

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SY MACO,
DEFENDANT AND APPELLANT.***G.R. No. 5994. December 20, 1910*

Ponente: TORRES, J.

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This is a case which was instituted in the Court of First Instance of Cebu against the Chinaman Sy Maco, separately from that against his co-defendant Go Quico, for a violation of Act No. 1761, and was forwarded to this court on an appeal entered by the defendant.

On August 22, 1909, J. C. Milliron, an agent of the Bureau of Internal Revenue, after taking a memorandum of the numbers of certain bank notes to the value of P35, to wit, two 10-peso and three 5-peso notes, delivered them, together with 1 peso in silver, to Pacencio Rosales, an employee of the said Bureau, in order that the latter might therewith procure opium, and accordingly Rosales, after he likewise had made a memorandum of the numbers of the said notes, on the 25th of the month aforementioned, delivered the said amount to the Chinaman Go Chico, telling him to buy opium wherever he might find it. As soon as Go Chico had received the money, he went to the store of the Chinaman Sy Maco, and there having informed the Chinaman Go Quico, a clerk in the employ of the owner of the store, of the object of his visit, the latter immediately sold him some opium contained in a can which the said clerk fetched from the back part of the store and delivered to him in the presence of the said Sy Maco, before whom Go Chico paid the price of the opium acquired by delivering the said amount of money. During this transaction Sy Maco told the buyer, Go Chico, before the latter left the store, that he should be very cautious, as the opium was very dangerous on account of its being contraband. Another Chinaman, named Du Ho Hay, who had entered the store after Go Chico to demand a certain sum of money which he had delivered the day before to the said Go Quico, as the latter had not furnished him the opium he desired to purchase, was also present at the time.

While Go Chico was buying the opium, Pacencio Rosales stationed himself in the street to observe, from a certain distance away, what was going on in the store. After the buyer came out of it, he and Rosales went to the latter's house in order there to ascertain whether the contents of the can received in Sy Maco's store was really opium, and afterwards Rosales went to the agent Milliron to deliver the can to him. The latter, through a hole that had been opened in the can, examined its contents and, as soon as he was convinced that it really contained opium, at once proceeded to make a search of the said Sy Maco's store, which lasted from 11 o'clock in the morning until 1 o'clock in the afternoon, approximately. At the commencement of the search, the agent Milliron seized two 10-peso bank notes and one of 5 pesos, found in one of the drawers of the store, as they bore exactly, the numbers of which he had made a memorandum before he had delivered the notes to Rosales. Having, with difficulty, searched all the receptacles and depositories of the store, and notwithstanding that the adjoining room in the back part of it had several doors communicating with different houses, which made all search and inspection fruitless, yet Milliron found 28 pieces of bamboo and clay, such as serve to join the stem of the opium pipe with the bowl on one end and the mouthpiece on the other.' These utensils were found on some sacks and cases in the storeroom.

It was observed that two of the said instruments had been used for smoking opium, as particles of opium were found adhering to them.

For the foregoing reasons the provincial fiscal filed an amended complaint in the Court of First Instance of Cebu, on August 27, 1909, charging the Chinamen Go Quico and Sy Maco with a violation of section 15 of Act No. 1761, and as this case was instituted solely against Sy Maco, under his petition that he be tried separately from his coaccused, Go Quico, the court, after considering the evidence adduced therein, rendered judgment on September 29 of the same year (p. 59 of the trial record), and sentenced the defendant Sy Maco to pay a fine of P2,000 and, in case of insolvency, to subsidiary imprisonment, and to the payment of one-half of the costs. The can of opium and the instruments for smoking the drug, which had been seized, were also ordered to be confiscated. From this judgment the defendant, Sy Maco, appealed.

Section 15 of Act No. 1761, known as The Opium Law, provides:

"(a) No person shall import, cook, or prepare opium, or engage in the business of purchasing or selling opium or of dealing or trafficking therein, unless he shall first have secured from the Collector of Internal Revenue a license to transact such business and shall have paid the license tax prescribed by this Act. * * *

"(b) 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."

From the evidence adduced at the trial of this case it was proved that the sale of a certain quantity of opium, in the store belonging to the Chinaman Sy Maco, by the latter's clerk, named Go Quico, to the Chinaman Go Chico, the buyer of the drug, took place in the presence of the said Sy Maco, for the latter, at the moment that the buyer was on the point of going out of the store with the opium he had bought, charged the said Go Chico to be cautious because the said drug was contraband and was very dangerous. The record does not show it to have been proved that the opium sold belonged exclusively to Go Quico, while it does show that the clerk got the article from the inner part of the store, and that the bank notes delivered by the buyer in payment of the price of the opium were found in a drawer in common use in the said store. Wherefore it is unquestionable that the defendant Sy Maco was directly interested in the sale and traffic of the said drug, and in whose store, at any rate, the opium sold was kept, aside from the fact that a number of instruments for smoking opium, two of which bore evident signs of having been used, were found inside the said store. For these reasons the liability of the defendant is undeniable, as he had in his store opium intended for sale and knowingly permitted the sale, in his presence, of a certain quantity of the said drug by his clerk, Go Quico.

With respect to the errors assigned by the defense to the judgment appealed from, it is proper to state herein, for the purposes of this decision, that the Act of Congress of March 3, 1905, section 11, Class III, group 1, No. 80 (b), prescribes, among other things, the following:

"Provided, however, That the Philippine Commission or any subsequent Philippine legislature shall have the power to enact legislation to prohibit absolutely the importation or sale of opium, or to limit or restrict its importation and sale, or adopt such other measures as may be required for the suppression of the evils resulting from the sale and use of the drug: And provided further, That after March first, nineteen hundred and eight, it shall be unlawful to import into the Philippine Islands opium, in whatever form, except by the Government, and for medicinal purposes only, and at no time shall it be lawful to sell opium to any native of the Philippine Islands except for medicinal purposes."

The Philippine Commission, acting under the authority granted by the said Act of Congress, saw fit to enact Act No. 1761, which went into effect on October 17, 1907, repealing the previous Act No. 1461, and establishing

rules for the purpose of gradually restricting and regulating the sale and use of opium during the period of time yet to elapse until the arrival of March 1, 1908, when the importation of the said drug into these Islands, as well as its carrying, holding, possession, or use for smoking, swallowing, injecting, and inhaling, would be ultimately prohibited, except for medicinal purposes, as likewise its sale, traffic therein, and so forth, as specified in the Act aforementioned, enacted on October 10, 1907.

During the period from the 17th of the same month, when this Act of the Commission went into effect, to the day preceding that of March 1, 1908, the legislature intended gradually to restrict and regulate the sale and use of opium, until its importation, use, possession, sale, and handling should be prohibited from and after the said 1st of March, in conformity with the aforementioned Act of Congress. As the Act of the Commission, before referred to, contains provisions applicable to the case at bar, after the absolute prohibition of the use, possession, importation, and sale of the said drug, there can be no rational ground nor well-founded reason for averring that the said Act of the Commission was in force only up to March 1, 1908, for the reason that, as aforestated, provisions were therein prescribed which were to be strictly complied with after the said date of absolute prohibition, with penalties for their violation, as may be seen by the text itself of the said Act.

The words of the title thereof which state, pending the ultimate prohibition of the importation of opium into the Philippine Islands, should be construed to mean the interval of time up to the date set by the Act of Congress when in accordance with said Act its importation into these Islands would be ultimately prohibited.

With respect to the allegation of the unconstitutionality of the Act of the Commission, No. 1761, on account of its having been passed for two different purposes, one restrictive prior to March 1, 1908, and the other prohibitive after this date, in order to understand that the said Act is not subject to the defect thereto attributed, it must be taken into account that Act No. 1761 was passed pursuant to the said Act of Congress, and on this being done by the Philippine Commission, the provision was strictly complied with which is contained in a paragraph of section 5 of the Act of Congress of July 1, 1902, to wit:

"That no private or local bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill."

It is evident that the Act of the Commission relates, as expressed by its title or caption, to a single matter, which is opium, and to no other, and hence the Act, which is properly applicable to the matter it concerns for the period from the time of its passage, prior and subsequent to March 1, 1908, until it should be absolutely repealed by another Act promulgated by the legislative power, is in no wise unconstitutional.

For these reasons, which are based upon the law, and because the complaint which initiated this case is in conformity with General Orders, No. 58, section 10, we uphold the ruling denying the demurrer. We also uphold, as proper, the order denying the inhibition prayed for by the defendant's counsel, as no support is found for his petition in any of the cases specified either in section 8 of the Code of Civil Procedure nor in Act No. 81. Moreover, if either of the defendants charged with the commission of a single crime is entitled to be tried separately from his codefendant, as was done in the present case on the petition of Sy Maco, in which cause two judgments, one of the 15th and the other of the 29th of September, 1909, were pronounced by the judge who tried the same, in conformity with the provisions established in section 33 of the said General Orders, No. 58, the aforementioned first judgment against Go Quico, one of the two defendants, can not serve the other defendant, Sy Maco, as a ground for challenging the judge who rendered it, as he was not included therein and was the defendant afterwards concerned in the second judgment ; this because, on the petition of any of the defendants, the law authorizes the rendition of a different judgment from that required to be rendered against the others, as occurred in the present case, and, in proceeding in this wise, the judge did not violate any law whatever nor did he execute any act contrary or prejudicial to the defendants' rights, especially in view of the fact that, as in the case of

Sy Maco, the latter expressly petitioned for a separate trial. It is not permissible in judicial proceedings to turn against one's own acts and to avail oneself of a privilege granted by the law for the purpose of impugning judicial acts in accord with the provisions of the law and with his own petition.

With regard to the other errors ascribed to the judgment appealed from, it is sufficient, in our opinion, for their disposal to state that the findings of fact as well as those of law, contained in that judgment, are accepted, inasmuch as we find them to be in accordance with the law and the evidence and other merits of the case, although, in consideration of the small amount of opium sold and of the fact that this is the first time, as shown by the record, that the defendant has violated the Opium Law, he may be deemed entitled to a lesser penalty.

For the foregoing reasons, therefore, it is our opinion that the judgment appealed from must be affirmed, with the costs of this instance; provided, however, that the defendant, Sy Maco, shall be sentenced to the payment only of a fine of P500 and, in case of insolvency, to the corresponding subsidiary imprisonment. The bank notes with which the opium was bought shall be returned to their owner, if this has not already been done. This decision shall not bar a continuance of the proceedings in this cause with respect to the other defendant, Go Quico, a report of the status of which shall be made by the clerk of the court. So ordered.

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

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