

**THE GOVERNMENT OF THE PHILIPPINES, PLAINTIFF-APPELLANT,
VS. AGAPITO D. JERVASIO, ADMINISTRATOR OF THE ESTATE OF
THE LATE DOLORES S. JERVASIO, DEFENDANT-APPELLEE.**

G.R. No. 47468. December 05, 1940

Ponente: LAUREL, J.

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LAUREL, J.:

The facts of this case are not disputed. Dolores S. Jervasio, during her lifetime, sold for the Manila Trading and Supply Co., automobiles, trucks, parts and accessories in the total sum of P436,274.36. For such sales she received commission, and on the theory that she merely acted as a broker, paid to the Government the sum of P1,499.40, as tax in that capacity. The Government, however, contending that she was a commission merchant, demanded payment of 1& per cent sales tax amounting to P6,544.11. Deducting the brokerage tax from the total sum due, the Government's claim against the judicial administrator of the estate of Dolores S. Jervasio, including the 25 per cent surcharge, amounts to W,305.89. The Court of First Instance of Occidental Negros in which the action was brought, absolved the defendant from the complaint, and from this decision the Government has appealed to this Court.

The legal question presented is whether or not, upon the facts, Dolores S. Jervasio was a commission merchant liable to the payment of the sales tax or was a mere merchandise broker.

Under section 1459 of the Administrative Code, as amended by Act No. 3243, a commission merchant is not included in the general term "merchant" unless he or she has an establishment of his or her own "for the keeping and disposal of feoods of which sales or exchanges are effected." This condition must be clearly shown or proven and not left to inference. The lower court has found that the deceased had no such establishment for the keeping and disposal of automobiles and trucks.

The judgment of the lower court is hereby affirmed, without costs. So ordered.

Avanceña, C.J., Imperial, Diaz, and Horrilleno, JJ., concur.

Judgment affirmed.

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