

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LIM CHINGCO, DEFENDANT AND APPELLANT.

G.R. No. 5482. January 15, 1910

Ponente: CARSON, J.

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CARSON, J.:

Two Chinamen, Lim Chingco and Go Chingco, were charged with a violation of the Opium Law in the Court of First Instance, upon a complaint couched in the following language:

"That the said accused, on or about the 27th day of March, 1909, in the jurisdiction of the municipality of Tiwi, Province of Albay, P. I., knowingly and unlawfully, kept, possessed, and held in their possession and under their control, eleven (11) pills of opium and about two (2) grams of prepared opium, the said accused not being officers of the Government, nor having a legal permission from the Collector of Internal Revenue, nor being licensed physicians, all contrary to law,"

Go Chingco on his plea of guilty was convicted and sentenced to pay a fine of P125. Lim Chingco entered a plea of not guilty, but was nevertheless convicted and sentenced to pay a fine of P200. Go Chingco did not appeal, and the action is before us now upon the single appeal of Lim Chingco.

On the 28th of March, 1909, W. M. Paterson, an agent of the Internal Revenue Department, found a small quantity of opium and an opium-pipe cleaning instrument in the store of the defendant, Lim Chingco. Paterson filed a complaint against Lim Chingco in the court of the justice of the peace of Albay, wherein a preliminary investigation was held. Lim Chingco upon being asked whether he was guilty or not guilty replied that he was guilty in that the said opium and opium-pipe cleaner were found in his store, but that they did not belong to him and were the property of his employee, Go Chingco. Thereupon Go Chingco's name was inserted, together with Lim Chingco's, in the complaint, and he, upon being examined by the justice of the peace, admitted that the opium and pipe cleaner were his property.

At the trial in the Court of First Instance, W. M. Paterson, the internal-revenue agent who found the opium and pipe cleaner in the store of Lim Chingco, and Juan de Mata, the auxiliary justice of the peace, were the only witnesses who testified for the prosecution.

The first of these witnesses, W. M. Paterson, testified, in part, as follows:

"Q. Was it you who filed a complaint with the court of the justice of the peace against Lim Chingco? - A. Yes.

"Q. And did you accuse him alone first? - A. Yes, sir.

"Q. And why did you accuse Go Chingco later on? - A. Because, when he was asked whether or not he was guilty at the court of the justice of the peace, he replied 'guilty,' saying that the apparatus for opium and the other utensils belonged to his clerk, and that he knew that his clerk used these things.

"Q. And was it Go Chingco who said that he was the owner of those articles? - A. Yes. Then I requested the court to include Go Chingco in that case."

The second witness, Juan de Mata, testified as follows:

"On account of the motion presented by the complaining witness, the accused, after pleading guilty, made the additional statement that he is guilty because the corpus delicti was found in his store but that it did not belong to him, and he says that he is guilty because it was found in his store, but that it was not his property; and that when the complaining witness learned these words of the Chinaman, he told me that the Chinaman was guilty as charged because the said property was found in his store, but that it did not belong to him; and then I asked the complaining witness who was the owner, and he then made the motion asking for the inclusion of the Chinaman Go Chingco in the complaint, and thereupon the motion was properly granted and I afterwards ordered the president to arrest the other Chinaman, and, when arrested, the latter was taken into the court and was instructed concerning the rights the law grants to him, and I read to him the complaint in Spanish and translated it for him into Bicol, asking him if he understood it, to which he answered affirmatively; and then I asked him whether or not he was guilty and he answered that he was guilty because the property belongs to him."

The appellant testifying in his own behalf admitted that the witness Paterson had found the opium and pipe cleaner in his store, but alleged that they were not his property but the property of his employee, Go Chingco, and in explanation of his alleged plea of "guilty" in the court of the justice of the peace said that he did not declare himself to be guilty of the crime as charged, but that he admitted that he was guilty of having the opium and pipe cleaner in his store, but explained that they were not his property but the property of his employee, Go Chingco; and that he knew that they were the property of Go Chingco, not because he had any knowledge of the fact that Go Chingco had them in his possession before they were seized but because when Paterson discovered them and asked who was the owner, Go Chingco replied that they were his. Go Chingco, testifying as a witness, corroborated all that was said by the appellant, and again admitted that the opium and pipe cleaner were his exclusive property.

We do not think that the testimony sustains the judgment of conviction of the appellant by the trial court. The evidence of record does not sustain a finding beyond a reasonable doubt that the appellant, Lim Chingco, was in possession of the opium and pipe cleaner at the time when these articles were used. It is true that their discovery in his store tends to raise a presumption, *prima facie*, that these goods were in his possession and under his control, but the uncontradicted evidence of record conclusively establishes that the seized articles were in fact the property of Go Chingco, and that they were at the time of their seizure in his exclusive possession, and that the appellant, Lim Chingco, had no knowledge of the fact that his employee, Go Chingco, had these articles in his possession or control.

The following citation from the decision in the case of *The United States vs. Tan Tayco and Co Sencho* (12 Phil. Rep., 739), wherein the facts were somewhat analogous to those set out in the record in this case, is directly in point, and decisive as to the innocence of the accused of the offense with which he is charged (p. 743):

"Possession has been defined to be the detention or enjoyment of a thing which a man holds or exercises by himself or by another who keeps or exercises it in his name. (Bouvier's Law Dictionary, Rawles's Revision, Vol. II.) Clearly it involves a state of mind on the part of the possessor whereby he intends to exercise and, as a consequence of which, he does exercise a right of possession, whether that right be legal or otherwise; and while the intention and the will to possess may be, and usually are, inferred from the fact that the thing in question is under the apparent power and control of the alleged possessor, nevertheless, the existence of the *animus possidendi* is subject to contradiction, and may be rebutted by evidence which tends to prove that the person under whose power and control the thing in question appears to be, does not in fact exercise such power of control and does not intend so to do. In order to complete a possession, two things are required - that there be an occupancy, apprehension, or taking; that the taking be with an intent to possess (*animus possidendi*). Hence, persons who have no legal wills, as children of insufficient understanding and idiots, can not possess or

acquire a complete possession (Pothier, Etienne, see 1 Mer., 358; Abb. Sh., 9); so where stolen property is placed in the house or upon the premises of A, without his knowledge or consent, A is not properly speaking in possession of such property, so long as he does not assert a right to its control, and is not moved by the animus possidendi with reference thereto.

"The statements of the witness Avila, if they can be believed, furnish a full, satisfactory, and sufficient explanation of the presence of the utensils for smoking opium in his house at the time of their seizure, which is entirely consistent with the allegations of the defendant that those utensils were not at that time in their possession; and, therefore, entirely consistent with the innocence of the defendants charged with a violation of the provisions of the above-cited section of the Opium Act."

The judgment of conviction of the appellant, Lim Chingco, and the sentence imposed upon him by the trial court should be, and are hereby, reversed, with his share of the costs in both instances de officio, and the appellant is acquitted of the offense with which he is charged. So ordered.

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

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