

GIL HERMANOS, PLAINTIFF AND APPELLANT, VS. JOHN S. HORD, DEFENDANT AND APPELLEE.

G.R. No. 3960. February 27, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The defendant demurred to the complaint in this action, the demurrer was sustained, the plaintiff declined to amend, final judgment was entered against the defendant, and he has appealed.

The only question is whether the complaint states a cause of action or not. It alleges in substance that the plaintiff, a mercantile partnership, paid internal-revenue taxes between the 13th of April, 1905, and the 2d of January, 1906, amounting to P2,175.52, and that those taxes were paid into the municipal treasury of Virac and amounted to one-third of 1 per cent of the value of certain hemp sold by the plaintiff. The hemp was sent by the plaintiff to Aldecoa & Co., in Manila, who afterwards sold it as commission merchants on behalf of the company; and upon making such sale they also paid one-third of 1 per cent upon its value. The plaintiff alleges that the payment it made was made under protest and it seeks to recover the sum of P2,175.52 from the defendant, who is the Collector of Internal Revenue.

Sections 139 and 140 of the Internal Revenue Law (Act No. 1189) are as follows:

"SEC. 139. Except as hereinafter specifically exempted, there shall be paid by each merchant and manufacturer a tax at the rate of one-third of one per centum on the gross value in money of all goods, wares, and merchandise sold, bartered, or exchanged for domestic consumption in the Philippine Islands, and this tax shall be paid whether such commodities consist of raw materials or manufactured or partially manufactured products, and whether of domestic production or imported. This tax shall be assessed on the actual selling price at which every such merchant or manufacturer disposes of his commodities and shall be paid at the end of each quarter in the sum lawfully due on the gross amount in money of the sales made by every such merchant or manufacturer during each such quarter. And each such merchant or manufacturer shall, on the first day of January, nineteen hundred and five, or on the date thereafter on which any such merchant or manufacturer engages in any such mercantile or manufacturing pursuit, pay a tax of two pesos.

"SEC. 140. Every person who on his own account, or on commission for another, is engaged in the sale, barter, or exchange of foreign or domestic goods, wares, or merchandise of any and all kinds for domestic consumption, and whether such goods, wares, or merchandise consist of raw materials or of manufactured or partially manufactured products, shall be considered as a merchant within the meaning of this article."

The claim of the plaintiff is that the hemp was not sold by it to Aldecoa & Co., and that the only sale that it made was the sale which Aldecoa & Co., as its agents, made in its behalf in Manila, and that when the defendant compelled the plaintiff to pay one-third of 1 per cent of the value of the hemp and also compelled Aldecoa & Co. to pay again one-third of 1 per cent upon such value he recovered the same tax twice.

We entirely agree with the plaintiff, that there was only one sale of the hemp. The sending of the hemp from Virac

to Manila to the agents of the plaintiff did not constitute a sale thereof. Such sale was only effected when the agents afterwards disposed of the hemp in Manila, but this does not resolve the question presented. It is very apparent that the tax under discussion is not a tax upon property. It is rather a tax upon the occupation or industry in which a person is engaged. These sections, 139 and 140, are found in Chapter XVI of the Internal Revenue Law which relates to "Tax on business, manufacture, and occupation." Section 144 of that chapter provides that stockbrokers shall pay an annual tax of P80; real-estate brokers, P80; custom-house brokers, P80; pawnbrokers, P200; lawyers and doctors, P50, and other occupations are mentioned therein, the tax on which is a gross sum per annum, or a sum to be determined with reference to the number of days in which the occupation is carried on, or, in the case of billiard rooms, the number of tables used. Nowhere in this section 144 is found any provision for a tax upon commission merchants. The law having provided for a tax on other agents, such as stockbrokers, real estate brokers, and custom-house-brokers, it can not be presumed that it was the intention of the legislator to relieve commission merchants from the necessity of paying any taxes for the business which they carry on. The difference between the tax upon a stockbroker, for example, and the tax upon a commission merchant, rests only in the manner of determining how much tax shall be paid. It was the clear intention of the law to tax both. The stockbroker pays a definite sum per annum, but for reasons which must have appeared sufficient to the legislator, it was decided to adopt some other measure for determining how much commission merchants should pay, and the method adopted was to require them to pay one-third of 1 per cent upon the value of all the sales made by them.

As has been said above, this is in no sense a tax upon the property sold; it is merely a method of deciding how much the person who makes the sale shall pay as a tax upon the business in which he is engaged. The money in this case paid by Aldecoa & Co. was paid as a tax upon their business and not as a tax upon the business of the plaintiff. There is no allegation in the complaint that the money paid by Aldecoa & Co. was the money of the plaintiff, and under the terms of the law it must have been the money of Aldecoa & Co. It is true that the tax to be paid by commission merchants for carrying on their business and the tax to be paid by merchants for carrying on their business is determined in the same way, but that does not constitute in any sense double taxation.

Why the plaintiff paid this tax in Virac in the Province of Albay and not in Manila, where it actually made the sale, does not appear, but no point is made with reference to this matter in the brief and we do not see how the place of payment could in any way affect the plaintiff, as the amount due to be paid was the same whether paid in Albay or in Manila.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

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