

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO CASTRO DI TIAN LAY, DEFENDANT AND APPELLANT.

G.R. No. 4436. March 20, 1908

Ponente: TORRES, J.

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TORRES, J.:

Between 10 and 11 a. m. on the 5th of July, 1907, Vicente San Martin and Bamon Valdes, inspectors of weights and measures, visited some stores in Calle Sande, district of Tondo [Manila], and on arriving at the store of Francisco Castro Di Tian Lay, from the front of the counter they called for the measures used therein in order to examine them. The owner of the store delivered the measures, with the exception of a ganta that was on top of a basket of rice kept in the store. The inspectors at once told the storekeeper to present the said ganta, but the accused instead of doing so, took it to the interior of the store, and as the inspectors saw from outside that the accused was trying to extract something from the ganta, San Martin ordered his companion to go in and see what it was. The latter then saw that, by means of a knife, the Chinaman was taking from the bottom of the ganta a piece of wood fitted and placed therein for the purpose of reducing the capacity of the measure by 9 millimeters; the reduction could even be made greater by raising the said small piece of board from the bottom of the measure. Said measure was a lawful one and bore the official seal of the department of weights and measures, and was the one used by the accused for the sale of rice in his store.

For the above reasons a complaint was filed by one of the inspectors charging Francisco Castro Di Tian Lay with the violation of Act No. 1519 of the Philippine Commission, and the corresponding proceedings were instituted. On the 6th of August, 1907, the court entered judgment and sentenced the accused to the penalty of three months of arresto mayor, and to pay the costs. From said judgment the accused has appealed.

The above facts, which have been fully proven in the present case, constitute a violation of the law cited above, section 30 of which is of the following tenor:

"SEC. 30. Any person who, with fraudulent intent, alters any scale or balance, weight or measure after it is officially sealed, or who knowingly uses any false scale or balance, weight or measure, whether sealed or not, or who fraudulently represents the weight or measure of anything to be greater or less than it is, shall be punished by a fine of not less than two hundred pesos nor more than four thousand pesos or by imprisonment for not less than three months nor more than two 3years, or by both such fine and imprisonment, in the discretion of the court."

The measure in question is one of capacity, registered and sealed by the proper department, and in which the accused placed a piece of board of about 9 millimeters in thickness in order to defraud the public by diminishing or reducing the interior or capacity of the said ganta. By such action it is unquestionable that section 30, quoted above, has been violated, it being illegal to alter the capacity of the aforesaid ganta after the same had been registered and sealed by the official department established therefor by the Government, for the benefit of the general interest of the public.

The subject-matter of this proceeding was defined and punished by article 577, Book III of the Penal Code, paragraph 3 of which reads as follows:

"Traders or vendors who shall keep measures or weights artfully contrived to defraud or who in any manner whatsoever shall violate the rules established for the making of standard weights and measures in the gild to which they belong."

However, the above article can not be applied in this case for the reason that it has been repealed by the said Act No. 1519.

Notwithstanding the denial of the accused and his exculpatory allegations supported by the testimony of two witnesses, the evidence offered by the prosecution fully substantiates his guilt as the principal liable for the violation of the aforesaid law, inasmuch as the evidence of the defense has not destroyed nor weakened that of the prosecution, and the witnesses for the accused were unable to show that the said inspectors had prepared the piece of wood found fitted in the bottom of the ganta; nor is it credible that, in so short a space of time, they could have placed it therein to show that it had a double bottom. It is therefore unquestionable that the piece of wood found within the ganta was placed therein for the purpose of defrauding purchasers, as the accused confessed to the chief of the department that he thought of the device because business was bad, according to the testimony of witness San Martin.

For the foregoing reasons the judgment appealed from should be affirmed, provided, however, that the penalty imposed on the accused shall be simply three months of imprisonment, in accordance with section 30 of Act No. 1519 cited above, with the costs against him. So ordered.

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

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