

6 Phil. 545

[G.R. No. 2024. October 30, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. W. W. RICHARDS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The Attorney-General claims that the defendant was convicted of a violation of the provisions of article 381 of the Penal Code and that that conviction should be sustained. That article is as follows:

“The public official who shall receive, directly or through an intermediary, a gift or present, or who shall accept offers or promises for his committing in the discharge of his office an act constituting a crime shall be punished with the penalties of *prision correccional* in its minimum to its medium degree and a fine of an amount equal up to three times the value of the gift, without prejudice to the imposition of the penalty pertaining to the crime committed in consideration of the gift or promise, should it have been executed.”

In order to convict a person of a violation of this article it is necessary to prove that he received money or other article of value, and having received it, agreed to do an unlawful act, or that a promise or offer was made to him to give him money if he would commit an unlawful act and that he did agree to commit the unlawful act in consideration of the promise or offer. It is not necessary in either case that the evidence show an express promise. It is sufficient if from all the circumstances in the case such promise can be implied.

The evidence in this case shows that S. A. Reich and one Rosenberg, his partner, imported from China in the summer of 1903, 41 mules, which they expected at the time they bought

them to sell to the Insular Government of the Philippines. When the mules arrived they were examined on board the vessel by the defendant, who was the veterinarian of the Board of Health, and he was paid by Reich the legal fees for such examination. After the mules were landed 39 of them were bought and paid for by the Insular Government. Prior to the payment of the price they were examined by Dr. Best, the city veterinarian, and again examined by the defendant at the request of the Insular Purchasing Agent, through whose office the purchase was made for the use of the city of Manila. During these examinations four or five, probably five, of the animals were rejected for various causes and other animals were supplied by Reich to take the place of those rejected.

The sale was completed and the money paid by the Insular Purchasing Agent to Reich on the 27th day of July, 1903. On the 28th day of July he gave to the defendant a check for 50 pesos; the latter received the check and drew the money thereon from the bank. On the 7th of August Reich gave to Pete Wilson a check for 100 pesos which Wilson cashed. Wilson was foreman of one of the city stables and had to do with the examination and purchase of these animals. On the 10th of August Reich gave a check of 100 pesos to Dr. Best, which the latter cashed. On the 29th of July Reich drew two checks, one for 50 pesos and the other for 20 pesos, and, on the 15th day of August another check for 20 pesos, which were delivered by him to one Hulett. Hulett was an employee of the Insular Purchasing Agent and had to do with the examination and purchase of these animals. These checks were cashed, two of them apparently by one Smith and the third by M. B. Davis. On the 3d day of August Reich drew a check for 500 pesos to the order of I. Beck and delivered it to the latter. Beck notified Mehan, the superintendent of city transportation, that he had this check for him, but Mehan refused to receive it. There was evidence to show that prior to the arrival of the animals in Manila, Beck had had a talk with Mehan in which he asked Mehan to receive a thousand pesos and distribute it among the employees who would have to do with the purchase of the animals. Mehan rejected this proposition and told Beck that he, Beck, had better drop the matter.

This case was commenced against Richards and Reich. Near the close of the Government's testimony the case was dismissed as to Reich and he was called as a witness for the Government. He testified among other things, as follows:

“Q. Was. this payment which you made to Dr. Richards, of 50 pesos, Mexican currency, made by virtue of an agreement between yourself and Dr. Richards?—A. No; I had no agreement with Dr. Richards.

“Q. How was the amount of that payment fixed—by whom?—A. By myself.

“Q. Upon what basis did you⁴ determine that amount?— A. As I stated, I knew it was customary to do that and I also took into consideration that he came right away to examine my mules and saved me a lot of expense at the same time\$ furthermore, I knew my mules could be detained.

“Q. Had any request come to you for payment for these services?—A. No.

“Q. Did you state when you made the payment that it was for that purpose?—A. No; I didn’t state anything at all. I simply handed him the check.

“Q. Didn’t state anything at all?—A. No.”

He also testified:

“Q. Did you have any conversation with Dr. Richards concerning the payment of this money or concerning the passing of these mules previous to the time of giving him the check?—A. No, sir.

“Q. Did you have any conversation with any of the others, defendants Best, Hulett, or Wilson, on that subject?—A. No sir.

“Q. Did you have any conversation at the time of giving the checks?—A. No, sir.”

He further testified:

“Q. Did you have any understanding with Dr. Richards, with Pete Wilson, with Mrv Hulett, or with Mr. Best concerning the passing of these mules?—A. No, sir.

“Q. Either separately or individually?—A. No, sir.

“Q. Or jointly—that is, all together?—A. No, sir,

“Q. Do you know of any arrangement or agreement or understanding which existed between these parties or any of them concerning your mules or the passing or purchase of your mules?—A. No, sir.”

As to his reasons for paying this money he testified as follows:

“Q. Why did you think it necessary, Mr. Reich, to pay the sums to these various veterinarians and transportation men who examined these animals for the Government?— A. Well, I know it was a general custom in town to do that; otherwise it takes you much longer to pass your animals.

“Q. Now, you have stated some four or five or six times in your direct testimony that you knew it was customary to pay gratuities to the public officials who spent time on your animals. How do you know this?—A. From other horse dealers.

“Q. Not of your own knowledge?—A. From other horse dealers and merchants in town.”

The defendant, Richards, testified that there was no agreement or understanding of any kind between him and Reich in regard to this check prior to its delivery and that he never had had any talk with Reich in regard thereto.

The money in this case was paid after the animals had been examined and the transaction closed. In order to convict the defendant, therefore, under article 381 above quoted, it is necessary to prove that there was some previous promise or agreement connected with some act to be performed by Richards. We have called attention to all the evidence in the case upon this subject and it is apparent that the only evidence to prove any previous agreement or promise is the fact that after the transaction was closed Reich delivered and Richards received the check above mentioned. This is entirely insufficient to show the existence of any promise or offer made in connection with the animals described in the complaint. Whether the receipt of this check by Richards would be evidence to prove an implied promise on his part to pass animals in the future which Reich might sell to the city need not be discussed because the complaint does not reach any such case.

The court below held that the evidence in the case showed a conspiracy between the men who received these checks to defraud the Government and upon this theory admitted as evidence the transactions between Reich and Mehan, Best, Wilson, and Hulett, with which transactions the defendant Richards had nothing to do. There is no evidence in the case that any of these so-called conspirators ever talked with each other about the alleged conspiracy or ever took any action whatever by reason of any agreement made between themselves. In fact, the only evidence in the case upon which to base the finding of conspiracy is the fact that after the transaction had been closed Reich distributed these checks to these different persons. The evidence is entirely insufficient to show the existence of any conspiracy

between them.

The defendant can not be convicted of a violation of either articles 381 or 382 of the Penal Code, and the judgment of the court below will accordingly have to be reversed.

The complaint and evidence are, however, sufficient to show a violation of article 386 of the Penal Code, which article is as follows:

“The public official who shall accept presents given him in consideration of his official position shall be punished with suspension in its minimum and medium degrees, and public censure.”

The defendant, Richards, testified at the trial that during the progress of these examinations he gave Reich and Rosenberg some professional advice in regard to the habit of cribbing in horses and told them how this disease could be detected in an animal, and he says the 50 pesos was the value of these services and that it was received by him in payment therefor. The evidence in the case does not support this statement.

The objections made by the appellant to the proceedings by virtue of which he was arrested and brought into court are disposed of by reference to the case of the United States vs. Wilson^[1] (3 Off. Gaz., 366), in which the same objections were made and overruled.

The judgment of the court below is reversed and the defendant is convicted of the crime defined in article 386 of the Penal Code and is sentenced to two years of suspension and to public reprimand, with costs of both instances against him, and the 50 pesos received by him as a gift is hereby confiscated.

After the expiration of ten days from the date hereof let judgment be entered in accordance herewith and at the proper time let the record be remanded to the court below for proper action. So ordered.

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

Tracey, J., did not sit in this case.

^[1] 4 Phil. Rep., 317.

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