34 Phil. 209

[G.R. No. 11115. March 10, 1916]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SILVESTRE YU TUICO, DEFENDANT AND APPELLANT.

D E C I S I O N

MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Surigao convicting the appellant of a violation of the Law relative to weights and measures and duly sentencing him therefor.

The information charges that the accused during the month of September, 1914, in the municipality of Lianga, Surigao, with the intention to defraud the person from whom he was at the time purchasing hemp by weight, altered the steelyards on which said hemp was being weighed in such manner that they showed the weight of the hemp to be much less than it really was.

The evidence in the case demonstrates that the accused inserted a piece of iron in the steelyards with which the hemp was weighed in such a way as to change the fulcrum of the beam thereby causing the steelyards to show much less than the real weight.

If the testimony of the prosecution is to be believed there is no question about the guilt of the accused. He was discovered in the act and the piece of iron used in altering the weight of the hemp was taken from the scales by the owner of the hemp and retained by him in spite of strenuous efforts on the part of the accused to take it from him. We find that the evidence shows beyond reasonable doubt that the accused is guilty of the crime charged.

The accused pleads double jeopardy, founding the plea on the fact that, on the preliminary examination before a justice of the peace, it was found by the justice that the evidence did not warrant the conclusion that a crime had been committed and that there was probable cause to believe the accused guilty thereof it The defense of double jeopardy cannot be

sustained on this ground. A preliminary investigation is not a trial and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof. The fact that a justice of the peace who has conducted a preliminary examination with respect to a given crime does not find that there are grounds sufficient to warrant the case being sent to the Court of First Instance does not preclude other officials properly authorized by law to that end to conduct another preliminary examination with relation to the same crime. Accordingly, it is proper for the provincial fiscal to make a preliminary investigation with respect to a crime with regard to which a justice of the peace has already made a preliminary investigation and dismissed the proceedings for lack of evidence.

The accused also raises the point that the complaint against him was not made by the injured party or by the proper Government official, but by the municipal treasurer who had no interest in the hemp which was being weighed at the time the crime was committed, and who was not the official or person authorized by law to make a complaint in such cases. We do not believe this objection well founded. Except where the law specifically provides the contrary a complaint that a public crime has been committed can be laid by any competent person (U. S. *vs.* Narvas. 14 Phil. Rep., 410; section 4, Code of Crim. Proc). Act No. 1519, under which the appellant was accused, does not require that the complaint shall be made by any particular person; therefore, a complaint made by a municipal treasurer under which a preliminary investigation has been made, followed by an information presented to the court by the provincial fiscal, is sufficient.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Torres, Johnson, Trent, and *Araullo, JJ.,* concur.

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