

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. VICENTE RUIZ, DEFENDANT AND APPELLANT.*G.R. No. 2947. October 19, 1906*

Ponente: ARELLANO, C.J.

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The defendant has been sentenced to five months' imprisonment (arresto mayor) with the accessories of article 61 of the Penal Code, to pay to the New York Life Insurance Co., of this city, the sum of \$172.74, United States currency, or its equivalent, P345.58, Philippine currency, or in case of insolvency, to suffer subsidiary imprisonment to the extent of one-third of the principal penalty, and to pay the costs.

The defendant has appealed from the judgment, but has pointed out no fundamental error. Article 535, paragraph 5, of the Penal Code, provides that the crime of estafa is committed by those who, to the prejudice of another, convert or misappropriate money or any other chattel which they may have received on deposit, on commission, or for administration. The accused misappropriated money received in commission for that company for which he was soliciting agent, to the amount expressed in the judgment. He has consequently been guilty of the crime charged. One of the arguments advanced by the defendant in this instance is that he who fails to deliver or return the same thing which he was under obligation to return or deliver is guilty of estafa, and that as the accused did not receive the money in question in United States currency, he could not be guilty of misappropriating it in United States currency. The court did not convict him for having converted a chattel received other than on commission—that is, received under any other title than that included in the words "on deposit, on commission, or for administration"—but convicted him for having misappropriated money received on commission. To this end it was not necessary that he should have failed to deliver the same coins received. It was sufficient if he failed to deliver the money received under these circumstances. The code furthermore punish as guilty of estafa he who converts to his own use any chattel received by him, on deposit, commission, or for administration, or by virtue of any other contract from which "arises the obligation of delivering it up, or returning," as for example, comodato, pledge, and others. In this case the delinquent converted a specific thing which it was his duty to deliver or return.

Moreover, in the case of money, it is a legal maxim that "one owes 'the same' as one receives, and that 'the same' is the thing or amount itself or. its proper equivalent." It is contended by the defense that no evidence has been introduced in order to establish the equivalence between the two sums. This is not correct, inasmuch as the defendant himself, in his letters to the complaining witness and in his testimony, indicates the rate of exchange upon which he acted in collecting the insurance premiums, and issuing receipts expressed in United States currency. It follows, therefore, that the judgment appealed from is in accordance with law, with the exception that the words "fifty- eight cents" should be amended to read "forty-eight cents." The judgment is, therefore, affirmed in its entirety with the costs of this instance. The amount of 345.58 pesos in the judgment is to be changed to 345.48 pesos, Philippine currency.

After the expiration of ten days from the entry of judgment the cause will be remanded for execution. So ordered.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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