ALFONSO TUASON Y ANGELES AND MARIANO TUASON Y ANGELES, PLAINTIFFS AND APPELLEES, VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G. R. No. 30885. January 23, 1930

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

On September 15, 1922, Esperanza Tuason y Chuajap made a donation inter vivos of certain property to plaintiff Mariano Tuason y Angeles. On April 30, 1923, she made another donation inter vivos to Alfonso Tuason y Angeles, the other plaintiff. On January 5, 1926, she died of senile weakness at the age of 73, leaving a will bequeathing P5,025 to Mariano Tuason y Angeles, and P5,050 to Alfonso Tuason y Angeles. Her judicial administratrix paid the prescribed inheritance tax on these two bequests.

Furthermore, the defendant collected the sums of P3,809,76 and P6,653.64 from plaintiffs Mariano Tuason y Angeles and Alfonso Tuason yr Angeles against their opposition and over their protest as inheritance tax upon the gifts inter vivos made to them.

The plaintiffs brought this action against the Collector of Internal Revenue for the recovery of the amounts of P3,809.76 and P6,653.64 collected from them as inheritance tax.

The judgment appealed from ordered the defendant to return the amounts claimed to the plaintiffs.

The appellant contends that the collection of these amounts as inheritance tax is authorized by the law.

Section 1536 of the Administrative Code provides:

> "SEC. 1536. Conditions and rate of taxation.—Every transmission by virtue of inheritance, devise, bequest, gift mortis causa, or advance in anticipation of inheritance, devise, or bequest shall be subject.to the following tax:"

* * * * * * *

Section 1539 enumerates the deductions to be made in determining the net sum which must bear the tax.

Section 1540 then provides:

> "SEC. 1540. Additions of gifts and advances.—After the aforementioned deductions have been made, there shall be added to the resulting amount the value of all gifts or advances made by the predecessor to any of those who, after his death, shall prove to be his heirs, devisees, legatees, or donees mortis causa."

When the law says all gifts, it doubtless refers to gifts inter vivos, and not mortis causa. Both the letter and the spirit of the law leave no room for any other interpretation. Such, clearly, is the tenor of the language which refers to donations that took effect before the donor's death, and not to mortis causa donations, which can only be made with the formalities of a will, and can only take effect after the donor's death. Any other construction would virtually change this provision into: "* * * there shall be added to the resulting amount the value of all gifts mortis

causa * * * made by the predecessor to those who, after his death, shall prove to be his * * * donees mortis causa" We cannot give to the law an interpretation that would so vitiate its language. The truth of the matter is that in this section (1540) the law presumes that such gifts have been made in anticipation of inheritance, devise, bequest, or gift mortis causa, when the donee, after the death of the donor proves to be his heir, devisee or donee mortis causa, for the purpose of evading the tax, and it is to prevent this that it provides that they shall be added to the resulting amount.

This being so, and it appearing that the appellees after the death of Esperanza Tuason y Chuajap, were found to be legatees under her will, the donations inter vivos she had made to them in 1922 and 1923, must be added to the net amount that is to be taxed.

In the course of the deliberations of this court on this case, the question arose as to whether or not that interpretation of the law would be constitutional. But as the parties did not raise this question in the court below, nor in this court, we cannot consider it. At any rate the argument adduced against its constitutionality, which is the lack of uniformity, does not seem to be well-founded. It was said that under such an interpretation, while a donee inter vivos who, after the predecessor's death proved to be an heir, a legatee, or a donee mortis causa, would have to pay the tax, another donee inter vivos who did not prove to be an heir, a legatee, or a donee mortis causa of the predecessor, would be exempt from such a tax. But as these are two different cases, the principle of uniformity is inapplicable to them. Aside from this, in regard to other aspects, we see nothing against the constitutionality of the law (Bromley vs. McCaughn [1929], U. S. Supreme Court Advance Opinions, p. 69).

The judgment appealed from is reversed, and the defendant is absolved from the complaint, without special pronouncement of costs. So ordered.

Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

DISSENTING

STREET, J.:

The two plaintiffs in this case are suing to recover two several sums of money, the payment of which has been exacted from them in the character of taxes upon inheritance, and it is very manifest to me that the taxes in question were imposed, and have been collected, in violation of that portion of section 3 of the Autonomy Act (Jones Law) which declares that the rule of taxation in these Islands shall be uniform. To demonstrate this conclusion it is desirable to fix in the mind the exact state of fact upon which the decision should turn. In this connection we note that the plaintiffs are not persons who would have inherited any part of the estate of Esperanza Tuason y Chuajap, if she had died intestate. It is clear therefore that the donations made to the two plaintiffs in 1922 and 1923, respectively, were not made "in anticipation of inheritance" and they are therefore not taxable in that character. The gifts in question were donations inter vivos, and as such they should be free from the inheritance tax.

But it happened that the donor, in a will executed late in 1925, gave two legacies of about P5,000 each to the two plaintiffs. These two legacies were of course subject to the legacy tax imposed by law, and those taxes have been paid without question. Nevertheless, under the decision now before us, the giving of those legacies has the effect of making the gifts of 1922 and 1923 to the plaintiffs taxable in the character of inheritances. This substitutes mere caprice for uniformity.

Further to Illustrate this, let it be supposed that a person, desirous of conferring a benefit upon two persons held in

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about equal esteem, makes a gift of P10,000 to one and P9,900 to the other. In a subsequent will, in order to equalize the gifts, the same benefactor gives a legacy of P100 to the second donee. Under the statute, as interpreted by the court, the first donee is not liable to any inheritance tax, but the second is liable upon the entire amount first given to him. This shows the lack of logical relation between the incidence of the tax and the fact taken as a basis for its imposition.

It will be noted that we do not here question the proposition that section 1540 of the Administrative Code might lawfully operate upon a donee who at the time of receiving the gift inter vivos belongs to the class who could take by intestate succession, in the absence of a will, for in this case the donation may be made in anticipation of inheritance (sec. 1536, Adm. Code). It was for this very reason that the undersigned sustained the position in Zapanta vs. Posadas. (52 Phil., 557), that the gifts there made were taxable. But section 1540 of the Administrative Code cannot, in my opinion, properly be interpreted to extend to gifts inter vivos made to a person not in a position to take as heir of the donor dying intestate.

In closing I wish to point out that the vital difference between this case and that under consideration in Zapanta vs. Posadas, supra, is that in the latter case the donees were persons who would have been heirs of the donor if the latter had died intestate, while in this case the donees are not in such position.

The judgment, in my opinion, should have been affirmed.

Johnson, J., I agree with Justice Street.
Villa-Real, J., I concur in the above dissenting opinion of Justice Street.

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