

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LOOK CHAW (ALIAS LUK CHIU), DEFENDANT AND APPELLANT.*G.R. No. 5887. December 16, 1910*

Ponente: ARELLANO, C.J.

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The first complaint filed against the defendant, in the Court of First Instance of Cebu, stated that he "carried, kept, possessed and had in his possession and control, 96 kilogrammes of opium," and that "he had been surprised in the act of selling 1,000 pesos worth of prepared opium." The defense presented a demurrer based on two grounds, the second of which was that more than one crime was charged in the complaint. The demurrer was sustained, as the court found that the complaint contained two charges, one, for the unlawful possession of opium, and the other, for the unlawful sale of opium, and, in consequence of that ruling, it ordered that the fiscal should separate one charge from the other and file a complaint for each violation; this, the fiscal did, and this cause concerns only the unlawful possession of opium. It is registered as No. 375, in the Court of First Instance of Cebu, and as No. 5887 on the general docket of this court.

The facts of the case are contained in the following finding of the trial court:

"The evidence, it says, shows that between 11 and 12 o'clock a. m. on the 18th of the present month (stated as August 19, 1909), several persons, among them Messrs. Jacks and Milliron, chief of the department of the port of Cebu and internal revenue agent of Cebu, respectively, went aboard the steamship Erroll to inspect and search its cargo, and found, first in a cabin near the saloon, one sack (Exhibit A) and afterwards in the hold, another sack (Exhibit B). The sack referred to as Exhibit A contained 49 cans of opium, and the other, Exhibit B, the larger sack, also contained several cans of the same substance. The hold, in which the sack mentioned in Exhibit B was found, was under the defendant's control, who, moreover, freely and of his own will and accord admitted that this sack, as well as the other referred to in Exhibit B and found in the cabin, belonged to him. The said defendant also stated, freely and voluntarily, that he had bought these sacks of opium in Hongkong with the intention of selling them as contraband in Mexico or Vera Cruz, and that, as his hold had already been searched several times for opium, he ordered two other Chinamen to keep the sack. Exhibit A."

It is to be taken into account that the two sacks of opium, designated as Exhibits A and B, properly constitute the corpus delicti. Moreover, another lot of four cans of opium, marked, as Exhibit C, was the subject matter of investigation at the trial, and with respect to which the chief of the department of the port of Cebu testified that they were found in the part of the ship where the firemen habitually sleep, and that they were delivered to the first officer of the ship to be returned to the said firemen after the vessel should have left the Philippines, because the firemen and crew of foreign vessels, pursuant to the instructions he had from the Manila custom-house, were permitted to retain certain amounts of opium, always provided it should not be taken ashore.

And, finally, another can of opium, marked "Exhibit D," is also corpus delicti and important as evidence in this cause. With regard to this the internal revenue agent testified as follows:

"Fiscal. What is it?"

"Witness. It is a can of opium which was bought from the defendant by a secret service agent and taken to the office of the governor to prove that the accused had opium in his possession to sell."

On motion by the defense, the court ruled that this answer might be stricken out "because it refers to a sale." But, with respect to this answer, the chief of the department of customs had already given this testimony, to wit:

"Fiscal. Who asked you to search the vessel?

"Witness. The internal-revenue agent came to my office and said that a party brought him a sample of opium and that the same party knew that there was more opium on board the steamer, and the agent asked that the vessel be searched."

The defense moved that this testimony be rejected, on the ground of its being hearsay evidence, and the court only ordered that the part thereof "that there was more opium on board the vessel" be stricken out.

The defense, to abbreviate proceedings, admitted that the receptacles mentioned as Exhibits A, B, and C, contained opium and were found on board the steamship Erroll, a vessel of English nationality, and that it was true that the defendant stated that these sacks of opium were his and that he had them in his possession.

According to the testimony of the internal-revenue agent, the defendant stated to him, in the presence of the provincial fiscal, of a Chinese interpreter (who afterwards was not needed, because the defendant spoke English), the warden of the jail, and four guards, that the opium seized in the vessel had been bought by him in Hongkong, at three pesos for each round can and five pesos for each one of the others, for the purpose of selling it, as contraband, in Mexico and Puerto de Vera Cruz; that on the 15th the vessel arrived at Cebu, and on the same day he sold opium; that he had tried to sell opium for P16 a can; that he had a contract to sell an amount of the value of about P500; that the opium found in the room of the other two Chinamen prosecuted in another cause, was his, and that he had left it in their stateroom to avoid its being found in his room, which had already been searched many times; and that, according to the defendant, the contents of the large sack was 80 cans of opium, and of the small one, 49, and the total number, 129.

It was established that the steamship Erroll was of English nationality, that it came from Hongkong, and that it was bound for Mexico, via the call ports of Manila and Cebu.

The defense moved for a dismissal of the case, on the grounds that the court had no jurisdiction to try the same and the facts concerned therein did not constitute a crime. The fiscal, at the conclusion of his argument, asked that the maximum penalty of the law be imposed upon the defendant, in view of the considerable amount of opium seized. The court ruled that it did not lack jurisdiction, inasmuch as the crime had been committed within its district, on the wharf of Cebu,

The court sentenced the defendant to five years' imprisonment, to pay a fine of P10,000, with additional subsidiary imprisonment in case of insolvency, though not to exceed one third of the principal penalty, and to the payment of the costs. It further ordered the confiscation, in favor of the Insular Government, of the exhibits presented in the case, and that, in the event of an appeal being taken or a bond given, or when the sentence should have been served, the defendant be not released from custody, but turned over to the customs authorities for the purpose of the fulfillment of the existing laws on immigration.

From this judgment, the defendant appealed to this court. The appeal having been heard, together with the allegations made therein by the parties, it is found: That, although the mere possession of a thing of prohibited use in these Islands, aboard a foreign vessel in transit, in any of their ports, does not, as a general rule, constitute a crime triable by the courts of this country, on account of such vessel being considered as an extension of its own nationality, the same rule does not apply when the article, whose use is prohibited within the Philippine Islands, in

the present case a can of opium, is landed from the vessel upon Philippine soil, thus committing an open violation of the laws of the land, with respect to which, as it is a violation of the penal law in force at the place of the commission of the crime, only the court established in the said place itself has competent jurisdiction, in the absence of an agreement under an international treaty.

It is also found: That, even admitting that the quantity of the drug seized, the subject matter of the present case, was considerable, it does not appear that, on such account, the two penalties fixed by the law on the subject, should be imposed in the maximum degree.

Therefore, reducing the imprisonment and the fine imposed to six months and P1,000, respectively, we affirm in all other respects the judgment appealed from, with the costs of this instance against the appellant. So ordered.

Torres, Mapa, Johnson, Carson, Moreland, and Trent, JJ., concur.

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