

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAN CHIAN ET AL., DEFENDANTS. &#8211; TAN CHIAN, APPELLANT.***G.R. No. 5627. October 17, 1910*

Ponente: TORRES, J.

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Prior to August 29, 1908, the Chinaman Tan Chian had been receiving merchandise on credit from the firm known as Kim Hoc Hen, composed of Chinese merchants residing in the municipality of Sorsogon, for the purpose of afterwards selling the merchandise on his own account, under agreement to pay for the same in small installments from time to time. As a result of these operations the said Chinaman tan Chian owed the firm above-mentioned, according to a balance sheet of his account, the sum of P288.35; wherefore, on August 29 of that year, the Chinaman Liao Gui, the manager of the said fim, forwarded to Tan Chian, through another Chinaman named Chua Ungco, the document marked "Exhibit A," attached to the complaint (p. 149 of the record), showing a statement of the said balance and the amount of P288.35 due the firm. As, notwithstanding that this statement of account, which was virtually a memorandum and was left with the debtor, the latter did not pay his debt, the said Liao Gui instituted a civil action for the collection of the said amount, and Tan Chian, on filing a counterclaim in the said suit, exhibited the aforementioned document, Exhibit A, in which alterations were observed in its characters, ciphers, and signs whereby Tan Chian was made to appear as the creditor instead of the debtor of the said firm of Kim Hoc Hen. The civil case was therefore dismissed, on petition of the plaintiff, without prejudice to the prosecution of such an action as might be proper.

For the foregoing reasons the provincial fiscal filed a complaint, on March 15, 1909, against Tan Chian and another Chinaman, Rufino Beltran, charging them with the falsification of the said document by reason of their having made alterations and changes in the note or memorandum, Exhibit A, evidencing the balance of accounts, by changing the Chinese characters meaning Debit for others that stand for Credit, with other ciphers and signs, so that the Kim Hoc Hen Company was shown to be the debtor, instead of the creditor, to the extent of P288.35; the defendants were further accused of afterwards having presented the said false document at the trial, knowingly and with intent of gain. This cause having come to trial, the court, after considering the evidence adduced, rendered judgment on April 20, 1909, acquitting Rufino Beltran, with one-half of the costs de oficio, and sentenced Tan Chian, for the falsification of a private document, to the penalty of one year eight months and twenty-one days' presidio correccional, and in case of insolvency, to the corresponding subsidiary imprisonment, to pay one-half of the costs, and to the other accessory penalties. From this judgment the defendant appealed.

From the facts hereinbefore related, which were duly proved in the present cause, it is found that the crime of falsification was in fact committed with respect to a document of a private character, provided for and punished by article 304, in connection with article 300, of the Penal Code; the first-named article is as follows:

"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 with the penalties of presidio correccional in its minimum and medium degrees and a fine of from 625 to 6,250 pesetas."

The following facts were fully proven at the trial: The Chinaman Liao Gui, the manager of the said firm of Kim Hoc Hen, sent, through another Chinaman, Chua Ungco, the memorandum, Exhibit A, of the account, showing a debit balance of P288.35, to the Chinaman Tan Chian; this account was made out by the bookkeeper of the firm, Vicente Jorge Guan Muaco, from the entries recorded in the ledger, fi'om which was torn out and attached to page 150 of the trial record the leaf which was presented as Exhibit B, in which the said sum appears as a balance owed by the defendant to the said firm. The bearer of the note or memorandum, Exhibit A, personally went to Guinlajon, a barrio of Sorsogon, to deliver it to the debtor who, after taking cognizance thereof, stated to Chua Ungco that on account of the poor business which he was doing he could not pay the whole debt, but that he would do so in small monthly payments. This memorandum, which was left with the accused, had been transmitted to him at the end of the said month in order that he might be informed, according to the custom observed by the Chinese in their mercantile relations, that there was an unpaid balance charged against him in account. However, notwithstanding the demands made upon him, Tan Chian did not pay the whole nor any part of the said sum of P288.35, and thereupon the legal representative of the manager, Liao Gui, filed suit against him in the justice of the peace court of Sorsogon, and the defendant in his answer to the complaint denied all the facts alleged by the plaintiff and at the same time filed a counterclaim, alleging that the plaintiff was owing him P288.35, according to a settlement had between them on September 24, 1908. Therefore, on the plaintiff's petition, the case was dismissed, with reservation of the right to institute such other action as might be proper. Tan Chian exhibited at the said trial, in answer to a subpoena duces tecum, the document marked "Exhibit A," the same document or memorandum which was written by the bookkeeper, Vicente Guan Muaco, and which was delivered by its bearer, Chua Ungco, to the debtor, Tan Chian, in the latter's store in Guinlajon. After the said document had been exhibited by the accused, alterations, changes, and the insertion of the signs, figures, and Chinese characters thereof were observed; these had been made in such manner that, in the place where before one read P1.39 now appears P678.09, where before one read P288.35 now appears P388.35, and where before appeared P289.74 one now reads P389.74; and if before one read expenditure, debit or balance owing, now one reads deposit or balance to credit, according to the testimony of the said bookkeeper who, on the paper Exhibit C graphically showed how by intercalating, amplifying, and superposing lines and signs in the Chinese, words, they may be converted into characters and words different from those previously written and of a different meaning. The bearer of the said memorandum, Chua Ungco, affirmed that this document then contained words different from those which were previously written therein at the time that he conveyed and delivered it to the debtor.

From all the foregoing facts it is concluded that the document or memorandum, Exhibit A, was falsified by means of alterations, changes, and the insertions of characters and signs in such manner that its contents, instead of showing a balance due by the accused Tan Chian, shows the latter to be a creditor of the firm which sent him the said memorandum for the purpose of informing him of his debt, so that he might pay the same, as was proper for him to do.

The defendant Tan Chian is the sole responsible perpetrator of this crime, by direct participation. It is immaterial whether it was he or another who made the said alterations and changes in the document, inasmuch as the falsified memorandum remained in his control from the time that he received it from Chua Ungco, on August 29, to the first part of November, 1908, when he exhibited it on the occasion of his filing the counterclaim in the justice of the peace court, whereby he demanded payment of the amount which in appearance the said firm was owing him, and during which long interval of time he could have effected the falsification. Whereas the execution of the criminal act aforesaid could have been of benefit and profit to him alone, since from debtor that he was, he became the creditor, after the alterations and changes which were made in the said memorandum, which was received without them, it must undoubtedly be presumed, without any evidence to the contrary, that the accused Tan Chian was, notwithstanding his denial, the sole perpetrator of the crime of falsification herein prosecuted;

and, even though it were another who made the alterations, changes, and insertions of the characters and figures in the document referred to, it is also to be presumed that such third person did so through inducement and, upon order of the defendant, for the very reason that the latter exhibited the said instrument afterwards at the trial to prove that he was a creditor for the amount therein expressed.

The penal law does not absolutely require that the falsification of a private document should have been detrimental to another; it is sufficient that the falsifier should have had the intention to cause such detriment to another person. In the present case it is evident that the defendant, in making alterations and changes in the said document, intended not only to elude the payment of his debt by defrauding his creditor, but also to effect his perverse purpose of having his creditor company pay to him the amount he actually owed the concern, by means of the falsification of the document expressive of his debt.

With respect to the nature of this document, it is unquestionable that it is a private instrument and does not embody the conditions required to allow its being considered as of a mercantile character, and therefore falls within the provisions of the said article 304 of the Penal Code.

The defendant recognized the document, Exhibit A, as being the same that he received from the manager, Liao Gui, although he denied having made alterations and changes therein, stating that he did not know how to write. Such allegations, for lack of proof, can not be considered as true and are, on the one hand, unlikely in themselves, and on the other, devoid of reasonable grounds for belief, for it was proved at the trial that by the alterations and changes made in the said document the defendant is made to appear therein as converted from a debtor to a creditor of the firm whose manager by means of the said document demanded of him the payment of his debt. Moreover, the said Tan Chian did not succeed in his attempt to prove that the firm of Kim Hoc Hen owed him P678.09 for the six sacks of rice removed by the manager, Liao Gui, from the defendant's store to another near by, which, for reasons not explained in this cause, could not have been the cause of the company's owing him so large a sum.

For the foregoing reasons, whereby the errors attributed to the judgment appealed from have been disposed of, and accepting the findings therein contained, as they are in accordance with law, it is proper, in our opinion, to affirm and we do hereby affirm the said judgment, with the costs against the appellant; provided, however, that he shall be sentenced to the accessory penalties specified in article 61 of the Penal Code.

Arellano, C. J., Johnson, Moreland, and Trent, JJ., concur.

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