

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. WALTER B. BROWN, DEFENDANT AND APPELLANT.

G.R. No. 3760. October 19, 1907

Ponente: TORRES, J.

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TORRES, J.:

Under a complaint presented on September 15, 1906, Walter B. Brown was accused of the falsification of a private document—that is, of the vale, "Exhibit A," the original of which is attached to page 14 of the record and is of the following tenor:

"Manila, P. I.—Sept. 10, '06.: Vale for P80 (Eighty Pesos, P. C.)—Payable on sight.—J. EL Taylor—Cos f Co."

On the date above mentioned and in the city of Manila, said Walter B. Brown, with intent to prejudice Walter E., Olsen & Co., made, imitated, and falsified said vale, a document which appeared to be signed by J. H. Taylor for the sum of ^80, with the signature and rubric of the said J. H. Taylor imitated; that upon the presentation of the pale to J. W. Marker, agent of Olsen & Co., the latter, believing the false statements made by the accused, delivered to him the sum of P63 and goods to the value of P17, the accused Brown not being authorized by Taylor to write the name of the latter on said vale or to present the vale in the store of Walter E. Olsen & Co. and collect the said amount.

The cause having been instituted under said information, the court, in view of the result, sentenced the accused to imprisonment for one year eight months and twenty-one days in Bilibid Prison, to pay a fine of C>25 pesetas, Philippine currency, to restore to Walter E. Olsen ik Co. the sum of P80, and, in case of insolvency, to subsidiary imprisonment and to pay the costs, from which judgment the accused has appealed.

The facts fully proven in the present cause are: That in the afternoon of September 10, 1906, the accused, Brown, presented himself at the cigar store of Walter E. Olsen, situated on the Escolta, city of Manila, and exhibited to J. W. Marker, an employee of the store, the vale which is the basis of this cause, stating that J. H. Taylor could not give him at that time the money which he wanted and on this account turned over to him said vale to have it cashed at said cigar store, and as Marker considered tile signature of the vale genuine and had confidence in the accused, who on other occasions had been at the store to cash various checks of Taylor, and because he had been in charge of the "Lone Star Cafe," he accepted the vale and delivered to the accused its value, partly in merchandise and partly in cash; Marker, on the following day, delivered the rale to the owner of the cigar store, Olsen, as a voucher for the sale (cash) and goods to the amount of P80. No restitution of the said sum or value was made to the offended party from that time until the date of the information, by the accused or by any other person, according to the testimony of J. W. Marker and Walter E. Olsen.

John H. Taylor denied that the signature and rubric written on said vale were his, although it has some similarity to his signature, and stated that he never signed or delivered such a document to the accused or to any other person for the purpose of obtaining money and goods from the said cigar store. The secret-service agent, George W. Marshall, testified that, in a conversation which he had with the accused, the latter confessed to him

voluntarily to have written the said vale because he was pressed and needed money to free himself from his creditors.

It is seen from the facts as proved that the handwriting, signature, and rubric of Taylor were simulated or imitated on the vale attached to folio 14 of the record to the prejudice of Walter E. Olsen, whose employee, J. W. Marker, at the said cigar store, delivered money and goods to the value of P80 to the accused, Walter B. Brown, because of the false vale, the latter not having reimbursed the injured party, the said Taylor having refused to recognize said vale and having denied the authenticity of the signature and rubric consisting of his initials and surname, written thereon in imitation of his handwriting and genuine signature.

Article 304 of the Penal Code says:

"He who, to the prejudice of a third person or with intent of causing it, shall, in a private document, commit any of the falsifications specified in article 300 shall be punished, etc."

No. 1 of article 300 cited says:

"By counterfeiting or feigning any writing, signature, or rubric."

The crime specified in article 304 in connection with article 300 of the Penal Code having been proven, the guilt of the accused was shown upon the trial as the sole author by direct participation and properly convicted of the falsification of said vale, executed for the sole purpose of obtaining from the cigar store managed by J. W. Walter [Marker] money and goods to the value of P80.

In the commission of this crime neither an extenuating nor aggravating circumstance is to be found, wherefore the penalty prescribed by the law is to be imposed in its medium grade.

With respect to the alleged nullity of the complaint, as claimed by the defense, because of its amendment after the accused had made his plea of not guilty, which amendment consisted of the insertion therein of a translation into Spanish of the falsified vale or document, it being taken into consideration that the amendment was a matter of form and subject to the discretion of the court, and has not prejudiced any essential right of the accused (sec. 9, General Orders, No. 58), and taking into account that the defendant, Walter B. Brown, understands English perfectly, and accepted service of the complaint also translated into English and testified at the trial in the same language, the said amendment in the form of the complaint has not affected the proceedings, nor has it brought about the nullity of the judgment appealed.

For these reasons, in our opinion, the judgment appealed from should be affirmed, the accused, Walter B. Brown, however, should be sentenced to the penalty of one year eight months and twenty-one days of presidio correccional, according to the code, instead of prison as imposed by the court, with the costs of this instance. So ordered.

Arellano, C. J., Johnson, Willard, and Tracey, JJ., concur.

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