

FERNANDEZ HERMANOS, PLAINTIFFS AND APPELLANTS, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

G.R. No. 8667. March 06, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila affirming a decision of the Insular Collector of Customs assessing import duties on certain repairs made at Hongkong on the steamer *Islas Filipinas* under the Philippine Tariff Law of 1909.

The facts in this case are agreed on. It appears that the plaintiffs were the owners of the steamer *Islas Filipinas* and that, on the 22d of December, 1911, the Collector of Customs addressed to plaintiffs an order requiring that the following repairs be made on said ship:

Repair all defective life belts.

Place one 10-pound tin of hard bread in each life boat.

Repair and provide means of battening the forecastle, skylight, and ventilators.

Renew both mast coats.

Renew five defective forecastle shell plates and one defective shell plate between decks, port side, amidship.

Repair both cargo gates in the forward bulwarks.

Repair the No. 3 bulkhead where marked.

Renew three side stringer plates in the after hold where marked.

Renew all defective frames, reverse frames, stringer plates, stringer angles, half beams, and bulkhead plates in both bunkers.

Renew all defective floors under main boilers.

Remove both boilers and renew the bottom of each boiler.

Renew all rivets in combustion chamber where necessary.

All bad plates found when on the deck must be renewed.

At the time of the issuance of said order it was impossible to effect the following repairs in the Philippine Islands :

Renew all defective floors under main boilers.

Remove both boilers and renew the bottom of each boiler.

On the 27th of December, 1911, Fernandez Hermanos dispatched the *Islas Filipinas* to Hongkong and on the same day sent a letter to the Collector of Customs stating that, in view of the fact that the removal of both boilers and the rebuilding of the bottoms could not be done in the Philippine Islands, they had ordered the steamer to Hongkong where adequate facilities for the performance of such work existed, and requesting that they "be allowed to make all repairs to the hull and boilers that is necessary to make the steamer seaworthy and enter subject to the provisions of paragraph 348 of the Philippine Tariff Act of 1909." In reply plaintiffs received a letter from the Collector of Customs stating:

"The records of this office show that the supervising inspector of hulls and boilers, among other repairs for the *Islas Filipinas*, has specified new bottoms in both boilers and repairs to the frames under both boilers. It also appears that he certifies that these repairs cannot be made in the Philippine Islands.

"You are therefore informed that the repairs above enumerated will be admitted free of duty upon the return of this vessel to this port. You are further informed, however, that any other general repairs made to this vessel, not necessary in connection with the repairs to the boilers and the frames therefor, will be dutiable for the reason that facilities for making these repairs exist in the Philippine Islands."

While the ship was in Hongkong repairs were made and supplies and labor furnished to the value of \$64,580 Hongkong currency. The repairs which could not be made in the Philippine Islands cost \$21,102.59 Hongkong currency. The cost of the repairs ordered to be made by the Collector of Customs, as made, amounted to \$48,763.42 Hongkong currency. It thus appears that repairs were made over and above those required by the Collector of Customs to the amount of \$15,816.58 Hongkong currency. Of this latter sum repairs to the amount of \$10,461.97 Hongkong currency would have been ordered by the inspector of the Bureau of Customs on examination of the vessel after she had been docked; and, as a matter of subtraction, there remains of the \$15,816.58 the sum of \$5,354.61 as the cost of repairs which would not have been ordered by the customs inspector under any circumstances. Of the said \$15,816.58 Hongkong currency the cost of repairs not ordered by the customs inspector, \$9,541.17 Hongkong currency were necessary to be made for the vessels to secure or retain insurance, leaving \$6,275.41 Hongkong currency, which were unnecessary for insurance purposes. It is conceded that the making of the repairs to the vessel which could have been made in the Philippine Islands would have required the steamer, on its return from Hongkong, to remain idle and inoperative for five or six weeks; and it is also admitted that if the repairs which could have been made in the Philippine Islands had not been made in Hongkong at the same time with the repairs which could not be done in the Philippine Islands, it would have been necessary, in order for the ship to reach the Philippine Islands for the repairs which could be made here, to place in Hongkong temporary work and structures at the expenditure of a considerable amount of money, which would have had to be removed and replaced with permanent work on the arrival of the vessel in the Philippine Islands. All of the repairs made to the vessel in Hongkong which could have been made in the Philippine Islands were made at the same time with the repairs which could not be made in the Philippine Islands; in other words, the vessel, although fully repaired, was not required to lie in Hongkong any longer than was necessary to make the repairs which had to be made there, the two classes of repairs having been made at the same time.

On the arrival of the vessel in the Philippine Islands duties to the amount of P20,025.92 were assessed on the repairs made on said vessel and it is from such assessment that this proceeding springs.

The contention of the Government is that under the Tariff Act all goods imported into the Philippine Islands are presumptively subject to duties and that, unless such goods are expressly exempted by the Act from the imposition of customs duties, they are assessable; that there not appearing anywhere in the Tariff Act an express exemption with respect to repairs made in foreign ports on Philippine vessels, except as to repairs which could not be made in the Philippine Islands, it necessarily results that all repairs made in a foreign port which could be made in the Philippine Islands must pay duty.

We are satisfied that the contention of the Government is sound to the extent that all articles, goods, wares or merchandise of every kind and class entering the jurisdiction of the Philippine Islands from any place or places, including the United States and its possessions, and in any manner whatsoever, either with intent to unlade therein, or which, after such entering, are consumed therein, or become incorporated into the general mass of property within said Islands, are subject to the payment of import duties. We doubt, however, if we have before us for interpretation that provision of the tariff which levies the duties just referred to. Rather, we have the

interpretation of an exception to the general imposition of duties in favor of a certain class of goods. Under sections 8 and 11, paragraphs 200 and 348, of the Tariff Act, repairs made in foreign ports to Philippine ships are exempt from import duties under certain circumstances. The question presented is under what circumstances are such repairs exempt from the payment of such duties.

The sections and paragraphs of the Tariff Act around which this controversy turns are as follows:

"SEC. 8. That the rates of duties to be collected on articles, goods, wares, or merchandise imported into the Philippine Islands, or going into said Islands from the United States or any of its possessions except as otherwise provided in this Act, shall be as follows:

* * * * *

"200. Boats, launches, lighters, and other water craft, set up or knocked down, imported into the Philippine Islands, and cost of repairs made in foreign countries to vessels, or to parts thereof, documented for the Philippine coastwise trade or plying exclusively in Philippine waters and for which repairs adequate facilities are afforded in the Philippine Islands, fifty per centum ad valorem.

"Provided, That upon proof satisfactory to the Collector of Customs that adequate facilities are not afforded in the Philippine Islands for such repairs, the same shall be subject to the provisions of paragraph three hundred and forty-eight of this Act:"

"SEC. 11. That the following articles shall be free of duty upon the importation thereof into the Philippine Islands upon compliance with regulations which shall be prescribed in accord with the provisions of each paragraph:

* * * * *

"348. Repairs to vessels documented in the Philippine Islands or regularly plying in Philippine waters, made in foreign countries, upon proof satisfactory to the collector of customs that adequate facilities for such repairs are not afforded in the Philippine Islands."

We are satisfied from the provisions above quoted that the position of the Government in this case is untenable and that the judgment affirming the imposition of the duties by the Collector of Customs on the repairs made to the vessel must be reversed. The fundamental defect in the position of the Government is that it divides the repairs which a vessel undergoes into two parts, one of which is composed of those which can be made in the Philippine Islands, and the other of those which can not be made in the Philippine Islands. The statute itself makes no such division and we see nothing therein which authorizes it. The Act speaks of the repairs as a whole. No matter how many items compose the repairs, they constitute what the law denominates repairs, an indivisible whole with which the Act concerns itself and upon which it imposes or does not impose import duties. If the repairs cannot be made in the Philippine Islands, then they can be made in a foreign country and, having been made there, may come in free of duty. If they can be made in the Philippine Islands, then, if they are made in a foreign country, they cannot come in free of duty. It is distinctly unauthorized by the terms of the law to divide the repairs into two parts and to impose duties on one part and not on the other. Furthermore, such a distinction is unreasonable, if not impossible, and leads to unjust and offensive results.

In the first place, it leads to a contradiction of terms. It is a violation of language to assert that a repairer of automobiles has adequate facilities as such when he can furnish only a tire where the automobile requires a new engine. It is impossible to contend that there are adequate facilities in the Philippine Islands for repairing a ship when all that can be furnished is a rivet when the rebuilding of a boiler is required. Facilities are not adequate unless[^], when required, all of the repairs necessary for the safe and convenient operation of the ship can be made by the use of such facilities.

It is apparent, therefore, that the theory of the Government by which the repairs referred to are divided into two parts requires of necessity that the words "adequate facilities" shall be interpreted in a manner violative of their plain meaning and that they be given a sense which the law never contemplated they should have. In order to meet the necessities of the Government's theory we must hold that a repairer has adequate facilities for repairing an automobile when he can do nothing more than put a patch on a tire; and that a ship repairer has adequate facilities for the repairing of ships when, although a propeller is required, he can do nothing more than caulk the deck.

In the second place, if the Government's contention is true, we must of necessity hold that it was the purpose of Congress to lay upon shipowners of the Philippine Islands a burden and to deal with them in a manner offensive and unjust as compared with other business men. Let us take this very case as illustrative of the injustice that would follow the interpretation of the law contended for by the Government. To require part of the repairs to be made in Hongkong and part in Manila would compel the vessel to remain idle for an additional five or six weeks; to travel between Hongkong and Manila in a more or less unseaworthy condition and probably without insurance; to expend money uselessly in temporary work which would have to be immediately removed and permanent work substituted; to be docked twice instead of once, a process always accompanied by risk and expense.

In the third place, no real line can be drawn between repairs which can be made in the Philippine Islands and those which can not be made here. In the case before us the Collector of Customs requires, in effect, that the plaintiffs have the ship's boilers and frames repaired in Hongkong and that they then bring the ship here for the balance of the repairs. But why stop there? Some of the work on the boilers and frames could have been done in the Philippine Islands. Some of the rivets in the boilers could have been put in here and some of the frames could have been fastened together by Filipino hands. At least the grinding, surfacing and painting could have been done here. The boiler frames could have been fastened to the ship's sides in the Philippine Islands; a pair of hands and a hammer are sufficient to do work such as that. If the theory of the Government is correct, any part of the work done in Hongkong which could have been done here is in law dutiable. It is no reply to argue that the dividing line must be drawn somewhere and that it would not be reasonable to divide up the work on a set of boilers and require, say, the boilers themselves to be made in Hongkong and the painting to be done here; or to require that the frames be made in Hongkong and attached here. But, so far as the Government is concerned, the question is not one of reasonableness; it is, what does the law require? The Government is standing squarely on the proposition that all repairs which can be made in the Philippine Islands must pay duty if made in a foreign port. Is there a different principle involved in the requirement that the boilers themselves be made in Hongkong but the painting be done in the Philippine Islands and in the requirement that the boilers must be put in in Hongkong but that the other repairs to the ship must be made in the Philippine Islands? If there is a difference in the two cases, it is one in the degree of unreasonableness rather than in the nature of the requirement itself. Both of these requirements are unreasonable. That the one is, perhaps, a little more unreasonable than the other furnishes no ground on which the more reasonable can be defended. It is unreasonable to require a ship to have part of its repairs made in Manila and a part in Hongkong, It would be difficult to justify a law requiring such an anomaly and the court will not presume that it was the intention of the Legislature to produce such a result.

In the fourth place, the theory of the Government would interfere with the natural and ordinary rights of ship-owners in the Philippine Islands. A vessel, by reason of her being incapable of movement except on her own bottom, should have all repairs made at one time and place; otherwise, between times and places, she must travel in a more or less unseaworthy condition and incur risks which she ought not to be required to assume. Moreover, a vessel represents a very large investment and continual expense. During its idleness the investment is unproductive and the expenses do not cease. Therefore, when idle for any purpose, it is necessary to take advantage of the period of idleness to accomplish all the things which, if unperformed, might require a subsequent period of idleness. If a vessel is laid up for certain repairs, it would be folly to confine the work to those repairs,

postponing others until another time when the operation of the vessel must again be suspended. A shipowner who docks his vessel for repairs does not limit operations to what may be visible or absolutely necessary at that time but, taking advantage of the situation, he overhauls his vessel from stem to stern and accomplishes during the idle period all that may be indicated as necessary or convenient for that time and, so far as possible, for the future. Nor does he have the repairs made successively. Work on all the repairs is going on at the same time. To require him to perform one set of repairs at a time, thus lengthening out the period of idleness, would be financially ruinous.

The statute plainly treats the repairs as a unit, however many there may be and whatever the nature thereof, so long as they are necessary for the safe, convenient, or economical operation of the vessel. There is not the slightest intimation in the statute that a division of the repairs into two groups is contemplated. If all of the repairs necessary for the safe, convenient, or economical operation of the ship cannot be made in the Philippine Islands, then they, all of them, can be made in a foreign port and come into the Philippine Islands free of duty.

The question of the control of the discretion of the Collector of Customs under the tariff law in determining whether or not there are adequate facilities in the Philippine Islands for the repair of a given ship is not involved in this case, inasmuch as it is admitted and the Collector has found that there were not adequate facilities in the Philippine Islands for the repair of the ship involved in the case, he declaring that some of the most important repairs could not be made here at all.

The judgment appealed from is reversed in so far as it affirms the levy of duties on the repairs made on the steamship involved in this case. So ordered.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

Carson, J., dissents.

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