

7 Phil. 235

[G.R. No. 3249. December 28, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE FLOR MATA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

The accused in this case was charged with the offense of unlawfully selling more than two decaliters of alcohol at a single sale on the 3d day of August, 1905, in the city of Manila without having first obtained a license to make such sale.

The evidence adduced at the trial discloses that the accused is the owner of a grocery store; that he had a license to retail intoxicating liquors at that store; that on the 3d day of August, 1905, one Ng-Chin, representing Kwong-Ung-Lung & Co., came to the store of the accused and purchased forty bottles of alcohol, which were sold to him for the purpose of resale and which were delivered on the same day in the store of Kwong-Ung-Lung & Co. and paid for upon delivery; that each one of these bottles contained some three-fourths of a liter of alcohol; and that the accused on the said day did not have a license for the sale of liquor by wholesale. The accused and his employees absolutely denied having made any sales of alcohol to any person upon the day and date mentioned in the complaint, but we think that the evidence conclusively establishes the facts as set out above, and that the total amount of alcohol thus sold amounted to more than two decaliters; that the same was purchased at a single sale and delivered at one time to the said Kwong-Ung-Lung & Co.; and that this alcohol was a distilled spirit as defined in subsection 0 of section 68 of Act No. 1189 of the Philippine Commission.

Section 66 of Act No. 1189 of the Philippine Commission provides that any person who carries on the business of a distiller, rectifier, wholesale liquor dealer, retail liquor dealer, etc., * * * without having¹ paid the license tax therefor as required by law, shall, besides being liable for the payment of the tax for every such offense, be fined in a sum not less than

P200 nor more than P2,000, or be imprisoned for a term of not more than six months, in the discretion of the court; subsection 6 of section (>8 of that law provides that every person who, for himself or on commission, sells or offers for sale foreign or domestic distilled .spirits or wines in larger quantities than two decaliters at any one time shall be regarded as a wholesale liquor dealer; and section 1 of Act No. 1338 provides that every person who sells or offers for sale, for himself or on commission, foreign or domestic distilled spirits, wines, or fermented liquors to other persons for the purpose of resale shall likewise be deemed to be a wholesale liquor dealer or wholesale dealer in fermented liquors, as the case may be, irrespective of the quantity of such distilled spirits, wines, or fermented liquors sold at one time.

The court below imposed a fine of P200, with the costs of the trial and subsidiary imprisonment in the event of nonpayment of the fine and costs. This court has frequently declared that subsidiary imprisonment can not be imposed in the case of offenses defined and penalized by an act of the Philippine Commission unless expressly provided for in the act, and no such provision is to be found in the penalty for the offense of which the accused is convicted.

The judgment and sentence of the trial court should be modified by reversing so much thereof as imposes the subsidiary imprisonment, and thus modified should be affirmed, with the costs of this instance against the appellant. After expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the case remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Willard, and Tracey, JJ., concur.
