

[G.R. No. 3307. March 22, 1907]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN GOYENECHEA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The accused in this case was found guilty of the crime of *estafa* by the Court of First Instance and sentenced to one year's imprisonment. The offense in this case consists in that the accused pledged with the American Loan Company, a loan agency, a typewriter, alleging the same to be his, the accused's property, when in truth said typewriter was then the property of and belonged to the firm of McCullough & Co., and had been rented from said firm by the accused.

There is no doubt as to the reality of this fact. The accused himself in testifying during the trial of the cause recognizes and admits the truth of such fact, and the same is also expressly admitted by the attorney for the defense in this case. The only thing alleged by the defense herein is that McCullough & Co. recovered the typewriter, said to have been converted, and therefore McCullough & Co. have suffered no damage or loss as is set forth and alleged in the complaint herein. According to the defense, the loan agency mentioned, the American Loan Company, in such a case as the present one, would be the injured party and not the firm of McCullough & Co., the owner of the typewriter.

It is enough to say that it was by reason of the act of appropriation and the execution of said act by the accused that the typewriter was first seized by the police and afterwards taken into court, and, lastly, that throughout the entire trial of the case McCullough & Co. was placed in a doubtful position as to its right in and to the typewriter; and that McCullough & Co. only recovered the typewriter after a claim for the same had been presented and formally supported by the agent or manager of the American Loan Company; all of which are facts duly brought out in the case and which show conclusively that McCullough & Co.

at least suffered disturbance in its property rights in the said typewriter and in the possession thereof. This fact, by itself, and without it being necessary to deal with any other considerations of material fact herein, always constitutes real and actual damage, and is positive enough under rule of law to produce one of the elements constituting the offense, the crime of *estafa*. Therefore, the allegation and claim of the defense is completely without foundation.

The offense comes within that prescribed in article 535, paragraph 5, of the Penal Code in connection with paragraph 2 of article 534 of the same code, for the reason that the court below has found that the value of the said typewriter is 50 dollars, United States currency, exceeding therefore, the sum of 250 pesetas but being less than 6,250 pesetas, the penalty for which, according to law is *arresto mayor* in its medium degree to that of *prision correccional* in its minimum degree. This court can not take into consideration any circumstances tending to modify the penalty in this case and we therefore sentence the accused to five months' imprisonment (*arresto mayor* in its medium degree).

With this modification, we affirm the judgment appealed from, with the costs of this instance against the accused. After the expiration of ten days from notification of this decision let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

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