

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BIBIANO BORJA, DEFENDANT AND APPELLANT.

G.R. No. 3716. October 04, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

The defendant was convicted in the court below of a violation of the tenth paragraph of section 24 of Act No. 1189, the Internal Revenue Law of 1904, and was sentenced to a fine of 1,000 pesos and to two years of imprisonment at hard labor. From this judgment the defendant has appealed.

Paragraph 10, above referred to, is as follows:

"Every officer, employee, or agent appointed and acting under the authority of this act—

* * * * *

"Tenth. Who demands or accepts, or attempts to collect, directly or indirectly, as payment, gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law, shall be fined in a sum not less than four hundred pesos nor more than ten thousand pesos, or be imprisoned for a term not less than six months nor more than five years, or be punished by both fine and imprisonment, in the discretion of the court. One-half of any fine so imposed shall be for the use of the Insular Government and the other half for the use of the informer, who shall be ascertained and stated in the judgment of the court.

"Provincial treasurers and their deputies and employees shall be deemed to be officers or agents acting under the authority of this act."

It appears from the record that a Chinese named Tan-Chuinco had been arrested for smoking opium without a license in violation of the provisions of Act No. 1461. He was taken by the officer who arrested him to the town of Pitogo and delivered to the municipal president and the latter turned him over to the defendant, the municipal treasurer. The Chinese testified at the trial that the defendant then told him that he must pay a fine of 300 pesos and that if he did not pay it he would have to suffer a year's imprisonment. He could not obtain the money in Pitogo and asked for time to get it from Macalelong, where he lived. The defendant gave him this time, he returned to Macalelong, procured the 300 pesos, and again went to Pitogo, arriving there at about 8 o'clock in the morning. He went to the house of the defendant and there delivered to him the 300 pesos. The Chinese asked the defendant to give him a receipt for it, and also a license to smoke opium, and the defendant told him he would have to come to the office. The Chinese went there at 4 o'clock in the afternoon and the defendant then delivered to him a license. He retired to his home and never made any complaint in regard to the payment of this 300 pesos and no further proceedings were ever taken against him for having smoked opium without a license. His testimony is corroborated by the testimony of two other Chinese who accompanied him and witnessed the delivery of the 300 pesos.

The defendant denies the receipt by him of 300 pesos and says that he simply told the Chinese that he must

procure a license to smoke opium and that on the payment of the fee of 5 pesos he, the defendant, would issue such a license. An examination of all the evidence in the case satisfies us that the conclusion of the court below is correct and that the defendant did, in fact, receive 300 pesos as testified to by the Chinese witnesses.

It is claimed by the appellant in his brief in this court that in order to convict of bribery there must be some solicitation on the part of the person paying the money—some attempt to corrupt the official—and there being in this case no evidence that the Chinese ever asked the defendant to receive the 300 pesos, the latter can not be convicted. Whatever may be said of other legal provisions upon the subject, it is very clear that a violation of said paragraph 10 is committed by an official who accepts money under the circumstances that appear in this case.

We find nothing in the Internal Revenue Law which provides for hard labor in cases of imprisonment imposed under that act. The judgment of the court below is modified by omitting the words "hard labor." In other respects it is affirmed, with the costs of this instance against the appellant. So ordered.

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

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