

1 Phil. 165

[ G.R. No. 442. March 14, 1902 ]

**VICENTE GAY, COMPLAINANT AND APPELLANT, VS. W. KEAY DEFENDANT AND APPELLEE.**

**D E C I S I O N**

**WILLARD, J.:**

Article 452 of the Penal Code is as follows: "Calumny is the false imputation of an offense which gives rise to official proceedings" (*procedimiento de oficio*).

The crime of which the complaining witness was accused was that of cutting timber upon public lands in the Island of Negros and the importation thereof into Iloilo without the payment of fees. The imputation, if true, would have made him liable to a fine according to the provisions of General Orders, No. 92, series of 1900.

The royal decree of November 13, 1884, put in force in the Philippines the "final regulations for the government of the forestry bureau of the Philippines." The said decree was promulgated in Manila on January 5, 1885, and published in the Manila Gazette on the 23d of the same month and year. The violation of these regulations are punished by a fine, and article 95 of the same provides that these fines shall be imposed by the governor in chief, by the general board of civil administration, or by the governor-general, according to the amount of the fine. There was no recourse before the courts of justice aside from two cases which have no connection with that and are not in point. The penalty was imposed and enforced in a purely administrative manner. There was no penalty other than administrative fines.

The General Order above cited conforms to this royal decree. It does not prescribe that the collection of the fines incurred should be made by judicial process. They should be collected, and indeed they have always been collected, by the bureau of forestry.

The question which must be decided is this: Do the violations of said General Order “give rise to official proceedings (*de officio*)” within the meaning of said article 452? Certain crimes, such, for example, as adultery, are prosecuted only upon the complaint of the aggrieved party. It was with the object of excluding this class of cases that the words *de officio* were employed.

The same phrase appears in article 326, which states as follows: “The crime of false accusation or denunciation is committed by imputing falsely to anyone acts which if true would constitute a crime of the class which give rise to an official proceeding if this imputation were made before an administrative or judicial officer who by reason of his office should proceed to verify or punish the same.

“Nevertheless proceedings shall not be commenced against the denouncer or accuser except by virtue of a final judgment or final order of dismissal of the court which should have jurisdiction of the imputed offense.

“The latter (court) shall order official proceedings to be commenced against the denouncer or accuser whenever it appears from the principal cause that there are sufficient grounds for commencing the new proceedings.”

It is certain that the text is confined to judicial proceedings notwithstanding the use of the word “administrative” (*administratvo*), since it provides conclusively that the accuser shall not be proceeded against until the court which should have jurisdiction of the crimes shall have dictated an order of dismissal. If the defendant Keay had been proceeded against in accordance with this article instead of article 452 and it should have been proved that his accusation after an investigation by the bureau of forestry was false and a final order of dismissal should have been dictated by the chief of said bureau he could not have been convicted. The bureau of forestry would have had the right to investigate and to punish the act, but the case would have lacked the essential element of a judgment of a judicial tribunal declaring the accusation to be unfounded.

These two articles are very similar. So far as the imputation is concerned this is the same in both. They differ with reference to the person to whom the said imputation is communicated. There are no reasons, therefore, why the phrase *procedimientos de officio* should be interpreted in article 452 in a sense different from that which should be given the same in article 326. We are therefore of the opinion that a person can not be convicted in

accordance with the former article unless the imputation constitutes a crime punishable before the courts of justice.

Having arrived at this conclusion we have not deemed it necessary to analyze the grounds upon which the trial court based its decision. The judgment appealed from is affirmed and the defendant is acquitted with costs of both instances taxed officially. .

*Arellano, C. J., Torres, Cooper, Mapa, and Ladd, JJ., concur.*

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