THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. NICOLAS ENCARNACION, DEFENDANT AND APPELLEE.

G. R. No. 18432. March 09, 1922

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The question presented in this appeal is purely one of law. It is as to whether or not article 397 of the Penal Code, under which Nicolas Encarnacion was prosecuted, was repealed by the Administrative Code. This appeal is brought by the prosecuting attorney against the order sustaining the demurrer filed by the accused alleging that article 397 of the Penal Code had been repealed.

The reasons for sustaining the demurrer are stated in said order as follows:

> "The provisions of the said sections 2581 and 2613 are, by virtue of Act No. 2798, applicable to the Mountain Province and consequently to the case at bar; and it is undeniable, in cases of this kind, that after examining the provisions of both laws, that is, article 397 of the Penal Code and section 2581 of the Administrative Code, and considering that the penalty prescribed by article 397 of the Penal Code is similar to, if not of the same nature as, that provided in section 2581 of the Administrative Code, we cannot escape the conclusion that the Legislature, by enacting sections 2581 and 2613 of the Administrative Code, in relation with Act No. 2798, has taken away from the courts the power to try and punish these kinds of violations and has placed it in the hands of the administrative officials by the proceedings provided in section 2613 of the Administrative Code." (Page 2, Brief of Attorney-General.)

Section 2581 of the Administrative Code defines and punishes the act of taking an interest in the contracts awarded by the Government. This section is under chapter 62 of the Administrative Code and refers to the Department of Mindanao and Sulu and not to the Mountain Province where the act complained of was committed. Act No. 2798, cited by the court, did not make section 2581 of the Administrative Code applicable to the Mountain Province, as said Act No. 2798 only made chapters 63 and 64 of the said Code applicable to the Mountain Province, and not chapter 62 in which section 2581 is embodied.

It is true that section 2613 is found in chapter 63 of this Code and by virtue of Act No. 2798 it was made applicable to the Mountain Province; but the provisions of section 2613 of the Administrative Code merely refer to the general procedure in cases of suspension and removal, without specifying therein the causes thereof, which may well be for causes other than those enumerated in section 2581 which is not applicable to the Mountain Province.

Furthermore, the punishment provided for in section 2581 of the Administrative Code, is one of a purely disciplinary nature, as contradistinguished from that prescribed by article 397 of the Penal Code, which is strictly penal in nature. The former is a punishment imposed, not by the judicial authority properly speaking, but by administrative officials (the department governor with the approval of the Secretary of Interior according to

section 2613 of the Administrative Code), and the proceedings are not had in accordance with the strict rules of criminal procedure. The penalty provided by article 397 of the Penal Code is imposed, properly speaking, by the judicial power and the proceeding is had under the strict rules of criminal procedure. The law has reserved to the administrative authorities the right to impose the punishment provided by section 2581 of the Administrative Code and that punishment is not considered, under the provisions of the Penal Code, as a penalty (article 24, No. 3, Penal Code). The two punishments are different in nature, wherefore it cannot be said that it was the intention of the Legislature to repeal article 397 of the Penal Code by the enactment of section 2581 of the Administrative Code.

The order sustaining the demurrer is reversed wand it is hereby decided that the court a quo order the accused to plead to the complaint, in accordance with law, and that the proceedings take their ordinary course in line with the existing provisions of the law of criminal procedure.

No special pronouncement as to costs is made. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, Ostrand, and Johns, JJ., concur.

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