

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, US.
JOSE A. BARRETTO, DEFENDANT AND APPELLANT.**

G.R. Nos. 48799 and 48800. August 26, 1942

Ponente: BOCOBO, J.

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BOCOBO, J.:

CRIMINAL LAW; SECTIONS 1453 AND 1463 IN CONNECTION WITH SECTION 2722 OF THE REVISED ADMINISTRATIVE CODE AS AMENDED; SECTIONS 1458 AND 1466 IN CONNECTION WITH SECTION 2723 or SAME CODE; WHEN A PERSON IS DEEMED A "SALARIED EMPLOYEE" OR A "BONA FIDE EMPLOYEE" AND NOT A COMMERCIAL BROKER.—Defendant herein may be properly considered a "salaried employee" or a "bona fide employee" within the purview of section 1465, paragraph (x) of the Revised Administrative Code and section 194 of the New National Internal Revenue Code. The fact that he received a commission in addition to his salary did not necessarily make him a "commercial broker" because this is a well-known practice in the business world by way of incentive for employees to efficient salesmanship. Moreover, his having been given a bonus for special services and also a gasoline allowance is indicative of his being an employee of the Luneta Motor Company. An independent commercial broker does not ordinarily receive these privileges from the merchants for whom he finds buyers or sellers. Furthermore, the defendant sold cars for only one automobile dealer, the Luneta Motor Company. Though this circumstance is not an infallible criterion of the status of an employee, it is nevertheless a strong evidence thereof. Finally, the trial court found that the accused "had to work during office hours at the Luneta Motor Company in the capacity of an employee and whose obligation it was to sell automobiles * * * for the said entity, Luneta Motor Company, with a salary * * * and receiving in addition a commission * * *." From this finding, it is clear that the defendant was a regular employee of the Luneta Motor Company, having to keep regular office hours at the establishment of the employer; and that he received his compensation as such employee in the form of salary and commission,

APPEAL from two judgments of the Court of First Instance of Manila. Boncan, J.

Decision penned by Associate Justice Jorge C. Bocobo.

Jesus Ocampo for appellant.

Assistant Solicitor-General Manalac and Solicitor Avancena for appellee.

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