

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS, MARIANO SOLITO, DEFENDANT AND APPELLANT.

G.R. No. 12546. August 25, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

The important question presented by this appeal is whether or not the defendant is guilty of forging, uttering and passing an altered obligation of the Government of the Philippine Islands with intent to defraud, in violation of the provisions of Act No. 1754. The complaint alleged that the said Mariano Solito, on or about the 15th day of May, 1915, in the Municipality of Dumaguete, in the Province of Oriental Negros, with intent to defraud, did falsely forge, utter and pass an obligation of the Government of the Philippine Islands, to wit, Treasury Warrant No. 428426, drawn by the Insular Auditor on the Insular Treasury in favor of Alvah D. Riley in the sum of P687.53, and by said forgery did secure the payment to himself of the said sum of P687.53; said acts committed within the jurisdiction of this court, to the prejudice of the Government of the Philippine Islands in the sum of P687.53, and contrary to the statute in such case made and provided.

Upon said complaint the defendant was duly arrested, arraigned, tried, found guilty of the crime charged in the complaint, and sentenced by the Honorable Carter D. Johnston, judge, to be imprisoned for a period of one year and one day, to pay a fine of P687.53, to pay the costs, and to suffer subsidiary imprisonment in case of insolvency in accordance with the provisions of the law. From that sentence the defendant appealed to this court.

From an examination of the record the following facts are proved beyond a reasonable doubt:

That the defendant Mariano Solito was, at the time mentioned in the complaint, correspondence clerk and acting chief clerk in the office of the division superintendent of schools in the municipality of Dumaguete; that, as such clerk, he was intrusted with the care of the correspondence of said office, and was authorized to open letters of an official character addressed to the office; that it was the custom of the Director of Education to forward to the division superintendents of schools checks for the reimbursement for travel expenses and for the payment of the salary of employees; that on the 19th day of April, 1915, said Treasury Warrant No. 428426 was issued to the said Alvah D. Riley for the sum of P687.53 by the Auditor of the Philippine Islands directed to the Treasurer of the Philippine Islands for payment; that on the same day (April 19th, 1915) said warrant was sent to the Director of Education; that said warrant was sent to Alvah D. Riley, through the division superintendent of schools, by the Acting Director of Education on April 29, 1915; that the defendant herein presented said warrant to the municipal treasurer for payment, bearing the indorsement of Alvah D. Riley, early in the month of May, 1915, and received the amount of money called for (P687.53) from said municipal treasurer; that Alvah D. Riley never had in his possession said warrant, nor had he ever seen the same, until after the defendant had presented it for payment to the said municipal treasurer; that he did not indorse the same by writing his name on the back thereof; that his signature which appears upon the back of said warrant was not his signature; that he did not write his name thereon; that the said division superintendent of schools did not receive said warrant and had never seen it until after the defendant herein had received the money thereon; that there is no proof in the record showing that any

person or persons had in his possession said warrant after it left the hands of the Acting Director of Education until it was presented by the defendant to the said treasurer indorsed as above indicated; that, at the time the defendant presented said warrant to the municipal treasurer for payment, he also presented a note purported to have been written and signed by Riley, in which the latter requested the said treasurer to cash the warrant. Riley denies absolutely that he gave to the defendant said note. The note was, in our opinion, a forgery. Riley never signed it nor authorized it.

While the record does not contain positive proof that the defendant did, in fact, write the name of Alvah D. Riley upon the back of said warrant, in view of all the facts and circumstances the conclusion is irresistible that he did. The record further shows beyond a reasonable doubt that the defendant did pass and utter said warrant after the same had been altered by said forged indorsement; and did, at the time mentioned in the complaint, without the authority of its owner, collect the amount due thereon with intent to defraud.

The questions are: Do these acts of the defendant fall under any of the provisions of Act No. 1754? Is the defendant punishable under any of said provisions?

Said warrant was a check issued by the Government of the Philippine Islands and, therefore, an obligation of the Government of the Philippine Islands as defined by section 1 of Act No. 1754. It was originally made payable to Alvah D. Riley, or to his order. When it was indorsed as above indicated, it became a check or warrant payable to bearer. The indorsement made a material alteration in said warrant. The indorsement changed said check from one payable to Alvah D. Riley, or to one to whom he ordered it paid, to one payable to bearer. The indorsement by the defendant had the effect of erasing the phrase "or order" upon the face of the warrant.

Whenever the holder of a check, without the consent of the maker, changes its terms so as to make it payable to bearer by erasing or changing the words "or order" after the payee's name, he thereby makes a material change in said document. (*McCauley vs. Gordon*, 64 Ga., 222; 37 Am. Rep., 68; 2 C. J., 1206; *Needles vs. Shaffer*, 60 Iowa, 65.) Changing the phrase "or order" to "bearer" is a material alteration. While the instrument was payable to Alvah D. Riley, or order, it was negotiable by the indorsement of Alvah D. Riley only. The change made it payable; to "bearer" and it was thereafter negotiable and transferable by delivery simply. In construing the effect of the indorsement we must not only look to said indorsement, but to the face of the document also, for the purpose of ascertaining whether or not the indorsement operated to alter the terms or conditions of the original contract. (*Johnston vs. May*, 76 Ind., 293; *Farmers' Bank of Kentucky vs. Ewing*, 78 Ky., 264; *Morris vs. Cain*, 39 La. Ann., 712.)

The defendant having passed and uttered an altered obligation of the Government of the Philippine Islands with intent to defraud, he is punishable under article 4 of Act No. 1754.

Therefore, the sentence of the lower court is hereby affirmed, with costs. So ordered.

Arellano, C. J., Carson, Araullo, Street, and Malcolm, JJ., concur.

[1] Note.—Case No. 12547 against this same defendant and involving the same question and principles of law was decided at the same time and with the same result.

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