

## THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. THE CHINAMAN TONGA, DEFENDANT AND APPELLEE.

*G.R. No. 5403. January 15, 1910*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

On the 23d day of November, 1907, the fiscal of said province presented a complaint against the defendant charging him with a violation of section 5 of Act No. 1461 of the Philippine Commission, as follows:

"That the said Chinaman, Tonga, on or about the 9th day of July, 1907, and at Echague, Province of Isabela, P. I., sold a small amount of opium valued at T0.60 to the Filipino Vicente Aron, who was not a physician, a pharmacist, a duly licensed seller, nor an inveterate user of opium duly registered."

To this complaint the defendant presented the following demurrer:

"1. That the complaint alleges that the defendant, on the 9th day of July 1907, in the town of Echague, Province of Isabela, P. I., violated the provisions of section 5 of Act No. 1461.

"2. That said Act No. 1461 was abolished by Act No. 1761, passed by the honorable Philippine Commission on October 10, 1907, which became effective on the 17th day of October, 1907, and during the pendency of this case.

"3.. That said Act No. 1461 having been abolished while this action was pending and the repealing Act having no provision regarding pending cases, there is no law now in force by which the alleged offense is punished. For this reason this court has no jurisdiction over the subject-matter.

"In view of the foregoing the defendant asks the court to dismiss the case and to set him at liberty, with costs de oficio."

Upon a consideration of the demurrer the lower court rendered the following decision:

"In this cause the accused is charged with the violation of Act No. 1461, the complaint alleging that on or about the 9th of July, 1907, in Echague, Province of Isabela, the accused did sell an amount of opium of the value of sixty cents to one Filipino, Vicente Aron, who was neither a physician, pharmacist, nor licensed seller or registered user of opium.

"To this complaint the accused filed a demurrer at the session held on the 25th of November, 1907, alleging that the court is without jurisdiction of this action for the reasons that said Act No. 1461 was repealed by Act No. 1761, approved by the honorable Commission of the Philippines on the 10th day of October, 1907, and which Act No. 1761 went into effect on the 17th day of October, 1907; that said Act No. 1761 makes no provision for the continuation of causes pending under the former Act No. 1461, and that there is no law now in force by which the accused can be punished for any offense committed under Act No. 1461.

"This demurrer came on for hearing before this court on the 26th day of November, 1907, the accused being represented by Mr. S. A. Harvey and the prosecution by Mr. Vicente Nepomuceno, district fiscal.

"After hearing the arguments of the attorneys and examining the record, the court finds that at the time it is alleged that this accused committed the offense charged, Act No. 1461, known as the 'Opium Law,' was in force and continued so until the 17th of October, 1907, when it was succeeded by a new Act, No. 1761, and which, in section 33, repeals Act No. 1461, making no provision whatever for the continuation of cases pending then for violation of Act No. 1461, or providing, in any manner, what disposition should be made of them.

"This being true, the court is of the opinion that this case must be dismissed because there is no law now in force under which this accused, if tried and convicted, can be punished for the offense committed in July, 1907. (U. S. vs. Tynen, 11 Wall., 88; Mongeon vs. People, 55 N. Y., 613; State vs. Wilder, 47 Ga., 522.)

"The court, therefore, sustains this demurrer and dismisses the case, the costs to be taxed de officio"

From this judgment of the lower court, the prosecuting attorney appealed and in this court presented a brief asking that the judgment of the lower court be reversed and that the cause be remanded for further proceedings in accordance with law. The defendant and appellee presented no brief here.

The questions presented by this appeal are identically analogous with the questions presented in the case United States vs. El Chino Cuna (alias Sy Conco) heretofore decided by this court (12 Phil. Rep., 241).

After a full consideration of the questions then presented this court decided that -

"Where an Act of the Commission or of the Philippine Legislature which penalizes an offense repeals a former Act which penalized the same offense, such repeal does not have the effect of thereafter depriving the courts of jurisdiction to try, convict, and sentence offenders charged with violations of the old law prior to its repeal."

The doctrine established in this decision has been followed by this court in the following cases: U. S. vs. Juliana Aron (12 Phil. Rep., 778) ; U. S. vs. Filomena Bernarda (12 Phil. Rep., 778) ; U. S. vs. Raymunda Kulang (No. 5404) ;[1] U. S. vs. Vicente Aron (No. 5405);[1] U. S. vs. Catalino Gaffud (No. 5406); [1] U. S. vs. Modesto Dumon (No. 5407)[1] U. S. vs. Sebastian Dayag (No. 5409). [1]

We see no reason for changing the doctrine established. The judgment of the trial court sustaining the demurrer to the complaint interposed by the accused is reversed and the record will be returned to the lower court for further proceedings in accordance with law So ordered.

Arellano, C. J., Torres, Mapa, Carson, Moreland, and Elliott, JJ., concur.

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[1] Not reported.

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