

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAN SENG KI, DEFENDANT AND APPELLANT.*G.R. No. 9783. September 19, 1914*

Ponente: JOHNSON, J.

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On the 15th day of January, 1914, a complaint was presented against the defendant, charging him with a violation of section 31 of Act No. 1761, as amended by section 3 of Act No. 1910. The complaint alleges that the said accused on said date did then and there willfully, unlawfully, and feloniously have in his possession and under his control two centigrams of opium. Upon said complaint the defendant was duly arrested, arraigned, tried, found guilty, and sentenced to pay a fine of P300, and in case of insolvency to suffer subsidiary imprisonment, as provided by law, and to pay the costs. From that sentence the defendant appealed to this court.

In this court the appellant alleges that the proof adduced during the trial of the cause was insufficient to show that he was guilty of the crime charged.

An examination of the record brought to this court shows that on or about the 13th day of January, 1914, two policemen of the city of Manila entered a building at No. 109 Calle Rosario, and made a search for opium and other evidence of a violation of the Opium Law. They entered a room in said building and there found the defendant. Said policemen testified that they found a strong odor of opium, indicating that there were some persons in said building smoking opium. They testified that they found that the hands of the defendant and his clothing bore stains of opium. They also found stains of opium upon the bed or a board that was used for a bed by the defendant. They also found under the bed the lid of a can which they claimed bore some evidence that it had, at some time, contained opium. A chemical analysis was made of the clothing, which showed that the stains were caused by opium. Said proof sustains the allegation that the defendant had had in his possession opium, but it does not sustain the allegation that he was then and there in the possession of opium. A mere stain upon the clothing or hand of an individual, caused by some particular substance, certainly cannot sustain the charge that he was at that time in possession of that substance. We do not believe that because a man's hands or clothing are stained with earth, that he can be charged with having in his possession real estate. The law specifically provides the punishment for one who has "in his possession or under his control" opium. Neither said section 31 nor section 3 above referred to attempts to punish one for having had in his possession or under his control opium. Said law provides for the present possession of opium. We do not believe that the stains of opium upon the hands or clothing of an individual are sufficient to show that he has "in his possession" nor that he has "under his control" opium.

Upon a careful examination of the record brought to this court, we are persuaded that the evidence is insufficient to show that the defendant is guilty of the crime charged in the complaint, in the manner and form alleged therein. Therefore the sentence of the lower court is hereby revoked and it is hereby ordered that the complaint be dismissed and that the defendant be discharged from the custody of the law, with the costs de officio.

Arellano, C. J., Torres and Araullo, JJ., concur.

CONCURRING

CARSON, J.

I concur. Proof of the existence of opium stains on the clothing of an accused person, is not of itself sufficient to establish the fact that at the time of his arrest, or at any time prior to his arrest he had opium in his possession or control with animus possidendi. There is no proof in the record as to the character of the stains on the hands of the accused.

CONCURRING

MORELAND, J.

I agree to the acquittal of the accused. The only opium with the possession of which the defendant is charged is that which composed the stains upon his hands and clothing. I do not believe that the law in penalizing the possession of opium contemplated that a mere stain upon the clothing or the fingers would be considered either opium or a possession thereof.

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