

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NICANOR CASTAÑEDA AND CRISPULO EDRALIN, DEFENDANTS AND APPELLANTS.

*G.R. No. 5809. December 22, 1910*

Ponente: CARSON, J.

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### CARSON, J.:

While this case was pending on appeal, the defendant, Nicanor Castaneda, withdrew his appeal, and thereupon the judgment of conviction and the sentence imposed upon him by the trial court became final.

The evidence of record sustains the finding by the trial court of the guilt of the appellant Crispulo Edralin, and we find no prejudicial error in the proceedings.

We think, however, that the facts disclosed by the evidence of record in this case justified and required a rather severer penalty than that imposed by the court below. The defendants were employed in the customs service, and attempted to sell five cans of opium to a Chinese storekeeper in the city of Manila. Such a violation of the provisions of the Opium Law is, to our minds, a much more reprehensible act than the mere smoking of opium by a victim of the vice. This court has always readily affirmed the imposition of the minimum penalty, as now prescribed by law, upon first offenders charged only with smoking opium, or having in their possession such small quantities of the drug as to justify the inference that it was intended merely for the personal use of the offender. But we think that within the discretionary limits authorized by law a much higher and severer penalty may, and properly should, be imposed on those who attempt to "exploit the vice," and who violate the provisions of the law for the purpose of gain.

The sentence of the lower court should be modified by imposing on the appellant, Crispulo Edralin, a fine of P500 in addition to the penalty of imprisonment imposed by the trial court, with the corresponding subsidiary imprisonment in the event of insolvency and failure to pay the fine, and, thus modified, the judgment of conviction and sentence appealed from should be affirmed with one-half the costs of this appeal against the appellant.

Arellano, C. J., 'Torres, Mapa, Johnson, and Trent, JJ., concur.

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### CONCURRING OPINION

Moreland, J.:

I concur in the result. I do not at this moment desire to go so far as the prevailing opinion goes in relation to the relative evil which results from selling and smoking opium. In that connection the court says:

"This court has always readily affirmed the imposition of the minimum penalty, as now prescribed by law, upon first offenders charged only with smoking opium, or having in their possession such small quantities of

the drug as to justify the inference that it was intended merely for the personal use of the offender. But we think that within the discretionary limits authorized by law a much higher and severer penalty may, and properly should, be imposed on those (the sellers) who attempt to 'exploit the vice,' and who violate the provisions of the law for the purpose of gain."

The penalty imposed by Act No. 1761, section 15, upon persons who sell opium is contained in the following paragraph :

"Any person violating the provisions of this section shall be punished by a fine of not less than five hundred pesos nor more than two thousand pesos, or by imprisonment for a period of not more than one year, or by both such fine and imprisonment, in the discretion of the court." Section 32 of the same Act punishes the smoking of opium as follows:

"On and after March first, nineteen hundred and eight, it shall be unlawful for any person in the Philippine Islands to inhale, smoke, chew, swallow, inject, or otherwise use or permit to be used in or on his body any opium, except for medicinal purposes, and then only upon prescription of a duly licensed and practicing physician.

"Any person violating any of the provisions of this section shall be punished by a fine not exceeding ten thousand pesos, or by imprisonment for not exceeding five years, or by both such fine and imprisonment, in the discretion of the court: Provided, however, That in the case of the commission of a second offense under the provisions of this section, any person so convicted, if other than a citizen of the United States or a citizen of the Philippine Islands, may, by order of the court, be deported."

On the 19th of May, 1909, Act No. 1761, above referred to, was amended by the Philippine Legislature by Act No.

1910: In that amendatory Act, section 15 of Act No. 1761, which punishes a seller of opium, was left untouched, while section 32 of Act No. 1761, relating to smokers of opium, was amended by fixing a minimum penalty to be imposed upon those who smoke opium of not less than P300, leaving the remainder of the penalty the same as in Act No. 1761 above quoted.

We thus see from these two Acts that a seller of opium is much less severely punished than a smoker of opium. Although the minimum penalty imposed upon a seller of opium is slightly heavier than the minimum penalty imposed upon a smoker of opium, nevertheless, while a seller of opium may not be fined more than P2,000 or imprisoned for more than one year, or both such fine and imprisonment, a smoker of opium may be punished by imprisonment for five years or fined P10,000, or may suffer both such penalties. Moreover, no matter how many times one may commit the crime of selling opium, he can not be deported, while a smoker of opium may be deported on the commission of a second offense.

It thus appears clearly that the crime of smoking opium may be punished far more severely than the crime of selling opium. The Legislature must, therefore, have been of the opinion that the crime of smoking opium is a far greater evil than that of selling opium. Whether or not the Legislature was right ought not, in my judgment, to be the subject of discussion here under the facts presented. The question whether or not a seller of opium is a person who produces more evil in a community than one who smokes opium is an academic question, the discussion of which leads to no results in this case, especially in view of the plain mandate of the law. The fact remains that the smoker, under the law, may be punished far more severely than the seller.

I base my concurrence in the increased penalty imposed by the court upon the ground that the accused were public employees in whom was imposed confidence and upon whom were placed responsibilities of a public nature and that they willfully violated such confidence and evaded such responsibilities.

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