaintiff suffered losses amounting to P10,243.14, Philippine currency.

"VII. That deducting the sum of P10,243.14, the losses mentioned, in paragraph VI of this stipulation, from the sum of P410,567.99, the aggregate of the profits mentioned in paragraphs IV and V, there remained a net profit of P400,324.85.

"VIII. That the said net profit of P400,324.85, together with other gains, profits, or income were accounted for by the plaintiff on its books of accounts kept in the Philippine Islands as earnings made by and accruing to the Philippine branch, thereby subjecting such profits, gains, or incomes to further business deductions—management expenses, losses, etc.

"IX. That the defendant Collector of Internal Revenue, acting and pretending to act under the provisions of Act No. 2833 (Philippine Income Tax Law), as amended by Act No. 2926, levied and assessed against plaintiff a tax of three (3) per centum on the amount of the aforesaid net profits (P400,324.85) earned by plaintiff, as recited in paragraphs IV, V and VI hereof, in the sum of P12,009.75, Philippine currency.

"X. That on the 18th day of October, 1923, plaintiff, in order to avoid the infliction upon it of fines and penalties and the distraint of its property by defendant, did pay to defendant, under instant protest in writing, the said sum of P12,009.75, Philippine currency.

"XI. That plaintiff's protest against the payment of the aforesaid tax was overruled and denied by defendant on the 20th day of October, 1923, and defendant has refused, and still continues in his refusal, to return to plaintiff, on demand, the said sum of P12,009.75, Philippine currency, or any part thereof.

"XII. That the parties hereto reserve the right to introduce evidence, direct or rebuttal, on any point not herein stipulated and which may be deemed material and necessary for the proper determination of this case."

Upon such issues and stipulated facts, the lower court rendered judgment for the plaintiff as prayed for in its complaint, without costs, to which the defendant duly excepted and filed a motion for a new trial, which was over-ruled. On appeal the defendant assigns the following errors:

"I. The lower court erred in declaring that the plaintiff's income taxed by the defendant was received from sources not within the Philippine Islands and therefore not subject to taxation.

"II. The lower court erred in condemning the defendant to return to the plaintiff the sum of P12,009.75, amount of the tax in question, instead of dismissing the complaint.

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

JOHNS, J.:

Upon the stipulation of facts, the question involved on this appeal is the legal construction to be placed on section 10 of Act No. 2833, as amended by section 7 of Act No. 2926, which provides as follows:

"There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company, partnership, joint-account (cuenta en participacion), association, or insurance company, organized in the Philippine Islands, no matter how created or organized, but not including duly registered general co-partnerships (compañias colectivas), a tax of three per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the Philippine Islands by every corporation, joint-stock company, partnership, joint-account (cuenta en participacion), association, or insurance company, organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest bearing obligations of residents, corporate or other-wise, and including the income derived from dividends or net profits subject to the tax established in this sub-section."

In its final analysis, that question involves the legal meaning and construction to be placed on the words "sources within the Philippine Islands," as they are used in that section, in connection with, and founded upon, the stipulation of facts. It will be noted that the section above quoted has two separate and distinct provisions; one for a tax of three per centum for each calendar year on the annual total net income derived from all sources by a domestic corporation, and the other for a like tax "upon the total net income received in the preceding calendar year from all sources within the Philippine Islands" by any corporation organized and "existing under the laws of any foreign country."

It is very apparent that it was the purpose and intent of the Legislature that a foreign corporation which has a branch office in the Philippines and engaged in business here should pay the same amount of income tax on that business as a domestic corporation would have to pay; otherwise, a foreign corporation with a branch office in the Philippines and doing business here would have an advantage of the amount of such annual income tax over a domestic corporation engaged in the same line of business.

Under paragraph 4 of the agreed statement of facts, it is stipulated that during the year 1922, plaintiff exported from the Philippine Islands a quantity of centrifugal sugar, of which ten per centum was produced and ninety purchased by it in the Philippine Islands, and which was sold in the United States by and through the agent of the plaintiff's Philippine branch, and that the sale was subject to confirmation and absolute control as to price and other terms and conditions by the plaintiff's Philippine branch. The same stipulation is made as to the tobacco, copra and coconut oil mentioned and described in the complaint. It is further stipulated that the profits or incomes in question were accounted for by the plaintiff on its books of account "kept in the Philippine Islands as earnings made by and accruing to the Philippine branch, etc.," That is to say, that although the sales of the products from which the incomes in question were derived were made in the United States, they were made there by an agent of the Philippine branch of the plaintiff, and all of them were made subject to the confirmation and absolute control as to price, terms and conditions by the plaintiff's Philippine branch. In other words, no sale was actually consummated until after it was ratified and approved by the local branch, and all profits or incomes from such sales were accounted for by the plaintiff on its books kept in the Philippine Islands "as earnings made by and accruing to the Philippine branch." It is further stipulated that the sugar, tobacco, copra and coconut oil in question, from which the net incomes were derived, were exclusively the products of the Philippine Islands in which and where they were produced on the properties of the plaintiff or by it purchased at or through its branch office in the Philippines, and from which country they were shipped to the United States and there sold in the same form and condition as when they were shipped from the Philippine Islands. That is to say, the income in

question was derived and received by the plaintiff from the exclusive products of the Philippine Islands which were purchased or produced by and through its branch office in the Philippine Islands and which it shipped from the Islands to the United States, where such products were sold in the identical condition in which they were shipped from the Philippine Islands. Hence, it must follow that the net income of the plaintiff as to such products was from "sources within the Philippine Islands" where the products were purchased or produced and where the plaintiff maintains its branch office for that specific purpose.

The appellee cites and relies upon the following opinion of the Attorney-General of the United States:

"A corporation organized under the laws of Scotland owns and operates two sawmills in the United States. The mills saw logs into plank squares called 'handle blanks' and also roughly turn hammer handles. These products are exported to Glasgow where they are finished at the home mill. In addition the manager of the American plant buys logs in the United States and exports them as such to Great Britain. No part of the products of the mills located in this country or of the logs purchased here is sold in the United States, but the entire output is sold in Great Britain. The plants and operations of the manager in the United States are conducted solely from funds sent to this country from the home office in Glasgow, Scotland, and no funds are sent to the home office from the American plants."

Based upon such facts, the Attorney-General held that the Scotland corporation was not liable to the tax in question. Assuming that to be the law, there is a very marked distinction between the facts in that case and the stipulated facts in this case. There the two sawmills in the United States sawed logs into plank squares called "handle blanks" and also "roughly turn hammer handles." In that condition, they were shipped to Glasgow where "they were there finished at the home mill" and then placed on the market. It further appears that all of the operations in the United States "are conducted solely from funds sent to this country from the home office in Glasgow, Scotland, and no funds are sent to the home office from the American plants." In the instant case, it is stipulated that the plaintiff exported the products in question from the Philippine Islands to the United States where they were sold by an agency of the plaintiff's Philippine branch, and that such sale was "subject to confirmation and absolute control as to price and other terms and conditions thereof by the plaintiff's Philippine branch," and that all of such net profits were kept and accounted for by the plaintiff "on its books of account kept in the Philippine Islands as earnings made by and accruing to the Philippine branch." That opinion is not in point upon the stipulated facts in this case.

Appellee's contention if sustained would give a preference to a foreign corporation doing business through a branch office in the Philippine Islands over a domestic corporation engaged in the same line of business to the amount of the 3 per cent tax upon the income in question. That was not the purpose and intent of the Legislature. It is very apparent that the Legislature intended that a foreign corporation with a branch office in the Philippine Islands could do business here upon the same terms and conditions as a domestic corporation, and that it never intended that a foreign corporation with a branch office and doing business in the Philippines should have any preference over a domestic corporation engaged in the same line of business.

In the instant case, the record is conclusive that all of the sources of plaintiff's income in question had their origin in or were derived from its branch office in the Philippine Islands by and through the products of the Philippine Islands, which were purchased or produced by its branch office in the Philippine Islands, and that all of the sales in question were made through its branch office, and that no sale was actually consummated until such time as it was approved by the branch office both as to terms and conditions, and that an account of all of such sales made in the United States was rendered to the branch office, together with the proceeds, where a full and complete record was kept and made of all of such transactions.

Plaintiff's source of income in question was from the products of the Philippine Islands which were derived

through its branch office, and it appears from the stipulation of facts that all of such products when shipped by the branch office to the United States were there sold in the identical condition in which they were shipped from the Philippine Islands, and that an account of all of such sales was rendered to the branch office.

Upon the record, we are clearly of the opinion that upon the products in question, plaintiff's net income was derived from "sources within the Philippine Islands."

The judgment of the lower court is reversed and the complaint dismissed, with costs for the defendant. So ordered.

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

UPON MOTION FOR RECONSIDERATION

February 9, 1928

JOHNSON, J., dissenting:

At the time this case was considered and voted I reserved my vote for the reason that I did not then have time to look into the authorities. Since that time I have taken the pains to examine the authorities upon the question presented by the appellant and I now dissent from the conclusions of the majority opinion, and vote to grant the reconsideration prayed for.

The only question presented by the appellant, under the stipulated facts, relates to the meaning of the phrase "total net income received from all sources within the Philippine Islands" by the appellee, as that phrase is used in section 10 of Act No. 2833 (March 7, 1919, vol. 14, Public Laws, p. 221), as amended by section 7 of Act No. 2926 (March 20, 1920, vol. 15, Public Laws, p. 260). Said section 10 provided for a tax of two per cent upon net incomes while said section 7 required payment of three per cent upon net incomes; otherwise the important part of said section (10) remains the same.

This case was decided upon the following stipulated facts:

"I. That plaintiff is a corporation duly organized and existing under the laws of the Kingdom of Spain, duly licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila.

"II. That defendant is the duly appointed, qualified, and acting Collector of Internal Revenue for the Philippine Islands.

"III. That plaintiff is the owner of several 'haciendas,' sugar and oil mills and tobacco factories located in the Philippine Islands destined to the production or manufacture of tobacco, sugar, copra, and coconut oil for sale therein and in foreign countries; and has been and is still engaged, in the Philippine Islands, in the shipping business and in the buying and selling of tobacco, sugar, copra, and oil and in the exportation of the same, and that its business has been and is being done mainly in the Philippine Islands.

"IV. That the Philippine branch of the plaintiff corporation on various dates during the year 1922 exported from the Philippine Islands a quantity of centrifugal sugar, of which ten per centum was produced and ninety purchased by it in the Philippine Islands, and which was sold in the United States by the agency therein of the plaintiff's Philippine branch, the sale being subject to confirmation and absolute control as to price and other terms and conditions thereof, by the plaintiff's Philippine branch; and that from such transactions on centrifugal sugar during said year 1922, the plaintiff made a profit of P114,226.80, Philippine currency.

"V. That, likewise, the plaintiff's Philippine branch on various dates during said year 1922, exported from the Philippine Islands a certain quantity of manufactured tobacco produced by it in the Philippine Islands which was sold in the United States by the agency therein of the plaintiff's Philippine branch, the sale being likewise subject to confirmation and absolute control as to price and other terms and conditions thereof, by the plaintiff's Philippine branch, deriving from such transactions a profit of P296,341.19, Philippine currency.

"VI. That, likewise, the plaintiff's Philippine branch on various dates during the said year 1922, exported from the Philippine Islands a certain quantity of copra and a certain quantity of coconut oil, produced, purchased, or manufactured by it in the Philippine Islands, which were sold in the United States by the agency therein of the plaintiff's Philippine branch, such sales being likewise subject to confirmation and absolute control as to price and other terms and conditions thereof, by the plaintiff's Philippine branch and that from such transactions on copra and coconut oil the plaintiff suffered losses amounting to P10,243.14, Philippine currency.

"VII. That deducting the sum of P10,243.14, the losses mentioned in paragraph VI of this stipulation, from the sum of P410,567.99, the aggregate of the profits mentioned in paragraphs IV and V, there remained a net profit of P400,324.85.

"VIII. That the said net profit of P400,324.85, together with other gains, profits, or income were accounted for by the plaintiff on its books of accounts kept in the Philippine Islands as earnings made by and accruing to the Philippine branch, thereby subjecting such profits, gains, or incomes to further business deductions—management expenses, losses, etc.

"IX. That the defendant Collector of Internal Revenue, acting and pretending to act under the provisions of Act No. 2833 (Philippine Income Tax Law), as amended by Act No. 2926, levied and assessed against plaintiff a tax of three (3) per centum on the amount of the aforesaid net profits (P400,324.85) earned by plaintiff, as recited in paragraphs IV, V, and VI hereof, in the sum of P12,009.75, Philippine currency.

"X. That on the 18th day of October, 1923, plaintiff, in order to avoid the infliction upon it of fines and penalties and the distraint of its property by defendant, did pay to defendant, under instant protest in writing, the said sum of P12,009.75, Philippine currency.

"XI. That plaintiff's protest against the payment of the aforesaid tax was overruled and denied by defendant on the 20th day of October, 1923, and defendant has refused, and still continues in his refusal, to return to plaintiff, on demand, the said sum of P12,009.75, Philippine currency, or any part thereof.

"XII. That the parties hereto reserve the right to introduce evidence, direct or rebuttal, on any point not herein stipulated and which may be deemed material and necessary for the proper determination of this case."

That part of said section 7, important for this decision, provides that:

"Sec. 7. Section ten (a) of the same Act (Act No. 2833) is hereby amended to read as follows:

" 'Sec. 10. (a) There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company, partnership, joint-account (cuenta en participacion), association, or insurance company, organized in the Philippine Islands, no matter how created or organized, but not including duly registered general co-partnerships (compañias colectivas), a tax of three per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the Philippine Islands by every corporation, joint-stock company, partnership, joint-account (cuenta en participacion), association, or insurance company, organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends or net profits subject to the tax established in this subsection.'"

From a careful reading of said section 7 it will be seen that a tax "upon the total net income" is imposed upon all classes of entities, each class including exactly the, same kind of commercial entities. They are (a) domestic corporations, etc., and (6) foreign corporations, etc., doing business within the Philippine Islands. The first class is required to pay the tax upon the total net income received "from all sources," while the second class is required to pay the tax upon the total net income received "from all sources within the Philippine Islands." From the provisions of said section it at once becomes evident that it was not the intention of the Legislature to collect taxes from foreign corporations on income "from sources without the Philippine Islands." From the provisions of said section it is evident that the Legislature did not intend to collect taxes upon incomes received by foreign corporations from their business or branches of business-outside of the Philippine Islands. The Legislature of the Philippine Islands under said section did not presume that it had authority to collect taxes upon the income of foreign corporations received from sources without the Philippine Islands.

We have then the question squarely presented: What is the meaning, scope and effect of the phrase used in said section, "from all sources within the Philippine Islands?" While we have been unable to find any judicial interpretation of that phrase, happily we have found an interpretation of the phrase by those who are authorized to speak upon that question.

In 1916 (September 8, 1916) the Congress of the United States adopted "an Act to increase the revenue and for other purposes." (Vol. 39, part t U. S. Stat. at Large, p. 756.) Section 10 of that Act is in exactly the same language (except as to the rate of taxation) as section 7 of Act No. 2926. Said section contained the phrase "the total net income received from all sources within the United States" as applied to foreign corporations. In the said Act of 1916 the phrase "from all sources within the United States" was first used by Congress. The phrase used in the Act of Congress of 1913 was "business transacted and capital invested within the United States." Congress, for some reason or other, found it advisable to change the phrase "business transacted and capital jtovested within the United States" to the phrase "from sources within the United States." By the Act of Congress of October 3, 1917 (vol. 40, U. S. Stat. at Large, p. 303) the term "net income" as applied to foreign corporations, is defined to mean, "the net income received from sources within the United States." (See also the Revenue Act of Congress for the year 1918.)

A question arose in the Revenue Department of the United States concerning the meaning of the phrase "from sources within the United States" as used in the Act of Congress of 1916. That question was referred to the Attorney-General of the United States (32 Opinions of the Attorney-General of the United States, p. 336). After a careful consideration of the meaning of said phrase the Attorney-General said:

"No income is derived from the mere manufacture of goods; before there can be income there must be sale; and there is no income from sources 'within the United States' from goods manufactured here (United States) unless there is, in the language of the statute, 'both manufacture and disposition of goods within the United States.' The purpose of the 1918 statute is to tax only income that accrues within the United States. Congress does not attempt to tax profits arising from goods manufactured in this country but sold after being shipped abroad, without being disposed of by the owner in this country (United States). When the corporation manufactures or partially manufactures articles in this country (United States), but does not sell them until they are taken abroad, there is no income 'from sources within the United States.' For the reasons given it is concluded that income which may accrue to a foreign corporation by the sale of merchandise purchased in the United States, but sold outside of the United States, is not income from 'sources within the United States.' "

That ruling by the Attorney-General was immediately accepted and followed as a correct interpretation of the phrase "from sources within the United States" by the Revenue Department of the United States Government; and not only that, but the same interpretation was followed in a later opinion of the Attorney-General of the United States, holding that the interpretation given by the Attorney-General under the Act of 1916 was a correct

interpretation of the use of that phrase in the Acts of Congress of 1921 and 1924. (Jan. 21, 1924, 34 Opinions of the Attorney-General of the United States, 93; 5 Treasury Bulletin, 1-39-519; Holmes Federal Taxes, 6th ed., p. 416.)

The opinions of the Attorney-General and the regulations issued in accordance therewith by the Treasury Department of the United States were followed until 1921, when by an Act of Congress of November 23, 1921 (vol. 42, Part I, U. S. Stat. at Large, p. 227), entitled "An Act to reduce and equalize taxation, to provide revenues, and for other purposes" and in subsection (e) of section 217 of that Act, an apportionment was provided of incomes derived partly within and partly without the United States. Said subparagraph (e) provided that "items of gross income, expenses, losses and deductions, other than those specified in subdivisions (a) and (c) of said section (217) shall be allocated or apportioned to sources within or without the United States under rules and regulations prescribed by the Commissioner with the approval of the Secretary (of the Treasury). Where items of gross income are separately allocated to 'sources within the United States' there shall be deducted the expenses, losses and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which cannot definitely be allocated to some item or class of gross income. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the expenses, losses or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Commissioner with the approval of the Secretary. Gains, profits and income from (1) transportation or other services rendered partly within and partly without the United States, or (2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States, shall be treated as derived partly from sources within and partly from sources without the United States, Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States shall be treated as derived entirely from the country in which sold." (Subsection [e], section 217 of Act of Congress of November 23, 1921.)

It will be noted that this section provides that all "gains, profits and income derived from the purchase of personal property within and its sale without the United States shall be treated as derived entirely from the country in which sold." Thus, the opinion of the Attorney-General, quoted above, is followed and ratified by said Act of Congress of 1921.

Subsection (e) of section 217 of the Act of Congress of November 23, 1921 (42, Part I, U. S. Stat. at Large, p. 244) was carried forward and made subsection (e) of section 217 of the Act of Congress of June 2, 1924, with some changes in the last two lines. (43 Part I, U. S. Stat. at Large, p. 74.)

Said subsection (e) of section 217 of the Act of Congress of 1921 was amended in subsection (e) of section 217 of the Act of Congress of 1924 in the following manner. In the last two lines the language in the Act of 1921 was "shall be treated as derived entirely from the country in which sold," whereas the last two lines of subsection (e) of section 217 of the Act of 1924 read: "derived entirely from sources within the country in which sold." Again, it will be seen that the Congress of the United States in both of said subsections (e) adhered to the doctrine announced by the Attorney-General in vol. 32, Opinions of the Attorney-General of the United States, p. 336, providing expressly that "gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States, shall be treated as derived entirely from sources within the country in which sold."

THE INCOME IN QUESTION, BY THE STIPULATED PACTS AND BY THE ADMISSION OF THE ATTORNEY-GENERAL IN THIS COURT, WAS DERIVED FROM MERCHANDISE "SOLD" IN THE UNITED STATES.

Considering the similarity of the statute here and the Acts of Congress of 1916, 1917, 1918, 1921 and 1924, and the meaning of the phrase "total net income received from all sources within the United States" (total net income received from all sources within the Philippine Islands), as interpreted not only by the highest fiscal department in the United States and followed by the Revenue Department, but by the Congress of the United States, to wit: that "no income is derived from the mere manufacture of goods; before there can be income there must be sale; and there is no income from 'sources within the United States' from goods manufactured in the United States unless there is, in the language of the statute, 'both manufacture and disposition of goods within the United States.* The purpose of the 1916 statute is to tax only income that accrues within the United States. Congress does not attempt to tax profits arising from goods manufactured in this country but sold after being shipped abroad without being disposed of by the owner in this country (United States). When a foreign corporation manufactures or partially manufactures articles in this country (United States) but does not sell them until they are taken abroad, there is no income 'from sources within the United States. "

From the foregoing we are led to the question, Where were the merchandise involved in this question sold? We find the answer to that question (1) in the stipulated facts (paragraphs 4, 5, 6 of the stipulated facts) and (2) in the brief of the Attorney-General (p. 6). Said paragraphs of the stipulated facts expressly provide that the merchandise from which the income in question arose "was sold in the United States." The Attorney-General in his brief, at page 6, also makes the statement that: "It is true that the sale of the articles was made in the United States." In our opinion it would be a great injustice to the appellee if the stipulation presented at the beginning of the trial and the admission of the Attorney-General after the trial should be construed now to the prejudice of the appellee. We do not believe, in view of said stipulation and admitted fact by the Attorney-General, that any question should be raised at this time as to the place of the sale. The question of the place of the sale has been admitted to be in the United States.

It is argued, however, in the majority opinion that inasmuch as the sale was by an agent in the United States, "the sale being subject to confirmation, etc. as to price and other terms and conditions" that the sale was not made in the United States according to the stipulated facts, but was made in fact in the Philippine Islands. We cannot give our assent to that argument. The sale took place, by agreement of the parties, where the goods were, in the United States at the time of the sale.

We must not confuse the source of property with the source of income from property.

The taxing power of the Philippine Islands does not extend beyond its territorial limits. The Philippine Government has no authority to tax property nor an income from property beyond its territorial limits. The Legislature evidently recognized the limitation of its powers when it provided in section 10 above quoted for a tax upon the "total net income received from all sources within the Philippine Islands."

The place where the sale of personal property takes place is always a question of fact, depending upon the facts and circumstances of each particular case. A few examples may serve to illustrate:

First example: A is a manufacturer or producer of hats in the City of Manila. He has an agent in the City of Dagupan. He sends hats from time to time to his agent to be sold in Dagupan. The place of the sale in this example is evidently Dagupan and not Manila.

Second example: A is a manufacturer of hats in the City of Manila. B, a citizen of Dagupan, orders a number of hats to be sold by him on his own account as a merchant in the City of Dagupan. The entire transaction takes

place in the City of Manila. In this case the sale of the hats takes place in the City of Manila.

Third example: A is a manufacturer of hats in the City of Manila. B orders a number of hats from A to be delivered and paid for at the City of Dagupan. In such a case the sale takes place at the City of Dagupan and not in the City of Manila.

Fourth example: A, a manufacturer of hats in the City of Manila, entered into a contract with B to deliver a quantity of hats in good condition in the City of New York. The hats were damaged in transit. The sale was not complete until the hats were delivered in good condition in the City of New York. The sale was made in the City of New York and not in the City of Manila. (E. C. McCullough & Co. vs. Berger, 43 Phil, 823; 35 Cyc, pp. 274, 275, 276.)

Fifth example: A is a manufacturer of hats in the City of Manila. He has an agent in the City of San Francisco to whom he sends large quantities of hats to be sold by his agent. A reserves the right to fix the price and conditions of the sale from time to time, as well as to confirm all sales. The hats were sold by the agent in San Francisco in accordance with the arrangement with A. The sale is made in the United States.

Sixth example: A is a foreign corporation doing business in the Philippine Islands and is a manufacturer and purchaser of hats in the City of Manila. From time to time he ships his products to the City of San Francisco in the United States to be sold there. He has a bodega or store in San Francisco. From time to time he goes to the United States and personally, as opportunity presents itself, sells said merchandise in the United States. The sale is made in the United States, notwithstanding the fact that his books of account concerning the purchase, manufacture and sale of said hats are kept in the branch office of the City of Manila.

THE PACT THAT THE SALE IN THE UNITED STATES WAS SUBJECT TO CONFIRMATION BY THE PHILIPPINE BRANCH DOES NOT MAKE THE SALE, ONE IN THE PHILIPPINE ISLANDS.

The fact that the Philippine branch of the plaintiff corporation reserved the right to control its agent in the United States in the sale of the merchandise in question does not make the sale, a sale within the Philippine Islands. The sale was made in the United States as per the stipulated facts and admission of the Attorney-General. The control of the sale as to price, etc. does not change the place of the sale of the merchandise. The Philippine branch of the plaintiff corporation simply took the precaution of having full control of the acts of its agents in the United States. The condition would have been exactly the same had the principal accompanied the merchandise to the United States and sold it. The sale by the agent does not change the place of sale. Corporations can only act through their agents.

THE PLAINTIFF IS SUBJECTED TO DOUBLE TAXATION

Under the stipulated facts the plaintiff is doing business in the United States. It has an income from said business.

Under the Acts of Congress of 1916-24 it is subject to pay an income tax upon the "gains, profits and income derived from the purchase of personal property without the United States" and under the decision of the majority opinion, he is also required to pay a tax upon the same income in the Philippine Islands. He is therefore subjected to a double tax on the same income.

Under the doctrine of the majority opinion the plaintiff, as a foreign corporation, bears an unequal burden to that imposed upon domestic corporations, notwithstanding the fact that it was the "purpose, and intent of the Legislature that a foreign corporation which has a branch office in the Philippine Islands and engaged in business here should pay the same amount of income tax on that business as a domestic corporation."

DOMESTIC AND FOREIGN CORPORATIONS SUBJECTED TO UNEQUAL BURDEN

If the doctrine of the majority opinion is the correct interpretation of the law, then domestic and foreign

corporations are subjected to unequal burden in accordance with the provisions of paragraphs (a) and (b) of section 12 of Act No. 2833. Their allowable deductions are not the same.

It is well established that a state, or territory authorized to legislate for itself, may regulate the activities of foreign corporations within the state or such territory, but it cannot regulate or interfere with what foreign corporations may do outside.

The plaintiff was authorized, through its branch office, to do business in the Philippine Islands. If it chose to do business outside of the Philippine Islands it had a perfect right to do so and the Philippine Legislature has no authority to place a burden upon the business done outside of the Philippine Islands. (*Allgeyer vs. Louisiana*, 165 U.S., 578; *St. Louis Cotton Compress Co. vs. Arkansas*, 260 U. S., 346; *Compañia General de Tabacos vs. Collector of Internal Revenue*, decided by the Supreme Court of the United States, Nov. 21, 1927, advance opinion, p. 83.)

In my opinion the motion for reconsideration should be granted and the judgment appealed from should be affirmed.

UPON MOTION FOR RECONSIDERATION

February 9, 1928

STREET, J., dissenting:

Although I signed the original opinion in this case I am constrained, upon further reflection, to record the belief that the assent thus given to the decision was ill-advised,—a mistake apparently due to an erroneous perception of the bearing upon this case of the two opinions of the Attorney-General of the United States and certain Congressional legislation referred to in the dissenting opinion of Mr. Justice Johnson. In dealing with a statute adopted by the Philippine Legislature from an Act of Congress we should be careful to take the law with the interpretation placed upon it by competent authority in the United States; and especial care should be taken about this in dealing with the intricate matters covered by the income-tax laws. Our endeavor should be to cooperate, as far as possible, with the Revenue Department of the United States, in making the operation of these laws just and uniform.

The opinions of the Attorney-General of the United States to which reference has been made sustain the proposition that when merchandise is purchased or produced in one country and sold in another, the place of sale is to be taken as the place of the source of income for the purpose of applying a law such as is under consideration in this case; and it will be noted that the ruling thus made arose upon facts where the conclusion reached was contrary to the interests of the Government revenue,—a circumstance which indicates that probably no strong considerations in favor of the Government were overlooked. In addition to this subsequent legislation of Congress, while accepting said proposition as a general rule, has defined the particular cases where a different rule shall be applied. But in the Philippine Islands we have none of this supplemental legislation, with the result that the rule enunciated by the Attorney-General is applicable in its full extension in this jurisdiction, not of course as a binding rule of law but as a competent interpretation of the statute from which our own law is taken.

My conclusion is in conformity with that reached by Mr. Justice Johnson, namely, that the decision heretofore entered in this case should be set aside and the appealed judgment affirmed.

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