

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LIM TIGDIEN AND SUSANA ESTEVES, DEFENDANTS. LIM TIGDIEN, APPELLANT.

*G.R. No. 10237. March 22, 1915*

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### PER CURIAM:

This is an appeal from a judgment of the Court of First Instance of Sorsogon convicting the accused of the illegal possession of opium and sentencing him to pay a fine of P1,000, with subsidiary imprisonment in case of insolvency, and to pay one-half of the costs of the trial.

There is no doubt from the record of the fact of possession. In fact, it is not disputed on this appeal. The main question presented for our consideration is whether or not the plea of former acquittal is sufficient to defeat the action.

It appears that on December 17, 1913, the accused, Lim Tigdien, who was in possession of part of a house belonging to Mariano Camara, alias Chino Chiquito, was found in the possession and control of a quantity of opium, together with certain articles connected with the use thereof, as follows:

Three jars containing approximately 1 kilo of opium.

Some thimbles used for the measuring of opium and containing small particles of the drug.

A pair of small scales for the weighing of opium.

On the 6th of January, 1914, the provincial prosecuting attorney filed an information against Lim Tigdien and others charging that, on the 17th of December, 1913, they were engaged in the smoking of opium in that part of the premises of Mariano Camara, aforesaid, in the possession of the accused, Lim Tigdien, in violation of the law in such case made and provided. That case was known as No. 1197 of the Court of First Instance of Sorsogon. Following the trial of this case the accused was acquitted. Later, and on the 14th day of July, 1914, the information in the present case was filed by the prosecuting attorney of the Province of Sorsogon charging that the said Lim Tigdien, with others, was found in the illegal possession of opium on the 17th of December, 1913, in that portion of the house of Mariano Camara in the possession of the accused. The opium referred to in the second information was the opium found at the time that it was alleged that the accused were discovered smoking opium, and was seized at the same time and place as the other articles mentioned above, which discovery and seizure led to the filing of the information in the action in which the accused was acquitted. In the trial of case No. 1197 the court, acquitting the accused, Lim Tigdien, said:

"The accused in this case are charged with having been found smoking opium. Two witnesses appeared before the court, Brigido Ragain and Domingo Embilo, from whose testimony the following facts appear:

"On the 17th day of December, 1913, between 7 and 8 o'clock at night, they smelt opium and they successively climbed on top of a pile of wood lying alongside of the house of Mariano Camara and looking into the window saw the accused smoking opium in pairs, two of them lying in each one of the beds found in the room.

"The accused Lim Tigdien has not been sufficiently identified by the evidence of the prosecution and for that

reason the court acquits him before the other accused enter on their defense."

The attorney for appellant urges here with insistence that Lim Tigdien, the appellant, having been acquitted of the charge of smoking opium, cannot now be convicted of the crime of illegal possession of the kilo of opium found in his house at the time he was discovered smoking opium, for the reason that it is alleged here by the appellant, and admitted by the Attorney-General, that the two prosecutions spring out of the discoveries and seizures made when the house of Mariano Camara was raided on the night of December 17, 1913. He contends that the opium, for the possession of which he is now being tried, was seized in the possession of the accused at the time he was found in the possession of the opium pipe, thimbles, and scales, and at the very time he was alleged, in the former case, to have been engaged in smoking opium in the pipe referred to; and all these articles, including the kilo of opium, having been used as evidence against him, or might have been so used, on the first trial, he cannot now be convicted of the possession of opium, as the authorities have no right to divide a single crime into its component parts and prosecute each part separately.

We are unable to see the force of the argument. The crime of smoking opium has none of the elements constituting the crime of illegal possession of opium. A conviction on one information is no bar to a subsequent conviction on another information unless the evidence required to support the conviction on one of such informations would have been sufficient to warrant a conviction on the other. The test as to former jeopardy is not whether the defendant has already been tried for the same act but whether he has been put in jeopardy for the same offense. (U. S. vs. Chins Po, 23 Phil. Rep., 578, and cases cited at p. 582.)

The case of United States vs. Look Chaw (19 Phil. Rep., 343) seems in a way to be decisive of this case, both on the principle on which the case is decided and the illustrations given in support of the argument. That was a case in which the plea of former conviction was urged as a defense. It appeared that the accused in that case had been found in the possession of 137 cans of opium, was charged therewith in a previous action, convicted, and sentenced to five years' imprisonment and a fine of P10,000. After such conviction he was immediately tried on the charge of selling opium in that he had sold 30 of the 137 cans for the possession of which he had already been convicted. That was the charge which was the basis of the action in the case cited. The court overruled the plea, convicting the accused of the sale of the opium for the possession of which he had previously been convicted as aforesaid. In arriving at its conclusion the court said:

"In answering the second complaint for the sale of opium, the defendant alleged that he had already been in jeopardy.

" 'The defendant was convicted yesterday,' said his attorney, 'for the violation of law committed, of possessing opium, and has already been sentenced by this court to five years' imprisonment and in addition to pay a fine of ten thousand pesos. According to the principles of penal law, when a person has committed a crime which is necessary in order to commit another, he, of course cannot be punished for the two crimes, but must suffer for the crime for which the greater penalty was provided.'

"The court rejected this allegation: first, because the prosecution of two crimes instead of one was brought about by the defense itself; and second, because, in the opinion of the trial judge, if the defendant had first been convicted for selling opium, he certainly would have been in jeopardy in the cause prosecuted for possessing opium, for the reason that really one cannot sell opium without possessing it, while, if the terms are inverted, the same result does not follow, because one may possess opium without selling it, and consequently in the present cause the plea of double jeopardy is inadmissible.

"True it is, we assert, that it is one crime to possess opium, punished by section 31 of the Act, and another to sell opium, punished by section 5 of the same Act before cited. "And it is also true that when one single act constitutes two or more crimes, or when one of them is a necessary means for the commission of the other,

only the penalty corresponding to the more serious crime shall be imposed, in its maximum degree, and thus, he who smokes opium in a pipe, by one single act lays himself liable to three penalties of the law, one of them, merely for the fact of possessing opium, another, for the mere possession of a pipe in which opium is smoked, and the other, for the act of smoking opium; but the penalties corresponding to these three crimes ought not to be imposed upon the defendant in this case, and only the penalty for the most serious of these crimes.

"But the illegal possession of 137 cans of opium and the illegal sale of 30 cans of opium, which are the two acts confessed by the accused, are not one act which constitutes two crimes, nor a crime which is a necessary means for the commission of another. They are two isolated acts, punishable, each of them, in themselves. Only in the event where all the amount of the opium possessed and seized be in its totality the same as that which was possessed with the sole purpose of being delivered as the matter or subject of a sale previously agreed upon, could it be said, in the opinion of this court, that the possession of the opium was a necessary means to effect the delivery by reason of the sale, and that the sale agreed upon was the sole reason for the possession of the opium seized. The possession of the quantity contained in the pipe cannot be considered as a different crime from that of smoking opium in a pipe, nor the possession of the pipe, as a crime different from that of smoking opium in a pipe. But if the person surprised in smoking opium in a pipe was also surprised in the possession of the thirty cans sold by the accused, it could not properly be inferred that the possession of these thirty cans, which in itself is a crime, was a necessary means for the commission of the other crime of smoking opium in a pipe, and that the person in whose possession the thirty cans were seized, possessed the same solely and exclusively for the purpose of smoking opium in a pipe. It might very well have been that he had acquired the drug for the purpose of inhaling, injecting, chewing, swallowing, or other uses, and that only by chance did it occur to him to try to smoke it in a pipe, on the very occasion when he was surprised, this being the evident fact of the commission of the crime which can not, in its essence, include the existence of thirty cans, not then contained in the pipe, each can certainly being susceptible of other various uses, every one of which might by its nature constitute a different crime.

"We consider this doctrine equally applicable to crimes which are evils by their very nature, as well as to those which are merely *malum quia prohibitum*; because it not only aims at a more or less strict application of a penal precept which, undoubtedly, in the practice of this courts usually tends toward the lesser severity and, occasionally, the greatest benignity when the second class, or conventional crimes, are concerned, but also because that doctrine is the logical result of the process of the intelligence in the derivation of consequences from the principles constitutive of the nature of things."

This case seems to us to be authority in the case at bar. Indeed, the very case we have before us is given in the *Look Chaw* case as an illustration of the application of the doctrine laid down therein.

We accordingly affirm the judgment of conviction, with costs against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

Trent, J., dissents.

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