

KUENZLE & STREIFF, PLAINTIFF AND APPELLEE, RS. THE UNITED STATES, DEFENDANT AND APPELLANT.*G. R. No. 2840. August 08, 1907*

Ponente: JOHNSON, J.

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It appears from the record that on the 21st day of December, 1903, the plaintiff imported into the Philippine Islands four cases of cotton textiles and two cases of silk goods, from Genoa, Italy. The importer declared the four cases of cotton textiles under paragraph 120 of Act No. 230 of the Philippine Commission, and claimed that the said goods should have been declared under paragraph 118 of the said law, citing Tariff Decision Circular No. 323 in support of this contention. The Collector of Customs ruled against this contention of the importer. From this decision of the said collector the importer appealed to the Court of Customs Appeals.

The second ground of protest of the importer was, that upon examination of the two cases of silk goods in the appraiser's division, a total shortage of three pieces was discovered. Notwithstanding this fact the Collector of Customs charged duty upon this shortage. From this decision, the importer appealed to the Court of Customs Appeals.

An examination of the decision of the Court of Customs Appeals will show that it did not pass upon the first protest mentioned, presented by the importer. The Court of Customs Appeals decided only the second question. Before the Court of Customs Appeals, the Collector of Customs appeared and alleged that the importer did not have the right to appeal from his decision to the said court, and cited section 286 of the Philippine Customs Administrative Act. Inasmuch as the importer or plaintiff herein did not appeal from the decision of the Court of Customs Appeals for the reason that the said court did not pass upon his first protest, to wit, that the Collector of Customs did not classify the four cases of cotton textiles under the proper paragraph of the Tariff Law of the Philippine Islands, the only question which this court can consider is (a) whether or not the plaintiff did have the right to appeal in this case from the decision of the Collector of Customs, and (b) whether or not the Collector of Customs had the right to impose duty upon the pieces of textile which were not imported but which, in some way, had been lost.

Section 288 of the Philippine Customs Administrative Act, as amended by Act No. 864, reads as follows :

"The court [Court of Customs Appeals] shall have the power to determine all questions arising in the appeal, including the questions as to whether any duty, exaction, or fee can lawfully be imposed. The remedy by appeal to the Court of Customs Appeals is exclusive of all other remedies upon all questions relating to the customs duties or the administration thereof under this act."

The protest of the plaintiff with reference to the payment of the duty upon three pieces of silk which were lost is based upon the fact that the Collector of Customs had no right to impose duty Upon them, they not having been brought into the Philippine Islands. By reference to said section 288 it is seen that the Court of Customs Appeals has power to determine all questions arising in the appeal, including the question as to whether any duty, etc., can

be lawfully imposed.

It would seem, and we so hold, that said section 288, by express terms, gives the importer in cases like the present, the right to appeal from the decision of the Collector of Customs.

Upon the question of the right of the Collector of Customs to impose duty upon goods that are lost in transit, the lower court made the following statement of fact in its decision:

"From the fact that the cases containing the three pieces of silk in question arrived at Manila in apparently good condition, and that said cases continued in like good condition until examined by the appraisers, it is held to be proved that the extraction of said three pieces of silk occurred prior to the arrival of the merchandise in the Philippine Islands. The rules of presumption all go to establish this conclusion, because the steamer which brought the merchandise arrived in Manila only a few hours before coming to anchor, and from the circumstances under which the theft was committed it is evident that the thief must have had full leisure to remove the outside case, cut the zinc lining, and replace the wooden boards."

There was no evidence brought to this court which shows, or tends to show, that the finding of the lower court was not in accordance with the evidence presented to it; therefore, we find that the extraction of the said three pieces of silk occurred prior to the arrival of the merchandise in the Philippine Islands. The Collector of Customs, in passing upon the question whether the importer should pay duty upon the three pieces of silk, said:

"That the question had already been passed upon administratively in a former case, basing said decision upon section 215 of the Philippines Customs Administrative Act."

Section 215, in part, provides as follows:

"That whenever the appraiser reports a deficiency in or absence of part of the contents of a package as called for by the invoice, no allowance shall be made unless evidence satisfactory to the collector shall be produced that said shortage occurred before the arrival of the merchandise in the Philippine Islands, the burden of proof in such cases resting upon the importer."

This article prescribes that in case of a shortage which occurred before the arrival of the merchandise in the Philippine Islands, the importer shall not be charged duty upon the shortage, the burden resting upon him, however, to show that said shortage did not occur after the arrival of the merchandise in the Philippine Islands. In the present case the lower court found as a fact that the said three pieces of silk were lost before their arrival in the Philippine Islands. This being true, and no evidence having been brought to this court which shows, or tends to show, to the contrary, we are of the opinion, and so hold, that the Collector of Customs had no right to impose a duty upon the said three pieces of silk.

Upon the questions, therefore, (a) whether the importer had the right to appeal from the decision of the Collector of Customs to the Court of Customs Appeals, and (b) whether the Collector of Customs had the right to imposed duty upon goods not actually imported, but found upon the invoice of the importer, it having been shown that said goods were lost in transit, we are of the opinion and so hold, that the decision of the lower court should be affirmed. The case is hereby ordered to be remanded to the Court of First Instance of Manila with direction that a judgment be entered in accordance with the foregoing decision. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

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