

**MUÑOZ & CO., PLAINTIFFS AND APPELLEES, VS. JOHN S. HORD,
COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND
APPELLANT.***G.R. No. 4832. January 28, 1909*

Ponente: CARSON, J.

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This is an appeal from a judgment of the Court of First Instance of Manila, in an action brought by the plaintiff company for the recovery of certain sums of money which were paid by it, under protest, to the defendant Collector of Internal Revenue, who claimed the right to receive these moneys under the provisions of sections 139 and 140 of Act No. 1189.

During the first and second quarters of the year 1905, various provincial dealers in agricultural products consigned to the plaintiff company hemp, copra, and other agricultural products, grown and produced in these Islands, to be sold for export and on commission to persons engaged in the business of exporting such products. Acting under and in pursuance of this employment, plaintiff company sold produce thus shipped to them of the total value of P155,409, to various exporters, who actually exported the same to places without the Philippine Islands.

During the same period the plaintiff company, as agent for certain correspondents in the provinces, from whom it received consignments of agricultural products on commission, purchased, for and on account of these correspondents, goods, wares, and merchandise to the total value of P7,917, which were shipped to the parties for whom they had been purchased, a so-called commission being charged on each shipment, which the company claims was added merely to reimburse it for the loss of time and the trouble involved in the transaction.

Thereafter, the plaintiff company, on demand of the Collector of Internal Revenue, paid, under protest, as internal-revenue taxes, an amount equal to one-third of 1 per cent of the total amount, first, of the value of the agricultural products sold by the plaintiff company, on commission, and exported beyond the Islands by the purchasers; and, second, of the total value of the above-mentioned purchases of merchandise for shipment by the plaintiff company to their provincial correspondents.

The trial court was of opinion that there was no authority in law for the collection of these sums of money by the Collector of Internal Revenue, and gave judgment in favor of the plaintiff company for the amounts collected and the costs of the action instituted for their recovery.

The defendant appellant makes the following assignment of errors:

"1. That the court erred in holding that the merchandise, sold by appellee to exporters in the Philippine Islands and bought by such exporters for the purpose and with the intention of exporting the same, was not sold 'for domestic consumption' in the Philippine Islands, within the meaning of section 139 of Act No. 1189 of the Philippine Commission; and that the taxes imposed were not authorized by law;

"2. That the court erred in holding that the purchase of merchandise by appellee for others and shipping the same to them, for which services so performed appellee charged and received a specific amount, did not make said appellee a merchant under the provisions of section 140 of the aforesaid Act No. 1189, and that the tax imposed and collected was not properly leviable;

"3. That the court erred in giving judgment in favor of appellee and against appellant;

"4. That the court erred in refusing the motion of appellant to set aside its aforesaid judgment and grant a new trial on the ground that said judgment was contrary to law, and that the evidence was insufficient to justify the decision."

In support of his assignment, appellant lays down the following propositions? which, if their soundness be admitted, clearly entitle him to a reversal of the judgment of the trial court, and to a judgment that the plaintiff recover nothing under his complaint:

"1. The taxes imposed under sections 139 and 140 of Act No. 1189 are occupation taxes and are not imposed upon goods, wares, and merchandise per se, sold, bartered, or exchanged.

"2. All goods, wares, and merchandise sold by any person in the Philippine Islands on his own account or on commission for another to any other person in the Philippine Islands, whether such other person be an exporter or not, and whether such goods, wares, and merchandise so sold be or be not subsequently exported by the purchaser, is a sale of such goods wares, and merchandise 'for domestic consumption' in the Philippine Islands within the meaning of section 139 of Act No. 1189; and every such person making such sale is a merchant within the terms of section 140 of said Act and is subject to the taxes imposed by section 139 unless such person is within the exempted classes enumerated in section 142 of said Act.

"3. The alleged purchases by appellee on commission for growers and producers of hemp, etc., were in effect, sales to such purchasers.

The provisions of sections 139, 140, and 142 of Act No. 1189, upon which appellant bases his right to make the collections in question, are as follows:

"SEC. 139. Except as hereinafter specifically exempted, there shall be paid by each merchant and manufacturer a tax at the rate of one-third of one per centum on the gross value in money of all goods, wares, and merchandise sold, bartered, or exchanged for domestic consumption in the Philippine Islands, * * *. This tax shall be assessed on the actual selling price at which every such merchant or manufacturer disposes of his commodities, and shall be paid at the end of each quarter in the sum lawfully due on the gross amount in money of the sales made by every such merchant or manufacturer during each such quarter.

"SEC. 140. Every person who on his own account, or on commission for another, is engaged in the sale, barter, or exchange of foreign or domestic goods, wares, or merchandise of any and all kinds for domestic consumption, * * * shall be considered as a merchant within the meaning of this article."

"SEC. 142. The following persons shall be exempted from the payment of the taxes imposed in section one hundred and thirty-nine:

"(a) Agriculturists, on all products of their own production sold by them.

"(b) Exporters, on the raw material and manufactured or partially manufactured products actually exported by them. * * *"

Plaintiff and appellee does not deny appellant's first proposition, but he contends that goods sold for exportation out of the Islands are not "goods sold for domestic consumption in the Philippine Islands," in the sense in which that term is used in section 139 of the law, and that since the products in question were sold for export, as

evidenced by the signed certificates secured from the purchasers, and were in fact exported, the imposition of a tax of a third of one per centum of the value of the products thus sold was not warranted or authorized by the provisions of law upon which the Collector of Internal Revenue based his action in that regard.

The issue thus raised is limited to a question as to the legislative intent in enacting section 139 of Act No. 1189 above cited, and the meaning which should be given to the words "goods sold for domestic consumption" as used therein.

Revenue laws are not, like penal laws, to be construed strictly in favor of the individual and against the State. They are rather to be regarded as remedial in their character, enacted for the promotion of the public welfare, and as such to be given, where possible, a construction which will tend to carry out the manifest intention of the legislator in placing them upon the statute book. (*Cliquot's Champagne*, 3 Wall., 114; *U. S. vs. 28 Casks of Wine*, 7 Int. Rev. Rec, 4; *U. S. vs. 36 Barrels of High Wines*, 12 Int. Rev. Rec, 40; *U. S. vs. 100 Barrels of Spirits*, 12 Int. Rev. Rec, 153; *U. S. vs. Stowell*, 133 U. S., 1.) And in the case of *U. S. vs. Hodson* (10 Wall., 406), the Supreme Court of the United States, holding that such statutes are to be construed liberally so as to carry out the purpose of their enactment, declared that the general rule that that which is implied in a statute is as much a part of the enactment as that which is expressed, is as applicable to revenue laws as to statutes generally. These principles of construction are not necessarily in conflict with the special canons of construction relied upon by the appellee who, with reason, insists that "a tax can not be imposed without clear and express words for that purpose," and cites from the opinion in the case of *U. S. vs. 36 Barrels of High Wines*, as follows:

"The internal-revenue laws should be construed reasonably and fairly so as not to be made a trap to deceive or catch the innocent and well-intentioned who endeavor to render full obedience to the law;"

And from *U. S. vs. Watts*, Fed. Cas. 16653, as follows:

"The internal-revenue laws can not be so construed as to extend their meaning beyond the clear import of the words used. It is the duty of the courts of the Union, undoubtedly, so far as they are invested with any agency in carrying out the financial purposes of the Government, fairly to enforce the revenue laws of the country, and see that they are not fraudulently evaded, but they are not at liberty, by construction or legal fiction, to enlarge their scope to include subjects of taxation not within the terms of the law."

Keeping in mind these principles of construction, what meaning is to be given to the words "goods sold for domestic consumption," in sections 139 and 140 of the Act?

Act "No. 1189, as appears from its title, is "An Act to provide revenue for the support of the Insular, provincial, and municipal governments, by internal taxation," and is general in its nature and application. Article 16 of the Act, which embraces sections 139, 140, and 142, treats generally, as appears from its title, of the imposition of an internal-revenue "Tax on business, manufacture, and occupation." Section 139, also general in its nature, undertakes to prescribe the tax which is to be collected from merchants and manufacturers, on account of sales, barter, or exchanges of commodities in these Islands, exempting, nevertheless, from the operation of its provisions certain classes of persons specifically mentioned in section 142, and limiting its operations to "goods, wares, and merchandise sold, bartered, or exchanged for domestic consumption in the Philippine Islands." The only reason suggested, which induced the Philippine Commission to impose this limitation on the operation of the provisions of this section was the necessity of avoiding the possibility of an infringement upon the reserved right of Congress to impose import and export duties in the Philippine Islands. But this reason has no application, where no tax is laid upon the commodities as exports, or because of their exportation or intended exportation, or upon persons who actually export such commodities, as sufficiently appears from the following citation from the opinion of the Supreme Court of the United States in the case of *Coe vs. Errol* (116 U. S., 525-527) :

"Do the owner's state of mind, in relation to the goods, that is, his intent to export them, and his partial preparation to do so, exempt them from taxation? This is the precise question for solution.

"When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State. Until then it is reasonable to regard them as not only within the State of their origin, but as a part of the general mass of property of that State, subject to its jurisdiction, and liable to taxation there, if not taxed by reason of their being intended for exportation, but taxed without any discrimination, in the usual way and manner in which such property is taxed in the State.

"Of course they can not be taxed as exports; that is to say, they can not be taxed by reason or because of their exportation or intended exportation; for that would amount to laying a duty on exports, and would be a plain infraction of the Constitution, which prohibits any State, without the consent of Congress, from laying any imposts or duties on imports or exports; and, although it has been decided (*Woodruff vs. Parham*, 8 Wall., 123) that this clause relates to imports from and exports to foreign countries, yet when such imposts or duties are laid on imports or exports from one State to another, it can not be doubted that such an imposition would be a regulation of commerce among the States, therefore, void as an invasion of the exclusive power of Congress. (See *Walling vs. Michigan*, ante 446, decided at the present term, and cases cited in the opinion in that case.) But if such goods are not taxed as exports, nor by reason of their exportation, or intended exportation, but are taxed as part of the general mass of property in the State, at the regular period of assessment for such property and in the usual manner, they not being in course of transportation at the time, is there any valid reason why they should not be taxed? Though intended for exportation, they may never be exported; the owner has a perfect right to change his mind; and until actually put in motion, for some place out of the State, or committed to the custody of a carrier for transportation to such place, why may they not be regarded as still remaining a part of the general mass of property in the State? If assessed in an exceptional time or manner, because of their anticipated departure, they might well be considered as taxed by reason of their exportation or intended exportation; but if assessed in the usual way, when not under motion or shipment, we do not see why the assessment may not be valid and binding.

* * * * *

"But no definite rule has been adopted with regard to the point of time at which the taxing power of the State ceases as to goods exported to a foreign country or to another State. What we have already said, however, in relation to the products of a State intended for exportation to another State will indicate the view which seems to us the sound one on that subject, namely, that such goods do not cease to be part of the general mass of property in the State, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation to another State, or have been started upon such transportation in a continuous route or journey. We think that this must be the true rule on the subject.

It is evident, therefore, that the reason for the limitation imposed upon the operation of the provisions of section 139 does not suggest a construction of the language used which would exempt merchants from the tax in question on account of the barter, sale, or exchange of commodities intended for ultimate export, or which as a matter of fact are ultimately exported, where it does not appear that such merchant is himself an exporter or has actually exported such commodities.

It will be observed further that such a construction would go far to defeat the whole purpose of the provisions of the section in question; for a holding that a tax must be collected on account of all sales, barter, or exchanges of commodities in these Islands, save only those which are intended for export and are in fact ultimately exported, would impose an intolerable burden not only upon the government and its officials charged with the impracticable

duty of collecting the tax, but upon all traders and middlemen, who would be compelled to submit to the inconvenience and annoyance entailed by any system of inspection whereby the products of the country could be kept under perpetual surveillance, to determine whether the fact that they have ultimately been exported entitles those who at any time prior thereto have sold, bartered, or exchanged such commodities, to exemption from the payment of taxes which otherwise they would be compelled to pay.

Applying the rules of interpretation above cited, it is clear that a construction should be rejected which gives to the language used in the exception a meaning not required to accomplish the purpose for which the exception was inserted by the legislator, and which tends to defeat the ends which are sought to be attained by the enactment of the provision wherein the exception is found, unless it appears that the language of the exception is not susceptible of some other fair and reasonable construction, to which such objections can not be raised.

The executive branch of the Government has given the phrase in question a construction, which seems to us to come fairly and reasonably within the meaning of the language used, and to be free from objection. In a letter in the record, written by the Secretary of Finance and Justice, it is said that, "The phrase 'for domestic consumption' is used in the large, general sense of being used for the purpose of commerce in the Philippine Islands;" and this is the construction which has uniformly been placed upon this section by the officers of the Government charged with its execution, since the date of its enactment. The same idea is expressed in slightly different language by the Solicitor-General in his brief, as follows;

"The purpose of the Act being to tax all merchants except those exempted in express terms, it is reasonable and fair to conclude that the Commission used the word "consumption" in a broader sense than it ordinarily signifies; and that it was here meant, not the total destruction of the thing sold, but its use or consumption in a commercial sense; that is, of transfer by sale, barter, or exchange from one to another in the Philippine Islands."

In the connection wherein the phrase under consideration is found, we think that without in any wise enlarging or limiting the meaning of the word "consumption" used therein, it may fairly and reasonably be regarded as equivalent to the words, "use, commercial or otherwise," so that the entire phrase may be rendered as follows: "All goods, wares, and merchandise sold, bartered, or exchanged for domestic" use, commercial or otherwise, "in the Philippine Islands." In this sense no sale, barter, or exchange of goods, other than a transaction which actually involves their export from the Philippine Islands can be regarded as excepted from the operation of the provisions of section 139 of the Act; and the fact that either the vendor or purchaser or both, intend the goods for ultimate export, or that the goods are actually and ultimately exported, in no wise affects the "domestic" nature of commercial transactions in such goods in the Philippine Islands prior to the ultimate sale, barter, or exchange, by virtue of which the goods are actually exported.

Counsel for plaintiff and appellee lays great stress on the fact that the section in question has been amended, since the date of the transactions out of which this action arose, by striking out therefrom the words "for domestic consumption." It is contended that the construction placed upon this section by the defendant Internal Revenue Collector before the amendment is precisely the same as that which must be given to the language of the section as amended, in violation of the elementary rule of construction, that where possible, some meaning should be given to legislative acts, and any construction which renders such acts nugatory or of no effect is to be avoided. This conclusion would be entitled to consideration were it not for the fact that the record contains certain correspondence of the Secretary of Finance and Justice, introduced by the plaintiff without objection, which fully and sufficiently explains the action of the Legislature in making the amendment. Ruling on a protest of the chamber of commerce of Manila, based on the precise issue raised by plaintiff in this action, that officer of the Government (who himself drafted Act No. 1189, and was a member of the small body which enacted it), in the

course of an exhaustive examination of the question submitted, made use of the following language:

"This subject was thoroughly discussed by the Commission when the Internal Revenue Law was enacted, and its construction at that time was precisely that now adopted by the Collector of Internal Revenue. If the language adopted is not sufficiently plain to express that construction, it should be made so by an amendment to the law, but it is believed that it is entirely competent to accomplish the purpose."

In the light of these observations, we do not think that the fact that an amendment was made along, the lines indicated, justifies the inference as to the intention of the legislature, or as to the meaning of the language originally used, which plaintiff attempts to establish.

It is suggested that the fact that subsection (b) of section 142 specifically exempts exporters from the payment of the tax, renders the use of the phrase, in the sense given to it by the defendant Collector of Internal Revenue, wholly superfluous and unnecessary; and indeed this appears to be the view taken by the Commission, when the amendment was adopted. But redundant words or phrases are not infrequently found in legislative enactments, and only the most skillfully drawn statutes are entirely free from such defects. So, while it is true that an effort should be made to give some meaning to every part of a statute, this rule does not impose upon the courts an imperative obligation to give to every redundant word or phrase a special signification, contrary to the manifest intention of the legislator; and a possible interpretation of a word or phrase which tends to defeat the whole purpose of the law is to be rejected, when the use of such words or phrase may fairly and properly be treated as a mere repetition or reiteration of other language in the statute, in itself sufficient to carry out the intention of the legislator.

Finally, as to this branch of the case, we think that, if after an examination of the language of the Act itself, any doubt remained as to the proper construction to be given the phrase in question, the uniform construction placed upon the statute by the executive officers charged with its execution, should be respected and adopted, if necessary to resolve the doubt.

"In case of ambiguity in a statute, contemporaneous and uniform executive construction is regarded as decisive." (Brown vs. U. S., 113 U. S., 568).

"Where the language of a series of statutes is dubious, and open to different interpretations, the construction put upon them by the Executive Department charged with their execution has great and general controlling force with this court." (St. Paul, Minneapolis, etc., Railway Co. vs. Phelps, 137 U. S., 528.)

"It is a rule well established that the construction given to a statute by those charged with the duty of executing it will be given great weight by the courts if the true construction be doubtful." (U. S. vs. Hill, 120 U. S., 169.)

The second branch of the case does not present so much difficulty. We think there can be no doubt that the appellee was acting in its capacity as a commission merchant when it bought and shipped goods, wares, and merchandise to its patrons, and received compensation therefor, and that the tax imposed on account of these transactions was properly and lawfully imposed. In effect, these transactions constituted sales of the goods by plaintiff company to its correspondents in the provinces, and the so-called commission charged by plaintiff company represented the profits upon the goods sold. The relations of the parties to the contract were those of buyer and seller, and the mere fact that the vendor did not keep the goods sold in stock did not make it any the less a merchant in relation to these transactions, than if the goods had been stored in its warehouses at the time when the orders were received. The real question is whether or not there was a sale or exchange of the goods shipped by plaintiff company in response to the orders and requests of its provincial correspondents. As has been suggested by the Solicitor-General in his brief, most merchants engaged in the so-called "mail-order business" (which in some communities has developed into a business of no mean proportions) make no pretense of carrying

any stocks on hand, and their profits consist of a fixed and agreed upon commission on the value of the goods sold. It will hardly be contended that the persons engaged in business of this nature are not merchants within the meaning of the Act, or that their transactions are not such as to justify the imposition of the tax in question.

We find no merit in appellee's contention that the imposition of the tax in question was an imposition of the tax upon two different persons for one and the same sale, or a double imposition of the tax on one person for and on account of the same transaction. In the language of the appellee's own brief, under the provisions of the law, "when the same item of merchandise is sold several times, each successive seller is subject to the tax, the amount of which varies with the selling price," so that "if an article is sold twice, two taxes have properly accrued; if five times, five taxes." If instead of ordering and buying directly from a manufacturer or wholesale merchant, I elect to buy through a middleman or commission merchant, paying him such profit as he elects to charge, or a fixed and agreed upon percentage of the wholesale value of the goods, it may be true that in a certain sense I have purchased the goods from the manufacturer or wholesale dealer, and that the middleman or commission merchant is merely an "agent or-messenger who does the buying for me," whom "for reasons of convenience I send to make the purchase for me," but it is very clear that it is the intention of the law, definitely and explicitly stated in its general provisions, that such commission merchants who receive compensation for such services shall pay a tax as well as the manufacturer or wholesaler.

If a merchant in Manila buys rice from a dealer in Pampanga, and barter or exchanges this rice for hemp with a hemp factor in Albay, the law clearly imposes a tax upon the Pampanga rice dealer of one-third of 1 percent of the value of the rice sold to the merchant in Manila; a tax on the merchant in Manila of one-third of 1 per cent of the value of the rice delivered by him in exchange with the hemp factor in Albay; and a tax on the hemp factor in Albay of one-third of 1 per cent of the value of the hemp delivered to the merchant in Manila in exchange for rice. If the hemp merchant in Manila elects, as a matter of convenience, to pay not only the tax imposed upon him, but the tax payable by one or both of the other parties, for and on their behalf, this fact by no means changes the nature of the transaction, nor does it justify a complaint, on the ground that the merchant in Manila has paid taxes twice or thrice upon the same series of transactions, or because each of the three parties to the transaction have been compelled to pay a separate tax for his respective participation therein.

Some question seems to have been made as to the title acquired by the plaintiff company in the goods purchased by it for the purpose of filling the orders of its provincial correspondents. We think there can be no doubt that while the plaintiff company may have purchased such goods with the ultimate intention, and for the purpose, of filling its correspondents' orders therewith, nevertheless, it purchased such goods on its own account and acquired a perfect title therein. If bought on credit, in accordance with the general custom of merchants in Manila, the vendor looked exclusively to the plaintiff company for payment, and could in no event have held the persons, for whom the goods were ultimately intended, responsible for the purchase price; and it is not apparent how the plaintiff company's provincial correspondents could have had recourse against the original vendor of such goods, in the event of failure on the part of the plaintiff company to comply with its obligations touching the shipment of such goods to them. Until the plaintiff company actually shipped the goods to their provincial correspondents, it had exclusive control thereof, and could make such use of these goods as it saw fit; and if it so desired it could refuse to ship them to the person for whom they were originally intended, and divert them to some other purchaser. While it was agreed that the shipment of the goods should be at the risk of the company's provincial correspondents, there is no suggestion that the holding of these goods in their go downs pending shipment was in like manner at the risk of their correspondents, or that they had any control whatever over such goods until they were actually shipped to them.

The transfer of this right of ownership from the plaintiff company to their provincial correspondents can only be

satisfactorily explained on the theory that the transaction was either a sale, barter or exchange of such goods, and, as such, subject to the tax in question. It matters not in what form the transaction appears, as a matter of bookkeeping, on plaintiff company's books, its nature and essence remain the same.

The judgment of the trial court should be reversed, and judgment entered in favor of the defendant for the costs of the proceedings in first instance. No costs will be allowed in this instance.

Arellano, C. J., Torres, Mapa, and Tracey, JJ., concur.

Johnson and Willard, JJ., dissent.

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