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Dant & Russell v. Board of Supervisors

Roger J. Traynor

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of the first degree and imposing the death penalty. (See §§ 189, 190, Pen. Code.)

The judgment is affirmed.

[L. A. No. 18517. In Bank. Feb. 8, 1943.]

DANT & RUSSELL, INC. (a Corporation), Appellant, v.
BOARD OF SUPERVISORS OF THE COUNTY OF
LOS ANGELES et al., Respondents.

- [1] **Commerce—Taxation—Imports.**—U. S. Const., art. I, § 10, forbidding state duties on imports, does not apply to goods shipped from an unincorporated territory of the United States, such as the Philippine Islands, whether or not the goods are in original unsold packages.
- [2] **Id.—Regulation.**—U. S. Const., art. I, § 8, cl. 3, protects goods from state and local taxation while in transit through the state and from discriminatory state legislation because of its out-of-state origin after transit ends.
- [3] **Id.—Taxation—Imports.**—Goods which were shipped from the Philippine Islands, and which have come to rest here and are being held at the pleasure of the owner or for shipment elsewhere as his interest dictates, are subject to taxation.

APPEAL from a judgment of the Superior Court of Los Angeles County. Emmet H. Wilson, Judge. Affirmed.

Proceeding in mandamus to compel the cancellation of tax assessments. Judgment for defendants following the sustaining of a demurrer to the petition without leave to amend, affirmed.

Henry C. Rohr and Stanton & Stanton for Appellant.

J. H. O'Connor, County Counsel, and Gordon Boller, Deputy County Counsel, for Respondents.

Earl Warren, Attorney General, Robert W. Kenny, Attorney General, H. H. Linney, Assistant Attorney General, and

[3] See 24 Cal.Jur. 135; 26 R.C.L. 87, 120.

McK. Dig. References: [1, 3] Commerce, § 8; [2] Commerce, § 3.

Adrian A. Krage, Deputy Attorney General, as Amici Curiae on behalf of Respondents.

TRAYNOR, J.—At various times during the years 1937 to 1940, inclusive, mahogany lumber was shipped from the Philippine Islands to Long Beach, California, where it was stored in piles in the yard of a warehouse. It was not packed in bundles but shipped in individual pieces. None of it was sold in this state, and no orders were received or solicited here for sales outside the state. Pieces were sold from time to time on orders received at petitioner's office in Portland, Oregon, and were delivered by the warehousemen to carriers for shipment to their destination outside of California. The county of Los Angeles levied ad valorem property taxes on the lumber remaining in the yard at Long Beach on the first Monday in March, 1938, and on the first Monday in March, 1939. Petitioner appeals from a judgment entered upon an order sustaining without leave to amend respondents' demurrer to the petition for a writ of mandate to compel cancellation of the assessments.

[1] Petitioner contends that the taxes are invalid on the ground that they were imposed on imports in violation of the provisions of article I, section 10, of the Constitution of the United States that "No state shall, without the Consent of the Congress, lay any Imposts or Duties on Exports or Imports . . ." The word "imports," however, as used in this section refers exclusively to goods shipped from a foreign country (*Sonneborn Bros. v. Cureton*, 262 U.S. 506 [43 S.Ct. 643, 67 L.Ed. 1095]; *Dooley v. United States*, 183 U.S. 151 [22 S.Ct. 62, 46 L.Ed. 128]; *E. J. McLean & Co. v. Denver & Rio Grande R. R. Co.*, 203 U.S. 38 [27 S.Ct. 1, 51 L.Ed. 78]; *Patapsco Guano Co. v. Board of Agriculture*, 171 U.S. 345, 350 [18 S.Ct. 862, 43 L.Ed. 191]; *Woodruff v. Parham*, 8 Wall 123 [19 L.Ed. 382]), and it has long been settled that the Philippine Islands are not a foreign country but an unincorporated territory of the United States. (*De Lima v. Bidwell*, 182 U.S. 1 [21 S.Ct. 743, 45 L.Ed. 1041]; *Downes v. Bidwell*, 182 U.S. 244 [21 S.Ct. 770, 45 L.Ed. 1088]; *Fourteen Diamond Rings v. United States*, 183 U.S. 176 [22 S.Ct. 59, 46 L.Ed. 138]; *Gonzales v. Williams*, 192 U.S. 1 [24 S.Ct. 171, 48 L.Ed. 317]; *Cincinnati Soap Co. v. United States*, 301 U.S. 308 [57 S.Ct. 764, 81 L.Ed. 1122]; *The Alta*, 136 F. 513 [69

C.C.A. 289]; *Faber v. United States*, 157 F. 140.) It follows that the lumber in question does not constitute imports, and it is immaterial whether it can be regarded as having been in original packages unsold at the time the taxes were levied. [2] The commerce clause of the United States Constitution (see *Hanley v. Kansas City So. Ry. Co.*, 187 U.S. 617 [23 S.Ct. 214, 47 L.Ed. 333]; *Stoutenburgh v. Hennick*, 129 U.S. 141 [9 S.Ct. 256, 32 L.Ed. 637]; *E. J. McLean & Co. v. Denver & Rio Grande R. R. Co.*, 203 U.S. 38 [27 S.Ct. 1, 51 L.Ed. 78]; *Inter-Island Steam Nav. Co. v. Hawaii*, 96 F.2d 412, aff'd 305 U.S. 306 [59 S.Ct. 202, 83 L.Ed. 189]; *Pacific Coast Dairy, Inc. v. Dept. of Agriculture*, 19 Cal.2d 818, 827 [123 P.2d 442]) protects the lumber from state and local taxation while in transit (*Coe v. Errol*, 116 U.S. 517 [6 S.Ct. 475, 29 L.Ed. 715]; *Carson Petroleum Co. v. Vial*, 279 U.S. 95 [49 S.Ct. 292, 73 L.Ed. 626]; *Kelley v. Rhoads*, 188 U.S. 1 [23 S.Ct. 259, 47 L.Ed. 359]; *Hughes Bros. Timber Co. v. Minnesota*, 272 U.S. 469 [47 S.Ct. 170, 71 L.Ed. 359]) and from discriminatory state legislation because of its out-of-state origin after the transit ends. (*Welton v. Missouri*, 91 U.S. 275 [23 L.Ed. 347]; *Walling v. Michigan*, 116 U.S. 446 [6 S.Ct. 454, 29 L.Ed. 691]; *I. M. Darnell Co. & Son v. Memphis*, 208 U.S. 113 [28 S.Ct. 247, 52 L.Ed. 413].) [3] There is no contention here, however, that the taxes in question were discriminatory, and since the lumber had come to rest in this state and was held here at petitioner's pleasure or for shipment elsewhere as petitioner's interest dictated, it was a part of the general mass of property in the state and therefore subject to taxation. (*Minnesota v. Blasius*, 290 U.S. 1 [54 S.Ct. 34, 78 L.Ed. 131]; *Sonneborn Bros. v. Cureton*, 262 U.S. 506 [43 S.Ct. 643, 67 L.Ed. 1095]; *Whitfield v. Ohio*, 297 U.S. 431 [56 S.Ct. 532, 80 L.Ed. 778]; *American Steel & Wire Co. v. Speed*, 192 U.S. 500 [24 S.Ct. 365, 48 L.Ed. 538].) The judgment is affirmed.

Gibson, C. J., Shenk, J., Curtis, J., Edmonds, J., Carter, J., and Peters, J. pro tem., concurred.

Appellant's petition for a rehearing was denied March 8, 1943.

[L. A. No. 17852. In Bank. Feb. 9, 1943.]

FRANCIS A. GUDGER, Respondent, v. MABEL MANTON et al., Defendants; LUCILE PUGH, Appellant.

[1a, 1b] Libel—Slander of Title.—One who, without a privilege or without justification to do so, publishes matter which is untrue and disparaging to another's property in land, chattels or intangible things under such circumstances as would lead a reasonable man to foresee that the conduct of a third person as purchaser or lessee thereof might be determined thereby is liable for pecuniary loss thus caused.

[2] Id.—Slander of Title—Imposition of Apparent Lien.—The unjustified levy on a husband's separate property of an execution on a judgment against his wife constitutes a disparagement of title rendering the execution creditor liable for damages proximately caused, whether or not a cloud on the title in a technical sense exists.

[3] Malice—Definitions and Distinctions.—Malice implied in law is a legal fiction, whereas actual malice denotes ill will or a desire to do harm for the satisfaction of doing it or conduct which amounts to the same thing.

[4] Libel—Slander of Title—Burden of Proof—Questions of Fact.—In slander of title cases, the burden of proving lack of privilege is on the plaintiff. The existence of the circumstances necessary to create the privilege is a question of fact.

[5] Id.—Slander of Title—Malice.—Malice as an element in slander of title may be expressed or implied. An implication of malice is proper if there is an absence of privilege or justification and other elements of the tort are present. Actual malice may in some cases show lack of privilege.

[1] See 16 Cal.Jur. 158; 33 Am.Jur. 311.

[2] Recording of instrument purporting to affect title as slander of title, note, 9 A.L.R. 931. See, also, 33 Am.Jur. 312.

McK. Dig. References: [1, 2, 9] Libel and Slander, § 99; [3] Malice; [4] Libel and Slander, § 103 (3, 4); [5] Libel and Slander, § 102; [6, 12] Appeal and Error, § 1230(8); [7] Libel and Slander, § 103(4); [8] Appeal and Error, § 973; [10] Levy and Seizure, § 1; [11] Libel and Slander, § 103(3); [13] Libel and Slander, § 100; [14] Attorneys at Law, § 74; [15] Agency, § 194; [16] Agency, § 189; [17] Attorneys at Law, § 41; [18] Evidence, § 111; [19-21] Libel and Slander, § 103(5); [22] Libel and Slander, § 103(1).