

DOROTEO O. RAYMUNDO, PLAINTIFF AND APPELLANT, VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE, ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 34465. October 28, 1931*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Manila by Doroteo O. Raymundo for the purpose, of recovering from Juan Posadas, jr., as Collector of Internal Revenue, and Victor Alfonso, treasurer of the City of Manila, certain internal revenue taxes paid by the plaintiff under protest, and amounting all together to P1,956.41. Upon hearing the cause the trial court dismissed the complaint, and the plaintiff appealed.

The money for the recovery of which this action was brought is claimed by the defendants in the character of merchants' tax, under section 1459 of the Administrative Code, as amended. It appears that the plaintiff is a licensed auctioneer of the City of Manila, whose business it is to conduct auctions for the sale of unredeemed pledges held by pawn shops. The plaintiff has no office or regular place of business of his own, nor any depository where the things for sale by him are kept. His custom is to go around from time to time, and from place to place, as his services are needed, and to conduct the sale of such jewelry, furniture, or other merchandise as the particular establishment employing him may hold for sale at auction. The plaintiff receives no commission on his sales, but he is paid a daily wage for the service rendered. Furthermore, the jewelry, furniture, and other things sold by him remain at all times in the power and under the control of the pawn-broking establishment by which he is employed, until the same are delivered to the purchaser as highest bidder, the price being paid directly to such establishment, without any intervention whatever on the part of the plaintiff in the receipt or custody of the price. The taxes in question were paid for the third and fourth quarters of 1928 and the first and second quarters of 1929. The amount involved is not the subject of dispute, and the sole question for decision is whether, in conducting various sales as an auctioneer, the plaintiff should be considered a "merchant" within the meaning of section 1459 of the Administrative Code.

In the last paragraph of the section referred to the word "merchant" is defined as follows:

" 'Merchant,' as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

Attention should be directed to subsection (w) of section 1464, in connection with subsection (x) of section 1465 of the Administrative Code. The two last mentioned provisions impose a fixed tax upon "commercial brokers." It is noteworthy that this provision taxing commercial brokers did not appear in the Administrative Code as it originally stood but has been introduced by later amendment into the subsections which related originally to stockbrokers only. We consider the term "merchandise broker," as used in the concluding words of the paragraph

above quoted from section 1459, to be coextensive in meaning with the expression "commercial broker" as used in subsection (w) of section 1464, as amended, and in subsection (x) of section 1465, The difference in verbiage between "merchandise broker" and "commercial broker" was doubtless due to a mere accident of translation in finding equivalents in English or Spanish.

The legal status of the auctioneer has been often considered in judicial decisions, and the conclusion has been uniformly reached that he is the "agent" of the merchant or merchants for whom he acts. (Words and Phrases, vol. I, p. 639, S. V. Auctioneer.) He should therefore not be considered as being himself a merchant. He is rather a merchandise, or commercial, broker and is excepted from the merchants' tax. But, even supposing that the auctioneer is not technically a merchandise broker, within the express exception of the definition of merchant, still the term auctioneer cannot by any legitimate process be brought within the meaning of the word merchant as that term is used in section 1459. The merchant, as owner of the goods, gets the profit or suffers the loss incident to the sale. The plaintiff in this case was no more entitled to share in the profit than an ordinary clerk. It is true, as the appellee insists, that the merchants' tax is merely a tax on sales, but before the tax can accrue, the sale must be made by one who has the character of merchant. One who sells in the character of mere agent or servant, like a clerk or the auctioneer in this case, is certainly not liable for the tax.

The judgment appealed from will be reversed, and the plaintiff will recover of the defendant the sum of P1,956.41. So ordered, without costs.

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

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