

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SY LIONGCO, DEFENDANT AND APPELLANT.

G.R. No. 10498. December 24, 1915

Ponente: CARSON, J.

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CARSON, J.:

The appellant in this case was convicted in the court below of the illegal possession of a small quantity of opium ashes on the 21st of July, 1913, and sentenced to 9 months' imprisonment and to the payment of a fine of P300.

If the testimony of the witnesses for the prosecution is worthy of credence there can be no doubt of the guilt of the accused; and a careful examination of the evidence of record discloses nothing which would justify us in disturbing the findings in this regard by the trial judge who saw and heard the witnesses testify and was satisfied beyond a reasonable doubt as to the substantial truth and accuracy of the testimony of these witnesses.

In the case of the United States vs. Sua Tua (11 Off. CJaz., 43) we ruled adversely to contentions similar to those urged by counsel for appellant in this case as to the kind of proof necessary to sustain an allegation in a criminal complaint that a certain substance offered in evidence is in fact opium or one of its derivatives. We then held that a chemical analysis is not an indispensable prerequisite to the establishment of an allegation of this kind, and that "the ability to recognize these drugs can be acquired without a knowledge of chemistry to such an extent that testimony of a witness on the point may be entitled to great weight. Such technical knowledge is not required, and the degree of familiarity of a witness with such drugs only affects the weight and not the competency of his testimony."

So also we have frequent..., ruled adversely to contentions similar to those urged by counsel for appellant as to the lack of proof of the animus possidendi. As was said in the case of United States vs. Tin Masa (17 Phil. Rep., 463) "direct proof of facts of this nature, in a criminal proceeding, is rarely forthcoming, except in cases of confession, and their existence may, and usually must, be inferred from the varying circumstances in each particular case." In the case at bar, the opium ash was found in a tin box in the house of the accused and no reasonable or credible explanation, inconsistent with the presumption that it was there and then in his possession and control, animus possidendi, was offered as evidence; though testimony which the trial court found to be manifestly false and without foundation in fact was introduced by the defense to the effect that one Daniel Garces, a deputy provincial treasurer who aided in making the seizure, concealed the opium ash at the place where it was found by one of the police officers who accompanied him. Under all the circumstances, we think that the trial judge properly found that at the time of the seizure the opium ash was unlawfully and illegally in the possession of the accused, animus possidendi.

We find no error in the proceedings at the trial prejudicial to the substantial rights of the accused, but we think the penalty imposed by the trial judge is excessive. It is true that the penalty prescribed by statute ranges from a fine of from three hundred to ten thousand pesos or imprisonment from three months to five years, or both such fine and imprisonment, but the discretion conferred upon the courts to impose a penalty within these broad limits upon

conviction of the offense for which they are prescribed is not an arbitrary one, and should be exercised with due regard to circumstances of each case. We do not think that the mere possession of a few grains of opium ash is sufficient to justify the imposition of a fine of three hundred pesos and, in addition, an exceptionally long period of imprisonment. It is true that in this case there is evidence in the record tending to disclose that the accused has been convicted once before of the unlawful smoking of opium, but while the fact might justify the imposition of a prison sentence as well as a fine, it does not, in itself, necessitate or require the imprisonment of the accused for a period of nine months. Such severe penalties should be reserved for cases wherein there is reason to believe that the convict had been engaged in the exploitation of the vice, or wherein the number of convictions or other attendant circumstances clearly disclose that he is a contumacious and hardened offender or the like. (U. S. vs. Urn Sing, 23 Phil. Rep., 424; and the recent case of U. S. vs. Torres and Padilla, 15 Off. Gaz., 1345, decided August 20, 1915.)

We are of opinion that a prison sentence of three months instead of nine months in addition to a fine of three hundred pesos will serve the ends of justice in this case; we conclude therefore, that the sentence imposed in the court below should be modified by the substitution of three months imprisonment, for so much thereof as imposes nine months imprisonment and that thus modified, it should be affirmed with the costs of this instance against the appellant. So ordered.

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

DISSENTING[1]

MORELAND, J.,

My judgment is strongly against the increase in the penalty in this case because I believe it to be an invasion, indeed, an abrogation, of the statutory powers of the Court of First Instance.

This is a conviction for a violation of the Opium Law. The Court of First Instance sentenced the appellant to pay a fine of P1,000 under a statute which authorizes that court to impose "a fine of not less than five hundred pesos nor more than two thousand pesos, or by imprisonment for a period of not more than one year, or by both such fine and imprisonment, in the discretion of the court." (Act No. 1761, sec. 15.) On appeal this court, on its own motion, "reversed" the sentence of the court and imposed 6 months' imprisonment and P1,000 fine.

I cannot find a fact or circumstance in the record which justifies, in my humble opinion, the modification of the deliberate judgment of the Court of First Instance with respect to the penalty. I know of no legal principle which supports or permits it. No one has ventured to assert at any stage of this case that the imposition of the P1,000 fine was not within its legal powers, as they are fixed by statute. No one has ventured to claim that, in imposing that fine, the Court of First Instance violated the law or committed a legal error. No one has even claimed that any error exists; and certainly no one has pointed it out or given it a name. This court, on its own statement, does not increase the penalty on any legal theory or on any principle of law or, so far as I can ascertain, on any other principle ever before recognized by any court or author. It proceeds on a theory, it seems to me, altogether new. It asserts that it does so simply by reason of "a well settled practice of this court" and "the views announced by us in the case of United States vs. Lim Sing (23 Phil. Rep., 424);" and for that reason "a prison sentence should be imposed." I cannot conceive that there could be a practice which could govern the decision of a court on a question of law; or that substantive rights in a criminal case should be made to depend on the practice of a court; or that whether a person goes to prison or not depends not on the law but on the practice of the court. If this court can, by a "well-settled practice," take away the powers of the Court of First Instance which are specifically granted by statute, thereby repealing pro tanto an Act of the Legislature; if it can by "a well-settled practice"

destroy one of the most important attributes of a trial court by giving little or no force or effect to the fact that it is a trial court with all that that implies; if by "a well-settled practice" it can obliterate the fact that the trial court saw the accused, heard him testify, observed his physical condition, his conduct, the state of his mind, obtained a fair conception of his honesty, his intelligence, his habits with respect to the use of opium; that the court has the most intimate knowledge of the conditions of his district with respect to the violation of the Opium Law and of the penalties which ought to be imposed to preserve respect for the law and to protect the public; if "a well-settled practice" can deprive a trial court of those attributes which, under his oath, he is bound to exercise for the public good in the administration of justice, what cannot a "well-settled practice" do?

In this opinion I shall discuss the principles involved not only in the decision in the case at bar but also those governing the case of Lim Sing above referred to, as the latter case lays down at length what are claimed to be the principles on which the case at bar is based; and, while the decision in the Lim Sing case is a decision of this court and, as such, must be respected by all, it has, since it was decided, been almost, if not quite, as often disregarded as followed by this court. (U. S. vs. Barba, 29 Phil. Rep., 206.) The case cited was a complete repudiation of the doctrine of the Lim Sing case. See also the following cases: United States vs. Tan Chia (29 Phil. Rep., ITS); United States vs. Jao Quico (R. G. No. 9409);[1] United States vs. Palanca Dy Tiamco (R. O. No. 9463) ;[1] United States vs. Ku Lu Kim (R. G. No. 9713) ;[1] United States vs. Yap Sin Tuan (R. G. No. 8360) ;[1] United States vs. Tin Tong Guim (25 Phil. Rep., 39) ; United States vs. Ngo Se Siong (R. G. No. 8629) ;[1] United States vs. Choa Phek (R. G. No. 9078) ;[1] United States v. Que Nan and Ong Neng (R. G. No. 8838) ;[1] United States vs. Yap Sin (R. G. No. 8291) ;[1] United States vs. Limena (R. G. No. 8610) ;[1] United States vs. Sy Chu and Aquino (R. G. No. 8633) ;[1] United States vs. Tan Seng (R. G. No. 8116) ;[1] United States vs. Ang Nuan (R. G. No. 8117) ;[1] United States vs. Choa Siong (R. G. No. 8474) ;[1] United States vs. Choa Seem (R. G. No. 9032) ;[1] United States vs. Que Siang (R. G. No. 9061).[1] In the case of United States vs. Tan Chia, above, the court said:

"The only argument made is addressed to the severity of the penalty imposed, it being urged that the companion of the accused in the possession of the opium described in the information, and who pleaded guilty to the charge against him, was sentenced to pay a fine of P300, whereas the appellant was sentenced to imprisonment for four months; that the difference in penalty as demonstrated is a manifest injustice to the appellant and that his penalty should be reduced accordingly. In reply to this argument the Attorney-General contends that 'Act No. 1761, as amended by Act No. 1910, gives the trial court the right to exercise discretion in the application of the penalty, the only limitation being that the fine imposed shall not exceed P10,000 or be less than P300, and that the imprisonment shall not exceed five years or be less than three months,' and adds that 'the penalty imposed by the court below was within its discretion and is accordingly fully supported by the law. It is undoubtedly the rule, generally speaking, that an appellate court will not interfere with the penalty imposed by the trial court where the statute gives the trial court discretion in the application of the penalty and the penalty imposed is within the limits designated. (U. S. vs. Jao Quico, R. G. No. 9409, filed August 4, 1914 [1]; U. S. vs. Palanca Dy Tiamco, R. G. No. 9463, filed August 4, 1914 [1]; U. S. vs. Ku Lu Kim, R. G. No. 9713, filed August 31, 1914 [1]; 3 Cyc., 325, 327; 12 Cyc, 905, 906; Baldwin vs. State, 75 Ga., 482; Whitten vs. State, 47 Ga., 298; Farris vs. State, 35 Ga., 241; People vs. Kelly, 99 Mich., 82; State vs. Barrett, 40 Minn., 65; State vs. Herrick, 12 Minn., 132; Wright vs. State, 45 Neb., 44; Weinecke vs. State, '14 Neb., 14; Morrison vs. State, 13 Neb., 527; People vs. Williams, 58 Hun., 278; State vs. Miller, 94 N. C., 902; Tarrant vs. State, 4 Lea, Tenn., 483; March vs. State, 35 Tex., 115; People vs. Schafer, 161 Cal., 573; Fitts vs. Atlanta, 121 Ga., 567; Keeler vs. State, 73 Neb., 441; People vs. Sharrar, 164 Mich., 267; State vs. Bjelkstrom, 20 S. D., 1; State vs. Van Waters, 36 Wash., 358.)"

I feel therefore at liberty, particularly as I was absent at the time the Lim Sing case was decided, to present my objections to the theory on which it rests. It is a case involving the possession of opium where, on conviction, the accused may be punished under the statute "by a fine not exceeding ten thousand pesos, or by imprisonment not

exceeding five years, or by both such fine and imprisonment, in the discretion of the court." (Act No. 1761, sec. 31.) The penalty fixed by the statute should be noted as it is the basis of the objection which I make to the doctrine set down in the Lim Sing case as in this.

As I have before stated there is no contention by anybody, nor has it been suggested, not even by this court, that the court below erred in fining the appellant P1,000 instead of sentencing him to 6 months' imprisonment and a fine of P1,000. Such contention could not be seriously made, as, upon the face of the law, it would be clearly unsustainable. It cannot be said with seriousness that the imposition of a penalty of P1,000 is reversible error, or error of any kind, when the minimum penalty, so far as the fine is concerned, is fixed by the statute at 'P500 and the maximum at P2,000, and "by imprisonment for not more than one year, or by both such fine and imprisonment, in the discretion of the court." It is clear that the action of this court in augmenting the penalty in the case at bar under the principle announced in the Lim Sing case is a repeal pro tanto of the statute, inasmuch as it is a declaration that Courts of First Instance have no discretion so far as penalties are concerned, in dealing with the ordinary cases of the use, ownership, possession, importation and sale of opium. The denial of the right of a trial court to impose, under the statute above quoted, a penalty of P1,000 for the importation of opium, which is the case before us, or to impose a penalty of more than P300 for the possession of opium, which is the Lim Sing case, is, of course, an abrogation of the discretion of the court.

I have spoken so far of the reversal of the judgment of the trial court although nothing was touched but the sentence. There is, of course, a distinction to be made and observed between a judgment of conviction and a sentence; and while, in both the cases under discussion, the judgment of conviction was affirmed the sentence was changed. The court nevertheless, in terms "reversed" the sentence in these cases, saying, in the Lim Sing case, "the sentence ? ? ? is reversed, and in lieu thereof the convict is hereby sentenced etc.," imposing an entirely different penalty. I have used the words "reverse the judgment" instead of "modify the penalty," as, first, it followed, in part at least, the form used by the court, and, second, it seems to make plainer the error which, I believe the court committed in modifying the penalties. If it requires an error to reverse a judgment, it requires at least as much to modify a penalty; and if the court cannot reverse a judgment without legal error, it certainly cannot modify a penalty without legal error. Second, the distinction should be kept in mind for another reason: judgments are reversed or modified because the law requires it,—not because it may be or ought to be done but because it must be done. So, but in a greater degree and for more powerful reasons, with penalties. Courts are not authorized to use their discretion in the resolution of appeals, that is, in the determination of questions of law. They must obey and apply the law. They have no discretion whatever as to when it shall be applied, or how it shall be applied, or to what extent it shall be applied, or whether it shall be applied at all. The law determines those matters itself and the courts are simply the servants of the law, by and through whom it acts and works and speaks. When the law says "act," there is no alternative for the courts, and they cannot plead their discretion to support them in their refusal to act. And they must act precisely as the law prescribes. With penalties it may be quite different. Where a statute gives trial courts discretion in the application of penalties, then, while the necessity of imposing some penalty is as imperious as that requiring the pronouncement of a legal judgment, the quantity or amount of the penalty is a thing left, within the limits fixed, exclusively to the courts which are given that discretion. Where the penalty is within the prescribed limits, there can be no error of law; for how can a law be violated when the court has observed its provisions to the letter? If the statute authorizes a fine not to exceed P10,000, how can a fine of P9,000 be in violation of law? Or a fine of P400? Nor is the imposition of such a fine an "abuse of discretion," that badly mauled expression; for where the law sets specific limits, mathematically exact, as are the penalties prescribed by the Opium Law, an abuse of discretion is impossible. Even if the limits set by the statute are exceeded, if the court imposes a fine of P11,000 when the maximum under the statute is P10,000, the act does not constitute an abuse of discretion but a violation of law,—an act outside of the power and

authority of the court, an excess of jurisdiction, on which a writ of habeas corpus will issue. In the imposition of penalties where the statute fixes the limits, it is not only idle, but it is a misuse of language, to employ the expression "abuse of discretion." The only inquiry in such a case is, Did the court keep within the limits set by the statute? If it did, the statute has been obeyed not violated; the court did what the statute told him to do, not what it told him not to do. If the statute is obeyed how can there be error, or abuse of discretion, or anything else on the part of the court, requiring or even authorizing a change? On what theory can the legal act of the court be set aside, or vacated or modified?

Moreover, the Supreme Court has no statutory authority (and that is the only authority it has) to touch a penalty imposed by a trial court so long as that penalty is within the limits fixed by law. The court is simply authorized to review the record and the evidence and pronounce such a "judgment as law and justice shall dictate" (Code Crim. Proc. sec. 50). While the sentence is not specifically mentioned in the provisions of the Code of Criminal Procedure relating to appeals, it is in practice a part of the judgment of conviction and we may concede, for the sake of argument, that it may be said to be included therein. But even so, the authority to reverse a judgment or modify a penalty extends only to those cases where the law shall "dictate" such action. Accordingly, when the law does not "dictate" the court should not reverse or modify; indeed has no authority to do so. It seems to me clear, and is a proposition which, so far as I can ascertain, has never been questioned by any court in English or Spanish speaking countries, except the Supreme Court of the Philippine Islands, that a penalty will not be modified so long as it is within the limits prescribed by law. I have been unable to find a case where the contrary has been maintained.

I apprehend that, in the law of appeal, it is an elementary proposition, so elementary in fact as to be, until the decision in these cases was written, undisputed, that an appellate court has no authority to reverse or modify a judgment of an inferior court unless there is legal error on which that reversal or modification can be predicated. I am also of the opinion that it is a proposition equally elementary and equally undisputed that, where a trial court is given discretion, within certain limits, relative to the penalty to be imposed on a conviction for a crime, a penalty imposed by that court which is within the limits fixed by the Legislature is not reviewable on appeal. I regard it as a proposition equally beyond doubt that it will be assumed on appeal, in the absence of a showing to the contrary, that the discretionary powers of the lower court have been exercised properly and legally; and that the burden of showing the contrary is on the party complaining. (3 Cyc, 325, 327; 12 Cyc, 905, 906.)

In the case of *Baldwin vs. State* (75 Ga., 482), the court said: "When the law fixes a punishment by a fine, not to exceed one thousand dollars, for the commission of an offense in the discretion of the judge, in such a case, a fine within the limit prescribed is within the discretion of the judge, and is not the subject of review by this court." (*Whitten vs. State*, 47 Ga., 298; *Farris'os. State*, 35 Ga., 241.)

In the case of *People vs. Kelly* (99 Mich., 82), the court passing upon the question of the severity of the penalty, the maximum penalty having been imposed, said: "The sentence was authorized by law, and was one within the exclusive province of the legislature to prescribe. This court will not review the discretion of the trial court in such matters."

In the case of *State vs. Barrett* (40 Minn., 65), the appeal was from the death penalty. In discussing the imposition of the maximum penalty the court said: "The death penalty is fixed by statute, * * * except in cases where the trial court shall certify that by reason of exceptional circumstances it should not be imposed * * * The court refused to certify to the existence of exceptional circumstances in the case at bar * * *. This is a matter which is peculiarly within the province of the court before whom the accused has been tried. No appellate court should interfere with its conclusions, * * * (*State vs. Herrick*, 12 Minn., 132.)"

In the case of *Wright vs. State* (45 Neb., 44), the court held: "It is urged that the sentence is excessive; but to the district court and not to this court is entrusted the power to impose sentences for the commission of crimes against the state; and the judgment of that court cannot be controlled or interfered with in the absence of a clear abuse of discretion. (*Weinecke vs. State*, 34 Neb., 14; *Morrison vs. State*, 13 Neb., 527.)"

In the case of *People vs. Williams* (58 Hun. [12 N. Y. Sup., 249], 278), the trial court in sentencing the accused on conviction under the crime of petit larceny said: "Inasmuch as you have put this county to the expense of three trials by jury in this court, in addition to the sentence already pronounced, you shall each pay a fine of five hundred dollars."

The appellate court in passing upon the validity of the sentence said: "* * * they (defendants) are in no way responsible for the failure of two previous juries to agree, and that fact alone should not aggravate their punishment. But the judgment and sentence pronounced was tvithin the limits of the jurisdiction of the court which pronounced it, and we do not think it is the province of this court on this appeal to criticise or interfere with it."

In the case of *State vs. Miller* (94 N. C, 902), there had been imposed by the trial court a sentence of 30 days' imprisonment and a fine of \$2,000. There was a petition for certiorari praying for a reduction of the fine. The court refused to hear it. On appeal the Supreme Court said: "As the measure of punishment ? * * is and must be in the discretion of the judge, * * * so must be his hearing or refusing to hear a petition for its change or modification * * *. It might obstruct or paralyze the administration of criminal justice, if this court were to undertake to revise that discretion, or listen to suggestions that it has been unwisely exercised in a particular case. The judge who tried the cause and heard the testimony, is the best, as he is in law the sole judge of the merits, and if he acts within the boundaries prescribed by law, his decision is final and unreviewable in the appellate court."

In the case of *Tarrant vs. State* (4 Lea [Tenn.], 483), the accused was convicted of carrying a pistol. He was fined \$50 and sentenced to 10 days' imprisonment and was required to furnish a bond to keep the peace. The statute under which he was convicted provided that he should be fined \$50 and that in the discretion of the court he could be imprisoned for not to exceed a specified period. An appeal was taken against the severity of the penalty. Resolving that appeal the appellate court said: "It is doubtful whether an appeal to this court can be sustained alone for the purpose of revising his discretion in this respect (to remit imprisonment). We have in one or two instances exercised the power of releasing the imprisonment, but with great doubt as to the propriety of doing so. But, conceding that the power exists, its exercise in cases of this character would be unwise and injudicious."

In the case of *March vs. State* (35 Tex., 116), the accused was convicted of aggravated assault and fined \$500 under a statute authorizing a penalty of not less than \$100 or more than \$1,000. On appeal for a remission of a portion of the penalty the appellate court said: "Counsel for appellant complain that the fine assessed by the jury is excessive, and that therefore the judgment should be reversed. That was a question of fact for the jury to determine, and this court is not authorized to interfere, to control or reverse the action of the jury in that particular."

In the case of *People vs. Schafer* (161 Cal., 573), the appellant was convicted of burglary and duly sentenced. He appealed urging as error that the trial court had abused its discretion in imposing the penalty. The appellate court said: "But in' this state the determination of the trial court as to the penalty to be adjudged on conviction of a public offense is conclusive upon all appellate courts, provided the court adjudges a penalty which is authorized by the statutes of the state. * * * As the trial court confined itself within these limits, its action is beyond review by the courts on appeal. (*Fitts vs. Atlanta*, 121 ("a., 567.)"

In the case of *State vs. Bjelkstrom* (20 S. D., 1) the appellant was convicted of grand larceny and sentenced to 3

years, imprisonment. The maximum sentence permitted by the statute was five years. The trial court in sentencing the accused said: "If you deem the sentence severe in this case, you may attribute about one-half of it to the perjury you have committed in this trial."

On appeal from the judgment of conviction and the sentence imposed, the appellate court said: "In exercising the discretion, therefore, which is vested in the court, the reason or motive for fixing the length of any particular term is not a subject of review in this court. While courts are not usually as frank in stating the reasons that induce them to fix the sentence at any particular term as the court in the case at bar, they undoubtedly frequently act upon such consideration, and give longer or shorter sentences as, in their opinion, are justified under all the circumstances of the case and the manner in which the accused has conducted himself during the trial. So long, therefore, as the sentence is within the time limited by statute, if the judgment of the court is otherwise legal, the judgment must be affirmed."

In the case of *State vs. Van Waters* (36 Wash., 358), the appellant was convicted of rape and sentenced to 25 years' imprisonment. On appeal taken against the severity of the sentence the appellate court said: "The sentence imposed by the court, while within the limitations of the statute, seems to us unnecessarily severe in the light of the evidence. If we felt that it was within our recognized powers we would direct a modification of it, reducing the period to five years. But our investigations lead us to doubt the authority of an appellate court to reduce or modify a sentence which is within the discretion of the trial court to impose, and we mention the matter here in the hope it may aid the appellant in inducing the pardoning power to exercise its clemency in his behalf after he has served a reasonable time."

The *Lim Sing* case, which is made the basis of the increase in the penalty in this case, asserts as a general proposition, that "all prison sentences and fines in excess of P300 should be modified by the substitution thereof of a fine of P300." This, it seems to me, is a remarkable doctrine, in view of the penalties fixed by statute and the discretion given to the trial court in their imposition. The decision asserts that the main reason why Courts of First Instance are not permitted to impose a penalty of more than P300 in cases of the smoking or possession of opium, is that Courts of First Instance in different parts of the Islands have imposed different sentences for the same offense. The decision says: "We have been brought to this conclusion not merely by the marked inequality in the application of penalties in such cases in the different courts in the Islands and even in the same court on different occasions; but also because of the vicious consequences flowing from the uncertainty as to the severity of the penalty to be imposed upon convicts in such cases."

The decision adds another reason in support of the doctrine which it announces, which reason is a conclusion drawn from the quotation first made, and that is that "the imposition of unequal and at times arbitrarily severe penalties on persons convicted of smoking opium or of having small quantities of the drug in their possession is calculated to increase enormously the danger of blackmail." The fear that the courts may impose a long prison sentence or even an extremely heavy fine on conviction upon a charge of smoking opium, places one who is conscious of guilt practically at the mercy of an informer who demands large sums as the price of silence. (See opinion in that case.)

These propositions are, in my judgment, not only unique, but show a misconception of the powers and duties of courts and the rights of litigants. The assertion that a Court of First Instance, which is, under the law, not only permitted but required to impose a penalty of from P300 to P10,000 or imprisonment for not to exceed 5 years, or both, shall not be permitted in ordinary cases to impose a fine of more than P300 is a declaration against precedent, and, in my humble judgment, in violation of the letter and spirit of the Opium Law, and will necessarily tend to confusion in the administration of the law. But when we add to that the reason which the court gives for its act, the confusion is complete. To hold that we will reverse or modify penalties on the ground that, if

those permitted by statute are imposed, people will be blackmailed, and that we will reverse judgments from the Province of Rizal because they are different from those of Bulacan, and will, therefore, reverse those of Bulacan because they are different from those of Rizal, is to assert a most extraordinary doctrine.

The decision of the court in this as in the Lim Sing case is a declaration that the judgment of Courts of First Instance will be reversed and the sentences imposed thereunder be reduced or increased by fiat, and that it is entirely immaterial that the court has committed no error under the law. This is the necessary result; for, is it an error for a court to impose a penalty of P500 upon a person convicted of the illegal possession or the smoking of opium when the law permits the court to impose from P300 to P10,000 and five years imprisonment in addition? Certainly not. No one has claimed such a thing and no one can claim. Is it illegal for a court to impose a fine of P600 upon one who is convicted of the illegal possession or the smoking of opium when the law permits that court to impose any sum from P300 to P10,000 and imprisonment for five years? Certainly not. No one has claimed such a thing and no one can. As we have already said, the decision in the Lim Sing case declares the reasons, and the only reasons, for the decision to be that the different Courts of First Instance of the various provinces impose different sentences on conviction for the same crime; and that the difference in the penalty which different courts may impose permits blackmail. In other words, it is not that the Court of First Instance of Leyte, for example, committed an error when it imposed a fine of P500 under a conviction for the illegal possession of opium; or that the Court of First Instance of Iloilo erred in imposing a fine of P600 for the same offense; but that the judgment of the Court of First Instance of Leyte should be reversed because it is not like the judgment of the Court of First Instance of Iloilo; and that that of Iloilo should be reversed because it is not like that of Leyte. It is not that the Court of First Instance of Nueva Ecija erred in imposing a fine of P700; or that the Court of First Instance of Albay erred in imposing a fine of P1,000 for the same offense; but that the very fact of the difference in the penalties imposed in these courts is a sufficient reason for their revocation; that is to say, that because the courts in various provinces imposed different penalties for the same offense it is a sufficient reason for reversing all their judgments, although the law expressly gives to each one the power to act as it pleases (within certain limits of course). This, it is evident, is not an objection to the judgment because it is erroneous, but it is an objection to the way the law works in practice. It is not a criticism of the action of the lower court but of the Legislature. It was not the trial court but the Legislature that the Supreme Court found was wrong; but deeming it necessary to do something the court reverses both. The objections urged in the decision are objections which go to the policy of the law which permits that sort of tiling to occur. It is an argument, which, if advanced at all, should go to the Legislature. It is not the purpose of the decision to correct the judgments because they are erroneous in law but to institute a penal system conceived and originated by the Supreme Court by refusing to permit the logical and necessary results of a different and opposing policy. In other words, the Supreme Court observed, as it thought, that the policy of the Legislature which adopted the system of discretionary penalties produced, what it must necessarily produce if it is of any value whatever, different penalties in different courts for the same offence; and believing that such results were improper and dangerous, it, therefore, sought to establish the system of fixed penalties (that embodied in the Philippine Penal Code) by prohibiting any other result than that which flows from the policy of fixed penalties. In other words, while the court did not directly assert its right or its purpose to institute and establish the system of fixed penalties in a field where the Legislature had deliberately inaugurated the system of discretionary penalties, it, nevertheless, accomplished precisely the result which would follow such a purpose by refusing to permit the theory of discretionary penalties to accomplish its normal and legitimate purpose. By requiring all Courts of First Instance in the Philippine Islands to impose the same penalty, this court forces the results which necessarily accompany the system of fixed penalties. While it professed not to abolish the system of discretionary penalties and substitute in place thereof that of fixed penalties, it did precisely the thing which it professed not to do by preventing the theory of discretionary penalties from accomplishing its normal and natural result thereby rendering its establishment by the Legislature futile. It substituted in place of the

results of the system of discretionary penalties those of the system of fixed penalties. This is equivalent in law and effect to the abrogation of the one theory and the adoption of the other.

It seems clear, therefore, that the purpose of the court was the equalization of all penalties imposed under the Opium Law, and, as a necessary consequence, to establish the system of fixed penalties in place of that of discretionary penalties adopted by the Legislature when it enacted the Opium Law. The very reason offered to give life to the decision, the desire to make all penalties uniform, is sufficient to demonstrate the unsoundness of the judgment and to make clear the fact that it is a piece of legislation and not a judicial decision. Nor is the other reason offered by the court to support its decision, namely, the ability to blackmail more easily under one theory than under the other, a sound one even if we admit it to be a permissible one. The proposition that an accused who knows that he cannot be fined more than P300 for the illegal possession of opium is less open to blackmail than one who cannot know for a certainty that he will not be fined a larger sum does not appeal to me. That proposition touches at the most only the question of the amount which the blackmailer may extort. One dislikes to be convicted of a crime even though he knows that the penalty imposed will not be more than P300, and the difference between his dislike and the dislike of one who may be fined P500 is one of degree and not of kind. If the one who may be fined P=500 is willing to pay blackmail, the one who is positive that he will be fined only P300 is also willing to pay blackmail. While he may not be willing to pay so much as the one whose sentence is uncertain, he is, nevertheless, willing to pay something, and when that point is conceded the whole argument falls. Moreover, if one who knows that he is to pay a fine of only P300 is in a better position than one who may expect a fine of ^500, why should not he who knows that his fine cannot exceed P100 be in a better position so far as blackmail is concerned, than one who knows that his fine cannot exceed P300. And for the same reason would not one who knows that his fine cannot exceed P50 be in a better position than either of the others? If this is so, then, according to the theory of the decision, the court ought to reduce the fine imposed by the trial courts of the Philippine Islands from P300 to P50 because the reduction of the fine lessens the power to blackmail. It is scarcely a greater stretch of authority and but little more arbitrary to reduce the minimum penalty to ^50 than it is to wipe out altogether the discretion of trial courts.

I take it to be clear from these observations that the reasons themselves given in support of the decision are its greatest weakness. No legal reasons are given; they are reasons of policy. They are not founded on a legal error; they are based on matters which cannot justly or properly appeal to courts but are matters which address themselves naturally and normally to legislatures. The result is that the opinion in this case is not a legal decision. It is the establishment of a policy. It is not based on a violation of law, for admittedly no one has violated the law; it is based on a theory of criminology, drawn, so far as the record shows, from nowhere, and based, so far as the record goes, on nothing; it is founded on no law, no fact, no record, no error, no assignment of error, no prayer of appellant or demand of appellee, nothing.

But the decision I am now discussing is more and does more than this; it is an invasion and a seizure of those attributes and function of a trial court which have always been considered his sacred own, and an appropriation of them to the exclusive use of the Supreme Court of the Philippine Islands. This is easily shown:

In the first place, we should bear in mind and keep always before us the most vital of all attributes of a trial court—the fact that he is a trial court. The atmosphere which is produced by a trial, by accused, and witnesses, and counsel, and even the spectators themselves, which tells the court as nothing else can the nature of the thing within the body of the cause which it is his special duty as a trial court to discover, is no longer of value; for this is the very thing that is rendered useless to him by this decision. How the parties to the case look; how they appear; how they testify; what forces appear to affect or move them as the trial goes on; their appearance, breeding, language, bearing, deportment; their appearance and attitude as witnesses, and the thousand and one factors which

influence and guide a judge in his appreciation of their testimony; these things, the power to consider which is the very essence of a trial court, are profoundly affected, if not wholly destroyed, by the decision of this court. These are among the very forces which induce and regulate the exercise of discretion; and if they do not exist or can produce no effect, the exercise of real discretion is impossible. The extent and severity of a penalty may depend to a very large extent, sometimes wholly, on how the accused looks, appears and conducts himself in the court room and especially on the witness stand. If he appears the degenerate, or the hardened crook, or the careless profligate, facts and circumstances which may not, and most of them cannot, appear in the record at all, the trial court may, and, if he performs his duty to the public, must take those facts and circumstances into consideration in fixing the penalty as well as determining the guilt. Certainly such a man should be more severely punished than one who was clearly the victim of adverse circumstances, or of false friends or of the temptations of youth, and who shows none of the qualities mentioned. This vitally important element of the trial court is left without value by the decision under discussion. If a Chinaman, who is before a court charged with being a user of opium, has impressed on his face and manifest in his figure the inescapable signs of the opium user, of the man who, if left to himself, must shortly go to a madhouse or die, the trial court not only has the right, but it is his duty, to impose a prison sentence. Provision is made in the Insular prison in Manila for the treatment of opium users; and there is an order of the Governor-General now in force requiring all provincial and municipal prisoners convicted under the Opium Law who are victims of the habit to be sent to Manila for treatment during their incarceration. This beneficent power of the trial court is taken from him by this decision and all the efforts of the Government at reformation of such criminals go for nought, as, since the decision under discussion, no court can impose a prison sentence under such circumstances. (See opinion in Lim Sing case.)

The decision thus strips Courts of First Instance of every resource, of every opportunity to use the information which, in law as well as common sense, is the only basis on which a proper penalty can be imposed, by refusing to permit them to use it. And one of the regrettable things about it all is that in place of the invaluable information which the trial court has and has exclusively, and which makes it so effective an agency of the administration of the criminal law, the Supreme Court substitutes complete ignorance of the atmosphere of the court, the appearance and deportment of the accused, his manner as a witness, his bearing, breeding, whether he is hardened, abandoned or degenerate, whether he is young in crime with hopes for the future, whether he is a perjurer and suborner, whether he is a helpless victim of opium, and the thousand things which are the legitimate, and, in many cases, the only legitimate grounds for the imposition of a penalty—all those are gone.

In the second place, we should not lose sight of the fact that a Court of First Instance has some of the attributes of a representative of his judicial district. He knows the offenses that are most prevalent, the depredations that are most frequent and the crimes from which his district most suffers; in short, if he fits himself for his duty, he knows thoroughly the history and criminal statistics of his district. He knows what penalties are required with regard to a particular offense in order not only that the offenders shall be adequately punished but that the district shall be fully protected against a repetition of the crime. Knowing these things better than anyone else, and far, far better than the Supreme Court, is it not strange that the Supreme Court should desire to interfere with him in the representation of his district? It is clear that, if there is substantially no importation of opium in the port of Aparri, a single importation should not be visited with the same penalty as an importation in Manila where opium smuggling may be so common as to threaten the welfare of the community. So, should the offense of smoking opium in Leyte, where that crime may not be committed more than once in a decade, be punished with the same penalty as if committed in Manila where the vice may flourish to an alarming extent? However, we, from a theoretical or philosophical point of view, may answer these questions, the Legislature has answered them emphatically in the negative; and has clinched that answer by giving Courts of First Instance almost carte blanche in the imposition of penalties.

While this court reviews the facts in criminal cases, it is on records only, and, as we have already seen, under the limitations set by section 50 of the Code of Criminal Procedure; and it certainly cannot be authorized to restrain the exercise of a discretion expressly granted by statute to Courts of First Instance, which discretion always rests in large part on no record whatever. This court, whatever its functions, must act within the limitations of law (sec. 50, above), and must confine itself to the record. While it reviews the facts it is in every other sense (and in my judgment in that also) an appellate court; and, as such, its power is limited to the correction of legal errors and does not extend to the abrogation of the statutory attributes of inferior courts. The declaration made in the Lim Sing case that no Court of First Instance in the Philippine Islands may impose more than $\text{P}300$ fine upon conviction of the crime of illegal possession of opium, when the law permits, in the discretion of that court, the imposition of a fine of ten thousand pesos and imprisonment for five years is not the exercise of the functions of an appellate court but of those of the Legislature. In making such a declaration the court is not using the legitimate power of an appellate court or even of a court that reviews the case on the record but the supreme power of sovereignty.

As I have stated before, there was no contention nor has it been suggested by this court that the court below committed a legal error in fining the appellant $\text{P}1,000$ instead of sentencing him to 6 months' imprisonment and to pay a fine of $\text{P}1,000$. Such contention could not be seriously made, as upon the face of the law it would be absurd. It cannot be said with seriousness that the imposition of a penalty of $\text{P}1,000$ demonstrates a legal error when the minimum penalty is fixed at $\text{P}500$ and the maximum at $\text{P}2,000$ and the court in its discretion may impose both such fine and imprisonment. In my judgment it is clear that the action of this court in augmenting the penalty in the case at bar and in the Lim Sing case above cited is a repeal pro tanto of the statute inasmuch as it is a declaration that the Courts of First Instance have no discretion, so far as penalties are concerned, in dealing with the ordinary cases of the use, ownership, and possession of opium. The denial of the right of a trial court to impose a penalty of $\text{P}1,000$ for the mere importation of opium, which is the case before us, is an abrogation of the discretion of the court and a repeal of the statute to that extent.

For these reasons I dissent.

Note.—Since the above opinion was written the Legislature, to avoid, in part, in my judgment, the effects of the decision of this court in the Lim Sing case, has amended the Opium Law (Act N q . 2381) so that the minimum penalty is three months' imprisonment and a fine of $\text{P}300$. The maximum penalty is untouched.

Judgment modified; penalty reduced.

[1] This dissent was written in connection with case No. 8546 (U. S. vs. Sy Chuco, 12 Off. Gaz., 693) and the Lim Sing case (23 Phil. Rep., 424) which were published during the absence of the writer. It is now published with R. G. No. 10498 which involves the same question.

[1] Not reported.

[1] Not reported.

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