

BARTOLOME VENUS, PLAINTIFF AND APPELLEE, VS. JUAN POSADAS, JR., AS COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 32603. August 14, 1930

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of the Province of Capiz on July 27, 1928, by Bartolome Venus, for the purpose of recovering from the Collector of Internal Revenue the sum of P1,641.60 paid to him, under protest, on March 19, 1924, in the character of internal revenue tax. Upon hearing the cause the trial judge gave judgment in favor of the plaintiff requiring the Collector of Internal Revenue to refund to the plaintiff the amount so paid by him under protest, without pronouncement as to costs. From this judgment the Collector of Internal Revenue appealed.

The only defense relied upon by the appellant and necessary to be considered upon this appeal is that of prescription. From the agreed statement of facts it is apparent that more than four years elapsed from the time the tax, for the recovery of which this action was instituted, was paid under protest until the date when the action to recover the money was instituted. In section 1579 of the Administrative Code the period of only two years is allowed after the payment of an internal revenue tax under protest within which action may be brought for its recovery. The lower court held that the provision referred to is not absolute but only permissive, and the case of *Zaragoza vs. Alfonso* (46 Phil., 159), is cited as a case in which the prescriptive provision was ignored. It is true that in the case mentioned recovery of a tax involuntarily paid was permitted after more than two years had elapsed. But the tax involved in the case cited was not an internal revenue tax, and the provision upon which reliance is here placed by the defendant is found in the provisions of the Administrative Code relative to the collection of internal revenue taxes. Also, in *Zaragoza vs. Alfonso*, supra, the question of prescription was not raised, and the decision there made is not pertinent to the point now under consideration.

The period of two years allowed in section 1579 of the Administrative Code is taken from the United States Revised Statutes, and the courts of the United States have not hesitated to apply said provision to cases arising under the statute (*Maryland Casualty Co. vs. U. S.*, 251 U. S., 342). There is no good reason why it should not be given effect in this jurisdiction. We accordingly hold that the right to recover the tax which is the subject of this action has prescribed.

The judgment appealed from must be reversed and the defendant, Juan Posadas, Jr. as Collector of Internal Revenue, will be absolved from the complaint. So ordered, without costs.

Malcolm, Villamor, Ostrand, Johns, Romualdez and Villa-Real, JJ., concur.

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