

**KOPPEL (PHILIPPINES), INC. PLAINTIFF AND APPELLANT, VS.
ALFREDO L. YATCO, ETC., COLLECTOR OF INTERNAL REVENUE,
DEFENDANT AND APPELLEE.**

G.R. No. 47673. October 10, 1946

Ponente: HILADO, J.

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HILADO, J.:

This is an appeal by koppel (Philippines), Inc., from the judgment of the Court of First Instance of Manila in civil case No. 51218 of said court dismissing said corporation's complaint for the recovery of the sum of P64,122.51 which it had paid under protest to the Collector of Internal Revenue on October 30, 1936, as merchant sales tax. The main facts of the case were stipulated in the court below as follows"

"AGREED STATEMENT OF FACTS

"Now come the plaintiff by Attorney Eulogio P. Revilla and the defendant by the Solicitor General and undersigned Assistant Attorney of the Bureau of Justice and, with leave of this Honorable Court, hereby respectfully stipulated and agree to the following facts, to wit:

"I. That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office therein at the city of Manila, the capital stock of which is divided into one thousand (1,000) shares of P100 each. The Koppel Industrial Car and Equipment Company, a corporation organized and existing under the laws of the State of Pennsylvania, United States of America, and not licensed to do business in the Philippines, owned nine hundred and ninety-five (995) shares out of the total capital stock of the plaintiff from the year 1928 up to and including the year 1936, and the remaining five (5) shares only were and are owned one each by officers of the plaintiff corporation.

"II. That plaintiff, at all times material to this case, was and now is duly licensed to engaged in business as a merchant and commercial broker in the Philippines; and was and is the holder of the corresponding merchant's and commercial broker's privilege tax receipts.

"III. That the defendant Collector of Internal Revenue is now Mr. Bibiano L. Meer in lieu of Mr. Alfredo L. Yatco.

"IV. That during the period from January 1, 1929, up to and including December 31, 1932, plaintiff transacted business in the Philippines in the following manner, with the exception of the transactions which are described in paragraphs V and VI of this stipulation:

"When a local buyer was interested in the purchase of railway materials) machinery, and supplies, it asked for price quotations from plaintiff. A typical form of such request is attached hereto and made a part hereof as Exhibit A. (Exhibit A represents typical transactions arising from written requests for quotations, while Exhibit B to G, inclusive, are typical transactions arising from verbal requests for quotation.) Plaintiff then cabled for the quotation desired from Koppel Industrial Car and Equipment Company. A sample of the pertinent cable is hereto attached and made a part hereof as Exhibit B. Koppel Industrial Car and Equipment Company answered

by cable quoting its cost price, usually A. C. I. F. Manila cost price, which was later followed by a letter of confirmation. A sample of the said cable quotation and of the letter of confirmation are hereto attached and made a part hereof as Exhibits C and C-1. Plaintiff, however, quoted to the purchaser a selling price above the figures quoted by Koppel Industrial Car and Equipment Company. Copy of the plaintiff's letter to purchaser is hereto attached and made a part hereof as Exhibit D. On the basis of these quotations, orders were placed by the local purchasers, copies of which orders are hereto attached as Exhibit E and E-1.

"A cable was then sent to Koppel Industrial Car and Equipment Company giving instructions to ship the merchandise to Manila forwarding the customer's order. Sample of said cable is hereto attached as Exhibit F. The bills of lading were usually made to 'order' and indorsed in blank with notation to the effect that the buyer be notified of the shipment of the goods covered in the bills of lading; commercial invoices were issued by Koppel Industrial Car and Equipment Company in the names of the purchasers and certificates of insurance were likewise issued in their names, or in the name of Koppel Industrial Car and Equipment Company but indorsed in blank and attached to drafts drawn by Koppel Industrial Car and Equipment Company on the purchasers, which were forwarded through foreign banks to local banks. Samples of the bills of lading are hereto attached as Exhibits F-1, I-1, I-2 and I-3. Bills of lading, Exhibits I-1, I-2 and I-3, may equally have been employed, but said Exhibits I-1, I-2, and I-3 have no connection with the transaction covered by Exhibits B to G, inclusive. The purchasers secured the shipping papers by arrangement with the banks, and thereupon received and cleared the shipments. If the merchandise were of European origin, and if there was not sufficient time to forward the documents necessary for clearance, through foreign banks to local banks, to the purchasers, the Koppel Industrial Car and Equipment Company did, in many cases, send the documents directly from Europe to plaintiff with instructions to turn these documents over to the purchasers. In many cases, where sale was effected on the basis of C. I. P. Manila, duty paid, plaintiff advanced the sums required for the payment of the duty, and these sums, so advanced, were in every case reimbursed to plaintiff by Koppel Industrial Car and Equipment Company. The price were payable by drafts agreed upon in each case and drawn by Koppel Industrial Car and Equipment Company on the respective purchasers through local banks, and payments were made to the banks by the purchasers on presentation and delivery to them of the above-mentioned shipping documents or copies thereof. A sample of said drafts is hereto attached as Exhibit G. Plaintiff received by way of compensation a percentage of the profits realized on the above transactions as fixed in paragraph 6 of the plaintiff's contract with Koppel Industrial Car and Equipment Company, which contract is hereto attached as Exhibit H, and suffered its corresponding share in the losses resulting from some of the transactions.

"That the total gross sales from January 1, 1929, up to and including December 31, 1932, effected in the foregoing manner and under the above specified conditions, amount to P3,596,438.84.'

"V. That when a local sugar central was interested in the purchase of railway materials, machinery and supplies, it secured quotations from, and placed the corresponding orders with, the plaintiff in substantially the same manner as outlined in paragraph IV of this stipulation, with the only difference that the purchase orders which were agreed to by the central and the plaintiff are similar to the sample hereto attached and made a part hereof as Exhibit I. Typical samples of the bills of lading covering the herein transaction are hereto attached and made a part hereto as Exhibit I-1, I-2, and I-3. The value of the sales carried out in the manner mentioned in this paragraph is P133,964.98.

"VI. That sometime in February, 1929, Miguel J. Ossorio, of Manila, Philippines, placed an option with Koppel Industrial Car and Equipment Company, through plaintiff, to purchase within three months a pair of Atlas-Diesel Marine Engines. Koppel Industrial Car and Equipment Company purchased said Diesel engines in Stockholm, Sweden, for \$16,508.32. The suppliers drew a draft for the amount of \$16,508.32 on the Koppel Industrial Car and Equipment Company, which paid the amount covered by the draft. Later, Miguel J. Ossorio definitely called the deal off, and as Koppel Industrial Car and Equipment Company could not ship to or draw on said Mr. Miguel J. Ossorio, it in turn drew another draft on plaintiff for the same

amount at six months sight, with the understanding that Koppel Industrial Car and Equipment Company would reimburse plaintiff when said engines were disposed of. Plaintiff honored the draft and debited the said sum of P16,508.32 to merchandise account. The engines were left stored at Stockholm, Sweden. On April 1, 1930, a new local buyer, Mr. Cesar Barrios, of Iloilo, Philippines, was found and the same engines were sold to him for \$21,000 (P42,000) C. I. F. Hongkong. The engines were shipped to Hongkong and a draft for \$21,000 was drawn by Koppel Industrial Car and Equipment Company on Mr. Cesar Barrios. After the draft was fully paid by Mr. Barrios, Koppel Industrial Car and Equipment Company reimbursed plaintiff with cost price of \$16,508.32 and credited it with \$1,152.95 as its share of the profit on the transaction. Exhibits J and J-1 are herewith attached and made integral parts of this stipulation with particular reference to paragraph VI hereof.

"VIII. That plaintiff's share in the profits realized out of these transactions described in paragraph IV, V, and VI hereof totaling P3,772,403.82, amounts to P132,201.30; and that plaintiff within the time provided by law returned the aforesaid amount of P132,201.30 for the purpose of the commercial broker's 4 per cent tax and paid thereon the sum of P5,288.05 as such tax.

"VIII. That defendant demanded of the plaintiff the sum of P64,122.51 as the merchants' sales tax of 1½ per cent on the amount of P3,772,403.82, representing the total gross value of the sales mentioned in paragraphs IV, V, and VI hereof, including the 25 per cent surcharge for the late payment of the said tax, which tax and surcharge were determined after the amount of P5,288.05 mentioned in paragraph VI hereof was deducted.

"IX. That plaintiff, on October 30, 1936, paid under protest said sum of P64,122.51 in order to avoid further penalties, levy and distraint proceedings.

"X. That defendant, on November 10, 1936, overruled plaintiff's protest, and defendant has failed and refused and still fails and refuses, notwithstanding demands by plaintiff, to return to the plaintiff said sum of P64,122.51 or any part thereof.

* * * * *

"That the parties hereby reserve the right to present additional evidence in support of their respective contentions.

"Manila, Philippines, December 26, 1939.

(Sgd.) ROMAN OZAETA

"Solicitor General

(Sgd.) ANTONIO CAÑIZARES

"Assistant Attorney

(Sgd.) "E. P. REVILLA

"Attorney for the Plaintiff

"3rd Floor, Perez Samanillo Bldg., Manila"

Both parties adduced some oral evidence in clarification of or addition to their agreed statement of facts. A preponderance of evidence has established, besides the facts thus stipulated, the following:

(a) The shares of stock of plaintiff corporation were and are all owned by Koppel Industrial Car and Equipment Company of Pennsylvania, U. S. A., except five which were necessary to qualify the Board of Directors of said plaintiff corporation;

(b) In the transactions involved herein the plaintiff corporation acted as the representative of Koppel Industrial

Car and Equipment Company only, and not as the agent of both the latter company and the respective local purchasers-plaintiff's principal witness, A. H. Bishop, its resident Vice-President, in his testimony invariably referred to Koppel Industrial Car and Equipment Co. as "our principal" (t.s.n. pp. 10, 11, 12, 19, 75), except that at the bottom of page 10 to the top of page 11, the witness stated that they had "several principals" abroad but that "our principal abroad was, for the years in question, Koppel Industrial Car and Equipment Company", and on page 68, he testified that what he actually said was "* * * but our principal principal abroad" and not "our principal abroad"-as to which it is very significant that neither this witness nor any other gave the name of even a single other principal abroad of the plaintiff corporation;

(c) The plaintiff corporation bore alone incidental expenses as, for instance, cable expenses-not only those of its own cables but also those of its "principal" (t.s.n. pp. 52, 53);

(d) The plaintiff "share in the profits" realized from the transactions in which it intervened was left "entirely" in the hands of Koppel Industrial Car and Equipment Company (t.s.n. p. 51);

(e) Where drafts were not paid by the purchasers, the local banks were instructed not to protest them but to refer them to plaintiff which was fully empowered by Koppel Industrial Car and Equipment Company to instruct the banks with regards to disposition of the drafts and documents (t.s.n., p. 50; Exhibit G);

(f) Where the goods were of European origin, consular invoices, bills of lading, and, in general, the documents necessary for clearance were sent directly to plaintiff (t.s.n., p. 14);

(g) If plaintiff had in stock the merchandise desired by local buyers it immediately filled the orders of such local buyers and made delivery in the Philippines without the necessity of cabling its principal in America either for price quotations or confirmation or rejection of that agreed upon between it and the buyer (t.s.n., pp. 39-43);

(h) Whenever the deliveries made by Koppel Industrial Car and Equipment Company were incomplete or insufficient to fill the local buyers' orders, plaintiff used to make good the deficiencies by deliveries from its own local stock, but in such cases it charged its principal only the actual cost of the merchandise thus delivered by it from its stock and in such transactions plaintiff did not realize any profit (t.s.n. pp. 53-54);

(i) The contracts of sale involved herein were all perfected in the Philippines.

Those described in paragraph IV of the Agreed Statement of Facts went thru the following process: (1) "When a local buyer was interested in the purchase of railway materials, machinery, and supplies, it asked for price quotations from plaintiff"; (2) "Plaintiff then cabled for the quotation desired from Koppel Industrial Car and Equipment Company"; (3) "Plaintiff, however, quoted to the purchaser a selling price above the figures quoted by Koppel Industrial Car and Equipment Company"; (4) "On the basis of these quotations, orders were placed by the local purchasers * * *."

Those described in paragraph V of said agreed statement of facts were transacted "in substantially the same manner as outlined in paragraph IV."

As to the single transaction described in paragraph VI of the same agreed statement of facts, discarding the Ossorio option which anyway was called off, "On April 1, 1930, a new local buyer, Mr. Cesar Barrios, of Iloilo, Philippines, was found and the same engines were sold to him for \$21,000 (P42,000) C. I. F. HongKong." (Italic supplied.)

(j) Exhibit H contains the following paragraph:

"It is clearly understood that the intent of this contract is that the broker shall perform only the functions of a broker as set forth above, and shall not take possession of any of the materials or equipment applying to said,

orders or perform any acts or duties outside the scope of a brokers and in no sense shall this contract be construed as granting to the broker the power to represent the principal as its agent or to make commitments on its behalf."

The Court of First Instance held for the defendant and dismissed plaintiff's complaint with cost to it.

Upon this appeal, seven errors are assigned to said judgment as follows:

"1. That the court a quo erred in not holding that appellant is a domestic corporation distinct and separate from, and not a mere branch of Koppel Industrial Car and Equipment Co.;

"2. The court a quo erred in ignoring the ruling of the Secretary of Finance, dated January 31, 1931, Exhibit M;

"3. The court a quo erred in not holding that the character of a broker is determined by the nature of the transaction and not by the basis or measure of his compensation;

"4. The court a quo erred in not holding that appellant acted as a commercial broker in the transactions covered under paragraph IV of the agreed statement of facts;

"5. The court a quo erred in not holding that appellant acted as a commercial broker in the transactions covered under paragraph V of the agreed statement of facts;

"6. The court a quo erred in not holding that appellant acted as a commercial broker in the sole transaction covered under paragraph VI of the agreed statement of facts;

"7. The court a quo erred in dismissing appellant's complaint."

The lower court found and held that Koppel (Philippines) Inc. is a mere dummy or branch ("hechura") of Koppel Industrial Car and Equipment Company. The lower court did not deny legal personality to Koppel (Philippines) Inc. for any and all purposes, but in effect its conclusion was that, in the transactions involved herein, the public interest and convenience would be defeated and what would amount to a tax evasion perpetrated, unless resort is had to the doctrine of "disregard, of the corporate fiction."

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In its first assignment of error appellant submits that the trial court erred in not holding that it is a domestic corporation distinct and separate from and not a mere branch of Koppel Industrial Car and Equipment Company. It contends that its corporate existence as a Philippine corporation can not be collaterally attacked and that the Government is estopped from so doing. As stated above, the lower court did not deny legal personality to appellant for any and all purpose, but held in effect that in the transactions involved in this case the public interest and convenience would be defeated and what would amount to a tax evasion perpetrated, unless resort is had to the doctrine of "disregard of the corporate fiction." In other words, in looking through the corporate form to the ultimate person or corporation behind that form, in the particular transactions which were involved in the case submitted to its determination and judgment, the court did so in order to prevent the contravention of the local internal revenue laws, and the perpetration of what would amount to a tax evasion, inasmuch as it considered-and in our opinion, correctly-that appellant Koppel (Philippines) Inc. was a mere branch or agency or dummy ("hechura") of Koppel Industrial Car and Equipment Co. The Court did not hold that the corporate personality of Koppel (Philippines) Inc. would also be disregarded in other cases or for other purposes. It would have had no power to so hold.. The courts' action in this regard must be confined to the transactions involved in the case at bar "for the purpose of adjudging the rights and liabilities of the parties in the case. They have no jurisdiction to do more." (1 Fletcher, Cyclopedia of Corporation, Permanent ed., p. 134, section 41.)

A leading and much cited case puts it as follows:

"If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons." (1 Fletcher Cyclopaedia of Corporations [Permanent Edition], pp. 135, 136; United States vs. Milwaukee Refrigeration Transit Co., 142 Fed., 247, 255, per Sanborn, J.)

In his second special defense appellee alleges "that the plaintiff was and is in fact a branch or subsidiary of Koppel Industrial Car and Equipment Co., a Pennsylvania corporation not licensed to do business in the Philippines but actually doing business here thru the plaintiff; that the said foreign corporation holds 995 of the 1,000 shares of the plaintiff's capital stock, the remaining five shares being held by the officers of the plaintiff herein in order to permit the incorporation thereof and to enable its aforesaid officers to act as directors of the plaintiff corporation; and

that plaintiff was organized as a Philippine corporation for the purpose of evading the payment by its parent foreign corporation of merchants' sales tax on the transactions involved in this case and others of similar nature."

"By most courts the entity is normally regarded but is disregarded to prevent injustice, or the distortion or hiding of the truth, or to let in a just defense." (1 Fletcher, Cyclopaedia of Corporation, Permanent Edition, pp. 139-140; italics supplied).

"Another rule is that, when the corporation is the mere alter ego, or business conduit of a person, it may be disregarded." (1 Fletcher, Cyclopaedia of Corporation, Permanent Edition, p. 136).

Manifestly, the principle is the same whether the "person" be natural or artificial.

"A very numerous and growing class of cases wherein the corporate entity is disregarded is that wherein (it is so organized and controlled, and its affairs are so conducted, as to make it merely an instrumentality, agency, conduit or adjunct of another corporation)." (1 Fletcher, Cyclopaedia Corporation Permanent ed., pp 154, 155.)

"While we recognize the legal principle that a corporation does not lose its entity by the ownership of the bulk or ever; the whole of its stock, by another corporation (Monongahela Co. vs. Pittsburg Co., 196 Pa. 25; 46 Atl. 99, 79 Am. St. Rep. 685) yet it is equally well settled that courts will look beyond the mere artificial personality which incorporation confers, and if necessary to work out equitable ends, will ignore corporate forms." (Colonial Trust Co. vs. Montello Brick Works, 172 Fed. 310.)

Where it appears that two business enterprises are owned, conducted and controlled by the same parties, both law and equity vail, when necessary to protect the rights of third persons, disregard the legal fiction that two corporations are distinct entities, and treat them as identical." (Abney vs. Belmont Country Club Properties, Inc., 279 Pac. 829).

"* * * the legal fiction of distinct corporate existence will be disregarded in a case where a corporation is so organized and controlled and its affairs are so conducted, as to make it merely an instrumentality or adjunct of another corporation." (Hanter vs. Baker Motor Vehicle Co., 190 Fed. 665.)

In United States vs. Lehigh Valley R. Co. (220 U. S. 257, 55 Law ed., 458, 464), the Supreme Court of the United States disregarded the artificial personality of the subsidiary coal company in order to avoid that the parent corporation, the Lehigh Valley R. Co., should be able, through the fiction of that personality, to evade the prohibition of the Hepburn Act against the transportation by railroad companies of the articles and commodities described therein.

Chief Justice White, speaking for the court, said:

"* * *. Coming to discharge this duty it follows, in view of the express prohibitions of the commodities clause,

it must be held that while the right of a railroad company as a stock-holder to use its; stock ownership for the purpose of a bona fide separate administration of the affairs of a corporation in which it has a stock interest may not be denied, the use of such stock ownership in substance for the purpose of destroying the entity of a producing, etc., corporation, and of commingling its affairs in administration with the affairs of the railroad company, so as to make the two corporations virtually one, brings the railroad company so voluntarily acting as to such producing, etc., corporation within the prohibitions of the commodities clause. In other words, that by operation at effect of the commodities clause there is a duty cast upon a railroad company proposing to carry in interstate commerce the product of a producing, etc., corporation in which it has a stock interest, not to abuse such power so as virtually to do by indirection that which the commodities clause prohibits-a duty which plainly would be violated by the unnecessary commingling of the affairs of the producing company with its own, so as to cause them to be one and inseparable."

Corroborative authorities can be cited in support of the same proposition, which we deem unnecessary to mention here.

From the facts hereinabove stated, as established by a preponderance of the evidence, particularly those narrated in paragraphs; (a), (b), (c), (d), (e), (f), (h), (i), and (j) after the agreed statement of facts, we find that, in so far as the sales involved herein are concerned, Koppel (Philippines) Inc., and Koppel Industrial Car and Equipment Company are to all intents and purposes one and the same; or, to use another mode of expression, that, as regards those transactions, the former corporation is a mere branch, subsidiary or agency of the latter. To our mind, this is conclusively borne out by the fact, among others, that the amount of the so-called "share in the profits" of Koppel (Philippines) Inc. was ultimately left to the sole, unbridled control of Koppel Industrial Car and Equipment Company. If, in their relations with each other, Koppel (Philippines) Inc. was considered and intended to function as a bona fide separate corporation, we can not conceive how this arrangement could have been adopted, for it there was any factor in its business as to which it would, in that case naturally have been opposed to being thus controlled, it must have been precisely the amount of profit which it could endeavor and hope to earn. No group of businessmen could be expected to organize a mercantile corporation-the ultimate end of which could only be profit-if the amount of that profit were to be subjected to such a unilateral control of another corporation, unless indeed the former has previously been designed by the incorporators to serve as a mere subsidiary, branch or agency of the latter. Evidently, Koppel Industrial Car and Equipment Company made use of its ownership of the overwhelming majority-99.5%-of the capital stock of the local corporation to control the operations of the latter to such an extent that it had the final say even as to how much should be allotted to said local entity in the so-called sharing in the profits. We can not overlook the fact that in the practical working of corporate organizations of the class to which these two entities belong, the holder or holders of the controlling part of the capital stock of the corporation, particularly where the control is determined by the virtual ownership of the totality of the shares, dominate not only the selection of the Board of Directors but, more often than not, also the action of that board, applying this to the instant case, we can not conceive how the Philippine corporation could effectively go against the policies, decisions, and desires of the American corporation with regard to the scheme which was devised through the instrumentality of the contract Exhibit H, as well as all the other details of the system, which was adopted in order to avoid paying the per cent merchants' sales tax. Neither

can we conceive how the Philippine corporation could avoid following the directions of the American, corporation in every other transaction where they had both to intervene, in view of the fact that the American corporation held 99.5 per cent of the capital stock of the Philippine corporation. In the present instance, we note that Koppel (Philippines) Inc. was represented in the Philippines by its "resident Vice-President." This fact necessarily leads to the inference that the corporation had at least a Vice-Presidents and presumably also a President, who were not resident in the Philippines but in America, where the parent corporation is domiciled. If

Koppel (Philippines) Inc. had been intended to operate as a regular domestic corporation in the Philippines, where it was formed, the record and the evidence do not disclose any reason why all its officers should not reside and perform their functions in the Philippines.

Other facts appearing from the evidence, and presently to be stated, strengthen our conclusion, because they can only be explained if the local entity is considered as a mere subsidiary, branch or agency of the parent organization. Plaintiff charged the parent corporation no more than actual cost-without profit whatsoever-for merchandise allegedly of its own to complete deficiencies of shipments made by said parent corporation (t.s.n., pp. 53-54-)-a fact which could not conceivably have been the case if plaintiff had acted in such transactions as an entirely independent entity doing business-for profit, of course-with the American concern. There has been no attempt even to explain, if the latter situation really obtained, why these two corporations should have thus departed from the ordinary course of business. Plaintiff was charged by the American corporation with the cost even of the letter's cable quotations-from aught that appears from the evidence, this can only be comprehended by considering plaintiff as such a subsidiary, branch or agency of the parent entity, in which case it would be perfectly understandable that for convenient accounting purposes and the easy determination of the profits or losses of the parent corporation's Philippine business, all expenses of its business in the Philippines should be charged against the, Philippine office and set off against its receipts, thus separating the accounts of said branch from those, which the central organization might have, for instance, in Sweden, and those which it might have in other countries. The reference to plaintiff by local banks, under a standing instruction of the parent corporation, of unpaid drafts drawn on Philippine customers by said parent corporation, whenever said customers dishonored the drafts, and the fact that the American corporation had previously advised said banks that plaintiff in those cases was "fully empowered to instruct (the banks) with regard to the disposition of the drafts and documents" (t.s.n., p. 50), in the absence of any other satisfactory explanation, naturally give rise to the inference¹ that plaintiff was a subsidiary, branch or agency of the American, concern, rather than an independent corporation acting as a broker. For, without such positive explanation, this delegation of power is indicative of the relations between central and branch offices of the same business enterprise, with the latter acting under instructions already given by the former. Far from disclosing a real separation between the two entities, particularly in regard to the transactions in question, the evidence reveals such a commingling and interlacing of their activities as to render even incomprehensible certain accounting operations between them, except upon the basis that the Philippine corporation was to all intents and purposes a mere subsidiary, branch, or agency of the American parent entity. Only upon this basis can it be comprehended why it seems not to matter at all how much profit would be allocated to plaintiff, or even that no profit at all be so allocated to it, at any given time or after any given period.

As already stated above, under the evidence the sales in the Philippines of the railway materials, machinery and supplies imported here by Koppel Industrial Car and Equipment Company could have been as conveniently and efficiently transacted and handled-if not more so-had said corporation merely established a branch or agency in the Philippines and obtained license to do business locally; and if it had done so and said sales had been effected by such branch or agency, there seems to be no dispute that the per cent merchants' sales tax then in force would have been collectible. So far as we can discover, there would be only one, but very important, difference between the two schemes a difference in tax liability amounting to the respectable sum of P64,122.51 in this case. To allow the taxpayer now to deny this tax liability on the ground that the sales were made through another and distinct corporation, as alleged broker, when we have seen that this latter corporation is virtually owned by the former, or that they are practically one and the same, is to sanction a circumvention of our tax laws, and permit a tax evasion of no mean proportions and the consequent commission of a grave injustice to the Government. Not only this; it would allow the taxpayer to do by indirection what the tax laws prohibited to be done directly (non-payment of

legitimate taxes), paraphrasing the United States Supreme Court in *United States vs. Lehigh Valley R. Co.*, *supra*.

The act of one corporation crediting or debiting the other for certain items, expenses or even merchandise sold or disposed of, is perfectly compatible with the idea of the domestic entity being or acting as a mere branch, agency or subsidiary of the parent organisation. Such operations were called for any way by the exigencies or convenience of the entire business. Indeed, accounting operations such as these are inevitable, and have to be effected in the ordinary course of business, wherever the home office of a business enterprise extends its trade to another land through a branch office, or thru another scheme amounting to the same thing.

If plaintiff were to act as broker in the Philippines for any other corporation, entity or person, distinct from Koppel Industrial Car and Equipment Company, an entirely different question will arise, which, however, we are not called upon, nor in a position, to decide.

As stated above, Exhibit H contains the following paragraphs:

"It is clearly understood that the intent of this contract is that the broker shall perform only the functions of a broker as set forth above, and shall not take possession of any of the materials or equipment applying to said orders or perform any acts or duties outside the scope of a brokers and in no sense shall this contract be construed as granting to the broker the power to represent the principal as its agent or to make commitments on its behalf."

The foregoing paragraph, construed in the light of other facts noted elsewhere in this decision, betrays, we think, a deliberate intent,

through the medium of a scheme devised with great care, to avoid the payment of precisely the per cent merchants' sales tax in force in the Philippines before, at the time of, and after, the making of the said contract Exhibit H. If this were to be allowed, the payment of a tax, which directly could not have been avoided, could be evaded by indirection, consideration being had of the aforementioned peculiar relations between the said American and local corporations. Such evasion, involving as it would, a violation of the former Internal Revenue Law, would even fall within the penal sanction of section 2741 of the Revised Administrative Code. Which only goes to show the illegality of the whole scheme. We are not here concerned with the impossibility of collecting the merchants' sales tax, as a mere incidental consequence of transactions legal in themselves and innocent in their purpose. We are dealing with a scheme the primary, not to say the sole, object of which is the evasion of the payment of such tax.

It is this aim of the scheme that makes it illegal.

We have said above that the contracts of sale involved herein were well perfected in the Philippines. From the facts stipulated in paragraph IV of the agreed statement of facts, it clearly appears that the Philippine purchasers had to wait for Koppel Industrial Car

and Equipment Company to communicate its cost prices to Koppel (Philippines) Inc., and for the latter to make the definite price quotations, before placing their orders, wherever such price quotations from the American corporation were required. It is obvious that in those cases the contracts involved in the orders thus placed by the said purchasers with Koppel (Philippines) Inc.,

were perfected in the Philippines. In those cases where no such price quotations from the American corporation were needed of course, the sales were immediately perfected, locally. The sales effected in those cases described in paragraph V of the agreed statement of facts were, as expressed therein, transacted "in substantially the same manner as outlined in paragraph IV." Even the single transaction described in paragraph VI of the agreed statement of facts was also perfected in the Philippines, because the contracting parties were here and the consent of each was given here. While it is true that when the contract was thus perfected in the Philippines the pair of Atlas-Diesel Marine Engines were in Sweden and the agreement was to deliver them C. I. F. Hongkong, the

contract of sale being consensual-perfected by mere consent-(Civil Code, Article 1445; 10 Manresa, 4th ed. p. 11), the location of the property and the place of delivery did not matter in the question of where the agreement was perfected.

In said paragraph VI, we read the following, as indicating where the contract was perfected, considering beforehand that one party, Koppel (Philippines) Inc. which in contemplation of law, as to that transaction, was the same Koppel Industrial Car and Equipment Co., was in the Philippines:

"* * * on April 1, 1930 a new local buyer, Mr. Cesar, Barrios, of Iloilo, Philippines was found and the same engines were sold to him for \$21,000 (P42,000) C. I. F. Hongkong * * * (Italics supplied).

Under the revenue law in force when the sales in question took place, the merchants' sales tax attached upon the happening of the respective sales of the "commodities, goods, wares, and merchandise" involved, and we are clearly of opinion that such "sales" took place upon the perfection of the corresponding contracts. If such perfection took place in the Philippines, the merchants' sales tax then in force here attached to the transactions.

Even if we should consider that the Philippine buyers in the cases covered by paragraphs IV and V of the agreed statement of facts, contracted with Koppel Industrial Car and Equipment Company, we will arrive at the same final result. It can not be denied in that case that said American corporation contracted through Koppel (Philippines) Inc., which was in the Philippines. The real transaction in each case of sale, in final effect, began with an offer of sale from the seller, said American corporation, thru its agent, the local corporation, of the railway materials, machinery, and supplies at the prices quoted, and perfected or completed by the acceptance of that offer by the local buyers when the latter, accepting those prices, placed their orders. The offer could not correctly be said to have been made by the local buyers when they asked for price quotations, for they could not rationally be taken to have bound themselves to buy before knowing the prices. And even if we should take into consideration the fact that the American corporation contracted, at least partly, through correspondence, according to article 54 of the Code of Commerce, the respective contracts were completed from the time of the acceptance by the local buyers, which happened in the Philippines.

"Contracts executed through correspondence shall be completed from the time an answer is made accepting the proposition or the conditions by which the latter may be modified." (Code of Commerce, article 54, italics supplied).

"A contract is as a rule considered as entered into at the place where the offer is accepted, or where the last act necessary to complete it is performed. So where delivery is regarded as essential to the completion of the contract, it is regarded as made at the place of delivery." (13 C. J. 580-81, section 581.)

"(In the consensual contract of sale delivery is not needed for its perfection.)"

- Appellant's second assignment of error can be summarily disposed of. It is clear that the ruling of the Secretary of Finance, Exhibit M, was not binding upon the trial court, much less upon this tribunal, since the duty and power of interpreting the laws is primarily a function of the judiciary (Ortua vs. Singson Encarnacion, 59 Phil, 440, 444.) Plaintiff cannot be excused from abiding by this legal principle, nor can it properly be heard to say that it relied on the Secretary's ruling and that, therefore, the courts should not now apply an interpretation at variance therewith. The rule of stare decisis is undoubtedly entitled to more respect in the construction of statutes than the interpretations given by officers of the administrative branches of the government, even those entrusted with the administration of particular laws. But this court, in Philippine Trust Company vs. Mitchell (59 Phil., 30, 36), said:

"* * * The rule of stare decisis is entitled to respect. Stability in the law, particularly in the business field, is desirable. But idolatrous reverence for precedent, simply as precedent, no longer rules. More important than

anything else is that the court should be right. * * *

- In the view we take of the case, and after the disposition made above of the first assignment of error, it becomes unnecessary to make any specific ruling on the third, fourth, fifth, sixth, and seventh assignments of error, all of which are necessarily disposed of adversely to appellant's contention.

Wherefore, the judgment appealed from is affirmed, with costs of both instances against appellant. So ordered.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Briones, and Tuason, JJ., concur.

CONCURRING

PERFECTO, J.:

We fully agree with the well-written decision penned by Mr. Justice Hilado in this case. We only wish to add that the ingenious device of organizing a subsidiary corporation, with the purpose of evading the payment of taxes, is not a new one. It is only one of the manifold manifestations of the shrewdness of the masterminds behind some powerful corporations who, without any oompuinction, do not stop at adopting any scheme by which the controlling capitalists may get even richer and richer, sometimes at government expense, sometimes by squeezing credulous or ignorant small shareholders, sometimes with the exploitation of the helpless public at large, and sometimes at great sacrifice of all the three entities.

The system of corporation combines, of holding and subsidiary corporations, of spreading and interlocking companies, has so well developed and has grown so powerful that even the wisest government had been unable to defend itself and protect the people from the crushing tentacles of the moneyed octopuses. It is true that in the United States of America antitrusts laws were enacted but, notwithstanding their ability and wisdom, the Americans were unable to stave off the effects of the bankruptcy of the pyramid of holding and interlocking complies built around the tragic figure of Samuel Insull.

That Philippine Government, that Filipino consumers, that Filipino public at large, had already been victims of the evil effects of such a system has been conclusively proved in the scandalous illegalities and irregularities disclosed in the investigation made by the First National Assembly, through its Committee on Rate Reducing of Public Utilities. In said investigation, it was revealed that, by a system of holding and interlocking companies, by their manipulation of books of accounts, our government was defrauded of enormous amounts in taxes and millions of pesos were unjustly squeezed from the public.

It is high time that alarm be sounded so that our government and our public may avoid being further victimized and this country turned into a puppet at the mercy of moneyed tycoons who are not stopped by any scruple to attain their unquenchable thirstiness for more money and for power and domination. All liberal-minded people must fight not only against political imperialism, but also against economic or financial imperialism, in fact, against any kind of imperialism. The call for eternal vigilance must be heeded by all, including tribunals, if the survival of our people must not be jeopardized by artful corporations and unscrupulous financiers.

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