

6 Phil. 534

[G.R. No. 2685. October 29, 1906]

**C. M. COTTERMAN, PLAINTIFF AND APPELLEE, VS. CU PONGCO BT AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

CARSON, J.:

This is an action brought by C. M. Cotterman to compel the defendants, who are conflicting claimants to 3,020 pesos, Mexican currency, in which he disclaims all interest and which he has deposited with the clerk of the Court of First Instance of the city of Manila, to interplead and litigate their several claims among themselves.

The defendant surety companies contend that this money was paid over to the plaintiff as Director of Posts, or to one of his agents as such, by one W. Schultze, postmaster at Laoag, as part of the funds of his office; that, nevertheless, the said funds were not credited upon the official accounts of the said Schultze; that the said surety companies have been compelled to make good the shortage in the funds of the said Schultze, postmaster, amounting to considerably more than the said sum of 3,020 pesos, Mexican currency, and that it was and is the duty of the said plaintiff, as Director of Posts, to credit the account of the said Schultze, postmaster, with the fund in question and to refund to the defendant surety companies the amount thereof.

The defendants, other than the surety companies, allege that the funds in question were paid over by them to the said Schultze, postmaster of Laoag, for the purpose of buying postal money orders on Manila; that the plaintiff, as Director of Posts, through his agents, took possession of these funds and of the post-office at Laoag and suspended the said postmaster before these postal orders were issued; that the said plaintiff, as Director of Posts, unlawfully refused and has continued unlawfully to refuse to issue these orders as requested or to permit his agents so to do, or to make return of the funds thus deposited with the postmaster of Laoag.

The evidence of record discloses that on the morning of the 18th of July, 1903, the said Schultze went to the defendants, other than the surety companies, and informed them that the mail for Manila would be made up that day and that if they desired to send money orders to Manila they should make application therefor at the earliest possible moment so that he might have sufficient time to prepare the proper papers and get his mail and reports ready in due time; that the defendants, other than the surety companies, did in fact make application on that morning for postal orders to the amount of 3,020 pesos, Mexican currency, and turned over the funds in question to the said Schultze, postmaster, in payment therefor; that the postal money orders were not issued forthwith, but instead a memorandum receipt was issued for the amount turned over by each applicant, Schultze promising to have the postal money orders ready at some time that afternoon, explaining the delay by stating that he was too busy at that time to fill out the forms and prepare the orders.

It further appears that at an early hour of the same day Post-Office Inspector Ladd arrived at Laoag; that he proceeded forthwith to inspect the accounts of the postmaster, found a considerable shortage, and took possession of all of the funds belonging to the office; that the funds in question were found in a place apart on the money-order table of the post-office and that at first Schultze informed the inspector that these funds were the proceeds of money orders already issued; that a few hours later when the inspector had verified the books and found that no such orders had in fact been issued, Schultze confessed that he was short in his accounts and stated that these funds had been paid in that morning for postal orders which he had promised to issue that afternoon.

The defendant surety companies insist that these funds were in fact loaned by the other defendants to their friend the postmaster to be used by him in concealing his shortage while the inspector was counting the funds of the office and to be repaid later, either in cash or postal money orders on Manila; that the said loan was accepted by Schultze and by him merged with the funds of the post-office and as such taken into possession by the inspector; that Schultze, having turned over these funds as part of the post-office funds, had no right or authority to reclaim them, it appearing that he was indebted to the Government in an amount in excess thereof, and that the defendants have no claim upon the Government for the return of said funds or for postal money orders in exchange therefor because, as it is alleged, they loaned the money to Schultze for his personal use and their right of action for the return thereof is limited to him.

This view of the case was accepted by the trial court and judgment rendered in favor of the

defendant surety companies, but we are of opinion that the finding of the trial court that these funds were a personal loan to Schultze for the purpose of aiding him in concealing his shortage is plainly and manifestly against the weight of the evidence; indeed there is no evidence whatever to support this contention other than the mere fact that when these funds were paid over to the postmaster and application made for money orders in exchange therefor, the applicants did not insist upon immediate issue but agreed to wait his convenience on his representation that he was very busy and could not prepare them until later.

There is no evidence to show that the applicants knew that there was a shortage to conceal; there is no evidence to show that they knew that an inspector had put in his appearance who might discover such shortage, and while it is clear that Schultze deliberately planned to conceal his shortage by inducing them to turn in these funds and wait for the issue of the postal money orders in exchange therefor, there is nothing in the transaction so irregular or so unusual or so much out of the ordinary course of business as to justify so violent a presumption as that these defendants conspired with him for the purpose of concealing his crime. It may be that the contention of the surety companies is founded on fact; and if it appeared that the defendants had any knowledge of the existence of a shortage at the time when these transactions took place it would be difficult, in view of all the evidence, to avoid the conclusion that these funds were loaned to Schultze as an act of mistaken friendship; but it must be remembered that the existence of that shortage, which is admitted and known to all men today, was a thing which at that time Schultze would naturally make every effort to conceal from all those with whom he was transacting official business.

The copy of a copy of the receipt to Jose Castro, which is filed as an exhibit in the case, varies in form and date from the copies of the receipts which appear to have been given to the other defendants, and this variation would seem to suggest that his claim for 460 pesos should be placed on a different basis than those of the rest of the defendants, other than the surety companies; however, as counsel for the surety companies did not appear to have considered the variation in form as of any essential importance and made no point thereon, either on the trial or on this appeal, and since all of the evidence in the record as submitted by both parties tends to show that the transaction represented by the receipt given to him was substantially identical with those represented by the other receipts of record; and since the originals of these receipts are not before us, we think that this variation in form must be attributed to a mistake in copying or to some other cause unknown which should not have the effect of putting the claim of Castro on a different basis from that of the other claimants.

The judgment of the trial court should be reversed without special condemnation of costs, and after deducting from the funds in question the amount of the costs of these proceedings, they should be divided *pro-rata* among the defendant claimants, other than the surety companies, in proportion to the amounts delivered to Schultze as set out in the pleadings.

After ten days let judgment be entered in accordance herewith and the record returned to the court from whence it came, where the proper orders will be made for the distribution of the funds. So ordered.

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