

CARLOS GSELL, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.*G.R. No. 7958. February 20, 1913*

Ponente: JOHNSON, J.

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The record shows that the appellant imported into the Philippine Islands a certain amount of merchandise, which he declared to be "9 bales wool waste," but which was invoiced in the bill of lading as "9 bales wool." The Collector of Customs for the port of Manila classified said merchandise as "wool waste" under paragraph (a) of article 135 of the Philippine Customs Tariff of 1909,[1] and assessed duty thereon at 10 per cent ad valorem. The duty thus assessed was paid under protest upon the ground that the merchandise in question should have been assessed for duty as "wool not farther advanced in condition than washed," and admitted free of duty under paragraph 311 of said Tariff Law.

An appeal was taken to the Insular Collector of Customs against the said classification and assessment of duty. The Insular Collector, after hearing the protest of the importer, modified the original classification and assessment and admitted said merchandise free of duty. In the second decision of the Insular Collector said merchandise was classified as "noils." The Insular Collector held that the merchandise in question was commercially known as "noils."

The decision of the Insular Collector of Customs was called to the attention of the Secretary of Finance and Justice on the 18th of July, 1911, and said Secretary, pursuant to law, requested the Collector of Customs to certify and transmit his said second decision,¹ together with the entries, invoices, exhibits, and all other papers connected therewith, to the clerk of the Court of First Instance of the city of Manila, for revision by the Court of First Instance, which request was complied with on the 28th of July, 1911.

Later the question as to the proper classification of said merchandise was presented to the Court of First Instance of the city of Manila. After a careful consideration of the record, the Honorable Charles S. Lobingier, judge, in a very carefully prepared opinion, modified the conclusion of the Insular Collector of Customs and held that the merchandise in question should have been classified and assessed for duty under paragraph (b) of article 303 of said Tariff Law and rendered a judgment in accordance with said conclusion.

From that judgment, the plaintiff appealed and in this court made the following assignments of error:

First. The Court of First Instance erred in holding that the merchandise in question is "wool further advanced in condition than washed."

Second. The Court of First Instance erred in not holding that the merchandise in question is "wool not further advanced in condition than washed."

After a careful examination of the record brought to this court, with special reference to the said assignments of error, we are persuaded and so hold that the classification of the merchandise in question made by the Court of

First Instance is in accordance with the facts and the law applicable thereto, and without a further discussion of the questions involved and without prejudice to the writing of an opinion in which such questions may be more fully discussed, the judgment of the Court of First Instance is hereby affirmed with costs.

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

TRENT, J., dissenting:

I dissent. Judgment should be reversed.

[1] 7 Pub. Laws, 390

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