

7 Phil. 736

[ G.R. No. 3188. March 12, 1907 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALEC KIENE, DEFENDANT  
AND APPELLANT.**

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

**CARSON, J.:**

The defendant was an insurance agent. As such agent there was paid over to him for the account of his employers, the China Mutual Life Insurance Company, the sum of 1,539.20 pesos, Philippine currency, which he failed and refused to turn over to them. For his failure and refusal so to do, he was convicted of the crime of *estafa* in the Court of First Instance of the city of Manila and sentenced to be imprisoned for one year and six months in Bilibid, and to pay the costs of the trial.

The facts as stated above were fully established at the trial of the case; the accused offered no evidence on his own behalf and rests his appeal substantially upon the alleged failure of the prosecution to establish the existence of a duty or obligation imposed on the defendant to turn over to his principal the funds which he is charged with appropriating to his own use.

Counsel for the defendant contends that the trial court erroneously admitted in evidence a certain document purporting to be a contract of agency signed by the defendant. The name of the accused is attached to this document, and one of the witnesses, the district agent of the China Mutual Life Insurance Company, stated that it was the contract of agency it purported to be, but failed to state specifically that the signature attached thereto was the signature of the defendant, though he declared that he knew his signature and had seen him write it on various occasions.

An examination of the record seems to indicate that the failure of the witness to expressly identify the signature of the defendant attached to the document was due to an oversight, but however this may be, it is contended that the execution of the document was not

formally established, and that the trial court erred in taking into consideration one of its provisions whereby the defendant appears to have expressly obligated himself to deliver to the China Mutual Life Insurance Company the funds collected on its account, without deduction for any purpose whatever.

We do not deem it necessary to review the action of the court in admitting this document in evidence, because we are of opinion that the obligation of the defendant to deliver the funds in question to his employers is determined by the provisions of article 1720 of the Civil Code, which is as follows:

“Every agent is bound to give an account of his transactions and to pay to the principal all that he may have received by virtue of the agency, even though what has been received is not owed to the principal.”

Nothing to the contrary appearing in the record, and the existence of the agency and the collection of the funds on account of the principal having been established, the obligation to deliver these funds to the principal must be held to have been imposed upon the agent by virtue of the contract of agency.

Counsel for the appellant further contended that the court erred in admitting in evidence a certain letter written by the defendant wherein he admitted the collection of certain funds on account of his principal, but we think that the execution of this letter was conclusively established, and that it was properly admitted, being pertinent and material to the issue in the case.

There were other objections to the admission of certain testimony at the trial of the case, but we find no error in the proceedings prejudicial to the real rights of the accused, and it is unnecessary to discuss the assignments of error based on these objections.

The crime of which the accused was convicted is defined and penalized in paragraph 5 of article 535, read together with paragraph 3 of article 534, of the Penal Code, and the penalty prescribed is that of *presidio correccional* in its minimum and medium degrees. There being no aggravating or extenuating circumstance to be taken into consideration, this penalty should be imposed in its medium degree, which, in accordance with the provisions of article 82 of the said code, is from one year eight months and twenty-one days to two years eleven months and ten days of *presidio correccional*. The trial court imposed the

penalty of one year and six months of imprisonment in Bilibid, and failed to impose the accessory penalties prescribed by law, and this sentence should therefore be reversed, and is hereby reversed, and instead thereof we impose the penalty of one year eight months and twenty-one days' imprisonment (*presidio correccional*), together with the accessory penalties prescribed by law, and the payment to the agents of the China Mutual Life Insurance Company, Limited, of the sum of 1,550.30 pesos, Philippine currency, with subsidiary imprisonment in case of insolvency, and the costs in both instances. After the expiration of ten days let judgment be entered in accordance herewith, and ten days thereafter let the case be remanded to the lower court for proper action. So ordered.

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

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