

[ G. R. No. 3332. July 18, 1907 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. HARRY B. MULFORD,  
DEFENDANT AND APPELLANT.**

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

**JOHNSON, J.:**

On the 26th day of June, 1905, the following complaint was presented against the defendant, charging him with the crime of *estafa*;

“That on or about the 25th day of April, 1905, in the city of Manila, P. I., the said Harry B. Mulford, ordinarily known as H. B. Mulford, did then and there willfully, unlawfully, feloniously, and with intent of gain, appropriate, misapply, and convert to his own use, one thousand dollars (\$1,000), United States currency, the property of El Banco Americano, ordinarily known as The American Bank, a corporation duly organized and registered under the laws of the Philippine Islands on September 6, 1901, and existing and doing a general banking business in said city of Manila ever since said date, which said sum of one thousand dollars (\$1,000) was then and there received by and in the care, custody, control, and possession of the said Harry B. Mulford as cashier and manager of said corporation and bank for management, investment, and administration as a part of the funds of the said Banco Americano under the duty and obligation on the part of the said defendant, Harry B. Mulford, to deliver and return the same to the said Banco Americano; all to the damage and prejudice of the said Banco Americano, and O. M. Jenkins, then and there a creditor and depositor of said bank, and numerous other creditors and depositors of said bank, in the sum of one thousand dollars (\$1,000), United States currency, which sum is the equivalent of and equal in value to the sum of ten thousand (10,000) pesetas; that the said Harry B. Mulford was then and

there cashier and manager of said corporation and bank, and has been such cashier and manager at all times since its foundation and organization aforesaid; that the said defendant, Harry B. Mulford, then and there covered up and concealed the said appropriation, misapplication, and conversion of the said sum of one thousand dollars (\$1,000), United States currency, by means of fictitious, fraudulent, and false entries in the account books of the said Banco Americano made by him from time to time during the time he was manager and cashier as aforesaid, and by means of a certain fictitious, false, and fraudulent promissory note for one thousand dollars (\$1,000), bearing date of April 25, 1905, and purporting to have been executed to the said Banco Americano by Go Chinco and Sy Pa, but in truth and in fact made and fabricated by the said defendant without authority, payable ninety days after date and bearing the number 1896 in said bank, so as to make it impossible to ascertain and determine whether the said one thousand dollars (\$1,000), United States currency, was appropriated, misapplied, and converted by the said Harry B. Mulford on the said 25th day of April, 1905, or at some time or times prior to the said 25th day of April, 1905, during the existence and lifetime of the said Banco Americano, and therein and thereby making it impossible to determine the specific pieces of money converted and misappropriated as aforesaid; that the said defendant had at all times and does still refuse to account for, pay over, and deliver to the said Banco Americano the said sum of one thousand dollars (P 1,000), United States currency, or any part thereof.

“Signed and sworn to by J. L. Barrett.”

After hearing the evidence adduced during the trial of said cause, the lower court found the defendant guilty of the crime of estafa and sentenced him to be imprisoned for a period of two years of *presidio correctional*, with the accesories of article 58 of the Penal Code and to return to the Insular Treasury the sum of \$1,000, United States currency, the amount “*estafada?*” and to suffer, in case of insolvency, subsidiary imprisonment, which Avas not to exceed one-third part of the principal penalty, and to pay the costs.

From this sentence the defendant appealed to this court, and made the following assignment of errors:

1. That the judgment and sentence of the said Court of First Instance was

contrary to law.

2. That the judgment and sentence of the said Court of First Instance was contrary to the evidence.

After a careful consideration of the evidence adduced during the trial of the lower court, we find the following facts to be true:

(1) That the American Bank was a corporation duly organized and registered under the laws of the Philippine Islands on the 6th day of September, 1901, and existed and did a general banking business in the city of Manila from said date until the 18th day of May, 1905.

(2) That the said defendant, Harry B. Mulford, was cashier and manager of said banking corporation from the date of its organization until the said 18th day of May, 1905, when the affairs and business of said corporation were taken control of by the Insular Treasurer of the Philippine Islands, under and by virtue of an order of the Governor-General of the Philippine Islands, in conformity with the provisions of Act No. 556 of the Philippine Commission.

(3) That as cashier of said bank, the said Harry B. Mulford, under the by-laws of said banking corporation, "had the entire active management of the business of the corporation, etc., with power to perform all the duties usually performed by such officer, together with such other duties as the board of directors might designate," and as such cashier had control, custody, and possession of the funds and deposits of said banking corporation.

(4) That on the said 18th day of May, 1905, when the Insular Treasurer took possession of the funds and assets of said banking corporation, he found there thirty-six promissory notes, amounting to the sum of \$36,500, United States currency, which notes were carried upon the books of said company by the said Mulford as a part of the assets of said banking corporation; that the note bearing date of April 25, 1905, purported to have been executed to the said banking corporation by Go Chinco and Sy Pa; that the said thirty-six promissory notes were signed by sixty-nine persons, including the said Go Chinco and Sy Pa; that after repeated efforts on the part of the said Insular Treasurer, none of the

sixty-nine signers of the said notes, including Go Chinco and Sy Pa, could be found within the city of Manila nor within the Philippine Archipelago; that the said Insular Treasurer used every means possible for the purpose of ascertaining the whereabouts of the persons whose names appear signed to the said promissory notes.

(5) That according to the records of said banking corporation the promissory note described in the complaint and numbered 1896 had been executed and delivered to the bank on the 27th day of October, 1904, and renewed two different times thereafter, to wit, on the 25th day of January, 1905, and again upon the 25th day of April, 1905.

(6) That according to the records of said banking corporation, the actual cash funds of said bank had been reduced in an amount equal to the said promissory note described in the above complaint, thereby showing that some person had actually taken out of the assets of said bank \$1,000, United States currency, on a date corresponding to the date of the said promissory note.

(7) That the said banking corporation had received from stockholders and depositors, from time to time, large sums of money and had on deposit and under the control and in the possession of the said defendant these sums of money, holding and managing the same as representative of the said banking corporation and in trust for the said depositors.

(8) That the defendant, Harry B. Mulford, as cashier and manager of said banking corporation, and being in control and possession of the funds and assets of said corporation, did appropriate, misapply, and convert to his own use the sum of \$1,000, United States currency, by means of fictitious, fraudulent, and false entries in the books of said banking corporation, which entries were made by him from time to time as cashier and manager of said corporation, and by means of a certain fictitious, false, and fraudulent promissory note executed by himself, signing the names thereto of Go Chinco and Sy Pa, representing thereby that Go Chinco and Sy Pa were legitimate debtors of said bank, whereas and in fact the persons Go Chinco and Sy Pa, if such persons exist at all, never did sign the promissory note described in the complaint, nor give their consent that the said defendant should sign their names to the said promissory note.

(9) That the said defendant, Harry B. Mulford, although he has been requested to return the said \$1,000, United States currency, to the possession of said banking corporation and to the custody of the Insular Treasurer of the Philippine Islands, has continually refused so to do, and that by such fraudulent misappropriation of the funds of said banking corporation and the depositors therein, and his refusal to return the said funds, he has thereby injured said banking corporation and said depositors to an amount equal to the said promissory note.

From all of the foregoing facts we are of the opinion, and so hold, that the defendant, Harry B. Mulford, did fraudulently misappropriate and apply to his own use the sum of \$1,000, United States currency, which he had under his control and in his possession belonging to the American Bank and the depositors of said bank, and that by reason of said fraudulent misappropriation of said sum, the said bank and depositors have suffered a loss and damage to that extent.

There were neither extenuating nor aggravating circumstances connected with the commission of the offense; the defendant therefore must be punished in the medium *degree of presidio correctional* in accordance with paragraph 5 of article 535, in its relation with paragraph 3 of article 534 of the Penal Code. Paragraph 3 of article 534 provides that, if the amount defrauded shall exceed 6,250 pesetas, the person, shall be punished with the penalty of *presidio correctional* in its minimum and medium degrees. One thousand dollars gold is equivalent to 10,000 pesetas. Inasmuch as the penalty imposed by paragraph 3 of article 534 is composed of two degrees, we must apply article 82 of the Penal Code. Applying this article, the medium degree of the penalty provided for by said paragraph 3 would be one year eight months and twenty-one days to two years eleven months and ten days.

It is our opinion that by reason of the peculiar trust and confidential relations which existed between the defendant, by virtue of his position as cashier and manager of said banking corporation, and his relation to the said bank and its depositors, that he should suffer the maximum penalty of the medium degree; therefore it is the judgment of this court that the sentence of the lower court be reversed and that the defendant should be imprisoned for a period of two years eleven months and ten days of *presidio correctional*, with the accessory penalties of article 58 of the Penal Code and to pay the sum of \$1,000,

United States-currency, to the Insular Treasurer, in trust for the said

American Bank and its creditors, and in case of insolvency to suffer subsidiary imprisonment, which shall not exceed the one-third part of the principal penalty, and to pay the costs. So ordered.

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

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