

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. OTIS G. FREEMAN, DEFENDANT AND APPELLANT.

G.R. No. 3779. November 13, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of estafa in a complaint in the words and figures following: "That on or about the 13th day of January, 1906, in the city of Manila, P. I., the said Otis G. Freeman was then and there a servant, clerk, agent, employee, and manager of the steamship department of Castle Bros., Wolf & Sons, a corporation doing business in the Philippine Islands; that by virtue of his said duties and employment, there then and there came into his possession and into his charge large sums of money belonging to the said Castle Bros., Wolf & Sons, which sums of money were then and there received on deposit, for safe-keeping, and under circumstances producing the obligation of delivering and returning the same to the said Castle Bros., Wolf & Sons; that the said Otis G. Freeman then and there willfully, unlawfully, and feloniously did of said moneys so received and held under his charge as aforesaid, with intent of profiting thereby, and without the consent of the said Castle Bros., Wolf & Sons, appropriate, misapply, and convert to his own use the sum of 3,500 pesos, Philippine currency, equivalent and equal to 17,500 pesetas, Philippine currency, the property of the said Castle Bros., Wolf & Sons; to the prejudice of the said Castle Bros., Wolf & Sons in the said sum of 3,500 pesos, Philippine currency, equivalent to 17,500 pesetas, Philippine currency.

"Contrary to the form of the statute in such case made and provided."

Upon this complaint the defendant was duly arrested on the 8th day of August, 1906, and on the 11th day of August, 1906, presented the following motion for a bill of particulars:

"And now comes said Otis G. Freeman, the defendant above named, by W. A. Kincaid, his attorney, and moves the court for an order directing that the complaint be made more definite and certain in this, to wit: Said defendant is charged in said complaint with receiving large sums of money on or about the 13th day of January, 1906; and before answering said complaint it is necessary that the said defendant be informed of the particular amounts or sums of money received on or about the said 13th day of January, 1906, by whom said amounts were paid, and whether he, said defendant, is charged with the estafa of one particular amount received from some individual or firm, or whether said sum of 3,500 pesos, Philippine currency, was made up from other smaller amounts, or otherwise. Until said complaint is made definite and certain in the particulars aforesaid, it is impossible for said defendant to intelligently answer the same.

"Wherefore defendant prays that said motion be granted."

This motion for a bill of particulars was duly supported by an affidavit signed by the defendant. The motion for a bill of particulars, on due consideration, was denied by the judge of the Court of First Instance of the city of Manila, on the 16th day of August, 1906. Notwithstanding the denial of the motion for a bill of particulars on the part of the lower court, the prosecuting attorney on the 13th day of September, 1906, filed a bill of particulars which was as follows:

"The following is a bill of particulars of the sums embezzled on which the complaint filed herein is founded:
"That oil or about November 1, 1903, the said Otis G. Freeman was employed as a servant, clerk, agent, employee, and manager of the steamship department of Castle Bros., Wolf & Sons; that he held this position from the said date until on or about the 28th day of July, 1906; that as such manager of the steamship department of the said Castle Bros., Wolf & Sons he had sole custody and control of the books and funds of the steamship department of the said Castle Bros., Wolf & Sons, and was under the duty and obligation of keeping true books of account of all the receipts and disbursements made by him as such manager of the steamship department of the said Castle Bros., Wolf & Sons; that the said Otis G. Freeman, on page 6 of the cashbook under his sole custody and control, and in which cashbook it was his duty to enter all sums of money received and disbursements made by him as manager of the steamship department of the said Castle Bros., Wolf & Sons, did make an entry dated January 13, 1906, that he then had on hand the sum of P10,719.38; that on the same page and the same date he made the following further entries of money received by him:

C. B. W. & S. Vale

P50.00

P. M. Co. P/O 12322 Spl a/c U. S. N.

333.20

" 12323 Ins. No. 7

312.50

C. B. W. & S. Vale

50.00

Ldg. China 76

9.80

No. 21

2.60

26

.50

41

.50

48

2.85

68

1.13

70

.50

71

.50

72

1.13

Gulf of Venice—Frt 16 Hd Stock

@64 @ 2/-3/8

Out of Freight No. 262 Doric 48

80.40

Ldg. Doric 48. No. 1 Younger

.50

Making a total of

P12,185.92

"That on page 7 of the said cashbook, and under the said date, January 13, 1906, he did make the following entries of sums of money disbursed by him as aforesaid manager of the steamship department of the said Castle Bros., Wolf & Sons:

C. B. W. & S. Deposit 211 Jany. 12

P6,354.00

Gulf of Venice Immigration " 18th

4.00

Cash Captain " 11th

3,550.00

Medical Services " 12th

30.00

"That on the same page and under the same date he did make an entry of having cash on hand to the amount of P2,247.84; that the entry 'Cash Captain, January 11th P3,550' so made in said cashbook on said date, January 13, 1906, as aforesaid, was a false entry and the said Otis G. Freeman did not on said 11th day of January, 1906, or at any other time, pay to the captain of the steamship Gulf of Venice the sum of P3,550, but then and there did only pay to the said captain of the said steamship Gulf of Venice a sum of money not greater than 50 pesos, Philippine currency; that by this false entry so made as aforesaid, the said defendant was enabled to falsely account for and conceal the embezzlement of the sum of 3,500 pesos, Philippine currency, which he embezzled at this time, or at some other time, the exact date or dates of the sum embezzlement or embezzlements not being known to the undersigned, or to Castle Bros., Wolf & Sons, but only to the defendant; that the defendant appropriated the sum

of 3,500 pesos from funds in his possession belonging to the said Castle Bros., Wolf & Sons while he was employed as manager of the steamship department of the said Castle Bros., Wolf & Sons, on or about January 13, 1906; that it is impossible for the undersigned or for Castle Bros., Wolf & Sons to state at what time the defendant embezzled any particular sum of money comprising the said 3,500 pesos, or to show what particular items make up the said 3,500 pesos, or from what particular firm or individual any particular item of this 3,500 pesos was received, as this information is exclusively and solely within the knowledge of the defendant.

(Signed) AYLETTE R. COTTON,
"Prosecuting Attorney."

The defendant was duly arraigned in the court below and pleaded "not guilty" of the crime charged in the said complaint. After hearing the evidence adduced during the trial of the cause, the lower court found the following facts to be true:

- That the defendant had been in the employ of Castle Bros., Wolf & Sons for about three years prior to the 1st day of July, 1906.
- That during that period the defendant was in charge of the steamship department of said Castle Bros., Wolf & Sons, receiving and disbursing moneys, keeping books pertaining to said department; that these books of account consisted of a cashbook, journal, and ledger, which were in the handwriting of the defendant.
- That the defendant had made statements to the witnesses Wolf, Baum, and Hosty, which statements, taken together with various entries in the books, amounted to a confession of his guilt of the crime charged in said complaint.
- That on the 11th day of January, 1906, the defendant entered in his cashbook (Exhibit B), "Cash paid to captain, Gulf of Venice, P3,500." That this entry was false was admitted by the defendant.
- That twelve days before the false entry of the 11th of January, to wit, on the 31st day of December, 1905, the defendant struck a trial balance showing a shortage in his accounts of about P3,000.
- That on the 30th day of June, 1906, the defendant made another trial balance wherein he acknowledged that he was short in his accounts in the sum of P2,078.50.
- That the defendant, a few days after the trial balance of June 30, 1906, admitted to the witness Wolf that he, the defendant, was short in his accounts, but insisted that the shortage did not exceed the sum of P3,000.
- The defendant said to the witness Hosty, "I don't know why I took the money" and in addition stated that he had taken about P2,700, but did not know from what account said sum was taken.
- That the contention of the defendant that he was to receive from Castle Bros., Wolf & Sons a portion of the profits resulting from the "steamship department of the said firm," and that the firm of Castle Bros., Wolf & Sons owed him, the defendant, a much larger sum than the said shortage, was not supported by the evidence.

Upon these facts the lower court found the defendant guilty of the crime charged in said complaint and sentenced him to be imprisoned for a period of one year and nine months of presidio correccional and to restore to Castle Bros., Wolf & Sons the sum of P3,500, or in lieu thereof to suffer subsidiary imprisonment for a period of seven months and to pay the costs of the prosecution. From this sentence the defendant appealed to this court and made the following assignment of errors:

"First. That the court erred in finding that the concern of Castle Bros., Wolf & Sons is a corporation doing business in the city of Manila.

"Second. That the court erred in not finding that the concern of Castle Bros., Wolf & Sons has no legal personality and that no action, civil or criminal, can be sustained in the courts of the Philippine Islands on the complaint or information of said concern.

"Third. That the court erred in not finding that Maurice F. Lowenstein was the manager of Castle Bros., Wolf & Sons and as such had full power and authority to bind said concern by agreement, whether written or by parole, made by him on behalf of said firm.

"Fourth. That the court erred in not finding that the appellant entered into an agreement with said Castle Bros., Wolf & Sons whereby he became manager of the steamship department at a salary of \$250 per month and 25 per cent of the profits; and the trial court erred further in not finding that such profits approximated the sum of P40,000 during the period from November, 1903, to July 31, 1906.

"Fifth. That the trial court erred in not finding that the appellant is an industrial partner in the steamship department of Castle Bros., Wolf & Sons and entitled to 25 per cent of the profits earned by said department during his management; that as such industrial partner he could not be guilty of embezzlement (estafa) of the funds of said department.

"Sixth. That the trial court erred in not dismissing this action, without prejudice to a civil action for an accounting."

These assignments of error may be classified under two heads—the first, including the first and second, relating to the existence of Castle Bros., Wolf & Sons as a legal entity, and the second, including the third, fourth, fifth, and sixth, relating to the alleged relation existing between the defendant and the said entity of Castle Bros., Wolf & Sons.

With reference to the first assignment of error, the defendant admits that he entered into the employment of the alleged firm or corporation, whichever it may be, at a fixed salary, and received large sums of money belonging to the same. Admitting this fact on the part of the defendant, it does not require much argument to show that he thereby incurred the obligation to turn over to said firm or corporation such sums of money so received, and that a failure so to do rendered him liable under the provisions of paragraph 5, article 535, of the Penal Code. (U. S. vs. Cockrill, No. 2330, Apr. 25, 1906.[1])

With reference to the second group of assignments of error, the only evidence adduced during the trial to show that the defendant was entitled to a percentage of the profits resulting from the management of the department over which he had control as an employee of said firm or corporation was by his own statements. The fact was strenuously denied by Wolf, manager of the said firm or corporation. The defendant claimed that he was entitled to 25 per cent of the profits, which he alleged were about P40,000, during the two years and more of employment on the part of the defendant, but notwithstanding the fact that he was claiming such a large sum of money, no mention of the same was ever made to Wolf, the manager, nor did he ever make any entries in his books indicating that the company owed him this sum or any other sum growing out of the profits of the business. Upon the contrary, the books show, according to his own statement, that he was indebted to the firm in the sum of P2,087.50.

If the defendant had been entitled, as a matter of fact, to a percentage of the large profits which his department had earned, which was more than enough to cover his shortage, why did he not call the attention of Wolf to this fact at the very earliest opportunity, when the latter confronted him with a shortage in his accounts? During the time Wolf was investigating the condition of the accounts of the defendant the latter sent a cablegram to Lowenstein, who was then in the United States, in the words following:

"LOWENSTEIN,

Care of Castle Bros., Wolf & Sons, San Francisco: "Accounts are not in order. It is a large amount.

Can refund. Can you appeal. Suspend proceedings until further notice.

"FREEMAN."

The defendant, in his testimony, stated that his arrangement with the firm or corporation by which he was to receive a percentage of the profits had been made with Lowenstein; yet, notwithstanding that fact, in the above cablegram he fails to demand from Lowenstein a compliance with the alleged arrangement or contract. We are unable to find in the record sufficient proof to sustain the contention of the defendant that he was to share in the profits resulting from his management of the particular business under his control.

The lower court found that the defendant had appropriated to his own use, out of the moneys received in his capacity as employee of the firm of Castle Bros., Wolf & Sons, the sum of P3,500. The defendant, during the trial in the lower court, attempted to show that at times money which was due his department was paid directly to the cashier of the firm of Castle Bros., Wolf & Sons, and that, therefore, he had no account of such receipts. This fact was admitted by the cashier, so that we are unable to find that the amount of funds appropriated by the defendant was equal to P3,500.

The defendant admitted to several of the witnesses who appeared during the trial that he was short in his accounts in a sum equal to from P2,700 to P3,000. The defendant himself in a trial balance made on or about the 30th of June, 1906, after he knew that his accounts were being investigated by his employer, acknowledged over his own signature that he owed the firm the sum of P2,078.50. This trial balance seems to constitute proof positive that he had received this sum for the benefit of his employer, and which he had not, upon request, returned to said employer.

We are of the opinion, and so hold, that the evidence shows, beyond peradventure of doubt, that the defendant did receive the sum of P2,078.50, while acting as employee of the firm of Castle Bros., Wolf & Sons, with the obligation to return the same to said firm. This finding, of course, will in no way estop the said firm of Castle Bros., Wolf & Sons from recovering in a civil action from the defendant any sum or sums in excess of this amount which are found to be due to the said firm. The only change which this finding makes in the conclusion of the lower court is in the amount of money which must be returned to the firm of Castle Bros., Wolf & Sons by virtue of this sentence.

It is the judgment of this court that the sentence of the lower court be affirmed with this modification, and that the defendant be sentenced to be imprisoned for a period of one year and nine months of presidio correccional, and to restore to Castle Bros., Wolf & Sons the sum of P2,078.50, or in lieu thereof to suffer subsidiary imprisonment for a period not to exceed one-third of the principal penalty, and to pay the costs. So ordered.

Arellano, C. J., Torres, Carson, Willard, and Tracey, JJ., concur.

[1] 8 Phil. Rep., 742.

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