

THE UNITED STATES, PLAINTIFF AND APPELLEE VS. MATEO P. PALACIO, DEFENDANT AND APPELLANT.

G.R. No. 11002. January 17, 1916

Ponente: ARAULLO, J.

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ARAULLO, J.:

These proceedings for violation of section 87 of Act No. 82, the Municipal Code, were brought against the defendant, Mateo P. Palacio, in the Court of First Instance of Leyte by the following complaint filed therein by the fiscal on December 18, 1914.

"The undersigned charges Mateo Palacio with having violated section 87 of Act No. 82, in the following manner, to wit: Said accused, on or about the 26th day of September, 1914, in the municipality of Tacloban, Province of Leyte, P. I., he being then and there a deputy to the provincial assessor of Leyte, charged with the duty of assessing real property, did wilfully, unlawfully, and criminally, upon revising the assessment and in reassessing the property of Francisco Madlonito, situated in the barrio of Di-it, municipality of Tacloban, omit from the tax list certain real properties and improvements belonging to said Francisco Madlonito, knowing that the properties omitted were law- fully taxable; in violation of law."

A demurrer having been filed by defendant's counsel on the ground that the facts alleged in the complaint did not constitute the crime provided for and punished by said section 87 of Act No. 82, the same was overruled, and, defendant having pleaded not guilty, the case came to trial. Evidence was introduced by both the prosecution and the defense, and, on January 15, 1915, said Court of First Instance rendered judgment in which, insisting upon the overruling of the demurrer interposed to the complaint, and finding the defendant guilty of the crime therein charged, he sentenced him to the penalty of forty days' imprisonment in the provincial jail, to pay a fine of P100, or, in case of insolvency, to suffer the corresponding subsidiary imprisonment and to pay the costs. Defendant has appealed from this judgment and has assigned thereto various errors which, as stated by the Attorney-General in his brief, may be reduced to the following:

"1. That the lower court erred in holding that the evidence adduced at trial proves defendant's guilt beyond all reasonable doubt.

"2. That the facts alleged in the complaint and proven at trial do not constitute the infraction provided for and punished by, section 87 of Act No. 82, known as the Municipal Code."

The evidence shows beyond all doubt that while defendant was serving as a deputy to the provincial assessor of Leyte, duly appointed and qualified as such, and having proceeded under orders of said assessor, given in the month of September, 1914, to verify the measurement, avaluation, and assessment of the properties of one Francisco Madlonito, situated in the barrio of Di-it, municipality of Tacloban of said province, he presented in performance of his duty a report in which he recorded as real property belonging to said Francisco Madlonito a rectangular parcel of unirrigated land which was adjoined on the north by the land of Anacleto Condes; on the east, by that of Ventura Vinas; on the south, by that of Jose Guardino; and on the west, by woods: it measured 3 hectares 51 ares and 23 centares in area, the only improvements consisting of 500 hemp plants; that several days

afterwards, in the following month of October, the provincial assessor, having been advised that defendant's report was false, proceeded in company with another deputy to remeasure and to make a new valuation and assessment of the same land, under guidance of and in accordance with data furnished by the same Francisco Madlonito who had previously conducted and furnished information to defendant; as a result of this proceeding on the part of said provincial assessor, it was ascertained that said land was unirrigated hemp or corn land; that it was polygond in form and was adjoined on the north by the property of Anacleto Condes and Basilio Espejo; on the east, by that of Nicanor Dolina, Basilio Espejo and Ventura Vinas; on the south, by the land of Tomas Tabosa and a wood; and by a wood on the west; it was found to measure 16 hectares 17 ares and 65 centares in extent, the improvements thereon consisting of a plantation of hemp, a dwelling house of mixed material, 80 clumps of banana trees, 9 cacao trees, 24 coconut trees 5 years of age, and one coconut tree in bearing. It was therefore apparent that in the tax list of real property which, as deputy to the provincial assessor, defendant was charged to prepare—that is, the report presented by him—he had omitted real property belonging to Francisco Madlonito, which property consisted of 12 hectares 66 ares and 42 centares of land and all the improvements mentioned, with the exception of the 500 hemp plants specified in this report.

Defendant endeavored in a way to explain this omission by attributing it to the fact that in making his report he relied upon the information furnished by Francisco Madlonito himself, and, with respect to the area, on that given him at the time by the two laborers who measured the land and who assured him that said measurement was correct, because it was the same as that which has been pointed out to them by the owner of the land. Defendant further explained that he also accepted the information furnished by said laborers with respect to the improvements specified in said report as consisting of a plantation of hemp; that these men had told him that there were no other improvements except the hemp plantation and some banana trees of which he did not know how many there were; with respect to the house, Francisco Madlonito told him that it belonged to Emiliano, Francisco's brother; that this latter was absent at the time and therefore defendant did not measure the property, deciding to postpone doing so until the 15th of January of the following year, when he intended to return.

These explanations of the defendant are not satisfactory, nor can they serve to exonerate him as he claims because, in the first place, he should not have relied on what the interested party himself, Francisco Madlonito, told him, nor upon the information which, at the time he inspected and measured the land, was furnished him by the two laborers of whose services he availed himself for the actual performance of that labor. He himself ought to have verified the correctness of the information and have informed himself of the true area of the land and of all the improvements thereon, they being in sight, in order to include them in the report which it was his duty to render to the provincial assessor in fulfilment of the mission confined to him. In the second place, Francisco Madlonito himself testified at the trial that he had furnished defendant with the same data and information which he subsequently gave to the provincial assessor and to the latter's other deputy when they both went to verify and investigate the defendant's work, from which verification and investigation it was disclosed that the land was larger by 12 hectares 66 ares and 42 centares and that it contained many other improvements such as clumps of coconut, cacao and banana trees, besides the 500 hemp plants mentioned in defendant's report. We therefore fail to understand and it has not been explained how said improvements could have been omitted from the report, nor how defendant could have failed to mention therein such a large tract of land as that of the 12 hectares above referred to. This, together with the circumstance of defendant's having passed the previous night in Francisco Madlonito's own house, and having had, therefore, sufficient opportunity and time to inform himself of exactly what the latter's property, which was to be measured and recorded in said report, consisted of, constitute proof that defendant (exception made in so far as the house is concerned, for it might be true that it did belong to Francisco Madlonito's brother), willfully omitted from his report an extensive portion of Francisco Madlonito's real property that he knew was lawfully taxable and which it was his duty to record in said document. The lower court did not,

therefore, incur the first error assigned by defendant's counsel in his brief.

Defendant's counsel alleges, however, that the act committed by his client and which, as aforesaid, was proven at trial, does not constitute an infraction provided for and punished by section 87 of Act No. 82, known as the Municipal Code.

That section provides as follows:

"Any officer charged with the duty of assessing real property, who shall wilfully omit from the tax lists real property which he knows to be lawfully taxable, shall be guilty of a misdemeanor and punishable by a fine not exceeding one thousand pesos, or imprisonment not exceeding two years, or both, in the discretion of the court."

Section 49 of the same Act, No. 82, provides that the real estate of the municipality shall be valued and assessed for taxation by a board, to consist of the president, the municipal treasurer, and a specially authorized deputy of the provincial treasurer, which board shall be known as the municipal board of assessors.

Said section 49 was amended by section 1 of Act No 1930, so that the aforementioned municipal board of assessors should consist of the municipal president, the municipal treasurer and, instead of the deputy to the provincial treasurer, of a third member to be appointed by the provincial board.

Subsequently, on February 11, 1913, Act No. 2238 was passed, section 1 of which created the position of provincial assessor for each province containing municipalities organized under the provisions of the Municipal Code. Section 2 of this Act provides that provincial assessors shall be allowed such number of deputies and clerks as shall be fixed by the provincial board with the approval of the Executive Secretary, and section 4, in reciting the duties of the provincial assessor, and, consequently, those of his deputies, provides that, when directed by the provincial board, he shall revise and correct the assessments and valuations of real property for the purpose of taxation, and, in the manner set forth in the Act, revise and correct, when so directed, any and all assessments and valuations for taxation, make a correct and just assessment and state the true value of the real property. Other sections of this Act confer upon the provincial assessor various powers in connection with the preparation of the lists of property subject to assessment, and, finally, establishes the procedure that must be followed where any municipality or any property owner does not agree with the assessment and valuation so made.

As may be seen, the purpose of Act No. 2238, in creating the office of provincial assessor and allowing him such number of deputies and clerks as shall be fixed by the provincial board with the approval of the Executive Secretary, was the same as that of Act No. 82 in creating, in section 49 thereof, the municipal board of assessors; and Act No. 1930, in amending said section in the manner aforementioned, to wit, by providing that all the real property, taxable or subject to the land tax, existing in the municipalities of these Islands, should be assessed, and, for this purpose and in order that the provincial board should exercise the necessary and proper supervision over the acts of the municipalities relative to said tax, provided that someone representing the provincial board, or, better said, a provincial official, should be a member of the municipal board of assessors—a purpose and object which are more accentuated in Act No. 2238 by expressly creating the office of provincial assessor for the revision and correction of assessments and valuations of real property declared in the municipalities—and to enable this official to take a direct and active part in preparing the lists of property subject to said tax. Said Act No. 2238 is therefore intimately related to the two Acts Nos. 82 and 1930 aforesaid, and is virtually a complement of the same in so far as regards the declaration and assessment of taxable property.

Said Act No. 2238 provides in section 18 that all Acts or parts of Acts in conflict therewith are repealed. In the two aforementioned Acts, Nos. 82 and 1930, in so far as relates to the assessment and valuation of taxable real property in municipalities, there is, strictly speaking, nothing which may be said to be in conflict with said Act

No. 2238, not only for the reason above stated, but also because this Act has done nothing but change the method and procedure provided in Act No. 82, the Municipal Code, for determining the taxable real property in the municipalities and the value thereof, by means of the intervention which in said procedure is given to the provincial assessors. But that municipalities are not excluded from taking part in the proceedings is shown by the fact that section 9 of this Act No. 2238 provides that, prior to directing the provincial assessor in accordance with the provisions thereof, to proceed to revise and correct the assessments and valuations of real property, the provincial board shall require each municipal council of the municipalities organized under the provisions of the Municipal Code (Act No. 82) to prepare, in such form and detail as the Executive Secretary may prescribe, a general schedule of the values of the different classes of land for the municipality which shall be forwarded to the provincial board for approval, and such schedule, when approved by the provincial board, shall serve the assessor as basis for the valuation and assessment. It also provides in section 13 that it shall be the duty of the municipal president, secretary and treasurer and all municipal employees, to render every assistance in their power to the provincial assessor.

Furthermore, one of the rules of interpretation, as very properly said by defendant's counsel in his brief, is that "when there are two laws on the same subject enacted on different dates, and it appears evident by the form and essence of the later law that it was the intention of the legislator to cover therein the whole of the subject, and that it is a complete and perfect system, or is in itself a provision, the latest law should be considered as a legal declaration that all that is comprised therein shall continue in force and that all that is not shall be rejected and repealed." A simple perusal of Act No. 2238 is sufficient to show that it was not the intention of the legislator to cover all matters relative to the assessment and valuation of the taxable real property of the municipalities, and that said Act does not contain a complete and perfect system for said subject, because, as aforesaid, the Act in question is closely related to Act No. 82, of which it is virtually a complement in so far as regards the organization of the service of making the lists for the complete and adequate collection of the tax on real property in municipalities organized under said Act No. 82. It cannot, therefore, be maintained that section 87 of this latter Act should be considered as repealed, in so far as it prescribes the penalty incurred by any official who, being charged with the duty of assessing real property, wilfully omits from the tax lists any real property which he knows to be lawfully taxable.

"Repeals by implication are not favored, and will not be decreed, unless it is manifest that the legislature so intended. As laws are presumed to be passed with deliberation and with full knowledge of all existing ones on the subject, it is but reasonable to conclude that in passing a statute it was not intended to interfere with or abrogate any former law relating to same matter, unless the repugnancy between the two is not only irreconcilable, but also clear and convincing, and flowing necessarily from the language used, unless the later act fully embraces the subject matter of the earlier, or unless the reason for the earlier act is beyond peradventure removed. Hence, every effort must be used to make all acts stand and if, by any reasonable construction, they can be reconciled, the later, act will not operate as a repeal of the earlier." (23 Am. and Eng. Ency. of Law, p. 489, and cases there cited [vol. 26, pp. 721, 726].)

As said Act No. 2238 provides no penalty for the provincial assessor or his deputy who, in revising the assessment and preparing the tax list of real property, wilfully makes any omission such as that aforesaid; and as the provincial assessor, or his deputy, is a public official or an official of the class referred to in section 87, it being immaterial whether he be a provincial or a municipal official (for it is sufficient that it be the duty of such official to assess real property) it is evident that the said penal provision contained in section 87 of Act No. 82 continues in force and is applicable to the provincial assessors and their deputies referred to in Act No. 2238, and that the lower court did not err in sentencing defendant, under the provisions of said section 87, to the penalty specified in the judgment appealed from.

The fact that the cadastral survey of the municipality of Tacloban was not terminated at the time of the discovery of the omission made by defendant in the report presented by him to the provincial assessor, and that such omission might have been repaired by correcting the list or report by means of the revision and new assessment made by the provincial assessor himself on his proceeding with the investigation of the misdemeanor committed by defendant, does not exempt the latter from liability, because what the law punished in said section 87 is the fact of the wilful omission, by the official charged with the duty of assessing the real property in the tax list, of any property which he knows to be lawfully taxable; and it is immaterial whether said omission can or cannot subsequently be remedied, because it constitutes in itself a false representation in that document and a fraud committed by the public official to the prejudice of the Government or with intent to cause such prejudice.

By reason of the foregoing, and the judgment appealed from being in accordance with the merits of the case and the law, we hereby affirm the same, with the costs against appellant. So ordered.

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

Carson and Trent, JJ., dissent.

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