

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PAULINO LABADAN, DEFENDANT AND APPELLANT.

G.R. No. 8969. December 04, 1913

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment of the Court of First Instance of Misamis convicting the defendant and appellant of a violation of the Election Law and sentencing him to pay a fine of P200 with subsidiary imprisonment as provided by law in case of insolvency, and to pay the costs of the trial.

The appellant is charged with having falsely made oath on the 4th day of May, 1912, that he was not delinquent in the payment of his taxes, when, as it is alleged, he was in fact delinquent in the payment of his taxes assessed against him for the year 1911.

It is admitted that on the 4th day of May, 1912, appellant took the oath prescribed by the Election Law to the effect that he was not delinquent in the payment of any taxes imposed since the 13th day of August, 1898, in any part of the Philippine Islands; it is also admitted that on that day he had not paid his taxes for 1911; the only question for determination is, therefore, whether or not the evidence of record establishes the allegation that he was a delinquent on the 4th day of May, 1912, when he subscribed to this oath.

Under the authority of the provisions of section 15 of Act No. 1791 the Governor-General of the Philippine Islands by Executive Order No. 93 issued December 27, 1910, (9 Off. Gaz., 139), prescribed the months of March, April, and May, 1911, as the period within which land taxes were payable in the Province of Misamis. No executive order was issued in 1911 with reference to the payment of taxes in that province in 1912, hence under the provisions of section 15 of Act No. 1791 and of the above mentioned executive order issued in 1910 the months of March, April, and May constituted the period during which the taxes were payable in that province in 1912.

It is further provided by section 15 of Act No. 1791 that: "After such term is so fixed the provincial treasurer shall select a period of not less than one nor more than three weeks during such term, within which said taxes shall be payable at the office of the provincial treasurer in the municipality, * * *: Provided, That in municipalities in which the municipal treasurer is a deputy of the provincial treasurer the collection period for each year shall cover the entire three months ending the day before the tax becomes delinquent."

It does not appear from the record in this case whether the municipal treasurer of Mambajao, Province of Misamis, was a deputy of the provincial treasurer or whether the provincial treasurer selected a period of "not less than one nor more than three weeks" during which taxes were to be paid in that municipality. If the municipal treasurer of Mambajao was in fact the deputy of the provincial treasurer, then the period or term within which taxes were payable in that municipality in the year 1912 consisted of the months of March, April, and May. If the municipal treasurer was not the deputy of the provincial treasurer, then in the absence of proof of the selection or designation of a period of "not less than one nor more than three weeks" by the provincial treasurer as provided above, it is clear that the taxpayers in that municipality could not be penalized for a failure to pay their taxes

before the end of the month of May, 1912, and that they could not be held to be delinquents if they paid their taxes to the provincial treasurer at any time during the months of March, April, and May.

The evidence of record in this case discloses that the accused did not pay his taxes for the year 1911 until June 3, 1912, the day before the election, which would seem to indicate that at the time when he paid these taxes he had been delinquent for at least three days. But the charge against him is not that he was delinquent at the time when he actually paid his taxes, but that he was delinquent on the 4th day of May, when he subscribed his registration oath; and from what has been said, it is clear that the evidence does not sustain a finding that on that day he was a delinquent. True, he had not yet paid his taxes, but the mere failure to pay one's taxes does not render one delinquent until and unless the entire period has elapsed within which the taxpayer is authorized by law to make such payments without being subjected to the payment of penalties for failure to pay his taxes within the prescribed period. (U. S. vs. Estavillo, 19 Phil. Rep., 478.)

The record contains a certificate of the municipal treasurer to the effect that the accused was delinquent (*en mora*) on the day when he subscribed his registration oath. But so far as the record discloses, the municipal treasurer did not testify before the trial judge and no opportunity was given either the court or the accused to ascertain the grounds upon which he based his opinion in this regard. The mere certificate of the treasurer, even if it be considered as evidence admitted without objection at the trial, is not sufficient to establish the allegation as to the delinquency of the accused. In order to establish this allegation it was incumbent on the prosecution to offer proof of all the necessary facts upon which a finding of the delinquency of the accused could be predicated beyond a reasonable doubt. As we have shown, the mere fact that the accused had not paid his taxes for the year 1911 when he took his registration oath is not conclusive proof of his delinquency on that date, and as we have indicated so far as can be gathered from the other evidence of record, it affirmatively appears that the failure to pay his taxes for the year 1911 could not have rendered him delinquent until the 1st day of June.

"To constitute a legal 'delinquent tax' on land, three things are necessary; (1) That the land is subject to taxation; (2) that a tax authorized by law has been levied on it in a manner provided by law; (3) that the tax remains unpaid after the time appointed for its payment. To make a tax delinquent each of these things must be shown; each is as essential as either of the others. (*Chauncey vs. Wass*, 30 N. W., 826, 830; 35 Minn., I.)" (Words & Phrases, vol. 2, 1956.)

The judgment of the lower court convicting and sentencing the appellant should be and is hereby reversed, with the costs in both instances *de oficio*, and he should be and is hereby acquitted of the offense with which he is charged in the information.

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

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