

OQUIÑENA & COMPANY, PLAINTIFF AND APPELLEE, VS. JOSE MUERTEGUI ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 9976. November 22, 1915*

Ponente: TORRES, J.

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This is an appeal, by bill of exceptions filed by counsel for the defendants from the judgment of December 12, 1913, in which the latter were ordered jointly and severally to pay to the plaintiff company the sum of P3,120.81, with legal interest thereon from March 6, 1910, and the costs of the trial.

By a written complaint of June 18, 1910, subsequently amended by another of July 22, 1913, counsel for Oquiñena & Co. commenced proceedings in the Court of First Instance of Cebu, alleging therein that from September, 1908, until March, 1910, the general mercantile partnership of Muertegui & Aboitiz, domiciled in the municipality of Palompon, Island of Leyte, had maintained commercial relations with the plaintiff firm; that during this period Muertegui & Aboitiz shipped various large amounts of hemp and other commodities to the plaintiff, Oquiñena & Co., at Cebu, for the latter to sell on commission; that on March 16, 1910, a balance of accounts was struck and it was found that the defendant company was owing the plaintiff the sum of P3,120.81; and that, in spite of repeated demands, the defendant firm had not yet paid the said sum to Oquiñena & Co. Counsel for plaintiff therefore prayed that judgment be rendered ordering the firm of Muertegui & Aboitiz to pay to the plaintiff the said sum of P3,120.81, with costs.

After counsel for the firm of Muertegui & Aboitiz had been summoned and had entered an appearance, in October, 1912, Paulino Aboitiz, one of the partners of the defendant firm, died, and for this reason Ramon Aboitiz was appointed administrator of the estate of the deceased. This administrator and Jose Muertegui are now managing and conducting the business of the defendant firm of Muertegui & Aboitiz. For this reason the plaintiff asked for permission to amend its complaint and include therein, as one of the defendants, Ramon Aboitiz, as administrator of the estate of the deceased partner Paulino Aboitiz. This permission being granted, the plaintiff filed the said amended complaint of July 22, 1913.

The demurrer to the complaint was overruled, whereupon counsel for each of the defendants entered a separate answer denying each and all of the paragraphs contained in the complaint, and as a special defense alleged that the sum claimed by the plaintiff was not a balance resulting from any settlement of accounts, but was the amount paid by the plaintiff as internal revenue tax, a payment which was never authorized by the defendants. The latter therefore moved to dismiss the complaint.

After a hearing of the case and an examination of the evidence adduced by both parties, the court rendered the judgment aforementioned to which the defendants excepted and, in writing, moved for a reopening of the case and a new trial. This motion was denied, the appellants excepted, and, the proper bill of exceptions having been filed, the same was approved and forwarded to the clerk of this court.

The question to be resolved in this litigation consists solely in determining which of the two parties, the plaintiff

or the defendants, is liable for the one-third of one per cent internal revenue tax which the commission agents Oquiñena & Co. must pay on the sales of commercial articles made by order and on account of their principals, Muertegui & Aboitiz.

These two mercantile partnerships (domiciled, the former in the city of Cebu and the latter in Palompon, Leyte) maintained business relations from April or May, 1908, to March, 1910, and although there was no written contract between them there was however a verbal agreement to the effect that the defendant firm, Muertegui & Aboitiz, should ship hemp and copra to the plaintiff firm at Cebu; that the latter, in turn, bound itself to sell the same on commission and that it was to receive for services rendered in effecting such sales a commission of one per cent of the price of the articles sold. The defendant firm agreed to pay all the expenses incurred by the shipment and sale of the articles sent by it to Oquiñena & Co.

About the end of March, 1910, the relations between the two firms came to an end and, on striking the proper balance of accounts between the contracting parties, the results showed a balance due of 73,120.81, the payment of which was duly demanded by the plaintiff company. The defendant company refused to pay it, alleging that the amount claimed did not constitute a balance due from any settlement whatever, but that it represented the amounts paid by the plaintiff, as commission merchants, for internal revenue taxes the payment of which was neither approved, either in whole or in part, nor authorized by the defendant company.

It is a fact fully proven at trial that the said sum was the amount of the one-third of one per cent tax, calculated on the prices of merchandise sold by the plaintiff company by order and on account of Muertegui & Aboitiz, and that it was an internal revenue tax paid by the plaintiff company in its capacity of commission merchants. The record also shows that the plaintiff party charged that sum to the defendant, as being responsible for its payment, in the account it transmitted to the latter, and, because the defendants would not pay it, brought this suit for its recovery. However, at the trial Anastacio Aldecoa, manager of the plaintiff company, testified that if the said sum, the subject of his claim, were stricken out of and not charged in the account, his debits and credits would balance (p. 214, stenographic notes). From this statement it is concluded that the balance shown in the account is only the amount of the tax paid by the plaintiff.

So then the sum which is the subject matter of the complaint filed by Oquiñena & Co. is the amount of the tax which it had paid at the rate of one-third of one per cent on the prices of the goods it sold as commission merchants, by the order and for the account of Muertegui & Aboitiz,—a tax which the plaintiff was obliged to pay, by reason of the occupation or business in which it was engaged in Cebu, upon effecting the said sales by order and on account of its principals, Muertegui & Aboitiz.

Is the amount of this tax, paid by the plaintiff as commission merchants, comprised in the expenses incurred by the shipment, storage and sale of the hemp and other articles handled by the defendant and sold by the plaintiff? We think not inasmuch as Muertegui & Aboitiz, as principals, were on their part obliged to pay the tax on the sales of hemp and other articles shipped to Cebu, and the amount at which this tax was fixed was the only one included as expenses in the agreement stipulating that all the expenses occasioned by the said transactions of commission sales of hemp and copra should be chargeable to the defendant company. With this understanding Muertegui & Aboitiz accepted and approved the accounts rendered by Oquiñena & Co. The sum of P3,120.81, paid by Oquiñena & Co. as commission merchants and not by reason of the one-third of one per cent on the value of the goods sold by them, is undoubtedly not comprised in the item of the expenses which, according to the agreement, should be chargeable to Muertegui & Aboitiz, because the plaintiff's contention appears to be denied by the defendants, and because the record does not disclose satisfactory proof that the contracting parties stipulated that the owners of the hemp and copra should be obliged to pay, in addition to the tax on the price of the goods sold by their commission agents, the tax which the latter had to pay on their business or occupation as

commission merchants.

Section 139 of Act No. 1189, the Internal Revenue Law, contains, among other provisions, the following:

"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, etc."

Muertegui & Aboitiz, convinced that they were obliged to pay this tax, diverse from that levied upon commission merchants, had no objection to approving the previous accounts presented by Oquiñena & Co., for they believed that the tax therein charged against them was the one specified in the said section 139 and was comprised, according to the agreement between them, in the item of expenses incurred during the course of their business transactions; but when a demand was made upon them by the Bureau of Internal Revenue for the payment of this tax, in their home town, they then learned that the amount of P3,120.81, charged in the plaintiff's last account and demanded by it, was the total of the sums paid by it as the internal revenue tax which the plaintiff company was obliged to pay as commission merchants. The obligation to pay this tax is explicitly prescribed in section 140 of the said Act, which is as follows:

"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, and whether such goods, wares, or merchandise consists of raw materials or of manufactured or partially manufactured products, shall be considered as a merchant within the meaning of this article."

If Oquiñena & Co., as merchants, were engaged in the sale on commission of goods which were sent to them by Muertegui & Aboitiz, it is unquestionable that as commission merchants they were obliged to pay the said tax of one-third of one per cent on the total value of the hemp and copra which they sold by the order and on account of Muertegui & Aboitiz, inasmuch as these latter, in turn, paid the tax due by them, as evidenced by the documents Exhibits 108 and 109, the last of which is a certificate by the municipal treasurer of Palompon, deputy of the provincial treasurer of Leyte, which sets forth the amounts paid by Muertegui & Aboitiz as the one-third of a one per cent tax on the value of the hemp and copra sold by Oquiñena & Co.

The plaintiff firm has put forward no good reason why Muertegui & Aboitiz should be obliged to pay the tax assessed on commission merchants.

In the decision of the case of *Gil Hermanos vs. Hord* (10 Phil. Rep., 218) it was held that:

"The fact that the plaintiff, a mercantile partnership, consigned a certain quantity of merchandise to another firm for sale upon commission, and paid the percentage tax imposed upon its business by the Internal Revenue Law, does not relieve the commission merchant from the payment of an occupation tax, nor does the payment by the latter constitute a double taxation against the plaintiff."

In the reason stated in the decision aforesaid, the following appears:

"It is very apparent that the tax under discussion is not a tax upon property. It is rather a tax upon the occupation or industry in which a person is engaged."

Further on, in another paragraph of the same decision, we find:

"As has been said above, this is in no sense a tax upon the property sold; it is merely a method of deciding how much the person who makes the sale shall pay as a tax upon the business in which he is engaged."

Although Muertegui & Aboitiz paid the tax on their goods which were sold in Cebu by Oquiñena & Co., this latter firm, by engaging in the business of commission merchants, is, in turn, obliged to pay to the Government

the tax specified in the foregoing section 140 of Act No. 1189; and as it was not proven that there was even a verbal agreement that Muertegui & Aboitiz should pay or reimburse Oquiñena & Co. for the said internal revenue tax on commission merchants, the claim made by the plaintiff party is therefore manifestly improper.

Starting from the hypothesis that the tax of one-third of one per cent which a commission merchant must pay as his contribution to the public revenues is not included among the expenses which, according to the mutual agreement, Muertegui & Aboitiz should have paid as the owners of the goods sold in Cebu by Oquiñena & Co., [for, as we have already said, the record discloses no proof of such an obligation] the evidence shows that Oquiñena & Co., in furnishing partial accounts to Muertegui & Aboitiz of the results of the sales of the goods which it had received on commission, included in the letters it addressed to the latter explanatory notes of the amount of the expenses incurred in making the commission sales, among which expenses was included the amount of the said tax of one-third of one per cent, but without explaining what kind of tax, whether it was the tax on the selling price of the goods sold, by the commission agents, or whether it was the internal revenue tax which this latter concern had to pay for the pursuit of its business or occupation of commission merchants. By reason of this lack of detail with respect to the kind of tax paid by Oquiñena & Co., the owners of the goods sold, as principals, continued to consent to and approve the acts of their agents in charging them with the amount of the internal revenue taxes paid by Oquiñena & Co. in their capacity of commission merchants, and accepted the deductions of the amounts of such taxes from the value of the merchandise and the items of such amounts in the accounts rendered, as if the principals were responsible for the payment of these taxes to the Bureau of Internal Revenue.

Muertegui & Aboitiz accepted as legal the deductions made by Oquiñena & Co., under the erroneous belief that the tax the payment of which they accepted, was that fixed on the price of the goods sold by Oquiñena & Co., inasmuch as the plaintiff in its letters merely referred to the payment of the internal revenue tax, without specifying which tax, and the defendants did not notice this error, so important and extremely detrimental to their rights and interests until, in the first part of October, 1909, a demand was made upon them by the municipal treasurer of Palompon for the payment of the one-third of one per cent on the sales of the hemp and copra sold in Gebu by Oquiñena & Co. by order and on account of the defendants, from the 1st of October to the 31st of December, 1909. By reason of this demand the latter had to pay to the Government the sum of P2,619.70, as proven by Exhibit 109, found on page 142 of the record.

Since then (October, 1909) the defendants have been aware of the fact that Oquiñena & Co. had charged to their account the business and occupation tax which the plaintiff company, as commission merchants, were obliged to pay to the Government, and that Muertegui & Aboitiz were not obliged to pay the tax levied upon their said commission agents. The defendants, therefore, refused to pay the balance of the account (Exhibit 57, pp. 121-132 of the record) amounting to P3,120.81, which is the amount demanded of them in the complaint and the exact sum of the amounts which, as taxes, developed upon Oquiñena & Co. to pay as commission merchants, and this fact is recognized by the manager of Oquiñena & Co., Anastacio Aldecoa, as disclosed by his affidavit, found on page 214 of the record.

If in their letters written prior to the said account of October, 1909, Muertegui & Aboitiz erroneously accepted and approved the reduction from the value of their merchandise of the amounts which Oquiñena & Co. had paid as the internal revenue tax on commission merchants, and consented to these amounts being charged against them in their previous accounts, which certainly were not presented, excepting the October account above mentioned, it is then very apparent that the collection made by the commission agent's firm was illegal, and likewise that the payment made with a part of the value of the merchandise belonging to its principals was notoriously improper, since the consent and acceptance which the principals had given in respect to the deductions and accounting made

by Oquiñena & Co. to the detriment of the interests of Muertegui & Aboitiz were null and void.

Article 1265 of the Civil Code provides: "Consent given by error, under violence, by intimidation, or deceit shall be void."

The article following, numbered 1266, prescribes that, in order that the error invalidate the consent, it must refer to the substance of the thing which is the object of the contract, or to those conditions of the same thereof which were chiefly the cause of its execution.

So then Muertegui & Aboitiz erroneously allowed the collection which their commission agents, Oquiñena & Co., unduly made by deducting from the value of the merchandise shipped to the latter for sale, the amount of the tax which the principals were not obliged to pay, but which it was solely incumbent upon the commission agents to pay. Therefore, if in the accounts presented by Oquiñena & Co. certain amounts for internal revenue taxes charged against the commission agents were given as paid by Muertegui & Aboitiz, the payment or the entry was erroneously accepted by the defendants, and for this reason they were not obliged to pay them.

Article 1895 of the Civil Code prescribes: "If a thing is received when there was no right to claim it and which, through an error, has been unduly delivered, there arises an obligation to restore the same."

Oquiñena & Co. credited itself with various sums which as commission merchants it had paid for taxes, and on this account received and paid to itself the said sums which from time to time it had deducted from the value of the merchandise belonging to Muertegui & Aboitiz, without having any right whatever to collect them and notwithstanding that its principals had, from May 1908 to September 1909, erroneously approved and accepted the said deductions. As soon as it is shown that an error occurred which affected Muertegui & Aboitiz to the prejudice of their interests and benefitted their commission agents, Oquiñena & Co., who through such error succeeded in relieving themselves from the payment of a lawful tax and in charging it to Muertegui & Aboitiz, the obligation of course arises to restore what was unduly paid. As Muertegui & Aboitiz, instead of claiming what they unduly paid, the exact amount of which is not satisfactorily shown in the record, confine themselves to objecting to the payment of the sum that is, the subject matter of the complaint and which is apparently a part of the amount of the taxes credited to itself by Oquiñena & Co. in the accounts rendered by it to its principals, the amount of which appears in the last account as a balance owing by the said principals, there is no good and sufficient reason by which this court can hold Muertegui & Aboitiz liable for the payment of the sum claimed, because, according to law and the terms of the verbal contract entered into between the parties, they are not obliged to pay the said tax on commission merchants.

For the foregoing reasons, the judgment appealed from must be reversed and Muertegui & Aboitiz absolved from the complaint filed by Oquiñena & Co., as they are hereby absolved, without special findings as to the costs of both instances. So ordered.

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

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