

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISAIAS GONZALEZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3832. January 31, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with a violation of the provisions of section 4 of Act No. 1461 of the Philippine Commission in a complaint in the words and figures following:

"That on several occasions, and on certain days in the months of April, May, June, and July, 1906, in Paoay, Province of Ilocos Norte, the said accused did, at the house of Chinaman Martin Rubio Co-Pinco, unlawfully and without a proper license or medical prescription, smoke opium—a fact which constitutes the said violation defined and punished by section 4 of Act No. 1461, committed within the jurisdiction of this Court of First Instance, contrary to law."

The defendants were duly arraigned and each pleaded "not guilty" to the offense charged in said complaint. At the close of the trial the court below found that the evidence submitted against the said Isaias Gonzalez and Primitivo Tabije was insufficient to show that they had violated the provisions of said act and therefore dismissed the action as to them and discharged them from the custody of the law.

Upon a consideration of all of the evidence adduced during the trial of the case, the court below found that Agustin Galarpe, Brigido Pobre, and Gregorio Acantilado were guilty of the offense charged in said complaint and sentenced the said Agustin Galarpe and Brigido Pobre to pay a fine of 60 each, and sentenced the said Gregorio Acantilado to pay a fine of 30, and each of the three sentenced defendants to pay one-fifth part of the costs. From this sentence of the lower court each of the three sentenced defendants appealed to the Supreme Court.

An examination of the evidence adduced during the trial of the cause shows beyond peradventure of doubt that the said Agustin Galarpe and Brigido Pobre on several different and distinct days were found in the house of a Chinaman whose name was Martin Rubio Co-Pinco, during the months of May, June, and July, 1906, smoking opium, using a pipe for that purpose furnished them by the said Co-Pinco. The evidence also shows, beyond a doubt, that the said Gregorio Acantilado visited the house of the said Co-Pinco during the month of July, 1906, and there smoked opium, using a pipe for that purpose furnished him by the said Co-Pinco.

Said section 4 of Act No. 1461 of the Philippine Commission provides as follows:

"(a) Except when prescribed as a medicine by a duly licensed and practicing physician, it shall be unlawful for any person to smoke, chew, swallow, inject, or otherwise consume or use opium in any of its forms unless such person has been duly registered as provided in section two hereof and has secured the certificate therein prescribed. Except when prescribed as a medicine by a duly licensed and practicing physician, no registered confirmed user of opium shall smoke, chew, swallow, inject, or otherwise use or consume opium except in his own residence.

"(b) Any person violating the provisions of this section shall be punished by a fine not exceeding two hundred pesos, or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment, in the discretion of the court."

The only question raised by the attorney for the defendants in this court is the question of the sufficiency of the proof adduced on the trial of the cause in the court below. The attorney for the defendants argued that the lower court should have condemned all of the defendants, under the evidence adduced, or should have acquitted all of them, arguing that the evidence was practically the same with reference to all of the said defendants charged in the complaint. As a matter of fact the record does disclose that practically the same evidence relating to the defendants who were condemned by the lower court also related in the same manner to the defendants who were acquitted. However, the acquittal of the court below was final as to the other two defendants.

It was suggested during the consideration of the cause in this court that the prosecuting attorney in the court below did not prove that the defendants had not been given a license to smoke opium. Except in certain cases under section 297 of the Code of Procedure in Civil Actions, evidence need not be given during the trial of a cause to prove a negative allegation. The complaint charged that the defendants smoked opium without a license. A license is a special privilege, specially granted, and if the party holding the same relies upon it as a defense, the burden is upon him to show that such special privilege or license was given. One of the purposes of said Act No. 1461 was to prevent the smoking of opium, as well as the use of the same in other forms, except by persons who were specially granted permission to use the same. The rules of evidence established in Chapter X of the Code of Procedure in Civil Actions are made applicable to all trials, unless otherwise expressly provided for by statute. (Sec. 274, Code of Procedure in Civil Actions.)

Upon a full consideration of the record brought to this court, we are of the opinion, and so hold, that the sentence of the lower court should be affirmed with reference to each of the appellants. So ordered.

Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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