

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SIMON SCHNEER, DEFENDANT AND APPELLANT.

G.R. No. 3380. February 23, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

The defendant was the agent of Eladia Carvajal de Lanman for the purpose of collecting and receiving money belonging to her and transmitting it to her. At the termination of his agency there was a balance due to her from him of 1,798.26 pesos, which he has not paid. It seems clear from the evidence that at the termination of his agency he did not have this money in his possession and that he had used it in his own business and lost it.

It appears that the money, with the collection of which he was charged, was derived from the rent of certain real estate in the city of Manila, one-half of which was owned by his principal and the other half by a person who was represented by the firm of Gutierrez Hermanos.

Gutierrez Hermanos were the persons who actually managed the property, collected the rents, paid the expenses of such management, and turned over to the defendant some of the balance due his principal. It was proved that they had thus delivered to the defendant 2,992 pesos. There were presented in evidence the accounts of the defendant with his principal from the commencement of the agency until its termination. There were also presented in evidence the accounts of Gutierrez Hermanos with Eladia for a part of this time. From the accounts of the defendant it is impossible to know just what he did in the management of the property. In those accounts he has charged himself with the rents collected and credited himself with taxes paid and other disbursements made on account of the property but it is very clear from the evidence that he collected none of these rents, except a small portion toward the end of his agency, and that he made none of these disbursements. In fact, commencing with January, 1903, many of the items which appear on his accounts as having been received and disbursed by him are also on the accounts of Gutierrez Hermanos as having been received and disbursed by them.

The last accounts of Gutierrez Hermanos show that they owed Eladia on the 20th of April, 1904, 4,065.60 pesos. The accounts of the defendant show that on the 1st of May of the same year he owed his principal, Eladia, 3,453.92 pesos. The evidence shows that Eladia had been paid by Gutierrez Hermanos the balance due of 4,065.60 pesos, and it is claimed by counsel for the defendant that that is all that she is entitled to receive from the property and that that includes the balance of 3,453.92 pesos due from the defendant to her.

As has been said, it is impossible to tell from the accounts of the defendant what money he actually received from the property. The sum of 2,992 pesos which appears in the accounts of Gutierrez Hermanos to have been paid by them to him do not appear at all in his accounts as having been received by him from them. It is clear that that particular amount was due from the defendant to Eladia in addition to what was due to her from Gutierrez Hermanos. Of that amount, 2,992 pesos, the amount of 1,798.26 pesos has never been paid.

The facts above stated constitute the crime of estafa by virtue of the provisions of paragraph 5 of article 535 of the Penal Code.

In the court below the defendant, represented by counsel, pleaded not guilty to the complaint. He afterwards asked permission of the court to withdraw the plea and demur to the complaint. This was denied by the court. In this ruling the court committed no error. The defendant has a right to demur to a complaint before he pleads thereto but he has no right after he has pleaded not guilty to withdraw that plea and present a demurrer. It is within the discretion of the court below to grant or deny him permission to do so.

The complaint alleges that between the 7th day of February, 1901, and the date of the complaint, which was on the 24th day of February, 1906, the defendant had converted to his own use money belonging to Eladia amounting to 1,808.32 pesos. When the defendant asked leave to withdraw his plea of not guilty he stated that he desired to present a demurrer and to ask for a bill of particulars, stating the different amounts which had been received and misappropriated by him. It is now claimed that the court committed an error in refusing to direct the fiscal to present such a bill of particulars. We know of no provision either in General Orders, No. 58, or in the laws existing prior thereto which requires the Government to furnish such a bill of particulars, and we accordingly hold that it was not error on the part of the court below to refuse to do so.

It appears that the defendant is more than sixty years of age. The judgment of the court below is modified so as to make the imprisonment that of one year eight months and twenty-one days of presidio correccional instead of one year and two months of presidio correccional; in all other respects it is affirmed, with the costs of this instance against the appellant.

After the expiration of ten days, judgment will be rendered in accordance herewith, and ten days thereafter the cause will be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

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