

[G. R. No. 18056. March 16, 1922]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANGEL R. SEVILLA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

OSTRAND, J.:

The defendant is charged with the crime of *estafa* under paragraph 5 of article 535 of the Penal Code, The Court of First Instance of Manila found him guilty and sentenced him to *presidio correctional* for the term of one year, eight months and twenty-one days, with the accessory penalties prescribed by article 58 of the Penal Code and with the costs. The case is now before this court upon appeal from that sentence.

Though counsel for the appellant has made twenty-three assignments of error and has argued all of them very earnestly and at great length, the case, from our point of view, yields readily to analysis and is in reality comparatively simple. The material facts relevant to the issues are practically undisputed and upon the points where there is any conflict of testimony, we shall, for the sake of the argument, adopt the view most favorable to the appellant. We will concede that he was a man of good character, reputation, and social position; that he possessed ample means and that his official record up to the time of the events hereinafter related was unblemished and exceedingly creditable to him.

The evidence shows that during the month of June, 1921, the appellant was the treasurer and responsible financial officer of the Manila Railroad Company. As such, his duties were thus defined in section 6 of article IV of the By-laws of the corporation;

“SECTION 6. The Treasurer.—The Treasurer shall keep full and accurate accounts of the receipts and disbursements of the Company; shall deposit all moneys, checks and other obligations to the credit of the company in such depositories as may be designated by the Board of Directors; shall disburse the

funds of the Company as ordered by the Board of Directors or Executive Committee, taking proper vouchers for such disbursements; shall render a statement of his accounts and transactions whenever required by the Board of Directors or Executive Committee; and generally perform all duties incident to the position of Treasurer subject to the control of the Board of Directors.”

One of the subordinates of the treasurer was denominated cashier and was a bonded employee, having charge of the cash and the disbursements under the immediate direction of the treasurer.

On June 18, 1921, the appellant took, through his subordinate, the cashier, the sum of P8,330 out of the funds of the Railroad Company, giving in return therefor his personal check for the same amount, drawn on the Philippine National Bank; on the 21st of the same month he cashed a check for P1,670 in the same manner and on the 29th another check for P2,000. In all instances he directed the cashier to hold the checks and not to deposit them on the current bank account of the Railroad Company until the end of the month. It is admitted that the appellant used the money for his personal or private purposes, though the exact character of the investments made has apparently not been truthfully disclosed.

For the purpose of obtaining data as to the financial condition of the Railroad Company with a view to a bond issue then in contemplation, the Insular Auditor in the morning of July 1st commenced an examination of its accounts. In counting the cash preliminary to the examination of the books, the appellant's checks were discovered and it was found that they were carried in the accounts as part of the cash on hand. An inquiry at the National Bank disclosed that the appellant then had only P125.66 to his credit there. The appellant could not be found until in the afternoon of the same day when it appeared that he, at 3 o'clock of that afternoon, had deposited on his current account with the National Bank the sum of P12,000, the total amount of the checks.

The checks were not presented for payment until July 6. Though not, as far as we can see, of any special importance, it may be noted that according to the evidence the money withdrawn by the appellant would have drawn interest at the rate of, at least, 2 per cent per annum if it had been deposited in the National Bank on the current account of the Railroad Company. The law applicable to this case is found in article 535 of the Penal Code, the pertinent part of which reads as follows:

“ART. 535. The penalties prescribed by the next preceding article shall be imposed upon:

* * * * *

“5. Any person who, to the prejudice (*perjuicio*) of another, shall convert or misappropriate any money, goods, or other personal property received by such person for safe-keeping, or on commission, or for administration, or under any other circumstances giving rise to the obligation to make delivery of or to return the same, or shall deny having received such money, goods, or other property.”

As will be seen, there are three essential elements in the offense here defined: (a) Money, goods, or other personal property received for safe-keeping or on commission or for administration or for any other purpose giving rise to the obligation to make delivery, or to return, the same; (b) conversion or diversion of such money or property by the person who has so received it, or denial on his part of such receipt; and (c) that such conversion, diversion or denial is to the injury of another.

Fraudulent intent in committing the conversion or diversion is very evidently not a necessary element of the form of *estafa* here discussed; the breach of confidence involved in the conversion or diversion of trust funds takes the place of fraudulent intent and is in itself sufficient. The reason for this is obvious: Grave as the offense is, comparatively few men misappropriate trust funds with the intention of defrauding the owner; in most cases the offender hopes to be able to restore the funds before the defalcation is discovered. We may say in passing that the view here expressed is further strengthened by the fact that of the nine paragraphs of article 535, the paragraph here under discussion is the only one in which the words “fraud” or “defraud” do not occur.

Applying the legal principles here stated to the facts of the case, we find all of the necessary elements of *estafa* under paragraph 5, *supra*, present. That the money for which the appellant’s checks were substituted was received by him for safe-keeping or administration, or both, can hardly be disputed. He was the responsible financial officer of the corporation and as such had immediate control of the current funds for the purposes of safe-keeping and was charged with the custody of the same. That he, in the exercise of such control and custody, was aided by subordinates cannot alter the case nor can the fact that one of the

subordinates, the cashier, was a bonded employee who, if he had acted on his own responsibility, might also have misappropriated the same funds and thus have become guilty of *estafa*.

Neither can there be any doubt that, in taking money for his personal use, from the funds entrusted to him for safe-keeping and substituting his personal checks therefor with instructions that the checks were to be retained by the cashier for a certain period, the appellant misappropriated and diverted the funds for that period. The checks did not constitute cash and as long as they were retained by the appellant or remained under his personal control they were of no value to the corporation; he might as well have kept them in his pocket as to deliver them to his subordinate with instructions to retain them.

This is not a case where money was exchanged for checks drawn against existing funds and available for immediate presentation to the bank for payment. In such a case the checks, while not actual money, would practically be the equivalent thereof and the momentary diversion of the coin or currency would probably not be held to constitute *estafa*.

But it is argued in the present case that it was not the intention of the accused to permanently misappropriate the funds to himself. As we have already stated, such intention rarely exists in cases of this nature and, as we have seen, it is not a necessary element of the crime. Though authorities have been cited who, at first sight, appear to hold that misappropriation of trust funds for short periods does not always amount to *estafa*, we are not disposed to extend this interpretation of the law to cases where officers of corporations convert corporate funds to their own use, especially where, as in this case, the corporation is of a quasi-public character. The statute is clear and makes no distinction between permanent misappropriations and temporary ones. We can see no reason in the present case why it should not be applied in its literal sense.

The third element of the crime with which the appellant is charged is injury to another. The appellant's counsel argues that the only injury in this case is the loss of interest suffered by the Railroad Company during the period the funds were withheld by the appellant. It is, however, well settled by former adjudications of this court that the disturbance in property rights caused by the misappropriation, though only temporary, is in itself sufficient to constitute injury within the meaning of paragraph 5, *supra*. (U. S. vs. Goyenechea, 8 Phil., 117; U. S. vs. Malong, 36 Phil., 821.)

The sentence appealed from is in accordance with the law and the established facts and is

hereby affirmed, with costs against the appellant. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ.,
concur.

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