

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BALTASAR SARMIENTO, DEFENDANT AND APPELLANT.*G.R. No. 4781. October 21, 1908*

Ponente: TRACEY, J.

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In the Court of First Instance of Bohol, Baltasar Sarmiento was convicted of having, as a public officer—that is, a councilor of the municipality of Tagbilaran—been interested in two cockpits and a billiard hall therein, contrary to the provisions of section 28 of Act No. 82, as amended by Act No. 663. It is claimed by the defense that on the principle *cessante ratione legis, cessat et ipsa lex*, thin Act is rendered ineffective by the provisions of the Internal Revenue Law, Act No. 1189, which, in subdivision (e) of section 146 expressly repeals so much of paragraph (h), section 43, of Act No. 82 as authorizes municipalities to exact licenses for cockpits, billiard tables, and so forth. It might be added that all the provisions of Act No. 82, authorizing taxes of this nature, fall within the general repeal of subdivision (a) of section 146 of Act No. 1189, affecting all laws and ordinances whereby taxes of this nature are imposed.

This argument overlooks the fact that the municipal council had other concern with cockpits and billiard rooms than the mere licensing of them, being charged by subdivision (j) of section 40 of Act No. 82 with the prohibition and closing of them, which is in the nature of a police power regulation rather than one for revenue. In other words, although municipal councilors may not now raise revenue from places of amusement of this character, they may, nevertheless, police and control them. Therefore, the councilman still has power over them and the reason of the law prohibiting his interest in them has not ceased by reason of the Internal Revenue Act. It is plain that it was unnecessary to show that the municipal council of Tagbilaran had ever licensed cockpits in order to bring them within the terms of Act No. 663, for, as cockpits are therein especially mentioned, they are not required to be covered by the phrase "or other permitted games and amusement whatever may be its technical construction. A conviction for a similar offense under the same Act was sustained by us in the case of *The United States vs. Gray* (8 Phil. Rep., 506).

The sentence of the Court of First Instance to six months of prison, with costs, is hereby affirmed, with the costs of this instance. So ordered.

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

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