

FROELICH & KUTTNER, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT,

G.R. Nos. 5600 and 5602. March 02, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

These two cases involve separate appeals by the Insular Collector of Customs from judgments of the Court of First Instance of Manila, reversing the decision of the Insular Collector of Customs upon the respective protests of the importers, and ordering a reliquidation of the duties in each case in accordance with the judgment of that court. Both cases involve the same question and they are treated together in this decision.

The plaintiffs imported into the Philippine Islands a number of cases of knitted undershirts. These undershirts are knitted of cotton threads or yarns, the garment in each instance being throughout of the same color and stitch, with the exception of the collar, the edges of the opening down the front, and the wristbands. Around the neck and the opening in front is stitched a knitted band of the same material as that composing the body of the shirt, but of a different stitch, and, in some cases, of a different color. The undershirts were classified by the Insular Collector of Customs under paragraph 125 (b) of the Tariff Revision Law of 1901, which reads as follows :

"125. Knitted goods, even with needle work: (knitted goods, mixed with other vegetable fibers, wool, silk, or floss silk, shall respectively be dutiable according to the corresponding numbers of Classes V, VI, and VII (see rule 5).)

* * * * *

"(b) Jerseys, undershirts, and drawers, N. W. kilo, \$0.35.

* * * * *

"Provided, That none of the articles classified under this paragraph shall pay a less rate of duty than twenty-five per centum ad valorem.

"NOTE. - The articles classified under this paragraph shall have no surtax for the making-up, but shall be liable to such other surtaxes as may be applicable."

This paragraph appears under Class IV (cotton and its manufactures), group 3 (textiles), and is subject to such rules under said group as may be found applicable.

The importers of these undershirts were required to pay a surtax of 30 per cent for the application of trimmings, the Collector of Customs claiming that the knitted band around the neck and down the opening in the front constitutes an application of trimmings under the provisions of Rule B (b) of paragraph 116 of the Philippine Tariff Revision Law of 1901. The portion of Rule B referred to reads as follows:

" (b) Textiles embroidered by hand or by machine after weaving or with application of trimmings shall be liable to the duties leviable thereon, plus a surtax of thirty per centum."

Messrs. Froehlich & Kuttner protested as follows:

"We made this declaration in order to avoid the imposition of a fine, knowing that your office follows the rule that undershirts manufactured with dyed yarns in the neckline are to be considered as 'trimmed,' but we now protest against the application of the surtax of 30 per cent for being trimmed, sustaining that the application of dyed yarns does not form any difference either in manufacturing or in value and does not make the undershirt to be considered as trimmed.

"We therefore request you to have the entry in question reliquidated and to order refund of the duty paid in excess."

Messrs. Kuenzle & Streiff protested as follows:

"You are herewith informed that we protest against your assessment of 30 per cent surtax for so-called trimming on above-mentioned undershirts imported by us under entry referred to at the heading. Our classification was only made in order to avoid the imposition of any fine, as we hold that no such surtax can be legally assessed. These undershirts are of the ordinary class and their making up in the style for which no surtax can be levied."

The Insular Collector of Customs rendered the same decision upon each of said protests, as follows:

"This protest is against the assessment of a surtax of 30 per centum for the application of trimmings on certain knitted cotton undershirts, dutiable under paragraph 125 (b) of the Tariff Revision Law of 1901 at \$0.35 per kilo, not less than 25 per centum ad valorem.

"The Court of Customs Appeals held in re Docket No. 725 (Appeal No. 663) that similar undershirts were liable to the surtax provided for the application of trimmings (see Tariff Decision Circular No. 452). This question was further amplified in Docket No. 795, unpublished, in case of Messrs. Kuenzle & Streiff, dated June 21, 1905, where the Court of Customs Appeals reaffirmed the application of the surtax in question."

The Insular Collector of Customs overruled each of the protests. An appeal from such decision was taken in each case to the Court of First Instance of Manila. On October 25, 1907, that court rendered a decision in the Froehlich & Kuttner case, affirming the decision of the Insular Collector of Customs. It does not appear that a decision was rendered on the appeal of Messrs. Kuenzle & Streiff. Thereafter, on the 1st day of October, 1908, the Supreme Court of the Philippine Islands rendered a decision upon the same question in another case of Froehlich & Kuttner vs. Collector of Customs, [1] reversing the decision of the Insular Collector of Customs and the judgment of the Court of First Instance. In that case this court held that knitted undershirts with a knitted particolored border sewed around the collar and down the front are not subject to the surtax prescribed by group 3, Rule B, of the Tariff Revision Law of 1905 and that such a border does not constitute an application of trimmings under rule 7. A motion for a rehearing was filed and on October 29, 1908, after careful consideration, a decision was rendered denying the motion. Thereafter and on the 5th of December, 1908, a new trial was granted by the Court of First Instance in the other two cases, as well as in a number of similar cases pending in that court. Upon the retrials, the trial court, following the decision of this court, reversed in each instance the judgment of the Insular Collector of Customs. It was stipulated on the trial of said causes that the evidence introduced in each case should be considered as evidence in the other, and in the case of Froehlich & Kuttner vs. Insular Collector of Customs it was stipulated that the evidence submitted in customs cases Nos, 2, 10 and 14, which were appealed to this court, bearing R. G. No. 4316, should be submitted as evidence in that case, and such evidence is attached to the record on this appeal.

Paragraph 125 of the Philippine Tariff Revision Law of 1901, under which the undershirts in question were dutiable, provides that knitted goods are exempt from any surtax for "the making-up." In the cases involved in R.

G. No. 4316, reported in 11 Phil. Rep., 380 (as in the present cases), it was contended by the Insular Collector of Customs "that the undershirt was practically complete before the application of the band or strip and that the purpose of the band was to enhance the value of the garment, give it a more ornamental appearance and make it more salable; that the band or strip was not made at the same time as the body of the undershirt but was afterwards added thereto; that the appraiser of textiles of the Manila custom-house testified that the undershirts in question in said cases were trimmed by the application of the colored edgings on the shirt and on account of the ornamental effect of the edging, the same having improved the appearance of the undershirts; although the edging was knitted and of the same fiber as the body of the undershirt, it was of a different pattern or design, and wherever the design was different the customs authorities considered it a different material; that in the cotton schedule as a whole dyed yarns are subject to a surtax, and for customs purposes are a different material."

The learned counsel for the appellant in these cases presents the following argument. He says:

"In addition to the provisions herein before quoted from the Tariff Revision Law of 1901, under which the duties and surtaxes were collected on the undershirts in question, there are a number of general rules and regulations set forth in section 5 of said Tariff Revision Law to be observed in the construction and enforcement of the various provisions of said Act. Of these general rules, Nos. 2 to 12, inclusive, are referred to in said Rule B. An examination of these general rules seriatim shows that rule 1 has to do with the number of threads in a particular textile; rules 2 to 7, inclusive, have to do with textiles composed of two or more materials, and rules 8 to 12, inclusive, with surtaxes. Of the last mentioned, rule 10 is as follows:

" 'Embroidery. - Textiles embroidered by hand or machine after weaving or with application of trimmings shall be liable to the duties leviable thereon, plus the surtaxes established in every case. * * *'

"An examination of Rule B (b), under Class IV, group 3, and of rule 10, shows that they are very similar in wording, the surtax in each case being imposed on account of the same operation, i. e., embroidery or application of trimmings; but it is Rule B (b) which establishes the amount of the surtax, and it is the one which must be applied.

"As the surtax was imposed in this case because of an 'application of trimmings,' it becomes necessary to determine the meaning of this phrase. In the case of *Froehlich & Kuttner vs. Collector of Customs* (11 Phil. Rep., 380, 383), herein before referred to, this honorable court found that the word 'trimmings,' where it is used in Rule B (6), and in Rule A, clause 3, last paragraph, under Class IV, group 3, and in rule 7 and in rule 10, must be given the same meaning in each. The appellant herein respectfully contends that such construction is erroneous, for the following reasons:

"The 'trimmings' referred to in general rule 7 and in Rule A, clause 3, last paragraph, under Class IV, are such as are imported in that form (for samples see exhibits on p. 59 of R. G. No. 4316 in this court), and not such as are imported as a part of a separate and completed article; in fact, the two are widely distinct, as a thing which, imported by itself, might not be considered a 'trimming,' may become so when attached to a completed article; thus buttons, which in themselves are not trimmings under the last two mentioned rules, may, if attached to a lady's dress for the purpose of ornamentation or decoration, trim that dress, and thus become an application of trimmings in so far as that particular dress is concerned.

"It is claimed by the appellees in these cases that the band around the front opening and the neck of the undershirts is a necessary part of the garment, and that without it the article would unravel. The appellant admits that a protecting band or a hem of some character is necessary, but respectfully insists that if a band is used of such a character as to ornament or decorate the garment, the surtax imposed by paragraph (6) of Rule B, above quoted, is properly payable on such garment. The bands upon the undershirts in question are of an ornamental design, of a different weave from that employed in the body of the garment, and they are generally woven of bright colors, clearly for the purpose of ornamenting or decorating the garment; an examination of the undershirts will readily show that such bands do ornament and decorate them, and this is also shown by the

testimony of the witnesses for the appellant; and Mr. Meyer, a witness for Kuenzle & Streiff, testified that this border or band on the undershirts makes them present a better appearance, but he afterwards, while testifying as a witness, seemed to be under the impression that he had made a mistake in admitting to the court that the band or border so placed on the undershirt gave it a better appearance.

"Rule A, under Class IV, group 3, and rule 7 having been shown to be inapplicable for the reasons stated, we have now only to consider the meaning of the words 'application of trimmings' as used in Rule B (b), under Class IV, group 3, and in rule 10.

"An examination of the Century Dictionary shows the following definitions:

""Trim (to) * * *

""4. Specifically, to embellish with ornaments; (to) decorate, as with ribbons, fringe, etc.

" 'Trimming * * *

" '3. Anything used for decoration or finish; an ornamental fitting of any sort: * * *'

"Under the foregoing definitions the undershirts in question are clearly 'trimmed' by means of an application of trimmings. That the word 'trimmings' does not have the meaning given to it by this honorable court in the case of Froehlich & Kuttner vs. Collector of Customs (11 Phil. Rep., 380, 383) is also shown by the testimony of Max Protzen in behalf of the appellees herein, in which he admitted that trimmings might be other than plaited; that is to say, 'trimming is not always plaited * * * whether an article is a trimming or not does not depend upon whether it is knitted, or plaited. A trimming may be woven, or plaited * * V (R. G. No. 5600, pp. 38-42.) 'It is respectfully submitted that this erroneous meaning was given by the court to the word 'trimmings' by reason of the confusion of rule 7, which has only to do with the importation of articles known as 'trimmings' when imported in that form, and not as a part of a completed garment, and even then referred only to the method of treatment to be applied to such of them as were composed of more than one textile material. This is also true of Rule A, under Class IV, group 3; in other words, there are certain textiles which are always trimmings no matter whether imported as such, or as a portion of a completed garment. Rule 7 and Rule A, above cited, are applicable to them when imported separately. Then there are certain other articles which are imported separately and not technically known as 'trimmings,' such as buttons, laces, ribbons, galloons, etc., but which, if attached to a completed article in such a way as to decorate or ornament it, trim the same and thereby become trimmings, notwithstanding the fact that they are not plaited as mentioned in rule 7; in fact, as shown by the testimony of Mr. Protzen in the trial of these cases, all trimmings are not plaited.

"Wherefore, the appellant respectfully contends that the band or border attached to the undershirts in question, being of a different design, stitch, color, and appearance from the body of the garment and ornamental and decorative in character, effectively trims the garment and adds to its attractiveness and value, and, in so far as the particular garment is concerned, has become a trimming of the undershirt. These bands or borders are not knitted as an integral part of the garment, but are knitted separately and are applied thereto by being stitched or sewn to the garment in the same way as a ribbon would have been if it had been considered desirable to use a ribbon instead of the band. Had a ribbon been used, it surely would not have been contended that the garment would not have had an application of trimmings, notwithstanding the fact that ribbons are differentiated from trimmings by said rule 7."

We proceed to an examination of that argument:

In these cases we have knitted undershirts. That part of such undershirts which has caused this litigation is the band running around the neck and down the edges of the opening in the front. In this band the stitch, as compared with that in the body of the garment, has been changed in form and has been placed, generally speaking, at right angles thereto. The material is of the same kind and quality as the body of the garment. This band seems to have

been knitted separately and sewn to the shirt as a separate piece. It is, generally speaking, about three-quarters of an inch wide. It was knitted originally about one and one-half inches wide and then folded on itself. It was attached to the shirt by taking the raw edge forming the neck and the opening in the front of the shirt and placing it between the two edges of the folded band and sewing all three edges together, leaving the band about three-quarters of an inch wide. The variation in the form of the stitch noticed in the band consists, in most of the exhibits, simply of a change which slightly raises the surface of certain parts of the band into little ridges, with small open spaces at regular intervals between, giving the outer surface of the whole band a rough but agreeable appearance, a slight depression and open space following each raised portion with fair regularity. In others of the exhibits the outer and inner edges of the band, for about one-eighth of an inch, are made up of stitches substantially the same as the stitch in the body of the garment, the central portion of the band lying between these two parts being of a different stitch and one which raises the surface of that portion noticeably above the parts referred to and giving to such raised portion an open-work appearance. In all of the exhibits the outer edges of the bands are indented or notched. In one of the exhibits no colored yarn is used in the band, it being of the same color as the garment itself. In another the colored portion consists simply of a very narrow line of dark blue which runs along the band next to the indented edge. In another the raised central portion is composed of yarn which is whiter than that in the body of the garment; and the tips of the little points made by the indentations in the edge of the band are also composed of whiter yarn. In others of the exhibits, there are two colors introduced into the band, in some to a greater extent than in others.

(1) Under these facts it is evident that the ornamentation so strongly urged by the appellant, if any at all in the real sense of the word, is clearly and conspicuously so incidental to the main purpose of the band as to be negligible. In none of the exhibits have we been able to discover a flower, a figure, a pattern or a design. If there is any design at all it lies in the form of the stitch and not in the product of the stitch; that is, while there is a change of stitch in the band as compared with the body of the garment, that changed stitch is not used to create a design, a flower, a figure or pattern. In other words, the manufacturer, when he made the change in stitch, had no intention to create anything more than a plain, useful shirt band. As we say, later, the changed stitch used in making the band lent itself far more readily to the purpose in view, namely, to prevent stretching and rolling, than the stitch in the body of the garment. It is possible that, in the judgment of some, the stitch used in the band is more attractive to the eye than the stitch in the remainder of the garment. That is a question of taste. The point is that there is found in the product of that stitch no flower, pattern, figure, or design of any kind. There is, so far as form is concerned, no attempt at ornamentation. There appears simply a succession of stitches, running in a series of straight lines along the bands, without theory, thought, conception, design, pattern or figure. Remove the offending stitch, and replace it with the stitch used in the remainder of the garment and, although a different colored thread be used to maintain the outlines formed by the changed stitch, there remains absolutely nothing of design, pattern, figure or form. Straight lines alone characterize the result. It is the stitch itself which is changed and not the thing which the stitch makes up or composes.

There being no conception of figure, pattern or design in the form of the alleged ornamentation, the fact that colored yarn or thread was used to a slight extent in some of the bands does not, in our judgment, produce the effects contended for by the appellant. The colored thread traces no flower, design, figure or pattern. It is uncontradicted that the cost of manufacture, or the value, or the retail price of the garment was not enhanced thereby. Its utility was neither increased nor diminished. The coloring matter introduced is not, in any true sense, a luxury. Even though it be decorative, which may well be doubted, it bears so small a relation to the whole purpose of the band as to be an incident without significance: - at least, without the significance attached to it by the appellant, or such as it would be necessary to attach to it to reach the result for which he contends. The color does not necessarily make the band a trimming. And it must be borne in mind that the basis of the classification made

by the appellant, as well as of his argument on this appeal, is that the band is a trimming by reason of its being ornamental in design and color. The coloring matter does not change the fact that the band is necessary to make the shirt a shirt; and its effect upon the garment as a whole is so slight as to be substantially without significance under the facts of this case.

(2) The garment is not complete without the band - that portion of the garment which, it is alleged, renders it liable to such tax. The undershirt would not be a completed garment without something to cover the raw edges of the collar and the opening in the front. Without this, these edges would stretch and roll, as well as unravel. To be sure, the stitches at the edges might be tied or fastened, but they would, notwithstanding, still stretch and roll to such an extent as to render the garment substantially worthless. Something more was necessary; either a piece of material different from the body of the garment had to be attached to prevent the stretch and the roll or else the material composing the body of the garment had to be extended and adapted to that purpose. From these exhibits it is clear and undoubted that if the additional piece required to prevent the stretch and the roll were made from the same material and with the same stitch, the purpose would still not be served. The reason is that the stretch and the roll would still be present, even though the material be doubled or trebled. The form of the stitch used in knitting the body of the undershirts admits of a stretch in one direction and a roll in the other and they are nearly as pronounced when the material is doubled or trebled as when single. It was necessary, therefore, to change the form of the stitch if the stretch and the roll were to be avoided. This is what was done. The form of the stitch was changed in making the part which was to serve as a band around the neck and down the front; and, to insure the result, the stitch of this part was placed at right angles to the stitch of the body of the garment. These two things prevent stretch, avert rolling, avoid unraveling, and make the garment complete. The fact that the band is a separate piece is, under the circumstances, of slight consequence. It is of the same material as the body of the garment. That it was knitted separately and placed on the shirt as a separate piece is not of sufficient importance, under the facts of this case, to sustain the contention of the defendant. Of what importance to anyone, or for any purpose of this case, is the fact that it was a separate piece? What different result follows whether the garment be left on the machine while the band is knitted without interruption of the continuity of the process, or whether the garment be laid aside while the band is knitted, to be attached later? Unquestionably the process followed by the manufacturer, that of knitting the band separately, is cheaper, requiring less labor and less expense. The thing to be considered under the facts of this case is the result which was attained. Did the separate knitting involve more labor? Did it result in a higher cost of manufacture? Did it increase the proportion of ornamentation? Did it detract from the utility? Did it result in more luxury and less necessity? Was it less a completion of the garment than it would have been if not knitted separately? Clearly not. The result had in mind and, that obtained was the completion of the garment - and that with the least possible cost to the manufacturer and the greatest possible utility to the purchaser. It should be noticed also that, as to knitted goods, there is no surtax for the "making-up." This phrase includes the completed garment, collar band and all.

Thus far we have found that, in the bands in question, there is no ornamentation, either of design or color, in the sense asserted by the learned counsel for the appellant; that, if there is ornamentation of any kind or in any sense, it is, under the facts and circumstances presented, so insignificant, in comparison with the real purpose of the band, as to be unimportant, even negligible.

But there are other points from which this case should be viewed.

(3) Rule 8 establishes surtaxes generally. It reads:

"Rule 8. Establishment of surtaxes. - The surtaxes applicable owing to broche, embroidery, metal threads, or making up, shall always be computed on the duties leviable on the textile by taking into account, if necessary, the increase of such duties in case of admixture."

Rules 9 and 10 read as follows:

"Rule 9. Broches. - Textiles, broches or woven like brocades, with silk or floss silk, shall be liable to the duties leviable thereon plus the surtaxes established in every case. (Class IV, group 3, Rule B, letter (a), and Class V, group 2, Rule B, letter (a).)

Broches or brocaded textiles are all textiles with flowers or other ornaments applied by means of a shuttle in such a manner that the threads do not occupy the entire width of the stuff, but only the space comprising the flower or pattern.

"Rule 10. Embroidery. - Textiles embroidered by hand or machine after weaving or with application of trimmings shall be liable to the duties leviable thereon, plus the surtaxes established in every case. (Class IV, group 3, Rule B, letter (b) ; Class V, group 2, Rule B, letter (b).)

"Embroidery is distinguished from patterns woven in the textile as the latter are destroyed by unraveling the weft of the textile, while embroidery is independent of the warp and weft and can not be unraveled."

These rules establish two kinds of handiwork upon which a surtax shall be imposed:

(a) Upon those textiles whose normal structure has been varied by the introduction of "flowers or other ornaments applied by means of a shuttle," which ornaments are a constituent and component part of the body of the fabric to such an extent that the removal of the ornamental design destroys the textile as such. This is clearly apparent not only from the use of the words "applied by means of a shuttle," which show conclusively that the ornamental design is woven as an integral part of the textile, but also from the words "in such manner that the threads do not occupy the entire width of the stuff, but only the space comprising the flower or pattern."

From these paragraphs of Rule 9 it is clear that the ornamental design occupies a portion of the textile which would have been occupied by the normal textile if the ornamental design had not been introduced; and that if the design were removed there would result in the textile a vacant space or hole of the size of the design.

(b) Upon those textiles whose normal structure has not been varied. In this class of textiles the variation consists in superadding something to the normal texture of the fabric after it has been completed. In other words, in this case, the variant may be removed without destroying, or even injuring in the slightest degree, the body of the fabric; that is, without leaving in the fabric a vacant space or hole. This is apparent from Rule 10, already quoted.

The division into these two classes made by Rules 8, 9 and 10 is made clear beyond question by the second paragraph of Rule 10, just quoted, where it says: "Embroidery is distinguished from patterns woven in the textile," the words italicized referring to the "flowers or other ornaments applied by means of a shuttle" which occupy "only the space comprising the flower or pattern."

Having observed these two classes of variants from the normal structure of the fabric, it is necessary to note next that "trimmings" are placed by Rule 10 in the second class, namely, those variants which are not an integral part of the body of the textile, which are not intended to complete it in any true sense, but are something foreign which is superadded to the textile and which may be removed without destroying the fabric itself or the practical utility thereof.

What is the significance of this division into classes and of the difference in the amount of duties assessed by the law upon each of said classes? It is found very largely in the difference met in the meaning of the expressions "necessity" and "luxury," "utility" and "ornamentation." One of the principles governing the Congress in passing the Customs Tariff Act under consideration, was that, apart from the duties imposed for the protection of home industries, luxuries, not necessities, should pay the heaviest duties. This clearly appears from the law under consideration. It is very largely luxuries upon which the surtax is imposed by the law. Observe the provisions of

Rule B, down to and including paragraph (c) group 3, Class IV. It reads:

"Rule B. Articles included in this group, which are within the under-mentioned conditions, shall be liable to the following surtaxes (see rules two to twelve, inclusive):

"(a) Textiles brochés, or woven-like brocades with silk or floss silk, shall be liable to the duties leviable thereon, plus a surtax of thirty per centum.

"(b) Textiles embroidered by hand or by machine after weaving or with application of trimmings shall be liable to the duties leviable thereon, plus a surtax of thirty per centum.

"Should the embroidery contain threads, purl, or spangles of common metal or of silver the surtax shall amount to sixty per centum of the duties applicable to the textile.

"When the threads, purl, or spangles are of gold the surtax shall be one hundred per centum.

" (c) Textiles and trimmings containing threads, or purl of common metals or silver, shall be liable to a surtax of fifty per centum of the duties leviable thereon.

"When the threads or purl are of gold the surtax shall amount to one hundred per centum."

We have already noted that, under General Rules 8, 9 and 10, establishing surtaxes, articles subject to such tax are by said rules divided into two classes: One class composed of those textiles where the variant is an integral and essential part of the fabric, and the other, of those where the variant is not an integral or essential part of the fabric. In the former class the variant is far more useful than in the latter. In fact, in the latter class the real necessity of the variant is almost wholly lacking. It is not a surprise, therefore, to find, under Rule B, that, in the former case, where the utility (necessity) and ornamentation (luxury) are both about equally present, the surtax is only one-half of what it is in the latter case, where the utility (necessity) has decreased very materially and the ornamentation (luxury) has increased so as to be plainly predominant. This is still more strikingly presented in the remaining paragraph of Rule B. Under this paragraph, which provides that, where the embroidery or textile and trimmings contain threads, purl, or spangles¹ of common metal or silver, the surtax shall be doubled, and where the threads, purl, or spangles are of gold, the surtax is required to be almost doubled again, being 100 per centum of the duties leviable thereon.

From these facts it is patent that as the utility of the variant decreases, and the ornamentation correspondingly increases, the surtax imposed is more than proportionately severe; that where the material of the offending article is the same as the body of the garment, and its primary and main purpose is really and essentially to complete the garment and not to adorn it - that is, to fulfill the requirements of utility and necessity and not those of ornamentation and luxury, the ornamentation, if any, being conspicuously insignificant compared with the primary and main purpose of the article - no surtaxes are imposed. Trimmings being, under the classification of the law, as we have seen, clearly of the latter class - namely, that class where the primary and main purpose is ornamentation and luxury —and the bands in question being as clearly of the former class - namely, that class where the article is of the same material as the body of the garment and the primary and main purpose is conspicuously utility and necessity - the bands are not trimmings within the meaning of the law, and are, therefore, not subject to the surtax levied by the Insular Collector of Customs in these cases.

(4) The appellant, therefore, in assessing the duties which form the basis of this controversy, has run counter to the apparent intent and purpose of the act as well as to one of the principles which underlie the Customs Tariff Act already mentioned, namely, that, generally speaking and apart from the theory of the protection of home industries, luxuries and not necessities shall pay the heaviest duties. That the undershirts in question are necessities of life is unquestioned. That the offending bands are necessary parts of those shirts is, in our judgment,

equally unquestioned. An additional duty following the attachment of the band is, therefore, in its result, under the conditions reigning in the Islands, a tax upon a necessity of life. It is the uncontradicted proof that the change in the form of the stitch in the bands and the introduction of colored yarns therein require no additional labor, do not add to the cost of manufacture, to the value, or to the wholesale or retail price of the garment. Why impose a surtax? The law does not specifically require it. We are unable to find a single reason of state polity that requires it. On the contrary, every reason is against its imposition. Such duty can not be fully supported upon the theory predominant in the United States that it does not result in a tax on the consumer. Here, at the present time, the reasons advanced to support that theory, even though valid, do not apply with the same force as in the United States. Under the conditions existing here the additional duty imposed is partly, at least, a tax upon the consumer. Moreover, it is a tax upon the poorest class of consumers. The undershirts represented in these cases are of the cheapest grade, for the use of the poorest class of people, selling in the market at retail for about fifty centavos each. The imposition of the proposed surtax, therefore, strikes at the pockets of the very poor, the class that can least afford to pay it. In the absence of provisions of law to the contrary, we will not, by construction, impose a tax upon a necessity of life, to be paid almost exclusively by the poorest of the people.

(5) We believe also that the position and the argument of the learned counsel for the appellant is contrary to another principle of construction of customs revenue Acts, namely, that, where the question whether or not the duty ought to be imposed is doubtful, the doubt should be resolved in favor of the importer. That there is doubt in the cases at bar is clear. That there is ambiguity in the phraseology of the Act is also clear. The position of the appellant in these cases, taken in connection with the previous decision of this court (11 Phil. Rep., 380) upon the same questions as are here involved, proves beyond question that the imposition of the surtax upon the garments in controversy is of doubtful validity. The assertion of the learned counsel for the appellant that the word "trimmings" when used in one paragraph of the law means one thing, and, when used in the same law only three paragraphs later, means another and somewhat different thing, is evidence of the strongest character that there is not only doubt, but grave doubt of the legality of the proposed imposition. This is particularly apparent when we take into consideration the general rule of statutory construction that a word used in a statute in a given sense is presumed to be used in the same sense throughout the law. (Sutherland on Statutory Construction, chap. 255.) While this rule is not, by some authorities, regarded as so rigid and peremptory as some other of the rules of construction, nevertheless it is particularly applicable in the cases at bar, where in the statute the words appear so near to each other physically, and particularly where the word has a technical meaning and that meaning has been defined in the statute. We do not, however, decide whether the word "trimming" means the same or a different thing when used in different parts of the Act.

From all this it is patent and clear that there is at least doubt as to the legality of the surtax sought to be imposed in these cases. In the case of *Hartranft vs. Weigmann* (121 U. S., 609, 616), the court said:

"But, if the question were one of doubt, the doubt would be resolved in favor of the importer, 'as duties are never imposed upon the citizen upon vague or doubtful interpretations.' "

To the same effect are *American Net and Twine Co. vs. Worthington* (141 U. S., 468); *In re Fellheimer et al.* (66 Fed., 720); *U. S. vs. Isham* (17 Wall., 496); *Powers vs. Barney* (5 Blatch., 202); *Dean vs. Charlton* (27 Wis., 526); *Sutherland Sta. Const.*, 461, 462; *Cooley, Taxation*, 266; 53 Fed., 78; *Mathewson & Co. vs. U. S.* (71 Fed., 394); *U. S. vs. Goodsell & Co.* (78 Fed., 802), and many others.

Lord Cairns, in *Partington vs. Attorney-General* (L. R. 4 H. L., 100, 122), said:

"As I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, can not bring the subject within the letter of the law,

the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."

Judge Story, in *U. S. vs. Wigglesworth* (2 Story, 369), said:

"It is a general rule in the interpretation of all statutes levying taxes or duties upon subjects or citizens, not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out, although standing on a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the government, and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import. Revenue statutes are in no just sense either remedial laws, or laws founded upon any permanent public policy, and therefore are not to be liberally construed."

There has been, in our judgment, nothing added to the testimony offered in the case of *Froehlich & Kuttner vs. Insular Collector of Customs* (11 Phil. Rep., 380), at all sufficient to change the ruling of this court made in that case. The decision in the former case was by an undivided court after extended and deliberate consideration. A motion for a rehearing was made. After thorough consideration it was denied without dissent. No constitutional question is involved. No manifest error has been pointed out. No new facts, in any sense decisive, have been presented that were not before the court in the former case. When a decision respecting the amount of duty to be collected on imports is rendered by the highest court in the land, such decision ought not be lightly set aside. Business men who have contracted in view and on the faith of that decision are likely to be seriously prejudiced thereby. For these reasons we affirm the judgments appealed from without special finding as to costs.

Arellano, C. J., Mapa, Carson, and Trent, JJ., concur.

[1] 11 Phil. Rep., 380.

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