

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. F. WICKERSHAM, DEFENDANT AND APPELLANT.

G.R. No. 6781. November 06, 1911

Ponente: CARSON, J.

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CARSON, J.:

The information in this case charges the defendant and appellant with the crime of hurto (theft) committed as follows:

"That one day in the month of July of the present year, 1910, in this municipality of Iloilo, Province of Iloilo, Philippine Islands, the said defendant, F. Wickersham, being chief clerk in the office of the Quartermaster of the United States Army in Iloilo, did willfully, maliciously and criminally, and without violence, intimidation or force toward persons or things, abstract, take possession of, and steal, for the sake of personal gain and without the consent of the owner and by abusing the confidence of his chief, various checks belonging to the United States, credited to Captain L. F. Garrard of the United States Army in Iloilo, to wit:

Check No. 141528

P344.00

Check No. 139856

525.48

Check No. 141471

212.00

Check No. 137651

272.00

Check No. 137691

10.00

Check No. 141489

1,500.00

2,863.48

and, in coin, the sum of P178.08, making: a total of P3,041.56 Philippine currency; the checks above mentioned having been drawn on the Treasury of the Philippine Islands, depository of the Treasury of the United States. Acts in violation of law."

There is no controversy as to the facts, the defendant and appellant, through his counsel, having admitted the truth of the testimony of the witnesses for the prosecution. The defendant was the chief clerk in the quartermaster's office in Iloilo, to whom was intrusted the combination and the key to the quartermaster's safe. He did not, however, have charge of the cash book, which was kept by another clerk in the office; nor did he have authority to open the safe or to withdraw funds therefrom except at the direction of his superior officer, the quartermaster, who was in charge of the safe and its contents, and under whose immediate control it was. The only duty of the defendant in regard to the safe and its contents was to keep safely the combination and the key, and to open and close it at the direction of his superior officer, the quartermaster in charge of the office; he had no control whatever over the contents of the safe and was not charged with the withdrawal or distribution of the funds, checks and other property which were kept in it.

During the absence of his superior officer and while in a state of intoxication, defendant opened the safe and abstracted therefrom the cash and checks described in the information. Before judgment of conviction in the court below, the cash and all of the checks were recovered, except three which were indorsed by the parties to whom the defendant sold them, and paid by the Treasurer of the Philippine Islands, upon whom they were drawn. The face value of these checks was refunded to the quarter-master, so that at the time when judgment was entered in the court below all of the stolen property or its value had been recovered.

Counsel for appellant, without denying that the record discloses highly reprehensible conduct in the abstraction of the checks and cash from the safe, and the negotiation of some of the checks, contends nevertheless that the judgment of the lower court should be reversed on various grounds.

Counsel insists that the trial court erred in refusing to declare the information fatally defective because, as counsel contends, it does not set out the value of the stolen checks. Counsel apparently does not deem the use of the sign T in the information a sufficient designation or equivalent of the term "pesos Philippine currency," and he insists that the tabulated form in which the checks are described in the information does not affirmatively disclose that the checks were worth the amount for which it is alleged they were drawn. Counsel's contention can not be sustained. The sign or character V is generally accepted in these Islands as the equivalent of the words peso or pesos Philippine currency; by Executive Order No. 44 dated Manila, October 29, 1904, this character was made the official "designation for the new Philippine pesos," and since that date its use for that purpose has become uniform and universal. We think that the allegation that the defendant stole the checks described in the tabulated statement set out in the information, and the sum of P178.08 in cash "which amount in all to the sum of P3,041.56 pesos Filipinos," is a sufficiently definite allegation of the value of the stolen property; and that it is so clear and explicit as "to leave no room for doubt in the mind of any person of even rudimentary intelligence" that it meant to charge the defendant with the theft of the sum of money therein mentioned and of the checks therein described, the total value of which was the sum therein indicated, the value of each separate check being the amount for which it was drawn as set out in the tabulated statement.

"The bill of rights for the Philippines, giving the accused the right to demand the nature and cause of the accusation against him does not fasten forever upon those Islands the inability of the seventeenth century common law to understand or accept a pleading that did not exclude every misinterpretation capable of occurring to intelligence fired with a desire to pervert." (Paraiso vs. United States, 207 U. S., 368; 11 Phil. Rep., 799.)

Counsel also contends that whatever be the nature of the offense committed by the defendant in abstracting money and checks from the safe of which he carried the key, it is not theft (*hurto*). His argument is that one can not steal from one's self, and that one who misappropriates funds or other personal property which are under his control may perhaps be convicted of some offense of the nature of *estafa* (embezzlement), or misappropriation or

defalcation of public funds if the funds abstracted are public funds; but that theft necessarily implies the taking of property from the possession of another. We do not question the soundness of the legal proposition thus stated, but as we understand the admitted facts in this case, the defendant did not have the funds and property contained in the safe under his control'. He had no authority of his own volition to withdraw funds from the safe upon any pretext whatever. The funds were placed in the safe and could only be taken from it by his superior officer or by his order. Defendant's possession of the key and the combination of the safe gave him no control over the contents. His relation to the contents of the safe was merely that of a guard whose duty it was to see that no one but his superior officer had access to the funds, and he had no more right of disposition of the contents of the safe than has a watchman of a warehouse to whom the key is intrusted the right to dispose of its contents. In the case of *U. S. vs. Webster* (6 Phil. Rep., 393), the defendant was a forage master in charge of Government forage, subject to the orders of the quartermaster, who was directly responsible therefor to the owner, the United States Government, and without whose order no forage could be issued. The forage master had no authority to issue any orders or give out any forage except upon the requisition of the quartermaster, nor was he authorized to receive money on account of sales of this forage. Without such authority and without an order from the quartermaster he disposed of hay and oats to the value of some P2,015, for which he failed to account to the Government. In that case we said:

"The qualified charge of this forage, subject to the orders of a superior, who alone was responsible to the Government for it, without the right on the part of the accused to sell it or to part with the physical custody of it unless on written orders, was not such a possession as to render the abstraction of the property by him malversation instead of theft."

Counsel's remaining contentions may, for convenience, be summed up in the proposition that since, as counsel suggests, checks have no value in themselves, or at most a mere nominal value, that is, the value of the piece of paper on which they are written, they are not properly the subject of larceny; and that whatever offense is committed by one who abstracts a check, the property of another, and thereafter negotiates it, it is not theft. It is contended that the offense of abstracting and negotiating a check may be estafa (embezzlement) or one of its kindred offenses, but that it is not theft. This was the theory of the common law under which commercial paper was not the subject of larceny, for the reason, as it was said, that it has no intrinsic value, and is merely an evidence or token of the existence of money or property elsewhere. The common law rule, however, has been abrogated in most American jurisdictions by statutes making commercial papers the subject of larceny (18 Am. & Eng. Ency. of Law, p. 515) and it is not in force in these Islands. The supreme court of Spain has repeatedly held that checks (cheques) and other commercial papers (valores) are subjects of larceny. Decisions of March 16, 1899, and of March 7, 1900.

In those States where commercial paper has by statute been made the subject of larceny, the statute generally provides that the face value shall "be taken, prima facie, as its value for the purpose of the statute, though this last provision is not universal. In Vermont, commercial paper was by statute made the subject of larceny without any regulation as to its value. In the recently decided case of *State vs. McClellan* (23 L. R. A. (N. S.) 1063), an unendorsed check was held to be the subject of larceny, and for the purpose of determining the degree of the crime its value was held to be its face value, or the amount for which it was drawn and which could have been realized upon it by its legal owner.

A check in the hands of its lawful owner is something more than a mere evidence or token of the existence of money elsewhere. It is an instrument which, from its peculiar qualities as a commercial document, places certain funds under the special control of its lawful holder so long as he retains it in his possession. It confers upon its holder exceptional and peculiar powers as to the disposition of the funds against which it is drawn, and enables him to realize those funds without regard to the mutual relations existing between himself and the drawer of the

check or the depository wherein the funds are actually placed. Furthermore, as a result of the peculiar qualities of a check as a commercial instrument, the lawful holder, so long as he retains possession, has not only the right to the funds against which it is drawn, but a claim against the drawer and previous endorsers in the event of a failure of these funds in whole or in part; provided, however, there is due diligence on his part in asserting his claim, and in case of endorsers in protesting the check in the event of nonpayment. The loss of possession of a check deprives the owner of the immediate control of the funds against which it is drawn, and may involve the loss of the fund itself, unless he adopts prompt and efficient measures to protect himself; indeed if the check be made payable to bearer its abstraction from his possession exposes him to the risk of loss of the fund without redress except only as against the guilty person. Manifestly these peculiar qualities which the law confers upon commercial instruments of this kind, and the exceptional incidents attaching to such instruments in the hands of a lawful owner, give them an actual substantial value in his hands which may and should be measured by the amount of cash which may be realized upon them, that is to say, in the case of a good and valid check, by its face value; and evidence that a check is a good and valid check is prima facie proof that it is worth its face value in the hands of the lawful owner. We are of opinion that a check is in a very real sense personal property, and that when abstracted with the intention of converting it to the use of the person taking it, the abstraction of the check constitutes a taking of personal property from the possession of another, defined and penalized as the crime of hurto (theft) in the Penal Code.

As to unendorsed checks made payable to order, the contention that they are of no value seems also to be based on the theory that the value of stolen property is to be determined by its condition when taken; that a check payable to order is an incomplete instrument as long as it remains unendorsed; that no one can draw money on a stolen check in the condition in which it is found at the time of the theft as long as it remains unendorsed by the payee; and that consequently stolen checks payable to order have only a nominal value at the time of the theft. We are of opinion, however, that it is not necessary that the subject matter of a larceny should be of value to a third person if valuable to the owner, and the value of good and valid checks and similar commercial paper to the owner is, as we have seen, the amount which he is entitled to receive therefor, ordinarily their face value, that is to say the amount for which they are drawn. In the case at bar the defendant took personal property of this character from the constructive possession of its owner with the intention of converting it to his own use. The fact, admitting that it was a fact, that he could not make use of this property in the condition in which it was at the moment when he deprived the owner of it without endorsing it, does not and ought not to determine its value when he is called to account for his criminal act. The checks in the hands of their lawful owners were completed instruments. They gave their lawful owner control of the amount of currency corresponding to their face value, with the power of transferring that control by an appropriate endorsement; and indeed the lawful owner might have realized their substantial value without endorsement, for endorsement was not absolutely essential to the value of these checks in the hands of an honest holder. A formal assignment in an appropriate public instrument and perhaps a parol agreement with manual delivery would have been sufficient for that purpose: as between the assignor and assignee, such an assignment would be complete and effectual, and the holder of a check thus assigned could enforce his right therein by appropriate legal proceedings. So far, therefore, as the lawful holder of a check payable to order is concerned, its value is the same whether he has actually endorsed it, or has yet to do so before demanding payment.

We find no prejudicial error in the proceedings in the court below; the judgment of conviction and the sentence based thereon should therefore be affirmed, with the costs of this instance against the appellant. So ordered.

Torres, Mapa, Johnson, Moreland, and Trent, JJ., concur.

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