

**TY SUE ET AL., PLAINTIFFS AND APPELLEES, VS. JOHN S. HORD,
COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND
APPELLANT.***G.R. No. 4495. January 14, 1909*

Ponente: TRACEY, J.

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This is an appeal from an order of the Court of First Instance of Manila granting a judgment upon the pleadings in favor of the plaintiffs for the recovery of P4,485.88, paid by them to the Collector of Internal Revenue under protest as an internal-revenue tax upon opium which the plaintiffs, as importers, had in their possession on April 1, 1906, when the Opium Law, No. 1461, went into effect, and which was thereafter withdrawn to be prepared for commercial use. The tax at the rate of P2.50 a kilo laid upon the crude drug had already been paid and the sum sued for is the amount of the additional withdrawal tax at the rate of P5 a kilo. The court below held that crude opium in the hands of dealers at the time the Act went into effect was not subject to this additional duty when withdrawn for the purpose of preparation for use. The matter is regulated by section 20 of Act No. 1461, which reads in part as follows:

"SEC. 20. (a) Before imported crude opium or imported prepared opium in any of its forms shall be released from the custom-house, there shall be paid thereon an internal-revenue tax as follows: On crude opium, two pesos and fifty centavos a kilo, net weight; and on prepared opium seven pesos and fifty centavos a kilo, net weight. This tax shall be paid to the Collector of Customs, under regulations prescribed by the Collector of Internal Revenue, with the approval of the head of the proper department.

"Before any crude opium which is in the Philippine Islands at the time this Act shall become effective is cooked or prepared for sale or for human consumption or use, every wholesale dealer shall pay on such crude opium to the Collector of Internal Revenue, or his duly authorized representative, an internal-revenue tax of two pesos and fifty centavos per kilo, net weight. On opium cooked or prepared in the Philippine Islands for sale or for human consumption or use, every wholesale dealer shall pay on the removal, or withdrawal of such opium from the place in which it is lawfully kept or stored, to the Collector of Internal Revenue, or his duly authorised representative, an internal-revenue tax of five pesos on each kilo, net weight. The burden of proving that the internal-revenue tax hereby imposed has been paid is imposed on the wholesale dealer: Provided however, That no tax shall be paid on opium removed or withdrawn for exportation and actually exported and not relanded in the Philippine Islands.

"All opium in the possession, or under the control, or subject to the order or disposition of any retail dealer at the time this Act becomes effective on which the internal-revenue tax provided by this Act has not been paid by a wholesale dealer, shall be subject to such tax, and said retail dealer shall pay on such opium before manufacture, sale, consumption, or use thereof, an internal-revenue tax, as follows: Crude opium, two pesos and fifty centavos for each kilo, net weight; cooked or prepared opium, or opium prepared for human consumption or use, five pesos for each kilo, net weight. The burden of proving that such internal-revenue tax has been duly paid is hereby imposed on the retail dealer. Net weight shall be determined by the customs rules

and regulations covering the importation of opium into the Philippine Islands."

It is claimed by counsel that any interpretation of the law other than that adopted by the trial court would work inequality, inasmuch as the aggregate tax of P7.50 paid by the dealer preparing or cooking the opium in the Islands would exceed the tax of P7.50 paid by the importer of the prepared article, by reason of the shrinkage in course of preparation of the bulk of the crude drug, claimed to amount to about one-seventh of the whole; that one purpose of the law, to favor the preparation of the drug within the Islands rather than outside, would thus be hindered; and that the first paragraph of section 20 providing for the tax on crude opium in the Islands at the time of the going into effect of the Act is supplemented by the second part which embraces only cooked opium in the Islands on the same date and consequently does not include such opium as might be cooked at any time thereafter, so that in effect the words "at the time this Act shall become effective," which we find in the first sentence of the second paragraph must be understood as if repeated after the words "Philippine Islands" in the second sentence thereof.

The trial judge in his opinion says:

"By the provisions of this section we clearly have fixed as a tax upon crude opium at the time of its importation the sum of P2.50 per kilo, and on prepared opium the sum of P7.50 per kilo; upon crude opium in the hands of retail dealers the sum of P2.50 per kilo, and on cooked or prepared opium in the hands of retail dealers the sum of P5 per kilo; and crude opium in the possession of wholesale dealers in the Philippine Islands at the time the Act became effective the sum of P2.50.

"This accounts for all classes of opium unless it be prepared opium which was imported into the Philippine Islands as such prior to the passage of the Act, and was at the time the Act became effective in the hands of whole-sale dealers.

"If the contention of the Government, that the provision of said section which provides for a tax of P5 upon opium 'cooked or prepared in the Philippine Islands for sale or for human consumption or use' upon removal or withdrawal of the same from the place in which it was kept, be well made—that is, that the provision refers to opium which has been or shall be cooked or prepared in the Philippine Islands from crude opium—then there is no provision for a tax upon the prepared opium which was in the Philippine Islands in the hands of wholesale dealers at the time the Act went into effect."

We do not think this consequence follows the construction of the Act contended for by the Government, which is to the effect that the other provisions of the Act reach all classes of opium whether crude or prepared, and whether in the hands of wholesale or retail dealers, except cooked opium in the hands of wholesalers prepared either before or after the law went into effect, that it is reasonable, therefore, to infer that this section was designed to reach both of these classes otherwise untouched rather than only one of them and that this purpose is fully met by the natural construction of the words of the section without the interpolation of any understood phrase, inasmuch as the words "opium cooked or prepared in the Philippine Islands for sale or for human consumption or use" naturally apply to the cooking or preparation without respect to a particular date.

It is further urged that the inequality resulting from this construction is much less than that which would follow from subjecting cooked opium, imported as such, to a tax of P7.50 and the similar article, imported in the crude state and afterwards cooked to only the original tax of P2.50 without the additional P5, there existing no reason for such a wide difference in the duty upon the two classes of cooked opium which is of the same quality, is destined to the same use and is of equal commercial value.

In the interpretation of this as well as of some other sections of the opium law it is impossible to satisfactorily harmonize its complicated and sometimes perplexing provisions so that it becomes the duty of the courts to choose between conflicting theories that which best accords with the letter of the law and with its purpose. In the

construction of the paragraph of section 20 under discussion, we are satisfied that the weight of argument both as to the natural interpretation of the words of the law and as to its reasonable effect lies with the Government, and, therefore, the decision of the Court of First Instance is hereby reversed, judgment to be entered in favor of the defendant-appellant, without costs of this instance.

Arellano, C. J, Torres, Mapa, Carson, and Willard, JJ., concur.

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