

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAN TAYCO AND CO SENCHO, DEFENDANTS AND APPELLANTS.

G.R. No. 4722. November 21, 1908

Ponente: CARSON, J.

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CARSON, J.:

The appellants in this case were convicted of a violation of the provisions of section 9 of the Opium Law (Act No. 1761), and both and each of them were sentenced to the payment of a fine of P500, with subsidiary imprisonment as prescribed by law, in case of insolvency and failure to pay the fine.

The information charges that the defendants, in violation of the provisions of section 9 of the Opium Law, on the 30th day of November, 1907, willfully failed to deliver to the provincial treasurer or any other Government official two cans of opium, which it is alleged they had in their possession on that date.

It is not charged in the complaint, nor does the trial court find as a fact that the opium, which it is alleged was found in the possession of the appellants on or about the 30th of November, 1907, had been in their possession at the time when the Opium Law went into effect (October 17, 1907), or within ten days thereafter; and an examination of the record discloses that there was no evidence whatever introduced at the trial which tends to sustain a finding that such was the case. We are unanimously of opinion that the provisions of section 9 are not applicable in cases where one has come into possession of opium after the expiration of ten days after the date when the Act went into effect, the object of said section being to provide a means whereby persons could dispose of opium lawfully in their possession prior to that date, and to furnish a means whereby such opium might be deposited in the hands of the proper Government official pending the lawful disposition thereof.

Section 9 of the Act is as follows:

"(a) Within ten days after this Act shall go into effect every person having opium in his possession, except a duly licensed and practicing physician, licensed pharmacist or second-class pharmacist, Bureaus or officers of the Government authorized by law or by the Governor-General to have possession of the same, shall deliver to the treasurer of the province in which the opium is located, or if located in the city of Manila then to the Collector of Internal Revenue, all opium in his possession or under his control, and the official to whom the opium is so delivered shall issue receipt for same, store the opium in a safe place, and report to the Collector of Internal Revenue immediately the name of the person making delivery, the quantity and kind delivered, and such further information as may by regulation of the Collector of Internal Revenue be required. Opium so delivered shall not be released except on permit of the Collector of Internal Revenue.

"(b) Reasonable charges to cover actual expense of storage and care of opium may be imposed by the Collector of Internal Revenue.

"(c) Any person failing to deliver the opium in his possession or under his control as prescribed in this section shall be punished by a fine not exceeding five thousand pesos, or by imprisonment for a period not exceeding five years, or by both such line and imprisonment, in the discretion of the court; and all opium not so delivered by such person shall be seized, forfeited, and sold as prescribed by this Act,"

By its terms, its provisions are clearly applicable only to cases wherein one in possession of opium fails to deliver such opium to certain designated Government officials within ten days after the law went into effect. Manifestly no person could comply with its requirements unless at such time he was actually in possession of opium, and one who came into possession of opium lawfully or unlawfully after the expiration of ten days from the date when the law went into effect could in no event comply with its mandatory provisions. Clearly the lawmaker did not have such cases in contemplation when this section was adopted, and the penalties and forfeitures prescribed in cases of violation of the mandatory provisions thereof are not applicable unless it appears that one accused of a violation of this¹ provision was in possession of opium before the expiration, of the tenth day after the law went into effect.

A comparative examination of sections 7 and 9 of the Act confirms us in this conclusion. Section 7 of the Act makes it unlawful for any person to have opium in his possession except in the cases therein expressly excepted, and provides penalties and forfeitures for a violation of its provisions. We do not think that it was the intention of the lawmaker, under the provisions of section 9, to direct that all persons who are guilty of a violation of section 7 should themselves furnish the Government officials with proof of their own guilt, under penalty of an additional punishment for their failure so to do. With the provisions of section 7 in mind, it seems clear that section 9 was intended to apply only to persons who, at the time when the law penalizing the possession of opium went into effect, had opium lawfully in their possession, and who might well have complained that the provisions of section 7 would have the effect of an unjustifiable confiscation of their property, unless the law provided some means whereby they could retain their right of ownership in and to opium lawfully in their possession, notwithstanding the provisions of the new law which prohibited and penalized the possession of opium after it went into effect.

For the purposes of this decision it is not necessary to decide whether the provisions of section 9 are applicable only to cases where one was lawfully in possession of opium at the time when the law went into effect, or whether its provisions were intended to include also persons who came into possession of opium after the law went into effect, but prior to the expiration of ten days thereafter, and on this point we expressly reserve our opinion.

The judgment of conviction and the sentence of the trial court should be and are hereby reversed with the costs of both instances de oficio. So ordered.

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

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