

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALLEN A. GARNER, DEFENDANT AND APPELLANT.

*G.R. No. 3594. October 12, 1907*

Ponente: TRACEY, J.

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### TRACEY, J.:

The accused was prosecuted for the exercise of his profession as an advocate without a license, in violation of the Internal Revenue Law (Act No. 1189). The offense is charged under section 66 of the act, which reads as follows:

"Any person who carries on the business of a distiller, rectifier, wholesale liquor dealer, retail liquor dealer, manufacturer of tobacco, snuff, cigars, or cigarettes, or dealer in manufactured tobacco, without having paid the license tax therefor as required by law, shall, Besides being liable for the payment of the tax, for every such offense be fined in a sum not less than two hundred pesos nor more than two thousand pesos or be imprisoned for a term not more than six months, in the discretion of the court.

"And any person who carries on any other business for which a license tax is imposed by law without having paid the license tax therefor as required by law shall, besides being liable to the payment of the tax, be fined in a sum not more than one thousand pesos or be imprisoned for a term not more than six months or be punished by both fine and imprisonment, at the discretion of the court."

The question presented is whether this section applies to the practice of advocacy. In section 25 of the act, in as many subdivisions, are enumerated thirteen separate sources of revenue, the first of which is called "Certain license tax" and the thirteenth "Tax on business, manufacture, and occupation." Corresponding with these thirteen sources of revenue are thirteen articles or chapters in the act, numbered from four to sixteen, respectively, the fourth headed "Licenses" and the sixteenth "Tax on business, manufacture, and occupation."

In like manner in section 147, providing for the application of the taxes collected, we find the distinction between these classes preserved and each of them treated separately and, so far as the nature of the subject permits, consecutively, as in the other sections cited. This arrangement indicates the design of the draftsman of the act to keep these different classes separate, treating each one in its appropriate article.

Section 66, above quoted, occurs in Article IV under the heading "Licenses," and the point is made that it must be restricted to the classes of licenses treated in that article and enumerated in section 68 and not extended to those treated in Article XVI and classified in section 144 under the head of "Tax on business, manufacture, and occupation." It is the contention of the Attorney-General that it must be extended to Article XVI on account of the use in the second paragraph of the phrase "on any other business for which a license tax is imposed by law," on the ground that such words would otherwise lack an object and be meaningless, inasmuch as all businesses other than those known as "occupations" are covered by the first paragraph of the section.

We think that this argument overlooks the contents of section 68, in which, among the classes of business specified as subject to the tax, but not included in the first paragraph of section 66, we find four, among them the important one of "Brewers." To these classes of business the second paragraph of said section must needs be

applied, thereby finding its proper application, without extending it to subjects treated in other chapters. It is true that some of the general provisions of Article IV relating to the time of payment of taxes and other matters may be understood to regulate such general subjects, when not otherwise provided for in corresponding parts of other chapters, but this necessity, if it exists, does not draw with it the extension of the specific provisions of this article. The annual license tax treated in Article IV must be distinguished from the annual license occupation tax, otherwise called "The specific occupation license tax," treated in Article XVI.

Section 145, contained in Article XVI, provides as follows:

"Every person subject to the payment of a specific occupation license tax who is delinquent in the payment of such tax for the period of ten days or more shall, in-addition to the payment of the tax due, be fined administratively in a sum equal to the amount of his license tax for the period of one quarter; and any such person who refuses or fails to pay such delinquent tax and fine when required to do so, shall for each refusal or failure be fined administratively in a sum equal to the amount of his license tax for the period of one year."

This section provides the method of collection of delinquent occupation taxes. If this scheme of administrative fines proves inadequate to enforce the prompt collection of the occupation tax, the remedy must be sought with the legislature. It is to be noted that the occupations reached by it are limited in number, as the second paragraph of that section provides for a judicial fine and imprisonment in the event of a second offense by merchants, manufacturers, or common carriers. Our conclusion is that while the person who practices advocacy without a license may be fined administratively under section 145, he may not be prosecuted criminally under section 66 of the act.

The judgment of the court below is reversed and the defendant is absolved, with costs de oficio. So ordered.

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

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