

**W.F. STEVENSON & CO., LTD., PLAINTIFF AND APPELLANT, VS.
THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND
APPELLEE.***G.R. No. 27877. December 07, 1927*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-27877/>**STATEMENT**

Plaintiff is a foreign corporation duly licensed to do business in the Philippine Islands, with its principal office in the City of Manila, and the defendant is the Collector of Internal Revenue.

Plaintiff alleges that during the years 1924 and 1925 and the first quarter of the year 1926, as the agent of Forbes, Munn & Co., Ltd., and for and on behalf of that company, as its principal, it sold in the Province of Iloilo merchandise and effects of that company of the value of P128,761.03, for and on behalf of which, and as its agent, the plaintiff made returns to defendant on all sales as required by law and paid the merchants' percentage tax on all of such sales in accord with the provisions of section 1458 of the Administrative Code, as amended by Acts Nos. 2892 and 3074 and of section 1459 as it relates to Acts Nos. 3065, 3183 and 3243. That plaintiff, for itself and in its own name, made returns to the defendant on all of its business in connection with such sales, and paid the defendant the fixed and percentage taxes due on such sales as a commercial broker in accord with the provisions of sections 1464, 1465 and 1466 of the Administrative Code, as amended by Acts Nos. 2835 and 2925. That on July 10, 1926, the defendant, pretending to act under the authority of section 1458 of the Administrative Code, as amended by section 2 of Act No. 2892, and section 1 of Act No. 3074 and of section 1459 as it relates to Acts Nos. 3065, 3183 and 3243, levied and assessed against the plaintiff, and demanded the payment of the sum of P2,178.71 which amount was increased to P2,183.73 as percentage taxes on such sales made by the plaintiff for and in the name of Forbes, Munn & Co., Ltd., including a surcharge of 25 per cent for nonpayment of such taxes when they became due, upon the theory that in *W. F. Stevenson & Co. vs. Collector of Internal Revenue* the making of such sales, the plaintiff engaged in the business of commission merchant and was subject to payment of the percentage tax imposed on merchants by section 1459 of the Administrative Code, notwithstanding that Forbes, Munn & Co., Ltd., had already paid the same tax under section 1459. That plaintiff protested payment and paid under protest which was overruled. For which plaintiff prays for a corresponding judgment, with interest and costs.

For answer the defendant admits the allegations made in the first paragraph of the complaint, and generally and specifically denies all other allegations, except those made in the following special defense, and then alleges that during the period mentioned, the plaintiff effected transactions as a commission merchant, the internal revenue fixed and percentage charges on which, plus the 25 per cent surcharge for delinquency, amount to P2,183.73, which was the amount paid by the plaintiff to the defendant, and he prays to be absolved from the complaint, with costs.

The case was tried and submitted upon the following stipulated facts:

"By leave of the court first had and obtained, the parties hereto, acting through their respective counsel, hereby

make and submit the following agreed statement of facts:

"(1) Paragraph I of plaintiff's complaint is admitted.

"(2) During the years 1924 and 1925 and during the first quarter of 1926, the plaintiff, acting as the agent of Forbes, Munn & Co., Ltd., a foreign corporation duly licensed to transact business in the Philippine Islands, with its principal office therein in the City of Manila, and for, in the name, and on behalf of the said Forbes, Munn & Co., Ltd., its principal, sold in the Province of Iloilo, Philippine Islands, merchandise and effects belonging to the said Forbes, Munn & Co., Ltd., amounting to P128,761.03.

" (3) Plaintiff, for and on behalf of its principal Forbes, Munn & Co., Ltd., and acting as agent of the latter, made returns to defendant on all such sales as required by law and paid for the account of the said principal the merchants percentage taxes on the value of all such sales in accordance with the provisions of section 1458 of the Administrative Code, as amended, by Acts Nos. 2892 and 3074, and of section 1459 of the same Code, in relation to Acts Nos. 3065, 3183 and 3243.

"(4) Plaintiff, in its name and on its own behalf, believing itself to be a commercial broker, made returns to the defendant on all of the business done by it in connection with the aforesaid sales as provided by law, and paid the fixed and percentage taxes due on said business, in accordance with the provisions of sections 1464, 1465 and 1466 of the Administrative Code, as amended by Acts Nos. 2835 and 2925.

"(5) On and after July 10, 1926, the defendant levied and assessed against plaintiff, and demanded of plaintiff the payment of the sum of P2,183.73 as percentage taxes on the aforesaid sales made by plaintiff for, in the name, and on behalf of Forbes, Munn & Co., Ltd., its principal, including a surcharge of 25 per cent for non-payment' of the taxes on time, alleging that plaintiff as such agent of Forbes, Munn & Co., Ltd., engaged in the business of commission merchant and as such was subject to the payment of the percentage tax imposed on merchants by the provisions of section 1459 of the Administrative Code and Acts Nos. 3065, 3183 and 3243, notwithstanding that Forbes, Munn & Co., Ltd., had already paid said tax on the same sales under the same provisions of law.

"(6) Plaintiff, solely to avoid distraint and the payment of the further fines and penalties', involuntarily and under instant protest in writing, paid to defendant the sum of P2,183.73, the amount levied and assessed by the defendant against the plaintiff as aforesaid.

"(7) The defendant overruled and denied plaintiff's protest on September 15, 1926, and has refused and still refuses to refund to plaintiff the said sum of P2,183.73."

The lower court rendered judgment for the defendant, to which the plaintiff excepted and filed a motion for a new trial, which was denied, and to which exception was taken. On appeal the plaintiff assigns the following errors:

"I. The lower court erred in finding that the appellant company engaged in the business of a commission merchant.

"II. The lower court erred in finding that appellant, granting for the sake of argument that it had acted as a commission merchant, was subject to the merchants' sales tax.

"III. The lower court erred in applying to the instant case the decision of this court in *Lee Chan Lam vs. Trinidad* (47 Phil, 979).

"IV. The lower court erred in holding the plaintiff, as agent of Forbes, Munn & Co., Ltd., liable for the sales tax on the transactions in question notwithstanding that the same tax on the same transactions had already been paid by plaintiff's principal."

JOHNS, J.:

As stated, this case was tried and submitted upon a stipulation of facts, from which it appears that during the period mentioned, the plaintiff, as the agent of Forbes, Munn & Co., Ltd., which was duly authorized to transact business in the Philippine Islands, and for and on behalf of its principal, sold in the Province of Iloilo merchandise and effects of its principal amounting to P128,761.03, and that plaintiff for and on account of its principal, and acting as its agent, made returns to defendant and paid the merchants' percentage taxes on all of such sales under the provisions of section 1458 of the Administrative Code, and for itself and in its own name, made returns to the defendant and paid to him the percentage tax owing from its business as a commercial broker. It further appears that the defendant required the plaintiff to pay the amount of the tax now in question upon the theory that in the making of such sales as agent for Forbes, Munn & Co., Ltd., plaintiff was a merchant, and as such was subject to the payment of the percentage tax imposed on merchants by section 1459 of the Administrative Code.

It should be noted that this case was tried and submitted on stipulated facts, from which it appears that the merchandise and effects in question were sold by Forbes, Munn & Co., Ltd., through the plaintiff as its agent, and that such sales were made by the plaintiff for and on behalf of Forbes, Munn & Co., Ltd., which was duly licensed to transact business in the Philippine Islands. That is to say, there is no evidence which shows or tends to show that more than one sale of the merchandise and effects were ever made and the evidence is conclusive that that sale was made for and on account of Forbes, Munn & Co., Ltd., by and through the plaintiff as its agent, and for and on its behalf. The record being conclusive that there never was but one sale of the merchandise and effects, and that that sale was made by Forbes, Munn & Co., Ltd., by and through the plaintiff as its agent, how and upon what legal principle can it be contended that the plaintiff should pay a merchant's tax on merchandise and effects which it never personally sold, and which it sold as agent for its principal? Based upon the stipulated facts, the record is conclusive that there never was but one sale of the merchandise and effects, and upon that sale the percentage tax was paid by Forbes, Munn & Co., Ltd. Neither is there anything in the stipulated facts which shows or tends to show that the plaintiff is a merchant or that as to the transaction in question it ever did business as a merchant.

Where parties to an action try and submit a case upon stipulated facts, and there is no other evidence introduced, they are bound by the facts as stipulated.

Upon the record before us, there never was but one sale, and the merchant's percentage tax was paid on that sale, and in addition thereto plaintiff paid its percentage tax on that business as a commercial broker, and the sales in question were made by plaintiff as agent for its principal, and they were not made by the plaintiff as a merchant, and it is not liable for the tax in question. To hold otherwise would require the payment of two merchants' sales tax on one sale only of the same merchandise and effects.

The judgment of the lower court is reversed, and one will be entered here for the plaintiff and against the defendant for P2,183.73, without interest and without costs.

So ordered.

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

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