

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JAMES O. PHELPS (ALIAS PHILLIPS), DEFENDANT AND APPELLANT.*G.R. No. 5728. August 11, 1910*

Ponente: TRENT, J.

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The defendant, James O. Phelps, was charged in the Court of First Instance of Jolo, Moro Province, with having violated the provisions of Act No. 1761. He was tried, found guilty as charged, and sentenced to one month's imprisonment and to pay a fine of P250, Philippine currency, and in case of insolvency to suffer the corresponding subsidiary imprisonment at the rate of P2.50 a day, and to pay the costs. He appealed.

The prosecution presented but one witness in this case, Homer G. Smith, an employee of the Bureau of Internal Revenue. This witness testified that the first time he ever saw the accused was in the International Saloon in Jolo in the month of April, 1909; that at that time, while two or three men were sitting together in the said saloon, he heard the accused say that he on some occasions liked to smoke opium; that a few hours after leaving the saloon he asked the accused if he smoked opium, and the accused answered "yes," that he smoked sometimes; that he knew then that it was his duty to watch the accused; that he then asked the accused what opportunities he had for smoking opium, and the accused replied, "good opportunities;" that he then said to the accused, "I wish to smoke opium." On the invitation of the accused he looked him up that night and was told that he (the accused) was not able to prepare a room for smoking, as the Chinamen were afraid, and asked the witness to see him the following night; that he saw him the following night, and accused again said that he could not find a suitable place; that they made another agreement to meet and at that time they went together to a certain house in the barrio of Tulay, where a certain Chinaman (this Chinaman was charged in criminal case No. 292 in said court) had prepared the opium and pipe for smoking; that the accused gave the Chinaman P2, and he (the witness) gave him P1 in payment for the preparation of the pipe and opium; that the accused smoked in the house of this Chinaman two pills of opium, and that one was prepared for him (the witness) to smoke, and on receiving the pipe which was prepared for smoking he took the pipe and the pan containing the opium and went directly to the justice of the peace and swore out a warrant for the arrest of the accused and the said Chinaman.

The defendant, J. O. Phelps, a man 30 years of age, testified that Smith, who was then going under the name of Lockwood, came to his house one night in Jolo and said that he was accustomed to smoking opium and asked him (the accused) if he knew of any Chinaman in the town who could assist him in obtaining opium to smoke; that he answered Smith that he did not; that Smith then asked him if the Chinaman (the one charged in criminal case No. 292), who was the accused's servant, could look for someone to furnish him (Smith) with a pipe until he became acquainted in town; that on the following night the witness Smith came again to his house, and after being there about twenty minutes became very nervous, saying that it was necessary for him to have some opium; that he told him (Smith) to go to the hospital, and received the reply that he (Smith) was working for the quartermaster and was looking for a position as clerk, and that they probably would not give him this position if they learned that he was an opium smoker; that he again asked to have the Chinaman assist him, and he (the accused) believing that he

(Smith) was acting in good faith and was really sick, told the Chinaman to do so; that by agreement he and the witness Smith went to the house of the Chinaman in Tulay, where the Chinaman prepared the pipe and gave it to Smith, he (Smith) giving the Chinaman P2, and that he (Smith) then left, without the accused noticing whether he smoked or not, and that he (the accused) was arrested about forty minutes later, and that he called for the doctor to examine him about one and one-half hours after he left the Chinaman's house.

The Chinaman corroborated the testimony of the accused on every material point, stating that he, after repeated demands made by Smith, did prepare some opium in a pipe and give it to Smith.

The chief of police of Jolo, a sergeant in the United States Cavalry, who arrested the accused and the Chinaman, testified that when he made these arrests the Chinaman and the accused did not have an opportunity to talk together before they went to the justice of the peace where the preliminary investigation was held.

Doctor De Krafft, of the United States Army, was called by the accused himself and made an examination of the accused about an hour and a half or two hours after he left the Chinaman's house. The doctor testified that the accused was a strong, robust man, and a man presenting no appearance of an opium smoker. On being asked by the court whether or not he could state positively if the accused had used any opium on that day, the witness answered, "I am sure that he did not use any opium on that day."

The court below in its decision said:

"I agree with him (the doctor) that the accused does not appear to be a person who uses daily a large amount of opium. The accused is a strong, robust man, in good physical condition, and from a casual examination of his person no one would accuse him of being a habitual user of opium."

The prosecution does not contend that the appellant sold or had in his possession any opium, neither does it contend that he had in his possession any of the prohibited paraphernalia used in smoking this drug. He is only charged with having smoked opium this one time in the house of the Chinaman, and the prosecution rests its case solely upon the testimony of the witness Smith, who was an employee of the Bureau of Internal Revenue, secretly acting in that capacity in Jolo.

On arriving in Jolo, Smith obtained employment in order to hide his true mission. He assumed the name of Lockwood for the same purpose, engaged in gambling, and admits having visited the house of the appellant three times for the purpose of making arrangements for himself and the accused to smoke opium. He stated to the accused that he (Smith) was desirous of smoking. He urged the accused to have the Chinaman make arrangements so they both could smoke. He went to the house of the Chinaman with the accused and paid the said Chinaman, according to his own statement, P1 for the preparation of the opium. If he had, by these means, induced the appellant to sell opium or to exhibit in his possession either opium or any of the prohibited paraphernalia, his testimony would be more reasonable, since the mere possession of the drug or any of the prohibited paraphernalia is a violation of the law within itself.

But, as we have said, it is not contended that the accused had in his possession any of these things. According to the statements made by the witness Smith, he not only suggested the commission of this crime, but he (Smith) also stated that he desired to commit the same offense and would pay his part of the expense necessary for the commission of the prohibited act. Such conduct on the part of a man who is employed by the Government for the purpose of taking such steps as are necessary to prevent the commission of the offense and which would tend to the elevation and improvement of the defendant, as a would be criminal, rather than further his debasement, should be rebuked rather than encouraged by the courts; and when such acts as those committed by the witness Smith are placed beside the positive testimony of the defendant, corroborated by the Chinaman and the doctor, the testimony of such witness sinks into insignificance and certainly does not deserve credit. When an employee of

the Government, as in this case, and according to his own testimony, encourages or induces persons to commit a crime in order to prosecute them, such conduct is most reprehensible. We desire to be understood that we base our conclusions as to the conduct of the witness Smith and the incredibility of his testimony on his own acts according to his own testimony.

We are, therefore, of the opinion and so hold, that the appellant is not guilty of this crime. The judgment of the lower court is reversed and the appellant acquitted, with costs de oficio.

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

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