44 Phil. 649

[G.R. No. 19869. March 21, 1923]

ROBERT E. MURPHY, PLAINTIFF AND APPELLANT, VS. WENCESLAO TRINIDAD, AS COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

D E C I S I O N

STREET, J.:

This is an appeal from a decision of the Court of First Instance of the City of Manila in an action wherein the plaintiff, R. E. Murphy, seeks to recover of the defendant, Wenceslao Trinidad, as Collector of Internal Revenue, a sum of money which had been exacted from the plaintiff, and paid under protest by him, as internal-revenue taxes, upon the value of certain embroideries exported by the plaintiff from the Philippines between July 1, 1916, and July 1, 1921. To the amount involved in the tax proper the statutory penalty, equal to twenty-five per centum of the tax, and a fine of P200 had been added by the Collector; and the total amount protested and sought to be recovered herein is P15,895.93. At the trial in the Court of First Instance his Honor, Judge Geo. R. Harvey, held that the tax in question" was legally due and had been properly collected. He therefore absolved the defendant from the complaint, and the plaintiff appealed.

It appears from the pleadings and admitted facts that the American Import Company, of San Francisco, California, is extensively engaged in the exportation of embroideries from the Philippine Islands for sale in the United States; and the plaintiff, R. E. Murphy, during the period covered by the transactions now in question, was employed by said company as its supervising agent in these Islands, upon a commission of three per centum of the value of the labor expended in the embroidery work. It further appears that the company has adopted the plan of causing all its product from the Philippine Islands to be embroidered here by native workers under the supervision of the company's agent,

and upon material supplied by the company from the United States. For the purpose of securing a uniform quality of work, even the thread used in the embroidery is supplied by said company to the embroiderers, but for this a charge is made at cost price. In his capacity as agent, the plaintiff receives from San Francisco the goods to be embroidered, supervises the manufacture of the embroidered product, and returns the same from time to time in a finished state to the company in San Francisco.

In respect to the transactions thus conducted by the plaintiff for the American Import Company of San Francisco during the period of five years from July 1, 1916, to July 1, 1921, the said plaintiff made returns to the Collector of Internal Revenue, for the purposes of taxation under section 1459 of the Administrative Code, showing taxable transactions to the value of P339,544.59, consisting, first, of P36,691.94, the value of thread and damaged materials sold by the plaintiff in the Islands; and, secondly, of P302,852.65, the value of the labor expended upon the embroidery work prior to September of the year 1919. Upon these returns he was taxed accordingly and paid the tax without protest.

From the foregoing it will be seen that in the returns upon which the plaintiff was thus taxed, no account was taken of the value of the goods used in the making of the embroideries, and after September, 1919, no account was taken even of the value of the embroidery work.

It appears, however, that during the aforesaid period of five years the plaintiff caused to be embroidered cloth, belonging to the American Import Company of a total value of P597,248.31, upon which there was expended labor of a total value of P931,823.30, all of which was returned to the American Import Company from time to time during the said period at its office in San Francisco, California. The freight and cartage on said shipments amounted to P670.42; and the plaintiff earned as his commission during the same time the sum of P28,785.04.

In view of the facts stated in the preceding paragraph, the Collector of Internal Revenue, evidently assuming that the plaintiff had previously been underassessed, demanded payment of the tax of one per centum on the difference between the gross amount of P1,595,219.01 and the amount upon which the

plaintiff had already been taxed (P339,544.59), that is to say, upon the amount of P1,255,674.41, thus claiming additional tax to the amount of P12,556.74, together with the statutory penalty of twenty-five per centum for delinquency, as prescribed in section 1458 of the Administrative Code, and a fine of P200, making in all the sum of P15,895.93. This amount the plaintiff paid under protest, and now sues to recover the same, under the authority granted in section 1579 of the Administrative Code.

The principal points of controversy are two, namely, first, whether the plaintiff Murphy (or his principal, the American Import Company of San Francisco) is liable in any event for the tax, commonly called the merchants' tax, imposed by section 1459 of the Administrative Code; and, secondly, whether, assuming such liability to exist, the value of the goods upon which the embroidery work is done can be properly included in the taxable value of the manufactured product.

At the inception of the discussion we should note the fact that in the section referred to a tax of one per centum is imposed upon the gross value of goods sold, bartered, exchanged, or consigned abroad. The expression "consigned abroad," as here used, means approximately the same as "exported;" and under the organic law here in force the Philippine Legislature' has no power, without the express approval of Congress, to make a law imposing a tax on exports. But the provision now in question has been three times ratified by different Acts of the Congress of the United States, that is to say, first, as it originally stood in Act No. 2541, as amended by Act No. 2622 of the Philippine Legislature; secondly, as it now stands in section 1459 of the Administrative Code of 1917; and, thirdly and lastly, as it stood in section 1614 in the Administrative Code of 1916 (Acts of Congress of July 1, 1916; of June 4, 1918; and of June 5, 1920). There can therefore be no question as to the validity of said provision as it has stood at all times upon our statute books since its first enactment; and we may say that the Congressional Act of ratification of June 5, 1920, was passed by Congress after this court had decided the case of Smith, Bell & Co. *vs*. Rafferty (40 Phil., 691), and said decision was reversed by the Supreme Court of the United States, in so far as relates to the efficacy of section 1614 of the Administartive Code of 1916, solely because of said ratification by Congress pending the appeal.

And now, upon the point of liability for the tax that has been collected, we note the contention in the appellant's brief that the plaintiff Murphy himself is not a "merchant." This contention is undoubtedly correct if the plaintiff is considered without relation to the master that stands behind him. Individually the plaintiff is no merchant. But he is the agent and representative in the Philippine Islands of the American Import Company of San Francisco; and that the latter is a merchant in the sense intended in section 1459 of the Administrative Code is obvious.

The term "merchant" is there defined as a person engaged in the sale, barter, or exchange of personal property of whatever character, and it is declared that the term includes manufacturers who sell articles of their own production. The American Import Company fulfills every requirement of this definition because it is engaged in the manufacture of Philippine embroideries and exports the finished product for sale in the United States. The fact that the production and export of these embroideries is effected through the agency of the plaintiff Murphy and that the operations of the company in these Islands are conducted in his name in no wise alters the case. Nor is the further circumstance here material that the consignor or shipper of the goods from these Islands is Murphy and the consignee in the United States is the American Import Company. Where a consignment of goods is otherwise taxable, the tax should be assessed and collected regardless of the personality of the consignor or consignee. A shipment of goods abroad is no less taxable under this section, though consigned to the order of the shipper himself.

Upon the question whether the value of the material used as a base for the embroidery work should be taken into account in estimating the value of the finished product for the purposes of taxation under section 1459, we are clearly of the opinion that the proper answer is in the affirmative, and the Collector of Internal Revenue made no mistake in including said item in his estimate. The merchants' tax, when paid by a manufacturer, should be computed upon all the elements of value in the finished product; and it would be singular indeed if a person residing in a foreign country could send his raw materials to his agent in this country to be here manufactured and then export the finished product free of tax on the basic material in competition with local manufacturers who are required to pay tax on the entire value. The possibility of so unjust a discrimination against local capital was foreseen by the lawmaker and defeated

by the use of carefully chosen words in section 1459, for it is there declared that the tax shall be paid on the gross value of the goods, "whether consisting of raw material or of manufactured or partially manufactured products, and *whether of domestic or foreign origin*." (Italics ours.)

It is hardly necessary to observe that in every case of manufacture the value of the basic or raw material represents an investment of capital which must be carried by someone, usually the manufacturer himself, during the process of manufacture; and there is no reason why a foreign company, buying its material in a foreign market, should not be required to carry the weight of the investment, when such material is sent to this country to be converted into a finished product, the same as a local manufacturer who buys his material here, or in any market.

Besides, as already pointed out, the case of the American Import Company, of California, falls squarely within; the letter of the statute; and in this connection we desire to quote a passage from an opinion of Lord Cairns, speaking in the House of Lords in Partington *vs*. Attorney-General (Law Reports, 4 H. L., 100, 122), in which the principle by which the courts should be guided in interpreting revenue laws is stated with notable force and perspicacity. Said his Lordship: * * * "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, cannot 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."

From any point of view the tax which was collected in this case was due to the Philippine Government from the American Import Company of San Francisco; and the circumstance that it has been collected nominally from the plaintiff Murphy should mislead no one. He has acted throughout as agent, and it is to be assumed, in the absence of proof to the contrary, that the money which went into the public coffers belonged to his principal. Besides, as consignor of the exported product, the plaintiff was apparently the person directly responsible

to the Collector for the taxes due on the several consignments.

We note that in his estimate of the value of the exported embroideries, the Collector adopted the gross cost of production, including the value of material, work done, commissions of plaintiff, freight, and cartage. The last three of these items are of course merely incidental expenses and are not *per se* contributory to value. The value assessed by the Collector, however, cannot be said to be excessive, since all the elements entering into the cost of production are merely items of proof upon which the Collector based his estimate, and the true value of the exported articles cannot be supposed to be less than the sum of all the elements of cost going1 into production and exportation.

Upon one point alone do we consider that error has been committed. This relates to the fine of P200 imposed on the plaintiff by the Collector and included in the amount which was paid by the plaintiff under protest. The question of liability for this fine seems not to have been called to the attention of the trial judge, and for that reason was evidently overlooked by him.

The imposition of this fine by the Collector serves as a reminder of a practice sanctioned by the Internal Revenue Law of 1904 (Act No. 1189), and the Collector no doubt supposed the same practice to be permissible under the Internal Revenue Law now in force. The history of the legislation on the subject is this: Under various provisions of the Internal Revenue Law of 1904 (Act No. 1189), the Collector had authority to impose administrative fines of varying proportions for sundry delinquencies on the part of persons liable for internal-revenue taxes; and although the person subjected to such a fine had a right of appeal to the Court of of First Instance (Act No. 1189, sec. 54), the Code Committee, when engaged in the revisal of that Act for incorporation in the Administrative Code did not look with favor on this feature of the law. Accordingly the Code Committee proposed to the Collector of Internal Revenue to eliminate the administrative fine altogether and in lieu thereof to insert a general provision, such as is contained in section 2741 of the Administrative Code of 1917, imposing a penalty, to be enforced by the courts, for the violation of any provision of the Internal Revenue Law or of any lawful regulation of the Bureau of Internal Revenue for which no specific penalty was

provided by law. This proposal met the approval of the Collector; and the administrative fine disappeared from our fiscal system with the adoption of the Internal Revenue Law of 1914, an Act prepared by the Code Committee and embodying the feature we have mentioned. The individuals responsible for this change in the law were of the opinion that the practice of allowing the Collector to impose fines in his discretion, even though within moderate limits, was objectionable. It certainly was not in harmony with legislation in the United States and is said to have been originally here adopted from the fiscal practices of the Government of Mexico. However that may be, the administrative fine has clearly ceased to be, imposable in this country, and the judgment appealed from must be corrected to the extent of allowing a recovery for the amount paid as such fine.

For the reasons stated, the judgment appealed from will be affirmed with respect to the tax and penalty thereon paid under protest, and reversed to the extent of the fine; and judgment will be entered for the plaintiff to recover of the defendant the sum of P200, but without interest, pursuant to section 1579 of the Administrative Code, and without costs. So ordered.

Araullo, C.J.,
Malcolm, Avanceña, Ostrand, and *Romualdez, JJ.,* concur.

DISSENTING

JOHNS, J.:

Although standing alone, I vigorously dissent.

The plaintiff is a resident of the City of Manila and engaged in supervising the manufacture of embroidered cloth within the Philippine Islands under a contract with the American Import Company. The defendant is the duly appointed and acting Collector of Internal Revenue of the Philippine Islands.

Omitting the formal parts, for cause of action the plaintiff alleges:

"II. That the plaintiff is engaged in the business of supervising the manufacture of embroidered cloth within the Philippine Islands, all of the cloth utilized in the said business being the exclusive property of the American Import Company, a California corporation with its principal office in the City of San Francisco, State of California, United States of America.

"III. That the said American Import Company pays the plaintiff for his services the sum of three per cent of the value of the labor expended upon the said cloth.

"IV. That the plaintiff upon causing the said cloth to be embroidered returns the same to the said American Import Company at San Francisco, California.

"V. That the plaintiff during the period from July 1, 1916 to July 1, 1921, caused to be manufactured into embroidered cloth, cloth belonging to the American Import Company of San Francisco of a total value of P597,248.31 upon which there was expended labor of a total value of P931,823.30, all of which was forwarded to the American Import Company from time to time during the said period at its office in San Francisco, California, the freight and cartage on the said shipments amounting to the sum of P670.42; that during the same period plaintiff sold on behalf of the said American Import Company within the Philippine Islands thread and damaged materials of a total value of P36,691.94; that plaintiff received as his commission during the said period the sum of P28,785.04.

"VI. That plaintiff declared for the purpose of taxation the sum of P339,544.59 and duly paid to the defendant as Collector of Internal Revenue the taxes due on the said sum.

"VII. That the defendant in his capacity as Collector of Internal Revenue and under the pretended authority of section 1459 of Act No. 2711 of the Philippine Legislature demanded of the plaintiff a tax of 1 per centum of P1,255,674.41, which sum is the total of the sums alleged in paragraph five hereof after deducting therefrom the sum of P339,544.59 alleged in paragraph six hereof.

"VIII. That in addition to the sum of P12,556.74 demanded of the plaintiff by the defendant as is alleged in the preceding paragraph the defendant as a penalty for the late payment of the said tax imposed a further tax of 25 per

centum of the said sum, or the sum of P3,139.19 and a fine of P200 or a total of P15,895.93.

"IX. That the plaintiff involuntarily and to avoid the summary seizure and sale of his property paid the said defendant the sum of P15,895.93 under written protest upon the ground that the tax was improperly levied, the said goods not having1 been consigned abroad within the meaning of section 1459 of Act No. 2711.

"X. That the defendant overruled the said protest of plaintiff and refused and continues to refuse to return to the plaintiff the sum of P15,895.93 or any part thereof."

Wherefore, plaintiff prays for judgment against the defendant for P15,895.93, with interest and costs.

For answer, the defendant alleges:

"1. That the plaintiff consigned abroad embroidered cloth of the value of P1,255,674.41.

"2. That upon said sum the defendant in his capacity as Collector of Internal Revenue levied, assessed, and collected from the plaintiff the amount of P12,556.74, as one per cent tax under the authority of section 1459 of Act No. 2711, plus 25 per cent as penalty for delay in payment, amounting to P3,139.19 and a fine of P200, making a total of P15,895.93.

"3. That said total sum was paid by the plaintiff to the defendant under protest which was duly overruled by the defendant."

Wherefore, defendant prays judgment for costs.

Upon such issues the parties entered into the following stipulation of facts:

"It is stipulated and agreed by and between the parties to the above entitled

action that the facts alleged in paragraphs 1, 2, 3, 4, 5, 6, 8, and 10 of the complaint are true.

"It is further stipulated and agreed that the defendant, in his capacity as Insular Collector of Internal Revenue, demanded that the plaintiff pay a tax of 1 per cent of P1,255,674.41, which sum is the total of the sums alleged in paragraph 5 of the complaint after deducting therefrom the sum of P339,544.59 alleged in paragraph 6 of the complaint; and that the plaintiff involuntarily and to avoid the summary seizure and sale of his property paid the defendant the sum of P15,895.93 alleged in paragraph 8 of the complaint under written protest upon the ground that the tax was improperly levied.

"It is further stipulated and agreed that the sum of P339,544.59 declared by the plaintiff for taxation as alleged in paragraph 6 of the complaint is made up of the sum of P36,691.94 covering sales of thread and damaged materials and the sum of P302,852.65 the value of labor expended on the cloth belonging to the American Import Company of San Francisco, California, up to and including the month of September, 1919; and that since the month of October, 1919, the plaintiff has declared for the purpose of taxation only the amount received by him for the sale of thread and damaged materials within the Philippine Islands.

"It is further stipulated and agreed that the American Import Company of San Francisco, California, is engaged in the business of selling the embroidered cloth forwarded to it by the plaintiff as alleged in paragraph 4 of the complaint."

Upon such pleadings and stipulation the case was submitted to the trial court, which dismissed the complaint and rendered judgment in favor of the defendant for costs.

The plaintiff appeals, claiming that the judgment is contrary to law and the evidence.

The question presented involves the construction of section 1459 of Act No. 2711, known as the Administrative Code.

> "SEC. 1459. *Percentage tax on merchants' sales*.—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered,
> exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.
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> " 'Merchant,' as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

It appears from an analysis of the pleadings and stipulated facts that the American Import Company is a California corporation with its principal office in the City of San Francisco, and that it was the exclusive owner of the cloth before and after it was embroidered, and that it furnished all of the materials necessary and used in the work. That at all the times alleged the plaintiff was the agent and in the employ of the company under a contract in and by which he was to receive for his services 3 per cent for supervising the embroidering of the cloth, and that after the cloth was embroidered, the cloth in its finished condition was returned to the company at its home office at San Francisco. That between July 1, 1916 and July 1, 1920, the value of the cloth used in the work was P597,248.31, and the value of labor which was expended in embroidering the cloth was P931,823.30 upon which freight and cartage was paid amounting to P670.42. During the times alleged, and acting for, and representing, the company, the plaintiff sold within the Philippine Islands thread and damaged materials of the value of P36,691.94, upon which the tax was voluntarily paid, and, hence, the amount of any "sales tax" on any goods sold in the Philippine Islands is not in controversy. The only question involved here is whether a sales tax should be paid on the value of the cloth imported by the American

Import Company and the value of the labor expended upon embroidering of it within the Philippine Islands.

I will frankly concede that if either the plaintiff or the American Import Company is a merchant within the meaning and definition of section 1459 of the Administrative Code, that tax should be paid. The majority opinion says that, individually, the plaintiff is not a merchant, "but lie is the agent and representative in the Philippine Islands of the American Import Company of San Francisco; and that the latter is a merchant in the sense intended in section 1459 of the Administrative Code is obvious."

As I construe the record, although the American Import Company is a merchant doing business in San Francisco, California, it is not a merchant doing business in the Philippine Islands within the meaning of section 1459 of the Administrative Code, and, hence, should not be liable for a sales tax on the value of cloth which it imported here to have embroidered, or for the value of the labor used in embroidering the cloth.

The caption of section 1459 is "Percentage tax on merchants' sales," and the section provides that all merchants not specifically exempt shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares and merchandise sold, bartered, exchanged or consigned abroad by them to be based on the actual selling price or the value of the things in question at the time they are disposed of or consigned, whether consisting of raw material, or of manufactured or partially manufactured products, or whether of domestic or foreign origin.

It must be conceded that the law was intended to apply to merchants doing business as such within the Philippine Islands, and that it does not apply to a merchant in San Francisco, unless he does business as a merchant in the Philippine Islands.

It is true that plaintiff sold some damaged thread and materials within the Philippine Islands. But the sales tax was paid in full upon all of the property sold, and the question of a sales tax upon any property which was sold is not involved in this case, an important distinction which the majority opinion apparently overlooks. That opinion is founded upon the fact that, because at one

time the plaintiff sold some damaged materials and thread upon which the sales tax was paid, therefore, the American Import Company during the whole period of five years was doing business here as a merchant when it imported its own material and employed labor within the Philippine Islands upon that material. I frankly concede that for any sale of goods, wares and merchandise made by either the plaintiff or the American Import Company within the Philippine Islands that the tax would be valid. But the record shows that the sales tax was paid upon all of the goods sold, hence, the only question here involved is the right to levy and collect a sales tax on the goods which have been imported and the value of the labor employed upon those goods within the Philippine Islands.

Hence, the question here involved is whether the importing of goods and the employment of labor upon those goods within the Philippine Islands makes and constitutes the importer a merchant within section 1459. That section was intended to apply to merchants within the Philippine Islands and to commodities, goods, wares and merchandise sold, bartered, exchanged or consigned abroad by persons doing business as merchants within the Philippine Islands.

It must be conceded that the Legislature of the Philippine Islands could not enact a law which would require a merchant doing business as such in California to pay a sales tax on goods, wares and merchandise which he sells in California. The existing law only applies to a California merchant who comes here and does business as a merchant within the Philippine Islands. The section itself defines the word “merchant” and says that, as here used, the word “means a person engaged in the sale barter or exchange of personal property of whatever character.” Here, again, the meaning of the word should be confined and limited to a person who does business as a merchant within the Philippine Islands as defined by the legislative act, and it does not apply to a person who does business as a merchant in the State of California, If it is a fact that the plaintiff or the American Import Company is a person who is engaged “in the sale, barter or exchange of personal property of whatever character” within the Philippine Islands, then the sales tax should be paid, otherwise not. The word “sale” has a well denned legal meaning.

In Words and Phrases, vol. 7, page 6291, it is said:

> "A sale, as defined by Blackstone, is a transmutation of property from one man to another in consideration of some price or recompense in value.
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> "A sale is a transfer of the absolute or general property in a thing for money or anything of value.
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> "A sale is a contract for the transfer of property from one person to another for a valuable consideration.
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> "The word 'sale' has a fixed legal signification, and means an exchange of goods or property for money paid or to be paid.
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> "A sale, in the ordinary sense of the word, is a transfer of property for a fixed price in money or its equivalent.
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> " 'To constitute a valid sale, there must be a concurrence of the following elements, viz.: (1) Parties competent to contract; (2) mutual consent; (3) a thing, the absolute or general property in which is transferred from the seller to the buyer; and (4) a price in money paid or promised.' "

The books are full of such definitions.

The same authority, volume 1, page 715, defining the word "barter," says that:

> "A barter is the exchange of goods of one character for goods of another; any sale of one character of merchandise where any transfer of merchandise is taken in exchange instead of money.
>
> "* * * means the exchange of one commodity or article of property for another, and has about the same meaning as 'exchange.' "

The same authority says in volume 3, page 2546, that:

> "Exchange is a contract by which the parties mutually give or agree to give one thing for another, neither thing nor both things being money only.

> "Exchange is a contract by which the parties to the contract give to one another one thing for another, whatever it be, except money, for in that case it would be a sale.
>
> "An exchange is a transfer of certain goods for other goods received therefor."

Bouvier's Law Dictionary, volume 1, defines the word "exchange" as:

> "The transfer of goods and chattels for other goods and chattels of equal value. This is more commonly called barter.
>
> "The distinction between a sale and exchange of property is rather one of shadow than of substance. In both cases the title to property is absolutely transferred, and the same rules of law are applicable to the transaction, whether the consideration of the contract is money or by way of barter."

All of such definitions are undisputed, standard and authentic. Upon any of the questions involved in the instant case, there is no claim or pretense that either the plaintiff or the American Import Company has ever sold, bartered or exchanged any personal property within the Philippine Islands. Yet within the express provisions of the statute the word "merchant" is confined and limited to "a person engaged in the sale, barter or exchange of personal property of whatever character." If neither the plaintiff nor his company has sold, bartered or exchanged personal property, then they are not merchants within the meaning of the word, as defined by the statute, and it expressly provides that "all merchants not herein specifically exempted shall pay a tax of one per centum, etc." If the plaintiff or his company is not doing business here as a merchant within the definition of the legislative act, how and upon what theory should they be subject to a "sales tax?" But it is said that the word "merchant," as defined in the act, "includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers." But here, again, "articles of their own

production" are not sold, bartered or exchanged within the Philippine Islands. The title to the cloth in both its original and manufactured form remained in the American Import Company from the time of its shipment from San Francisco to its return in the form of finished product.

It is admitted that the American Import Company imports the cloth from itself to itself in the Philippine Islands; that while here it is embroidered with Filipino labor, after which in its manufactured form the goods are again shipped from the Philippine Islands by the American Import Company to itself in California; and that no sales of the embroidered finished work have ever or at any time been made by the plaintiff or any one else within the Philippine Islands. All sales of the embroidered work are made by the American Import Company within the United States after its return shipment from the Philippine Islands.

This action is brought by the plaintiff in his own proper person. It is alleged in the complaint and admitted by the answer "that the plaintiff involuntarily and to avoid the summary seizure and sale of his property, paid the said defendant the sum of P15,895.93 under written protest upon the ground that the tax was improperly levied," and the case was brought by the plaintiff to obtain the return of the money which it is alleged and admitted that he personally paid.

The majority opinion admits that the plaintiff is not personally a merchant, and that he is not personally liable for the tax. In legal effect, it holds that the American Import Company is a merchant within the meanings of section 1459, and, as such, is liable for the tax, and assumes that the sales tax was paid by the plaintiff as the agent and for the use and benefit of the American Import Company. That assumption is a fiat contradiction of the pleadings and stipulated facts. There is no allegation or proof that the plaintiff paid the "sales tax" as the agent of, or for, or on account of, the American Import Company, and the assumption is in direct conflict with the pleadings and stipulated facts, and, yet, the majority opinion is founded upon that assumption.

Section 1459 provides for a "Percentage tax on merchants' sales," and that merchants within the meaning of the act "shall pay a tax of one per centum, etc." Such a tax is confined and limited to persons who are doing business as

merchants within the Philippine Islands, and the act itself defines the word "merchant" as "a person engaged in the sale, barter or exchange of personal property of whatever character."

Upon the questions here involved, there is no allegation or proof that either the plaintiff or the American Import Company was ever engaged in the sale, barter or exchange of personal property within the Philippine Islands. Under the admitted facts, their business is confined and limited to the importing of cloth to have it embroidered here and then returned to the place of its origin as a finished product. There is no claim or pretense that either of them ever sold, bartered, or exchanged any of the plain or embroidered cloth within the Philippine Islands, The statute has specifically defined the word "merchant" to mean a person who sells, barters or exchanges personal property, and was intended to apply to persons doing business as merchants within the Philippine Islands, and it should not be given any extraterritorial Jurisdiction. Here, there is no claim or pretense that the cloth in its original or finished form was ever bartered, sold or exchanged within the Philippine Islands, and, yet, the majority opinion holds that it is liable to a sales tax. The very nature of a sales tax carries with it and legally implies that something has been sold, and a tax is levied because it is sold. Here, you are levying a tax upon property which it is admitted has not been sold. If the American Import Company is liable for a sales tax upon its property which has not been sold, and the State of California was to levy a sales tax, which it would have a legal right to do, then under the majority opinion the American Import Company would be required to pay a sales tax on its property before it is sold, and a sales tax on the same property after it is sold, or a double sales tax on one sale only of the property.

In the final analysis, the majority opinion requires the payment of a sales tax for the privilege of employing labor in the Philippine Islands. It is not legally sound, and violates every rule of statutory construction.

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