

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCIANO LOPEZ, DEFENDANT AND APPELLANT.*G.R. No. 5150. September 16, 1909*

Ponente: TORRES, J.

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On the 22d of July, 1907, Marciano Lopez was appointed acting municipal president of the town of Silay, and after being duly sworn, assumed the office on the same date. On the 24th of said month he received a telegram from the provincial governor asking him if it were true that he was delinquent in the payment of the land tax as alleged in certain charges brought against him. The said charges turned out to be true, as appears from the certificate marked "Exhibit B," wherein it is shown that the said Marciano Lopez owed P101.85 for the tax corresponding to the year 1905, on two parcels of land and a building lot, and in view thereof the provincial board canceled the appointment of the said Lopez by resolution dated December 24, 1907.

In view of the above a complaint was filed by the provincial fiscal with the Court of First Instance of Occidental Negros, charging Marciano Lopez Ayalin with the violation of paragraph 7 of section 29 of Act No. 1582, in that, while still delinquent in the payment of the land tax, and therefore disqualified as an elector and ineligible for any municipal office, he took the oath to discharge the duties of acting municipal president of Silay, assumed the position and performed the duties thereof until the 25th day of July, 1907. The corresponding proceedings were instituted, and the trial court rendered judgment on the 25th of February, 1908, sentencing the defendant to pay a fine of P500 and costs, and in case of insolvency to suffer subsidiary imprisonment at the rate of one day for every P2 of the fine and costs remaining unpaid. From said judgment the defendant has appealed.

Paragraph 7 of section 29 of the Election Law reads:

"Any person who knowing that he is disqualified assumes any office shall be punished by a fine of not less than five hundred pesos nor more than one thousand pesos."

It is an undoubted fact that the accused, according to an official letter signed by a deputy of the provincial treasurer of Occidental Negros (folio 14), was required to pay the land tax due for the year 1905 on the 19th of July, 1907, and for that purpose delivered on the same day, a Friday, to Pedro Puentebella, who was in charge of his estate, the sum of P110.52, which was the amount of the tax owed by him, to be paid by the latter to the municipal treasurer; on the following day, Saturday, the 20th of July, as the accused was going by the house of his manager, on his "hacienda, he asked him if the said tax had been paid to the aforesaid treasurer, to which Puentebella replied in the affirmative, whereupon Lopez went on his way in the direction of Silay. This appears from the testimony of the defendant, confirmed by his manager Puentebella, although it is also a fact that the aforesaid amount was not paid into the municipal treasury, nor did the treasurer receive it on the said date for the reason that Puentebella failed to find the said official when he called at his office and the money was delivered to Simplicio Adeva, a clerk in said treasury, and believing that the latter had turned it over to the said treasurer, Puentebella, when questioned on the following day, the 20th of July, by the accused, Marciano Lopez, replied that

the tax had been paid as ordered by him.

From the foregoing facts which have been duly proven it would appear that when the accused took the oath on the morning of Monday, the 22d of July, and took possession of the office of acting municipal president of Silay, he did so believing that he was not a delinquent taxpayer, and that he had paid his indebtedness three days before, basing his belief on the affirmative answer given him by his manager when he asked the latter on the following day if the sum handed him on the day before had been paid into the municipal treasury.

In order to establish the fact that the defendant, Marciano Lopez, knowing that he was a delinquent taxpayer and as such ineligible to hold the office of municipal president, nevertheless took the oath, stating that he possessed the necessary qualifications therefor, and actually entered upon his duties as municipal president of Silay, it is indispensable to prove that the accused performed said official acts in bad faith and with certain knowledge that, on the 22d day of July, he was still delinquent in the payment of the tax, which, according to his manager, had been paid on the 19th of the said month. The honest belief and firm conviction that his indebtedness to the Government had been paid on the 19th or 20th of July, are incompatible with the charge preferred against him of having taken possession of the presidency with malicious intent to violate the Election Law.

In view of the fact that satisfactory evidence of the culpability imputed to the accused herein is lacking, it is our opinion that the judgment appealed from should be reversed, and that Marciano Lopez should be absolved, as we do hereby absolve him with the costs of both instances de oficio. So ordered.

Arellano, C. J., Johnson, Carson, and Moreland, JJ., concur.

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