

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GREGORIO MARTINEZ, DEFENDANT AND APPELLANT.*G.R. No. 9217. March 30, 1914*

Ponente: ARAULLO, J.

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The herein defendant was charged in the complaint with having maliciously and criminally engaged in wholesale traffic in liquors without having first paid the proper license tax, thereby violating section 66 of Act No. 1189, and the Court of First Instance of Mindoro Sentenced him to pay a fine of P200, with subsidiary imprisonment in case of insolvency, the costs, and to pay the license tax due for the second quarter of 1912. From this sentence said defendant appealed.

The complaint was based on the fact that upon searching the storeroom of the defendant's shop in the pueblo of Pola, Mindoro, the provincial treasurer of that province discovered three demijohns of vino anisado and a case of gin, which, according to the defendant himself, he had purchased for a resident of the same pueblo, Rufina Maravilla, who had a retail license for the sale of vinos and at the request of that person, to whom said wares had not yet been delivered, according to the treasurer and his deputy, because Rufina had not yet paid the defendant their value in hemp, as they had agreed.

It appears from the evidence presented that said three demijohns of anisado and a case of gin did really belong to Rufina Maravilla; that she, as well as the defendant, had a license for the sale of vino at retail; that said quantity of anisado and gin was purchased from a licensed dealer in distilled spirits, in the pueblo of Bauan, Province of Batangas, by an agent of the defendant, upon the request of Rufina to the latter, the proper invoice having been issued in her favor; that, according to the provincial treasurer and his deputy, payment for the vino agreed upon by Rufina and the defendant should consist, according to that woman's statement to them in her husband's presence, partly of hemp and the rest in money, which she and the defendant denied, asserting in their turn that the defendant had received from her P32 for that purchase, of which sum a balance still remained in said defendant's possession; that according to the bill of sale (Exhibit 1, page 50 of the record), the amount paid to the dealer who sold the vino to the agent of the defendant, as the price of the anisado and gin for Rufina, was only P26.75; and finally that, according to the patron or master of the boat which transported that freight, with more belonging to other persons, from Bauan to the said pueblo of Pola, the tide was falling when his boat approached the place where Rufina Maravilla's house was and he was unable to discharge the freight at said house, so he went back and took it to the defendant's house, where it was stored.

The Internal Revenue Law regards as a trader or dealer in wines and liquors at wholesale or retail every person who on his own account or on commission sells or offers for sale distilled spirits, wines, and liquors, fermented or unfermented, according to the quantity he may sell at a single sale. The defendant not having sold on his own account or on commission to Rufina Maravilla the anisado and gin in question, and there being neither evidence nor the slightest indication in the case that he obtained from the dealer in Bauan, or that such dealer had offered him, any remuneration as a commission or in any other way for the delivery of said anisado and gin to Rufina

Maravilla, and it appearing solely that the defendant was the intermediary of whom the woman availed herself to purchase those articles in Bauan for her shop and for the sale whereof she had the necessary license, it cannot be said that the defendant has engaged in the traffic in liquors in any amount or that he has violated section 66 of the said Act.

But the court, taking into account the proof that Rufina Maravilla had agreed to pay the defendant the value of the vino in hemp and that as she had not yet made such payment the vino was not delivered to her, held in its judgment that the facts related therein constituted the violation provided for and penalized by said section 66, because, according to the sentence itself, at bottom the said facts constituted traffic in liquors at wholesale in a clandestine manner, for the defendant lacked a license therefor and yet was profiting by acquiring the vino at the request of another person, upon whom he imposed conditions as to the article in which payment for the vino he had acquired should be made.

As has already been noted, there is not sufficient evidence that an agreement regarding the payment in hemp was entered into between the defendant and Rufina Maravilla, for she and her husband denied the statement attributed to them on this point by the provincial treasurer and his deputy; neither is there any evidence that the fact that said payment in the article agreed upon had not been made was the reason why the anisado and gin had not yet been delivered to their owner when they were found in the defendant's storeroom, especially when no proof has been presented by the prosecution to off set the statement of the patron of the boat. Nor is it proven, granting that such agreement was actually made, that the defendant profited or proposed to derive profit, because the amount of hemp should have received from Rufina in payment for those articles does not appear, and in the absence of this fact the profit which, it is alleged, would have accrued to him from the alleged transaction of resale cannot be determined. On the other hand, what does appear to be proven beyond all doubt is that Rufina Maravilla was the owner of the anisado and the gin, that she had the proper license to sell it and that the corresponding invoice was made out in her name; nor as a convincing reason for the existence of the alleged profit on the part of the defendant may we take into account the finding of the trial court to the effect that it is incredible that the defendant, who was engaged in the retail sale of vino, would, at the request of another person selling vino, gratuitously buy some for her, thereby aiding her in competing with him in the business, because it is still less credible that such a person would agree to pay the defendant with hemp for the value of the vino bought by him for her, thus giving him an opportunity and facilities for profiting through the resale of the hemp to such extent as she would fail to profit by making the payment in such article instead of in money, having later to sell the vino in her shop at the same price as the defendant in his and consequently suffering another loss.

In view of the foregoing, and as the defendant is not guilty of the violation attributed to him in the complaint, we reverse the judgment appealed from and freely acquit him; with the costs of both instances de officio.

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

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