

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SECUNDINO MENDEZONA, DEFENDANT AND APPELLANT.*G.R. No. 4211. November 18, 1908*

Ponente: TORRES, J.

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On the morning of February 3, 1905, as Bruno de Rementeria was riding in a carromata through the Escolta, and when passing the store named "El Louvre," the accused Mendezona, who was standing at the door, stopped him; Rementeria left his carriage and approached Mendezona, who at once asked him if he had money to send to Spain, to which country Rementeria intended going; Mendezona told him that he needed P5,000. Rementeria replied that he only had P3,000 on hand. The accused then asked Rementeria to let him have the said amount in exchange for a draft or an order which he would give him, drawn on his brother-in-law, Luis Alvarez, residing in Guernica, Spain. The accused assured him that Alvarez would pay the value of said order because, he, Mendezona, had funds in said city that he had sent there at the time he was head of the firm of Mendezona & Co.

Bruno de Rementeria, in the belief that Mendezona did actually possess funds in the hands of his brother-in-law Alvarez delivered to Mendezona the P3,000 in a check drawn by the manager of the firm of Urrutia & Co. dated February 3, 1905, drawn on the Banco Español-Filipino, which document is offered in evidence as Exhibit 1, and in exchange therefor Mendezona handed to Rementeria the draft which is attached to the complaint and is of the following tenor:

"Manila, February 4, 1905.—Sr. D. Luis Alvarez, Guernica.—Dear brother: Five days after sight, please pay to the order of Don Bruno de Rementeria the sum of ten thousand four hundred and eighty-nine pesetas and 51/100, value received of him in cash, and charge the same to the account of your brother—(signed) S. Mendezona."

Bruno de Rementeria sailed for Spain, and upon reaching Guernica he presented to Luis Alvarez the aforesaid order of payment, but without success, because Alvarez refused to pay it on the ground that he held no funds of the accused, nor had he ever had any. Rementeria then indorsed the document to his relative, Florencio de Arana, who had an account with the Banco de Bilbao, to see if it were possible to negotiate it; the Banco de Bilbao presented the said draft to Luis Alvarez for acceptance, but the latter persisted in his refusal to pay it, repeating his previous answer to Rementeria, that he had no funds belonging to the accused, nor had he ever had any. The Banco de Bilbao had the draft protested twice, for lack of payment, and in the protests Alvarez stated that he could not accept the draft nor pay the amount thereof as he had no money belonging to the drawer, nor had he ever had any, and because he had not received the funds that the drawer mentioned in his cablegram of the 25th of March last, as money that would be remitted.

Hence, in view of the lack of payment of the draft, Exhibit 2, issued by Mendezona, the Banco de Bilbao forwarded the original to the Banco Español-Filipino which in its turn remitted it to Rementeria with the following note indorsed on the back:

"The foregoing draft, together with the account of expenses for redraft and protest attached thereto, are this day returned to Don Bruno de Rementeria by virtue of instructions from the Banco de Bilbao, contained in their letter of August 28, last, without any ulterior liability whatever on the part of the said Banco de Bilbao, nor of this Banco Español-Filipino."

Rementeria states that he wrote from Spain to the accused Mendezona requesting payment of the said P3,000 which he was unable to collect in Guernica, but that, as Mendezona did not answer he does not know whether his letter was received or not. Rementeria returned to this country in October, 1906, and when a few months later he met the accused on the Escolta, he again demanded payment of the money. Mendezona then promised to pay it during the month of March, 1907, but, as Rementeria did not succeed in collecting the same or any portion thereof, he placed the matter in the hands of his lawyers, Rosado & Opisso, in order that they might take steps to obtain the reimbursement thereof.

For the foregoing reasons, on the 23d of April, 1907, before the Court of First Instance of Manila, the aggrieved party, Bruno de Rementeria, accused Secundino Mendezona, known as S. Mendezona, of the crime of estafa, and the proper proceedings were commenced. The court below rendered judgment therein on the 6th of June, 1907, sentencing the accused to the penalty of six months' imprisonment with hard labor, to indemnify Rementeria in the sum of P3,000, and, in case of insolvency, to suffer the corresponding subsidiary imprisonment, and to pay the costs. From this judgment the accused has appealed.

Article 535 of the Penal Code prescribes—

"The following shall incur the penalties of the preceding articles:

"1. He who shall defraud others by using a fictitious name, by assuming fictitious power, influence, or attributes, or by pretending to possess imaginary property, credit, commission, enterprises, or business or by using any other similar deceit that is not one of those mentioned in the following cases."

The above related facts, which have been fully proven in this cause, are included in one of the cases expressly prescribed in the article and paragraph of the code cited above, and certainly constitute the crime of estafa, inasmuch as Mendezona, claiming to possess funds in February, 1905, in the hands of his brother-in-law, Alvarez, a resident of Guernica, managed to persuade Bruno de Rementeria, who at the time was about to sail for Spain, that it was safe for him to deliver to the defendant in this city the sum of P3,000, and then to recover that amount at live days' sight from the said Alvarez in Guernica; and induced by such statements, Rementeria did deliver to him the money in the belief that he could readily collect it upon his arrival at Guernica. The truth was, however, that the accused had no such funds in the hands of his brother-in-law, and that he knew perfectly well that he did not have the money and that Rementeria would not be able to recover the amount from Alvarez after reaching Spain; Mendezona was aware that he had no money in the hands of his brother-in-law, and was probably convinced that the latter would not pay the P3,000 of the draft issued in bad faith in favor of Rementeria, and therefore had to cable his brother-in-law on the 25th of March, 1905, that he would make a remittance of that amount, which he never did, and thus deceived the latter also.

Such behavior clearly proves the commission of the crime of estafa in that money was taken in exchange for a draft, payable in a distant place where the drawer had no funds in the hands of the drawee, and for this reason the value of the draft was not recovered, the owner of the money, bearer of the draft, being thus deceived. In the said fraudulent transaction, the essential elements which constitute the crime prosecuted are undoubtedly present, such as the deceit by means of which it was intended to defraud Rementeria, and the prejudice thereby caused to him.

The accused pleaded not guilty, but he admitted that he had received from Rementeria a check for P3,000 which he cashed and deposited with the International Bank, and afterwards used the money in his business. He alleged in

defense of his actions that he had issued the said draft in favor of Rementeria, against his brother-in-law Alvarez, in the firm belief that he still had in the hands of the latter the proceeds of certain property that he had administered in Spain amounting to 6,000 or 7,000 Spanish dollars, and denied that he assured Rementeria that he had money in the hands of the said Alvarez, but simply property that the latter administered; he confessed, however, that, notwithstanding the fact that he promised to return the P3,000 to the owner in response to the several requests made him, the money had not been refunded up to the time of the filing of the information and the commencement of the proceedings.

Against the assertion of the accused that he told Rementeria that he had no funds but that he had property in administration by his brother-in-law stands that of the injured party, Rementeria, that the accused assured him that he had money in the possession of his brother-in-law, in Guernica, by whom the draft for P3,000 would be paid, which, being reasonably credible, must be admitted to be true, inasmuch as it is not possible to believe that Rementeria, who was only going to Spain for a short stay, was prepared to let the accused have his money in exchange for property as to the value of which he knew nothing, or whether or not it could be easily disposed of, as he would undoubtedly be in need of his money during his stay in Spain, and for his return to these Islands; moreover, the term of five days fixed by Mendezona in the draft for the payment of the amount therein stated, alone suffices to confirm Rementeria's declaration that Mendezona assured him that he had funds in the hands of his brother-in-law Alvarez, and the fixing of such a term would undoubtedly induce one to believe, as was the case with Rementeria, that there were funds in the possession of the person against whom the draft had been drawn, and that the amount would be paid in Guernica within the time that the accused had fixed.

The repeated statements of Luis Alvarez whenever payment of the draft was requested of him, to the effect that he never had had funds belonging to Mendezona, and that he had none at that time, confirm the fraud committed by the latter, and his guilt as the proven author of the crime of estafa. The cablegram of March 25, the month following that in which the draft was issued, corroborates Alvarez' assertions; no cablegram advising a remittance would have been despatched by the accused to Alvarez if the latter had money belonging to him, and, since no such funds were available the accused had no reason to believe that Alvarez would pay the P3,000 fraudulently obtained from Rementeria on the assurance that he had money in Guernica. In considering and qualifying the crime it is immaterial whether or not it is true that Alvarez wrote to Mendezona informing him that he had not paid the draft presented by Rementeria; the fact that such a letter was not produced in evidence because it was lost, as the accused has stated, is no proof that funds existed in the hands of Alvarez and that the latter failed to pay the draft for a lawful reason.

It has been proven and is irrefutable that, by means of false and fraudulent statements, the accused caused Bruno de Rementeria to believe that he had money in the hands of his brother-in-law, Alvarez, in Guernica, and managed to persuade the injured party to deliver to him the P3,000 which the latter thought that he could readily collect on his arrival in Spain where he intended to go, where as a matter of fact there were no such funds, and for this reason Alvarez refused to pay the draft; and, on the other hand, the owner of the money has been unable to recover it from the person who received the same because the latter used it in his own business, as he confessed. All of the said facts unquestionably constitute the crime of estafa wherein fraud or deceit and consequent prejudice are present.

As against the above conclusions, the allegation of the defense that the drawing of a draft, or the issuance of an order of payment, is a mercantile contract, and that the lack of acceptance or of payment of the same on the part of the person against whom the same was drawn or issued, with all of the effects and consequences arising therefrom, are governed by the Code of Commerce, can not prevail, inasmuch as mercantile acts wherein fraud or deceit and the consequent damage are present, and therefore partaking of the character of a crime, cease to be a

matter of commercial law and become subject to the Penal Code, for the reason that it is not a question of commercial transactions but of criminal acts which must be prosecuted and punished in accordance with the provisions of the criminal law.

The indorsement by Mendezona to his relative Florencio Arana, and that made by the latter to the Banco de Bilbao for the purpose of procuring payment of the draft fraudulently issued by Mendezona, do not alter the nature of the crime, nor favor or justify the behavior of the accused; on the contrary, they show the fraud and prove the loss occasioned to the injured party in consequence of the deception practiced by Mendezona in order to obtain the P3,000 belonging to Rementeria, which sum as confessed by the accused, was afterwards used by the latter, in Ins business.

In the commission of the crime herein no aggravating nor mitigating circumstance is present, for which reason, and as the amount wrongfully taken exceeds 6,250 pesetas, the penalty prescribed by article 534, paragraph 3, should be imposed on the accused in its medium degree, the penalty of presidio correccional in its minimum and medium degree, according to articles 81 and 82 of the Penal Code, being divided into three periods.

For the considerations above set forth, it is our opinion that the judgment appealed from should be reversed, and that Secundino Mendezona should be and he is hereby sentenced to the penalty of one year, eight months and twenty-one days of prision correccional, to suffer the accessory penalties of article 58, to make restitution of the sum of P3,000 to Bruno Rementeria, and, in case of insolvency, to suffer subsidiary imprisonment which shall not exceed one-third of the main penalty, and to pay the costs of both instances. So ordered.

Arellano, C. J., Mapa and Tracey, JJ., concur.

Carson and Willard, JJ., dissent.

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