

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PAU TE CHIN, DEFENDANT AND APPELLANT.

G.R. No. 5321. March 19, 1910

Ponente: CARSON, J.

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CARSON, J.:

Pau Te Chin, the appellant in this case, was sentenced by the trial court to six months of *arresto mayor*, and to indemnify the complaining witness in the sum of P590, with interest at the rate of 6 per cent per annum and subsidiary imprisonment in the event of insolvency, upon an information charging him with the commission of the crime of *estafa* as follows:

"That on or about the 11th day of December, 1907, in the city of Manila, Philippine Islands, the said Pau Te Chin, alias Pau Kam Ching, did then and there willfully, unlawfully, feloniously, deceitfully, and with intent of gain, defraud one Rafael Cotaucó by then and there using fictitious names, assuming fictitious powers, influences, and attributes, and by pretending to possess property, credit, enterprise, and commission that he did not possess, and use of other similar deceit, in this, to wit:

"That the said accused, Pau Te Chin, alias Pau Kam Ching, did then and there prepare a certain false, fraudulent, and fictitious draft, purporting to be drawn by and signed by one Lim Chi Hian on the said accused, Pau Te Chin, alias Pau Kam Ching, payor, for the sum of six hundred (600) pesos, Philippine currency, and purporting to be indorsed by one Lim Quieng Bi, one Sieng Mee, and one Woo Siong, which said draft was in the Chinese language, and a true copy of said draft in the Chinese language, together with a translation into the English language, is hereto attached and marked "Exhibit A," and made a part hereof; and did further then and there present and cause said draft to be presented to the said Rafael Cotaucó, and represent and cause to be represented to the said Rafael Cotaucó that the said draft was a good and valid draft for the sum of six hundred (600) pesos, Philippine currency, duly drawn by the said Lim Chi Hian, a reputable and responsible business man, and indorsed by the said Lim Quieng Bi, Sieng Mee, and Woo Siong, respectively, responsible business men, and requested the said Rafael Cotaucó to purchase the said draft; and pay therefor the sum of six hundred (600) pesos, Philippine currency.

"That then and there, relying on the false and fraudulent representations aforesaid, and believing that said draft was a good and valid draft drawn and indorsed as aforesaid, for the sum of six hundred (600) pesos, Philippine currency, the said Rafael Cotaucó was induced by said false and fraudulent representations to purchase the draft aforesaid and pay therefor the sum of six hundred (600) pesos, Philippine currency, which said sum the said Pau Te Chin, alias Pau Kam Ching, did then and there convert to his own use to the damage and prejudice of the said Rafael Cotaucó in the said sum of six hundred (600) pesos, Philippine currency, equivalent to and of the value of three thousand (3,000) pesetas.

"That the said draft was false, fraudulent, and fictitious, and the drawer and indorsers, above named, did not exist, as the said Pau Te Chin, alias Pau Kam Ching, then and there well knew.

"All contrary to law,"

The following is the English translation of Exhibit A referred to in the foregoing information:

"BILL OF EXCHANGE.

"Series 'Chai' Trip No. 50. Draft No. 20.

"We acknowledge the receipt from Mr. Ong Chik Nen, of Laoag, of the sum of six hundred pesos, (P600) local currency, and we agree to pay the same at Manila, upon presentation of this draft, at fifteen days' sight. After payment this draft is to be surrendered to this office as evidence of payment.

"Holder and draft must both be identified; if any other person picks this up, it shall be regarded as waste paper.

"Issued this 2d day, 11th month, 33d year. (Dec. 6, 1907.)

"

By (Signed) LIM CHI HIAN.
(Chop) CONG GUANG, Laoag.

"To MR. PAU KAM CHING (PAU TE CHIN), of the Ye Siong Hong.

"Draft presented. Date of expiration: 13th day, 12th month, 33d year (Jan. 16, 1908).

" (Chop) YE SIONG, Pua Ma Tao's nephew.

"Jan. 16 _____

On back:

"(Chop) LIM QUIENG BI.

"(Chop) SIENG MEE.

"(Chop) WOO SIONG."

For some twenty years prior to the date of the transaction out of which these proceedings arose, defendant owned and conducted an extensive dry-goods business in the city of Manila, with sales aggregating, as he claims, more than a million pesos a year. In the month of January, 1908, being in need of money, the defendant prepared or had prepared under his direction the above-set-out instrument, which upon its face purports to be a draft for P600, drawn at Laoag, Samar, by one Lim Chi Hian in favor of one Ong Chik Nen, payable fifteen days after sight, and accepted by defendant on January 1, 1908. On the back of this instrument were placed three undated stamps or chops, purporting to be the signatures of as many indorsers. Except the name of the defendant and of one of the indorsers (who seems to have added his name as an accommodation to the defendant, for the purpose of giving greater credit to the instrument in the later negotiations for its sale), all of the names attached to the instrument are fictitious, no such persons or firms being in existence as appear therein as drawer, payee, and indorsers, and, manifestly, the instrument was neither draft nor bill of exchange drawn and accepted in the regular course of business as on its face it purported to be. It was sold for and on behalf of the defendant by a Chinese broker to a Chinese lumber merchant and money lender named Rafael Cotaucó, for P590, who upon the maturity of defendant's acceptance, presented it to the defendant for payment, and was informed that defendant had no funds, and had made a general assignment in favor of his creditors, some of whom had forced him into liquidation a few days before the acceptance fell due.

The facts just set out, which in our opinion are fully established by the evidence of record, if unexplained, would leave little room for doubt that the defendant prepared a fictitious commercial instrument for the purpose of deceiving the purchaser to whom he sold it, by giving the instrument the appearance of a draft or bill of exchange drawn in the regular course of business, with a drawer, payee, and indorsers upon whom the purchaser might rely for payment in the event of the failure of the defendant acceptor so to do; and that the purchaser, deceived by the

fictitious quality given the instrument as a commercial document, had suffered by the deception of the defendant to the amount which he paid therefor.

But we think that there are further facts disclosed by the evidence of record which are sufficient to raise a reasonable doubt not only as to the intent of the defendant to deceive the purchaser of the instrument, but also as to whether the purchaser was in fact deceived, to his loss or detriment, by the peculiar and unusual form in which the instrument was executed. We can not close our eyes to the fact that a most reprehensible practice (we refuse to dignify it by speaking of it as a custom) exists among many of the Chinese merchants of the city of Manila, whereby borrowers, with the full knowledge of the lender, execute just such instruments as the one under consideration, in evidence of loans and advances such as that made by the purchaser of the instrument in the case at bar. What may be the origin of this practice, or what are the objects of the Chinese merchants who adopt it, we do not undertake at this time to determine. It is sufficient for the purposes of this decision to say that the existence of the practice is a matter of general knowledge in this community, and is disclosed by the records of various cases brought to this court, one of which, a civil case, is actually pending at this time; and that while the defendant in the case at bar did not expressly set up or rely upon the existence of the practice in his defense, we are satisfied that the evidence of record raises at least a reasonable doubt as to whether the transaction in question was not had in accordance with this practice with the full knowledge and consent of the complaining witness, the purchaser of the alleged fictitious and fraudulent instrument.

From the evidence of one of the principal witnesses for the prosecution, it appears that defendant not infrequently prepared and had discounted just such instruments as the one now under consideration, and that on at least one occasion this witness himself discounted such an instrument, with full knowledge of the fact that defendant made use of such instruments for the purpose of borrowing money thereon. And if the other witnesses for the prosecution are to be believed, and we think that the trial judge rightly found that they are, the defendant gave full and particular directions for the preparation of the alleged fraudulent instrument in the presence and within the hearing of various persons who happened to be in his store at the time it was executed, although there was not the slightest necessity for so doing. It would seem that had he been conscious that he was engaged in a fraudulent transaction he would not have thus unnecessarily exposed himself to detection and punishment.

The conduct of the complaining witness, the purchaser of the instrument, as disclosed by his own testimony, was such as to raise at least a reasonable doubt in our minds as to whether he was or was not aware of the true nature of the instrument which he discounted. He admitted that he bought the draft relying solely on the credit and business reputation of the defendant whose name appeared thereon as acceptor, and that he did not know and made no effort to discover what was the credit or standing of the drawer, payee, and indorsers, or whether any such persons were in existence. He bought the instrument notwithstanding the fact that the signature of the payee does not appear indorsed thereon, and he took it from the Chinese broker who sold it to him, without the broker's indorsement, and relying exclusively, as he says, upon the established credit of the defendant and the assurances of the broker that the defendant would pay it at maturity. Under all the circumstances, and especially in view of the known common practice among Chinese merchants and money lenders to give and receive instruments such as the one in question as evidences of loans and advances, we can not say beyond a reasonable doubt that the complaining witness was in anywise deceived by the form in which the instrument was executed, and indeed we are inclined to believe that he well knew that it was not a draft, as on its face it purported to be, and that it was no more than defendant's promise to pay its face value on maturity of his final acceptance set out therein.

It not being proven beyond a reasonable doubt that the transaction set out in the information involved any false pretence or deceit on the part of the defendant whereby the complaining witness was defrauded "in the substance, quality, or quantity" of the thing sold to him, defendant's conviction for the crime of estafa can not be sustained.

(Art. 534, Penal Code.)

It may not be improper here to say that this decision in noway places the stamp of our approval on the extremely reprehensible and dangerous practice referred to above, whereby money is borrowed and advanced by Chinese merchants and money lenders in Manila, on evidences of indebtedness cast in the form of drafts with fictitious drawers, payees, and indorsers. The execution, and the disposal or transfer of such fictitious commercial instruments to innocent purchasers for value, without knowledge of their true character, might well expose the parties not merely to the penalties prescribed on conviction of the crime of estafa but also to the much graver penalties prescribed for the crime of falsification of commercial instruments; and it is to be observed also that proof of the true nature of such evidences of indebtedness would in some cases affect the civil rights and obligations of the parties thereto in ways which, it is probable, are wholly unanticipated by those executing and negotiating them, as to which, however, we express no opinion whatever at this time.

The judgment of conviction and the sentence imposed by the trial court should be reversed, and the defendant acquitted of the crime with which he is charged and his bond exonerated, with the costs of both instances de oficio. So ordered.

Johnson, Moreland, and Elliott, JJ., concur.

Arellano, C. J., dissents.

DISSENTING

TORRES, J.,

It seems to the writer that the crime of estafa was committed and that, according to the merits of the case, the judgment appealed from should be affirmed.

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