

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. WILLIAM MACGAVIN, DEFENDANT AND APPELLANT.

G.R. No. 46324. December 03, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This case is before us on appeal taken by the accused William MacGavin from the decision of the Court of First Instance of Manila wherein he was found guilty beyond reasonable doubt of a violation of section 1 of Act No. 3202, as amended by Act No. 3954, and sentenced to pay a fine of P200, with the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs.

The fiscal's information under which the accused-appellant was convicted is of the following tenor:

"That on or about the 10th day of August, 1936, and for some time prior and subsequent thereto, in the City of Manila, Philippine Islands, the said accused, being then the assistant-treasurer and manager of the Hanson, Orth and Stevenson, Inc., a corporation duly established and doing business under the laws of the Philippine Islands, and acting as the duly authorized agent in Manila of the Tobacco Products Export Corporation, a corporation duly established in and doing business under the laws of the State of New York U. S. A., willfully, unlawfully and feloniously used and caused to be used the cigarette trade-mark Paul Jones on cigarettes consigned to the said Hanson, Orth and Stevenson, Inc. in Manila and sold and distributed, and caused to be sold and distributed, in the City of Manila, Philippine Islands, the said cigarettes bearing the said trade-marks Paul Jones, well knowing that said trade-mark was not registered in the Bureau of Commerce, Manila, and without first registering the said trade-mark with the said Bureau of Commerce, or securing a permit to use the said trade-mark from the said Bureau."

Upon arraignment in open court, the aforesaid accused pleaded not guilty to the crime charged, and proceeded with the trial of the case, at which evidence was adduced both by the prosecution and by the defense. From the said evidence the following facts, set out in the aforesaid decision of the trial court, were established beyond reasonable doubt, namely:

"The accused, from the incorporation in 1931 of Hanson, Orth & Stevenson, Inc., a corporation duly organized under the laws of the Philippine Islands, with its office on the 4th floor of 'Wise Building,' Juan Luna, Manila, was the manager of the importation department and assistant treasurer at the same time. The said corporation Hanson, Orth & Stevenson, Inc., were the agents in the Philippines of the Tobacco Products Export Corporation, a corporation duly organized under the laws of New York, United States of America. On January 9, 1932 the accused was appointed attorney-in-fact of Hanson, Orth & Stevenson, Inc., which appointment 'duly authorizes him to perform and do in its name, place and stead all acts necessary to be performed or done by the said principal in the transaction of any business required or necessary to be done by it with the Bureau of Customs at the Port of Manila, Philippine Islands, giving to the said agent full power and authority to do in its name anything and everything necessary to be done in the premises as fully and completely as the said principal could do if present personally, including the power to receive, handle and enter all goods, wares and merchandise imported or exported by or consigned to the said principal, to indorse bill of lading and checks

payable to the said principal, to sign, seal and deliver bonds on which the said principal is the principal obligor, and any and all other documents required for the performance of the authority herein conferred, hereby ratifying and confirming all that the said agent shall lawfully do under and by virtue of these presents. This power of attorney shall remain in full force and effect until duly revoked and written notice of such revocation shall have been given to the Collector of Customs at the port above named. In testimony whereof the said principal has hereunto affixed its signature and seal this 9th day of January, A. D. 1932—Hanson, Orth & Stevenson, Inc.'

"By virtue of this power, he received the following shipments of cigarettes trade-mark Paul Jones from the Tobacco Products Export Corporation:

Cases—

40,000

S. S. 'Wilveryew' about

5/2/36

Cases—

120,000

S. S. 'Helenus' about

18/4/36

Cases—

80,000

S. S. 'Greystoke Castle'

7/4/36

Cases—

80,000

S. S. 'Cingalese Prince'

27/4/36

Cases—

240,000

S. S. 'Tai Ping'

15/6/36

Cases—

120,000

S. S. 'Tricolor'

11/7/36

Cases—

240,000

S. S. 'Rhekenor'

12/8/36

"(Exhibit J)

and without registering the trade-mark 'Paul Jones' in the Bureau of Commerce in accordance with the aforesaid section 1 of Act No. 3202, as amended by Act No. 3954, on August 10, 1936 and prior to said date, he was distributing and selling the cigarettes with the said trade-mark among various customers of his in Manila, among them, Lim Bun Hick (Exhibits K, K-1, K-2, and K-3), with a store at No. 31 Escolta Street, of this City, and who, in turn, was selling said cigarettes to his other customers, like K. S. England, who has a store at No. 525 Rizal Avenue, Manila, and Chin Hun, who has a store at No. 84 Rosario Street of this same City.

"The trade-mark 'Paul Jones' was only registered on June 26, 1937 in the name of Philip Morris & Co., Ltd., Inc. (Exhibit A.)"

The first question to decide in the present appeal, raised in the first assignment of error, is one of law, namely, whether or not the trial court erred in not holding that Act No. 3202, as amended by Act No. 3954, is applicable only to cigars and cigarettes manufactured in the Philippines.

This same question has already been raised in the case of *People vs. Genaito* (G. R. No. 45514), in which this court, in a decision promulgated on October 17, 1938, said the following;

"The appellant contends that Act No. 3202, as well as the amendatory Act No. 3954, making compulsory the registration of a trade-mark for cigars and cigarettes in the Bureau of Commerce, has for its purpose solely to protect local manufacturers, this being the reason for the absence in both of the above-cited laws of any provision referring to imported cigarettes.

"While it is true that said laws have been promulgated to protect the local cigar and cigarette industry, it is not true, however, that the provisions thereof, making the registration of trade-marks compulsory, are not applicable to cigarettes manufactured in the United States and brought into the Philippines with a trade-mark, for distribution and sale. To carry out their purpose, said laws have to impose; as they in fact impose, as obligatory, not only the registration of trade-marks used by local factories but also those to be used in the Philippines by manufacturers in the United States and in foreign countries. If it were not so, the purpose of the laws would be completely illusory, and the local cigar and cigarette manufacturers would have no adequate protection against usurpers of their trade-marks or, trade-names. Suppose a particular trade-mark had been adopted and registered beforehand by some manufacturer in the Philippines, and some years later it was imitated and used on cigarettes manufactured in Virginia, U. S., and imported into the Philippines for distribution and sale. If, according to the theory of the appellant, the trade-mark used on cigarettes

manufactured in Virginia need not be registered in the Philippines, then the Virginia manufacturers and their agents or distributors in the Philippines would be able to wage with impunity a ruinous competition against the local manufacturer who is using and has registered the same trade-mark. To avoid the occurrence of such competition, section 1 of Act No. 3202, as amended by Act No. 3954, provides as follows:

" 'With the exception of trade-marks and trade-names already registered under the provisions of Act Numbered Six hundred and sixty-six, as amended, no trade-mark or (trade-name shall be used on cigars and cigarettes in the Philippine Islands without having first been registered in the Bureau of Commerce and Industry, * * *.' "

"It should be noted that the foregoing provision does not say 'on cigars or cigarettes manufactured in the Philippines,' but that 'no trade-mark or trade-name shall be used on cigars or cigarettes in the Philippine Islands,' making no distinction of their origin or country of their manufacture.

"By means of the compulsory registration of a trade-mark or trade-name, the local manufacturers are given the opportunity to oppose the application for registration if the trade-mark or trade-name sought to be registered is an imitation of the one they are already using and have registered for their cigars and cigarettes. To this effect, section 2 of Act No. 3202 provides for the publication of the application in the Official Gazette and the service of notice thereof upon the 'Manila Tobacco Association' and other similar associations."

The trial court, therefore, did not commit the error allegedly committed by it in its decision.

The second question of law raised by the appellant in his brief being a mere corollary of the first, the trial court likewise did not commit the second alleged error.

In view of the foregoing considerations, we are of the opinion and so hold, that the provisions of section 1 of Act No. 3202, as amended by Act No. 3954, are applicable not only to cigars and cigarettes manufactured In the Philippines, but also to those manufactured outside of the Philippines.

Wherefore, finding no error in the appealed decision, the same is affirmed in all its parts, with the costs to the appellant. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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