

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SANDALIO J. RODRIGUEZ, DEFENDANT AND APPELLANT.

G. R. Nos. 13352-13355. October 11, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

STATEMENT OF THE CASE.

These are appeals from decisions of the Court of First Instance of the Province of Rizal finding the accused guilty—(1) R. G. No. 13352 for a violation of a municipal ordinance of Caloocan and sentencing him to pay a fine of P30, with subsidiary imprisonment in case of insolvency; (2) R. G. No. 13353 for a violation of the Internal Revenue Law and sentencing him to pay a fine of P200, with subsidiary imprisonment in case of insolvency; (3) R. G. No. 13354 for a violation of the Internal Revenue Law and sentencing him to pay a fine of P10, with subsidiary imprisonment in case of insolvency, and pay the license-tax of P5; (4) R. G. No. 13355 for a violation of the Internal Revenue Law and sentencing him to pay a fine of P200, with subsidiary imprisonment in case of insolvency, and pay the license-tax of P5; and to pay the costs in each instance.

It was agreed by the accused and the fiscal that the evidence taken in case R. G. No. 13354 be considered as also taken in cases Nos. 13355 and 13353, as the facts were the same in each case.

In case No. 13352, it was agreed and stipulated that this case (R. G. No. 13352) be tried together with the other three cases, namely, R. G. No. 13353, R. G. No. 13354, and R. G. No. 13355. At the same time the accused, after having the demurrer filed by him overruled, stated: "Estoy enterado de las querellas. Admito los hechos alegados en todas las querellas, y solamente sostengo la cuestion legal de que no soy culpable bajo la ley." (I am informed of the complaints. I admit all the allegations in the complaint; I maintain only that under the law I am not guilty.)

The original complaint filed before the justice of the peace in R. G. No. 13352, alleges:

"That the said Sandalio J. Rodriguez, the accused above-mentioned, during the months of January, February, and March, 1916, in the municipality of Caloocan, Province of Rizal, P. I., did, then and there, willfully and unlawfully, open, maintain, exploit, and run publicly, a dancing hall named 'Esperanza' in the sitio of Meypajo, within this jurisdiction, where the general public is admitted, without having paid into the municipal treasury of this municipality the sum of P225 as a municipal tax corresponding to the first quarter of 1916, that is, the months of January, February, and March above indicated; and contrary to the ordinance in this matter, of said municipality, duly approved and promulgated."

When the case was appealed to the Court of First Instance, the fiscal filed an information which alleges:

"That the said Sandalio J. Rodriguez, the accused, during the months of January, February, and March, 1916, in the municipality of Caloocan, Province of Rizal, P. I., did, then and there, wilfully, maliciously, and unlawfully, as owner and manager of a dancing hall named 'Esperanza,' exploit and open to the public said dancing hall

without having paid into the municipal treasury the municipal tax of P225 corresponding to the first quarter of 1916.

"Act committed in violation of the ordinance above cited."

The information filed in case R. G. No. 13353 alleges:

"That the said Sandalio J. Rodriguez, the accused, on December 15, 1915, in the municipality of Caloocan, Province of Rizal, P. I., did, then and there, wilfully, maliciously, and unlawfully, engage in the business of selling cured tobacco at retail, without having previously paid the internal revenue license-tax corresponding to the fourth quarter.

"Act committed in violation of law."

The information filed in case R. G. No. 13354 alleges:

"That the said Sandalio J. Rodriguez, the accused, on December 15, 1915, in the municipality of Caloocan, Province of Rizal, P. I., did, then and there, wilfully, maliciously, and unlawfully, engage in the business of selling beer at retail, without having previously paid the internal revenue license-tax corresponding to the fourth quarter.

"Act committed in violation of law."

The information filed in case R. G. No. 13355 alleges:

"That the said Sandalio J. Rodriguez, the accused, on December 15, 1915, in the municipality of Caloocan, Province of Rizal, P. I., did, then and there, wilfully, maliciously, and unlawfully, engage in the business of selling liquors at retail without having previously paid the internal revenue license-tax corresponding to the third and fourth quarters.

"Act committed in violation of law."

QUESTIONS INVOLVED.

1. Sufficiency of complaint in R. G. No. 13352.
2. Legality of ordinance imposing a license tax on public dance halls and penalizing a violation thereof.
3. Sufficiency of the evidence in R. G. No. 13352.
4. Sufficiency of the informations in R. G. Nos. 13353, 13354, and 13355.
5. Sufficiency of the evidence in these three cases.

OPINION.

I.

A comparison of the complaint and the information filed in R. G. No. 13352 shows that the accused is charged with the same offense in both of them, namely, with having maintained and operated a public dance hall without having secured and paid for the municipal license-tax therefor as provided for and penalized by ordinances of the municipality of Caloocan. All the requirements as provided in sections 6 and 7 of the Code of Criminal Procedure have been complied with.

II.

A municipality is authorized to enact an ordinance providing for a license-tax for the maintenance and operation of public dance halls and penalizing the violation of such ordinance. The Municipal Law provides:

The municipal council shall:

"(dd) Fix penalties for violation of ordinances * * * " (Sec. 39, Act No. 82.)

"It shall be competent for a municipal council to prescribe fines or penalties for violations of its ordinances." * * * (Sec. 2239, Administrative Code of 1917.)

"The municipal council is empowered:

"(k) To license and regulate or to prohibit ? * - public dance halls * * *." (Sec. 40, Act No. 82.)

"The municipal council shall have authority to exercise the following discretionary powers:

(l) To regulate or prohibit * * * public dance halls * * *." (Sec. 2243, Administrative Code of 1917.)

"A municipal council shall have authority to impose taxes upon persons engaged in business or exercising privileges in the municipality as hereinbelow specified, by requiring them to procure licenses at rates fixed by ordinance of the council:

"(d) Dance halls and public dancing schools." (Sec. 2307, Administrative Code of 1917.)

McQuillin in his work on Municipal Corporations says, section 715, page 1555: "The penalty of imprisonment imposed by charter for violation of, an ordinance is not a debt within the constitutional provision forbidding imprisonment for debt." He further states, section 1007, page 2242: "License taxes are not debts within the constitutional provision prohibiting imprisonment for debt." 25 Cyc, page 634, lays down the following principle: "In the absence of constitutional or statutory inhibition, the authority to impose reasonable fines and penalties for the failure to pay a license-tax is regarded as a necessary incident to the power to levy such tax." (See further U. S. vs. Cara [1917], R. G. No. 12632, decided September 13, 1917, not published; and License Tax Case, [1867], 5 Wall., 462.)

III.

There is no doubt as to the appellant's having maintained and operated a public dance hall during the time alleged in the information. In fact he admits this.

The trial court found the accused guilty in this case of a violation of Ordinance No. 1, of the municipality of Caloocan (Exhibit A) taken in conjunction with Ordinance No. 14 (Exhibit B) of the said municipality. An examination of these two ordinances shows that Ordinance No. 1, series 1916, in section 1, amends section 9 of Ordinance No. 19, series 1913 (Exhibit I) by providing for the payment of the salary of special policemen on duty in public dance halls. Section 2 of said ordinance amends section 1 of Ordinance No. 27, series 1913 (which does not appear in the record), as amended by section 2 of Ordinance No. 14, series 1915, by fixing the amount of the license-taxes for the different classes of dance halls. Section 3 of said ordinance provides that the penalty for a violation of the two previous sections shall be the same as that provided for in section 8 of Ordinance No. 19, series 1913. Section 4 of Ordinance No. 14, series 1915, provides for the punishment for a violation of this ordinance by a fine of from P25 to P50, or by imprisonment for from one to two months, in the discretion of the court. Section 8 of Ordinance No. 19, series 1913, provides the amount of the license-tax for dance halls and requires that the owner or operator of a public dance hall shall pay the license-tax within the first ten days of

January, April, July, and October, and his failure to pay the license-tax shall constitute a violation of this section and shall be punished by a fine equal to the amount of the license-tax, and in case of insolvency to suffer subsidiary imprisonment at the rate of ₱1 per day. The penalty provided for in this section is clearly in conflict with the penalty provided in section 4 of Ordinance No. 14, series 1915. The penalty imposed in the above-mentioned section 8 of Ordinance No. 19, series of 1913, may be illegal as the maximum penalty which can be imposed by municipal ordinance is ₱200, whereas the penalty attempted to be imposed exceeds this amount.

It is a primary rule of statutory construction that when two laws cover the same subject, one of which is legal and the other illegal, the legal provisions will be held to be in effect. It is also a primary canon of constitutional law that when a statute is in part unconstitutional and in part good and it is possible to discard the unconstitutional part without affecting the good part, only the unconstitutional part of the statute will be discarded. Hence the only part of section 8 of Ordinance No. 19, series 1913, which would have to be discarded is that section which provides for the penalty to be imposed, and as section 4 of Ordinance No. 14, series 1915, provides a legal penalty, the proper penalty is that provided in the last mentioned section.

As the Court of First Instance imposed the penalty provided in section 4 of Ordinance No. 14, series 1915, it evidently considered the penalty provided by section 8 of Ordinance No. 19, series 1913, repealed by Ordinance No. 14, series of 1915, or else as null and void. Therefore, the judgment and sentence of the trial court is correct.

IV.

An examination of the information filed in R. G. Nos. 13353, 13354, 13355 shows that they charge a violation of the Internal Revenue Law and that they comply with all the requirements of sections 6 and 7 of the Code of Criminal Procedure. This court has held on numerous occasions that a complaint or an information is sufficient when the charge is so stated as to enable a person of common understanding and ordinary intelligence to know what is meant and so that the court may rule in accordance with law. It is not believed that any person of ordinary intelligence would have any difficulty in understanding what is charged in the informations in these cases.

The contention of the appellant, that it is necessary to secure the approval of the Collector of Internal Revenue before an information is filed, charging a criminal violation of the Internal Revenue Law, is so absurd that it is not deemed worthy of serious consideration. What that law does provide is that no civil action for the recovery of taxes or the enforcement of any fine, penalty, or forfeiture under that Act shall be begun without the approval of the Collector of Internal Revenue. (See section 1581, Administrative Code of 1917.) Of course, it is perfectly obvious that the fines, penalties, and forfeitures therein mentioned, are administrative penalties which are only recoverable by civil action, and that the law in no way affects or applies to criminal prosecutions.

V.

There can be no doubt as to the guilt of the accused. The facts in these cases are not disputed. As was said before, the accused himself stated that he admitted the facts alleged in the informations and that the only questions involved were questions of law.

While there has been some difficulty in discovering the facts in regard to each of these cases, due to the manner in which the cases were tried and the way in which the evidence was presented, it is believed that a careful analysis of the records in all four cases will show the following facts:

That on or about the 15th of December, 1916, an agent of the internal revenue went to the dance hall maintained and operated by the appellant; that upon entering the dance hall he found that the general public was admitted;

that he went to a table and called a waiter and ordered a glass of beer which he received and paid for; that this appellant upon being requested was unable to produce a license as required by the Internal Revenue Law for the sale of beer; that this agent of the Internal Revenue seeing some distilled liquors on display ordered a glass which was sold to him and that upon requesting the appellant to exhibit his license for the sale of the same he was unable to do so; that the same agent while in this dance hall saw several packages of cigarettes exposed for sale and that the appellant did not have the required license to sell cigarettes. It was proven, by another internal revenue agent, that the accused came to him in his official capacity as an agent of the Bureau of Internal Revenue, for the purpose of effecting an administrative compromise for his violations of the Internal Revenue Law; that an offer of compromise was made and accepted by this appellant; that at the time of making this administrative compromise the appellant freely and voluntarily admitted his guilt and stated that it was his desire to effect such a compromise; that the appellant at this time stated that he did not then have sufficient money to pay the compromise and requested a few days within which to raise the necessary amount; that this extension of time was granted to him and upon the defendant's request was extended several times and finally after his failure to pay the agreed compromise, these criminal cases were filed against him.

No ground exists on which to base the contentions of the defendant and appellant. No question of fact is involved. The questions of law raised by the defendant are all so elementary and without foundation that it is not deemed necessary to cite more authorities.

The respective judgments of the trial court in these four cases are affirmed with the costs of this instance against appellant. Let this order stand for R. G. No. 13352 and let the appropriate orders be entered in R. G. Nos. 13353, 13354, 13355. So ordered.

Torres, Johnson, Street, Avanceña, and Fisher, JJ., concur.

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