

STRUCKMANN & CO., PLAINTIFF AND APPELLEE, VS. THE UNITED STATES, DEFENDANT AND APPELLANT.

G.R. No. 3396. September 02, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record it appears that the plaintiff and appellee brought into the Philippine Islands handkerchiefs and declared the same to be "plain textiles" and paid the duty upon the same on the 14th of March, 1903, under protest.

The plaintiff and appellee claimed that said handkerchiefs were clearly manufactured of "plain textiles" and that the transparent part running around the whole handkerchief belongs to the hem, for which a surtax is paid, and consequently should not be regarded as part of the textile itself.

The Collector of Customs held that the said handkerchiefs should be classified as "figured cotton textiles," dyed in the piece, and should pay duty under paragraph 120 instead of under paragraph 119 of the Tariff Revision Law of 1901,[1] as claimed by the plaintiff and appellee.

From the decision of the Collector of Customs the plaintiff and appellee appealed to the Court" of Customs Appeals.

The Court of Customs Appeals held that said handkerchiefs were "more nearly assimilated to plain textiles" than to "figured textiles." From this decision of the Court of Customs Appeals the defendant appealed to this court.

After the said decision was rendered by the Court of Customs Appeals, the stenographer's notebook containing the evidence taken at the original hearing was lost before the notes were transcribed, and therefore the appeal could not be perfected. The decision of the Court of Customs Appeals was rendered some time prior to the 17th day of April, 1905. The decision contains no date.

During the time the parties interested were attempting to perfect the appeal to the Supreme Court, the Philippine Commission passed Act No. 1405 abolishing the Court of Customs Appeals, and transferring the powers and duties of that court to the Court of First Instance of the city of Manila.

The Secretary of Finance and Justice in allowing the appeal from the Court of Customs Appeals to the Supreme Court said:

"Inasmuch as the law provides for the transmission of the whole record to the Supreme Court, it is believed to be the duty of the judge of the Court of Customs Appeals to cause the record to be made complete before certification to the Supreme Court, which might be done by retaking the evidence or by reproducing the evidence adduced, by agreement of the parties, or in such other form as the court shall direct."

Notwithstanding this direction of the Secretary of Finance and Justice with reference to completing the record, the cause was referred to the Hon. A. S. Crossfield, judge of the Court of First Instance, and there the defendant

reproduced (the record does not show in what manner) the testimony of two witnesses on behalf of the defendant. The record shows that the plaintiff and appellee was unable to reproduce the evidence presented at the original trial upon which the judgment of the Court of Customs Appeals was entered. The plaintiff and appellee objected to a consideration of the cause by this court, upon the ground that the record was not complete, the evidence not all being brought to this court.

The law requires that in case of appeal from a decision of the Court of Customs Appeals the entire record shall be brought to the" Supreme Court. This requirement of law has not been complied with; the case is, therefore, dismissed with costs to the appellant. So ordered.

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

[1]I Pub. Laws, 598.

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