

6 Phil. 164

[G.R. No. 2460. April 19, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. G. L. MUHN, JR.,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

In April, 1902, the defendant and Nicolas Carranceja made a contract, of which the following is a copy:

“DAET, CAMARINES NORTE, P. I., April—, 1902.

“We, the undersigned of this contract, do agree to abide by the following:

“First. That Nicolas Carranceja employs G. L. Muhn, jr., at Labo, P. L, to buy hemp and sell rice and anisado, paying him a salary of 70 pesos, Mexican, per month, with a commission of 0.25 pesos, Mexican, for each pico of hemp he purchases and 0.12½ pesos, Mexican, for each sack of rice or demijohn of anisado that he sells.

“Second, While in the employ of N. Carranceja the above said G. L. Muhn will not buy hemp or sell rice and anisado for any other party.

“Third. That either of the undersigned may withdraw from this contract or suspend the same by giving one month’s notice to the other.”

Business was carried on by the defendant and Nicolas Carranceja under this contract until the death of the latter on the 27th of May, 1902. After his death it was continued without

interruption, the interests of his estate being represented by his son, Eicardo Carranceja, until the 30th day of September, when the contract was terminated.

On the 6th day of December, 1902, an agreement was made between the defendant and the representative of the estate by the terms of which the defendant admitted that he was indebted to the estate by reason of the business carried on under the contract above mentioned in the amount of 2,777.23 pesos, which he promised to pay in installments of 200 pesos on the 1st day of the next January and 100 pesos monthly thereafter until the whole was paid. He did not pay anything under this contract, and a complaint for *estafa* having been presented against him, he was tried upon this charge, and was convicted in the court below of having wrongfully appropriated to his own use 1,300 pesos of the money of the estate, and was sentenced to two years eleven months and ten days' imprisonment (*prision correccional*). From this judgment the defendant appealed.

As to the foregoing facts there is no dispute. In addition thereto we think it is also proved that at the time the relations between the parties were terminated on the 30th day of September there was an adjustment of the accounts by the said parties, and it was ascertained that there was then due to the estate of Nicolas Carranceja about 2,500 pesos.

It is claimed by the appellant that the contract above quoted created the relation of debtor and creditor between the parties, or made the defendant a partner with Nicolas Carranceja in the business that was to be carried on under this contract. The evidence does not support this contention. The terms of the contract are plain, and by virtue thereof the defendant was made the agent of Nicolas Carranceja. The money that was furnished to the defendant for the purpose of carrying on the business was the money of Nicolas, and did not become the money of the defendant as soon as it was furnished to him. The fact that in the books of account of the commercial house of Nicolas Carranceja the money was charged to the defendant and that other articles sent to him were also charged to him can not change the essential character of the contract between the parties. This was merely a method of keeping an account of the business, so that the parties would know how much money had been invested therein and what the condition thereof was at any particular time.

Neither is there anything in the said contract nor in the evidence to show that the defendant was in any sense a partner with the complaining witness.

Another fact was proved by the admission of the defendant At the trial he testified as follows:

“Q. When you separated yourself from the house how much money belonging to the house did you then have on hand?—A. Something like 1,000 pesos; I don’t remember exactly.

“Q. What became of that 1,000 pesos?—A. I used it in the business and lost it. I found that I couldn’t do business very well without letting out money, and as I had not a great amount to let out, people wouldn’t bring hemp to me; also, living expenses were very high in Labo. * * *

“Q. Then when you separated yourself from the house, what became of the property that you had on hand belonging to the house?—A. I still have some. Some is left in Labo and some of it is sold.

“Q. Where is the money that you received from settling accounts?—A. I had no business, and expenses were all that I had—that is, after the Labo business.

“Q. Do you desire to state that you used the funds for living expenses?—A. Yes; and in the business.”

It also appears that after the 30th of September, when he left the employ of the complaining witness, he carried on the same kind of business on his own account at Labo. It appears from this evidence that on the 1st day of October he had in his hands at least 1,000 pesos in cash which did not belong to him, and which did belong to the estate. This was money which he was under an obligation to return to the estate. He did not return it, but on the contrary appropriated it to his own use. There can be no question but that to the extent of this 1,000 pesos he was guilty of the crime of *estafa*. As to the remainder of the sum of 2,777.23 pesos, for which he admitted his liability in the contract of December 6, 1902, there is not sufficient evidence in the case to show that he appropriated this money to his own use, and we can not say as to this sum that he has been proved guilty of the crime of *estafa*. The cases cited by the appellant in his brief to show that he is not guilty of *estafa* have a bearing upon his liability as to the balance of 1,777.23 pesos, but they have no bearing upon his liability as to the 1,000 pesos which he had in his hands at the termination of the contract, and which he appropriated to his own use.

It was proved at the trial that in carrying on the business under the contract the defendant made advances to certain persons, which advances had not been repaid to him, and that he had in his hands at the termination of the contract various promissory notes growing out of

these transactions. At the time of the settlement on October 1 he offered to deliver to the estate the entire "business," as he termed it, including the 1,000 pesos. This offer the representative of the estate declined to accept, and it is claimed by the appellant that he can not be convicted in view of this offer; that the entire business belonged to the estate, and that they were bound to take it as it was, and could not insist upon his turning over part of the property and remaining liable for the rest. At the time he made this offer he had in his possession 1,000 pesos belonging to the estate. It was his duty to turn this over at all events. Whether or not he was liable for the remainder of the amount due, and whether or not the loss, if any, growing out of the advances made by him should fall upon him or upon the estate, were questions that could be determined thereafter. He had no right to use the 1,000 pesos belonging to the estate simply because the estate refused to accept as cash promissory notes which he had in his hands. Whatever the rights of the parties were as to those notes, they could not in any way affect the obligation resting upon the defendant to pay over the cash which he had in his hands, and which he admitted did not belong to him, and which he afterwards used.

The judgment of the court below is modified so as to make the amount wrongfully appropriated by the defendant 1,000 pesos instead of 1,300 pesos, and the amount of the indemnity to be paid to the widow of Nicolas Oarranceja 1,000 pesos instead of 1,300 pesos, the subsidiary imprisonment not to exceed one-third of the principal penalty. In all other respects the judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of ten days from the date of final judgment let the case be remanded to the lower court for proper procedure. So ordered.

Arellano, C. J., Torres, Mapa, and Johnson, JJ., concur.