

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. TAN OCO, DEFENDANT AND APPELLEE.

G.R. No. 11338. August 15, 1916

Ponente: TRENT, J.

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TRENT, J.:

The defendant in this case was charged in the court below with having violated the provisions of Act No. 2381 known as the Opium Law. A demurrer to the complaint was sustained upon the ground that the Act just mentioned and all other laws of the Philippine Legislature relating to the same subject-matter have been repealed by the Act of Congress approved December 17, 1914. The Government appealed, and the sole question argued in the printed briefs filed in this court is that relating to the effect produced by " the Act of Congress upon the local legislation dealing with the subject of opium.

Counsel for the defendant say: "There are two questions which we must carefully consider in order to arrive at a proper solution of the question presented by the demurrer filed in this case:

"First. Is the Act of Congress of December 17, 1914, repugnant and irreconcilable to Act No. 2381 of the Philippine Legislature?

"Second. If it is not so in express terms, then is the Act of Congress a general Act covering the whole subject of the former, with new provisions, and therefore operating as a repeal of the Philippine Acts?" and then attempt to show that both should be answered in the affirmative, resting their argument largely, if not solely, upon the proposition that the Act of Congress allows by implication any person to deal in opium in any of its forms, provided he registers and pays the special tax, while Act No. 2381 absolutely prohibits the importation of the prohibited drug except by the Government, and then for medicinal purposes only and restricts the use and possession thereof, when thus imported, to the persons mentioned therein.

The Act of Congress above mentioned (38 U. S. Stat., 785) is entitled:

"An Act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes."

Section 1 provides that every person, with certain exceptions (and the defendant in the instant case does not fall within the exception), who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the designated official or officials and pay the special tax provided in the Act. Section 2 (d) expressly extends the provisions of the Act to the Philippine Islands and confers jurisdiction upon the Courts of First Instance to try and determine all cases arising thereunder. Section 6 provides that the provisions of this Act shall not apply to the sale, distribution, giving away, dispensing, or possession of preparations or remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one

fluid ounce, or in a solid or semisolid preparation, in one avoirdupois ounce; or to liniments, or other preparations which are prepared for external use only, except liniments, ointments, and other preparations which contain cocaine, or any of its salts, or alpha or beta eucaine, or any of their salts, or any synthetic substitute for them, provided, that such remedies and preparations are sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this Act. Also the provisions of the Act shall not apply to decocainized coca leaves or preparations made therefrom, or to other preparations of coca leaves which do not contain cocaine. Section eight makes it unlawful for any person, with certain exceptions, not registered, as provided in the Act and who has not paid the special tax, to have in his possession or under his control any of the aforementioned drugs. Section 9 provides that any person who violates or fails to comply with any of the requirements of the Act shall, on conviction, be fined not more than \$2,000 or be imprisoned not more than five years, or both, in the discretion of the court. And section 12 provides that nothing contained in this Act shall be construed to impair, alter, amend, or repeal any of the provisions of the Act of Congress approved June 30, 1906, or of the Act of Congress approved February 9, 1909.

The Act of June 30, which was expressly extended to the Philippine Islands, makes it a misdemeanor for any person to manufacture or introduce into any state, territory or insular possession of the United States any article of food or drug which is adulterated or misbranded. Drugs are deemed to be misbranded if the package fails to bear a statement of the quality or proportion of any morphine, opium, cocaine, etc., or any derivative thereof. And that of February 9 provides that after the 1st day of April, 1909, it shall be unlawful to import into the United States opium in any form or any preparation or derivative thereof: Provided, That opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medicinal purposes only, under regulations prescribed by the Secretary of the Treasury. A violation of this Act carries with it a penalty of both fine and imprisonment, and possession is deemed sufficient evidence to authorize a conviction in the absence of a satisfactory explanation.

The primary theory for the enactment of laws concerning opium by the Philippine Legislature is found in the Act of Congress of March 3, 1905, entitled "An Act to revise and amend the tariff laws of the Philippine Islands, and for other purposes." Section 11, subsection 80, in part, is as follows:

"80. Opium: * * *. Provided, however, That the Philippine Commission or any subsequent Philippine Legislature shall have the power to enact legislation to prohibit absolutely the importation or sale of opium, or to limit or restrict its importation and sale, or adopt such other measures as may be required for the suppression of the evils resulting from the sale and use of the drug: And provided further, That after March first, nineteen hundred and eight, it shall be unlawful to import into the Philippine Islands opium, in whatever form, except by the Government, and for medicinal purposes only, and at no time shall it be lawful to sell opium to any native of the Philippine Islands except for medicinal purposes."

Pursuant to the authority conferred upon it by Congress, the Philippine Commission enacted Act No. 1461, effective April 1, 1906, entitled:

"An Act for the purpose of restricting the sale and suppressing the evil resulting from the sale and use of opium until March first, nineteen hundred and eight, when its importation or use for any but medicinal purposes is forbidden by Act of Congress."

Section 1 of this Act reads:

"Opium within the meaning of this Act shall embrace every kind, class, and character of opium, whether crude, prepared, or refuse, and all narcotic preparations thereof or therefrom, and all morphine or alkaloids of opium and all preparations in which opium, morphine, or any alkaloid of opium enters as an ingredient, together with all opium leaves and wrappings of opium leaves, whether such leaves or wrappers are prepared for use or not"

The subsequent sections provide for the registration of confirmed Chinese opium users and the issuance to such persons of a certificate upon the payment of a fee of 1*5, setting forth the quantity of the drug consumed by each applicant per day, week or month. Any person who should make or use a false certificate was penalized by a fine not exceeding P5,000, or by imprisonment of not exceeding two years, or by both such fine and imprisonment in the discretion of the court. It was unlawful for any non-registered person to use opium in any form unless it was prescribed as a medicine by a duly licensed and practicing physician. The sale, transfer, giving away or delivery of opium in any of its forms to any person, except those named in the Act, was made a crime. Physicians who habitually prescribed opium for their patients, when the physical condition of such patients did not require the use of opium, were subject to fines and imprisonment and the revocation of their license. Wholesale and retail dealers in opium were restricted in their operations and subjected to strict supervision and the payment of license fees. The illegal possession of opium in any of its forms was severely penalized. Before imported crude opium or imported prepared opium could be released from the customhouse, the importer was required to pay on crude opium P2.50 per kilo and on prepared opium P7.50 per kilo. All dealers in opium at the time of the passage of the Act had to pay a specified internal revenue tax before the drug could be disposed of. And finally, this Act was to continue in effect until March 1, 1908, after which time it was made unlawful to import into the Philippine Islands opium in whatever form except by the Government and for medicinal purposes only.

Act No. 1461 was repealed by Act No. 1761, effective October 17, 1907, entitled:

"An Act gradually to restrict and regulate the sale and use of opium pending the ultimate prohibition of the importation of opium into the Philippine Islands in whatever form except for medicinal purposes as provided by the Act of Congress approved March third, nineteen hundred and five, and prohibiting any person from having the possession of opium, cocaine, or alpha or beta eucaine in any of their several forms, or any derivative or preparation of any of such drugs or substances, except for medicinal purposes, and to repeal Act Numbered Fourteen hundred and sixty-one, and for other purposes."

The first section of this Act gives the same definition of opium as that given in section 1 of Act No. 1461, *supra*. The subsequent sections provide for the registration of confirmed Chinese opium smokers and the issuance to such persons monthly certificates up to and including¹ the month of February, 1908. The amount of opium authorized to be used by the Chinese persons thus registered was reduced, beginning with the month of November, 1907, each month 15 per cent. The use of false certificates and the unlawful use of opium were likewise severely penalized. The regulations governing the traffic in opium and the use by physicians, and the wholesale and retail dealers were made more stringent. The possession of opium pipes, hypodermic syringes, or other apparatus or paraphernalia used for smoking, injecting, or using opium in any manner was unlawful. Ten days after this Act went into effect it was made the duty of all dealers or possessors of opium to deliver the same to the duly authorized officers and agents of the Government, and when once delivered, the opium could not be released except upon permit of the Collector of Internal Revenue. Penalties were prescribed for the noncompliance with these provisions. AH imported opium, after the payment of all duties, taxes and charges, was to be delivered to the Collector of Internal Revenue or his duly authorized representative for storage in a place to be provided by the Collector, and neither the whole or any part of the opium so stored could be removed from such building or place except to a duly authorized opium dispensary or for export. Opium stored or withdrawn in any other manner was subject to seizure and confiscation. Every dispenser of opium was required to keep a book wherein full information should be set forth in Spanish and in English concerning the opium handled by him. On and after March 1, 1908, it was unlawful for any person in the Philippine Islands to use opium in any of its forms in any manner except for medicinal purposes and then only upon the prescription of a duly licensed and practicing physician.

Act No. 1761 was repealed by the Philippine Legislature by Act No. 2381, effective July 1, 1914, entitled "An

Act restricting the use of opium and repealing Act Numbered Seventeen hundred and sixty-one." The first section of this Act reads:

" 'Prohibited drug' and 'opium' as herein used, shall be understood in the sense defined in section one hundred and thirty-five of the Internal Revenue Law of Nineteen hundred and fourteen."

Section 2 provides that except as provided in section 136 of the Internal Revenue Law of 1914 (Act No. 2339) no person shall own, prepare or administer any prohibited drug or have the same in his possession or subject to his control, or knowingly transport or permit the same to be in or on his premises; and save upon the prescription of a duly licensed and practicing physician, veterinarian, or dentist, no person shall inhale, snuff, chew, swallow, inject, or otherwise take or use any such drug in or on his body or permit the same to be used upon him by another. Nor shall any person keep, maintain, or conduct any dive or resort where opium is smoked or otherwise used contrary to law. The violation of these provisions! carries with it a penalty of a fine not less than P300 or more than P10,000 and imprisonment for not less than three months nor more than five years. And in case of the commission of a second offense, the delinquent may be deported if he be not a citizen of the United States or the Philippine Islands. The subsequent sections make it a crime to guard or be a lookout for a dive or resort where opium is smoked or to unlawfully import or bring into the Philippine Islands any prohibited drug, or assist in doing so. The unlawful sale or delivery of such drug or the unlawful possession or custody of the same or any pipe or other apparatus designed for smoking, injecting, etc., are severely penalized. Likewise physicians, veterinarians, and dentists are subject to severe penalties for prescribing opium for a patient whose physical condition does not require its use. And finally, it is made the duty of the Chief of the Constabulary to enforce the provisions of this Act without prejudice to the full exercise of the powers and duties thereto incumbent upon other branches of the Government.

The provisions of Act No. 2339, effective July 1, 1914, known as the Internal Revenue Law, referred to in Act No. 2381, are sections 135, 136, 137, and 138. Section 135 reads:

Words and phrases defined.—'Prohibited drug,' as herein used, includes opium, cocaine, alpha and beta eucaine, their derivatives, and all preparations made from them.

" 'Opium' embraces every kind, class, and character of opium, whether crude, prepared, ash, or refuse, and all narcotic preparations thereof or therefrom, and all morphine or alkaloids of opium and all preparations in which opium, morphine, or any alkaloid of opium enters as an ingredient, together with all opium leaves and wrappings of opium leaves, whether such leaves or wrappings are prepared for use or not"

Section 136 provides that prohibited drugs may be lawfully kept, used, administered, and dealt in under the conditions set forth therein and by the persons named therein only. The persons thus authorized to possess and use such prohibited drugs are duly licensed and practicing physicians, veterinarians, dentists, and Government Bureaus or officers of the Government designated in writing by the Governor-General, and pharmacists and second-class pharmacists, upon the prescription of a duly licensed and practicing physician, dentist, or veterinarian. Under section 137, opium, as denned in section 135, can be imported only by the Philippine Government through the Bureau of Internal Revenue. And under section 138, physicians, dentists, veterinarians, pharmacists and second-class pharmacists are required to keep true and correct records of all prohibited drugs received and dispensed or transferred by them in such form and manner as may be prescribed by the regulations of the Bureau of Internal Revenue.

The foregoing show a carefully worked out system in both countries, restricting and regulating the use, possession, importation, and sale of opium in all of its forms. The Act of December 17 does not apply to certain preparations when they do not contain more than the specified amount of the prohibited drug per ounce, while the

local legislation makes no such exceptions. But those preparations may be sold by druggists as medicines in this country under Government supervision. To this extent the laws and regulations are more stringent in the Philippine Islands than in the United States.

Counsel do not limit their proposition that the Act of Congress permits by implication any person to deal in opium provided he registers and pays the special tax to any class of persons or to any specific use of the drug. If their contention is well founded as to the Philippine Islands, it must necessarily be true as to the United States proper, because the Act of February 9 absolutely prohibits the importation of smoking opium, or opium prepared for smoking, into the United States, and the Act of March 3, 1905, likewise prohibits the importation of opium into the Philippine Islands, except for medicinal purposes, unless the latter Act has been repealed by subsequent congressional legislation. If this Act has been repealed or modified, it was done by implication, as there are no express repealing clauses in any Act of Congress approved since March 3, 1905. On examination of this subsequent legislation it appears that Congress has never intended to relax the stringent provisions relating to the smoking of opium or to its use in any of its forms whatever. The prohibited drug can only be used, under these Acts, for medicinal purposes. To say that Congress intended by the Act of December 17, to permit the public generally or any person to import, deal in, sell or give away opium in any of its forms and for any purpose by registering and paying the special tax would be holding, in effect, that Congress desired to encourage a vice which the local Government, under Congressional sanction, has been seeking for many years to eradicate. That Congress did not intend to repeal any of the local laws dealing with the subject of opium appears from the Act itself, wherein it is provided that the duplicate-order forms required to be preserved under the provisions of section 2 and the statements or returns filed in the office of the collector of the district under the provisions of section 3, shall be open to inspection by officers, agents, and employees of "any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the sale, prescribing, dispensing, dealing in, or distribution of the aforesaid drugs. * * * Any person who shall disclose the information contained in the said statements or returns or in the said duplicate-order forms, except as herein expressly provided, and except for the purpose of enforcing the provisions of this act, or for the purpose of enforcing any law of any State or Territory or the District of Columbia, or any insular possession of the United States, or ordinance of any organized municipality therein, regulating the sale, prescribing, dispensing, dealing in or distribution of the aforesaid drugs shall, on conviction, be fined and imprisoned as provided by section nine of this act." :

Here is an implied recognition of the existence in the Philippine Islands of laws, ordinances, and regulations restricting the use of opium and the derivatives thereof.

But it is urged that the two laws cannot be harmonized so that both may stand, because the penalties for the same criminal acts are different and a person may be punished twice for the same offense in violation of the paramount law of the land, as in the instant case, where the defendant is charged with illegally having in his possession and under his control a certain amount of opium in violation of Act No. 2381. It is said that if the defendant is found guilty of this charge he may be punished by a fine of not less than three hundred pesos and by imprisonment not less than three months nor more than five years, and in case it be shown that he is a recidivist, he may be deported (section 2, Act No. 2381), and that such conviction and punishment would not be a bar to a subsequent trial, conviction, and punishment under the Act of Congress for the illegal possession of the same opium, the penalty being a fine of not more than four thousand pesos or imprisonment for not more than five years, or both, in the discretion of the court. That the penalties are different, there can be no question. In the one the minimum is fixed and both fine and imprisonment must be imposed; the maximum fine is ten thousand pesos and the guilty party, under certain circumstances, may be deported. While the other fixes no minimum, the maximum fine is four thousand pesos, and the defendant cannot in any case be deported.

If the present case had arisen in San Francisco, California, would the defendant's plea of a former conviction, under the Act of Congress of February 9, 1909, be a bar to a prosecution under the Act of Congress of December 17, 1914? In the first, the prosecution would have to prove possession and the fact of importation would be established by a presumption, while in the second, the prosecution would also have to prove possession, and the possession is presumptive evidence of a failure to register and pay the special tax. The presumptions establish separate and distinct facts. The point will be made clearer by supposing that the defendant attempted to satisfactorily explain in each case the possession of the drug. Then the prosecution would have the right to prove by direct evidence that the defendant did import into the United States the opium and that he had not registered and paid the special tax. Therefore, the evidence in the one case would not support a conviction in the other because the crimes are not the same. One would be illegal importation and the other, failure to register and pay the special tax. Consequently, a conviction or acquittal of the one would not be a bar to the prosecution of the other.

Now, we will consider the case from this point of view in this jurisdiction where it actually arose. Act No. 2381 was enacted under and by virtue of express authority of Congress and in passing this Act the Philippine Legislature kept well within the authority thus conferred upon it. The two Acts under consideration emanated from the same high source and are for all intents and purposes on a level with each other. So the question of the power of the Philippine Legislature to enact laws which conflict with or relate to matters covered by Acts of Congress has no place in the consideration of this case. The sole question is, as we have indicated, whether the Act of Congress approved December 17, 1914, has repealed by implication Act No. 2381, thereby also repealing by implication the Act of Congress of March 3, 1905.

Except as provided in section 136 of Act No. 2339, it is a crime for any person to have in his possession or subject to his control any "prohibited drug." (Section 2, Act No. 2381.) The persons who fall within these exceptions are, as above stated, duly licensed and practicing physicians, dentists, and veterinarians; Government Bureaus or officers of the Government duly designated by the Governor-General; and pharmacists and second-class pharmacists upon the prescription of a duly licensed and practicing physician, dentist or veterinarian.

In order to convict the defendant, the prosecution must prove that he had in his possession or subject to his control the prohibited drug and that he is not one of the persons named in section 136 of Act No. 2339. The first fact must be established either by direct or circumstantial evidence. The second may be presumed as a consequence of the first. (U. S. vs. Yao Sim, [31 Phil. Rep., 301].) If the defendant should hereafter be prosecuted under the Act of Congress of December 17, 1914, it would be incumbent upon the Government to prove possession in the same manner, and the fact that the defendant had failed to register and pay the special tax would be presumed in the absence of a satisfactory explanation of the possession. This, however, would not prevent the prosecution from proving the latter by direct testimony. Thus, it is clear that the crimes are separate and distinct. One is illegal possession of opium, the other is the failure to register and pay the special tax. The evidence of the one would not be sufficient to convict of the other.

In *United States vs. Lim Tigdien and Esteves* (30 Phil. Rep., 222), the defendant was acquitted of the charge of smoking opium. Subsequently he was prosecuted for the illegal possession of the same opium referred to in the first complaint, and after his plea of former acquittal had been overruled, he was convicted. This court affirmed the judgment, saying:

"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. Ching 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 20 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 United States vs. Mendoza (R. G. No. 11454, not published), just decided, the defendant stole a bicycle and sold it to Marcelino Ohprecio. After having served the term of imprisonment imposed upon him for the crime of larceny, he was prosecuted for estafa, found guilty, and sentenced accordingly. On appeal it was insisted that the trial court erred in overruling the defendant's plea of double jeopardy. The judgment was affirmed.

The two cases just cited support our holdings in the case at bar.

The foregoing are the foundations upon which the short decision and order for judgment, heretofore filed in this case, rest.

Torres, Johnson, Moreland, and Araullo, JJ., concur.

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