

**PACIFIC COMMERCIAL COMPANY, PLAINTIFF AND APPELLANT, VS.
ALFREDO L. YATCO, AS COLLECTOR OF INTERNAL REVENUE OF
THE PHILIPPINES, DEFENDANT AND APPELLEE.***G.R. No. 46722. June 27, 1940*

Ponente: MORAN, J.

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The stipulation of facts discloses that in August, 1932, plaintiff Pacific Commercial Company, a Philippine corporation, purchased for its New York office, 6,000 tons of centrifugal sugar from the Calamba Sugaj: Estate Planters at the prices specified in the letters-contract. It was agreed, inter alia, that the freight charges shall be paid at destination by the New York office and that payment would be made upon delivery of the shipping documents. On January 28, 1933, the seller loaded 3,000 tons of sugar on board the s. s. Chastine Maersk, and on March 30, 1933, another 3,000 tons on board the s. s. Ferndale. The first vessel sailed from Manila at 6 p. m. of January 28, 1933, and the second, at 12.05 p. m. of March 31, 1933. After the cargo has been loaded on, and before the vessels left port, one Amado M. Honorio as agent of the Calamba Sugar Estate Planters indorsed in blank and delivered to plaintiff the shipping documents. Payments were correspondingly made by the plaintiff which were later debited to the account of its New York office. The defendant Collector of Internal Revenue assessed a consignment tax of P13,479.04, including surcharge, which plaintiff paid under protest and for the recovery of which an action was brought in the Court of First Instance of Manila. The complaint having been dismissed, the present appeal was taken. Plaintiff contends that it is not subject to the consignment tax provided in section 1459 of the Revised Administrative Code, because, upon the facts of the case, it is a consignee, not a consignor, of the sugar in question. Reliance is placed upon the stipulation in the contracts to the effect that shipment is to be made by the seller.

A condition in a contract is at best prima facie evidence, and is by no means conclusive, of what actually transpired after its execution. In the instant case, it appears that the bills of lading covering the sugar in question were indorsed in blank and delivered to the plaintiff by the agent of the seller before the vessels left port. This indorsement operates to pass title to, and constitutes a constructive but nonetheless complete delivery of, the merchandise to the plaintiff at the point of shipment. (4 R. C. L. p., 31.) Under such circumstance, plaintiff alone could logically ship the cargo to its New York office.

Appellant seems to labor under an erroneous impression that it could not be a consignor because the vendor was the party "who made out and signed the bills of lading and placed the sugar on board the ship." Be this as it may, a matter which is disputed by the appellee, the making out of bills of lading and the placing of the merchandise aboard the ship supply no decisive criterion for determining who the actual consignor is, for the application of the tax in question. The tax imposed by law is on merchandise "consigned aboard" and not from one party to another within the Philippines. The party, therefore, who ships the merchandise aboard is the consignor upon whom the consignment tax applies, irrespective of who made out the bills of lading or placed said merchandise on board the vessel.

Judgment is affirmed, with costs against appellant.

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

Judgment affirmed.

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