

MURPHY, MORRIS & CO., PLAINTIFFS AND APPELLANTS, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

G.R. No. 5022. March 22, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a decision of the Court of First Instance of the city of Manila affirming the decision of the Collector of Customs in the protest case Entry E, 3646, and filed by the appellant herein in behalf of their clients, Moll, Kunzli & Co., the case number being C. A. 61. Inasmuch as the question involved in case C. A. 49, entitled Moll, Kunzli & Co. vs. The Collector of Customs, is the same, it has been stipulated that the appeal in that case be discontinued awaiting the decision of this case, and it has also been stipulated that the evidence in that case, as well as in this case, should be made a part of the bill of exceptions here.

The protest in this case was against the inclusion in the dutiable value of certain goods, dutiable ad valorem, of a 4 per cent commission on an invoice of said goods made by Cuno Hering, of Hamburg, Germany, to Messrs. Moll, Kunzli & Co. The form of invoice employed was the regular consular invoice prescribed for goods purchased by the importer, in which the said Cuno Hering described himself as seller. The protest was overruled and denied by the Acting Insular Collector of Customs.

The appellants say in their brief filed in this court:

"It will thus be seen that the question in this case is simply one of whether Cuno Hering was a seller to or purchasing agent for Moll, Kunzli & Co. If he was a seller, the items charged as a commission were properly included as a dutiable item in the valuation of the goods. If he was an agent of the purchaser, Moll, Kunzli & Co., the items charged as commission were not properly so included."

The court below found that Cuno Hering was the seller and not the agent of Moll, Kunzli & Co., and held, accordingly, that the commission, or whatever it may be called, of the seller, being an integral part of the value of the goods from the standpoint of Moll, Kunzli & Co., was therefore dutiable.

On the shipment of the goods from Weimar, Cuno Hering made the following declaration on the invoice accompanying the shipment.

"I, the undersigned, do solemnly and truly declare that I am the seller of the merchandise in the within invoice mentioned and described; that the said invoice is in all respects correct and true, and was made at Weimar, whence said merchandise is to be exported to the United States of America; that said invoice contains a true and full statement of the time when, the place where, and the persons from whom the same was purchased, and the actual cost thereof, the price actually paid or to be paid therefor, and all charges thereon; that no discount, bounties, or drawbacks are contained in said invoice but such as have been actually allowed thereon; that no different invoice of the merchandise mentioned in said invoice has been or will be furnished to anyone, and that the currency in which said invoice is made out is that which is actually paid or is to be paid for said

merchandise. I further declare that it is intended to make entry of said merchandise at the port of Manila.

"Dated at Weimar, Germany, this 24th day of December, 1906.

(Signed) "CUNO HERING."

On the arrival of the goods here, Moll, Kunzli & Co. made the following sworn declaration on the entry and appraiser's return:

"Tomas Molina, being duly sworn, says that he is an agent of the firm (or corporation) of M. M. & Co., agents of Moll, Kunzli & Co., the identical person (persons) mentioned in the within entry, and that the said entry contains the true numbers, weights, and quantities, according to the tariff, and a just and true account, classification, and description of all the goods, wares, and merchandise contained in the parcels described in the said entry, as he verily believes; that according to the best of his knowledge and belief there is no invoice or bill of lading other than those now produced by him and that they are in the state in which he actually received them, and that nothing has been by him or to his knowledge concealed or suppressed whereby the Government may be defrauded of the duty lawfully due on said goods, wares, and merchandise. And this deponent further says that the invoices and entry which he now presents contain, as to such goods, wares, and merchandise as are dutiable according to the value thereof, a just and faithful account of the actual cost and actual market value thereof in the usual wholesale quantity, including the cost of all packing, packages, and receptacles thereof, and all other costs incident to placing the said goods, wares, and merchandise in condition ready packed for shipment to the Philippine Islands."

On the question of the good faith of the appellants in making the protest, the following letter from the American consul at Hamburg was admitted in evidence without objection:

"HAMBURG, January 16, 1908.

"To the Collector of Customs, Manila, P. I.

"SIR: I received your letter of the 11th ult. inclosing two invoices of Mr. Cuno Hering, both of which I herewith return.

"I regret that it escaped our notice that the commission of 4 1/2 per cent was not stated on the invoice, as this office was extremely busy at the time.

"Of late we have had numerous conversations with Mr. Hering regarding other consular invoices, and on the same subject, and he has been informed that every item, including commission, must be stated in the consular invoice and that his invoices will be refused if any such statements are wanting.

"I would add that Mr. Hering is absolutely innocent in the matter, always wishing to do what is correct, but that Messrs. Moll, Kunzli & Co., in Manila, are constantly instructing Mr. Hering to make out his invoices other than in the manner prescribed by our regulations, and has caused this office much unnecessary annoyance and work. For instance, in this case, he was instructed by the Manila firm to leave out his commission, notwithstanding that we have always demanded that the same must be stated in the invoice.

"In future Mr. Hering's invoices shall be carefully scrutinized, so that such oversight may not occur again. I am, sir,

"Very respectfully yours,

"_____

"Consul-General"

We do not believe that it ought to be laid down as a general rule that an importer may not have the right to correct

a mistake made in a sworn statement to the customs officials concerning the relations which he sustains to the person from whom he receives the goods. We do not believe that such a statement is conclusive against him. We are convinced that does not work an estoppel in pais. Whether or not a correction will be permitted in a given case must depend upon the facts of that case. Whether or not one is estopped from asserting something contrary to what he has theretdfore stated or asserted depends on conditions. The doctrine of estoppel can be stated only in the most general terms. This is its particular characteristic. It is impossible to lay down a rule to cover all cases.

To arrive at a conclusion in this case it is necessary to consider only the facts of this case. Whether or not a correction will be permitted depends, among other things, upon (1) the good faith of the party seeking the change, that is, whether it is a real mistake or a simulated one; upon (2) the promptitude with which the request for correction is presented; and (3) upon whether or not injury will result to anyone if the change is permitted.

The fact that the relations between the appellants and Cuno Hering are stated under oath by appellants is not of itself conclusive against them. One may make an honest mistake under oath as well as in an unsworn statement. Neither is it conclusive that the appellants and Cuno Hering agreed in their description of the relations between them. Men may, and frequently do, mistake the relation which they bear to each other. These are simply facts which must be considered and weighed in determining whether as a matter of justice and equity, upon the whole case, the correction ought to be permitted.

For these reasons the authorities cited by the contending counsel, while significant and helpful, can not have weight here. The facts in those cases are not the same or substantially the same as in the case at bar.

The Government has no ready means of knowing the real relations between the shipper and the importer except by the testimony of these persons themselves. They themselves are the only ones who know the facts from which those relations spring. The evidence of that relationship they alone possess. The Government is, in a way, at their mercy in this regard. Therefore, when they solemnly and formally state under oath what these relations are, a presumption of more than usual strength and tenacity arises. that they are stating the truth and the fact, especially when in such statement they speak against their own interests. If, later, they return to vary that statement, thereby regaining what their previous statement lost them, their evidence of mistake will be scanned with the very closest scrutiny. If in it there appears any flaw or weakness, or if, in the whole case as presented, there appears any reason to doubt the good faith which they ought to exercise in dealing with the Government, the right to change will be denied them.

Greenleaf says in his Treatise on Evidence, paragraph 210:

"PAR. 210. In some other cases, connected with the administration of public justice and of government, the admission is held conclusive, on grounds of public policy. Thus, in an action on the statute against bribery, it was held that a man who had given money to another for his vote should not be admitted to say that such other person had no right to vote. So, one who has officiously intermeddled with the goods of another, recently deceased, is, in favor of creditors, estopped to deny that he is executor. Thus, also, where a shipowner, whose ship had been seized as forfeited for breach of the revenue laws, applied to the Secretary of the Treasury for a remission of forfeiture, on the ground that it was incurred by the master ignorantly, and without fraud, and, upon making oath to the application, in the usual course, the ship was given up, he was not permitted afterwards to gainsay it and prove the misconduct of the master, in an action by the latter against the owner for his wages, on the same voyage, even by showing that the fraud had subsequently come to his knowledge. The mere fact that an admission was made under oath does not seem alone to render it conclusive against the party, but it adds vastly to the weight of the testimony, throwing upon him.the burden of showing that it was a case of clear and innocent mistake. Thus, in a prosecution under the game laws, proof of the defendant's oath, taken under the Income Act, that the yearly value of his estates was less than £100, was held not quite conclusive against him, though very strong evidence of the fact. And even the defendant's belief of a fact, sworn to in an

answer in chancery, is admissible at law, as evidence against him of the fact, though not conclusive."

We do not feel like disturbing the conclusion of the Collector of Customs in this particular case. He dealt with the parties at first hand, was thoroughly acquainted with the system in operation, was deeply schooled in the methods and arts of those who seek to impose upon the Government in the matter of customs duties. He listened to the protest, observed the conduct of the parties, and weighed the evidence presented. He drew his conclusions from the whole case; and, while the declarations under oath of the appellants and Hering are not conclusive against them, still we are satisfied from the whole case that the Collector of Customs in concluding that they have failed to meet and overcome satisfactorily the burden of proof which those declarations laid upon them was fully justified.

The judgment of the court below is, therefore, affirmed, with costs against the appellants. So ordered.

Arellano, C, J., Torres, Mapa, Johnson, and Carson, JJ., concur.

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