

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CARROLL H. LAMB, DEFENDANT AND APPELLANT.

G.R. No. 8029. December 29, 1913

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment of the Court of First Instance of Palawan convicting the defendant and appellant Carroll H. Lamb of the crime of misappropriation of public funds, and sentencing him to imprisonment for one year and to the payment of a fine of P1,000 and the costs of the proceedings, together with an indemnity to the Philippine Government in the sum of P2,745.

The information on which the accused was tried is as follows:

"The undersigned, assistant attorney of the Bureau of Justice, charges the above-named defendant, Carroll H. Lamb, with misappropriation of public funds, committed as follows:

"That on and between the 25th day of October, 1909, and the 31st day of December, 1911, in the municipality of Puerto Princesa, Province of Palawan, P. I., the said defendant, Carroll H. Lamb, being then and there a duly appointed, qualified and bonded officer and employee of the Government of the Philippine Islands, to wit, superintendent of the Iwahig penal colony at Puerto Princesa, Province of Palawan, and acting as such superintendent, and being intrusted, as a part of his duties as such superintendent of the Iwahig penal colony, with the purchase of domestic animals and other property for the necessary use of the said Government of the Philippine Islands, did prepare, certify, and submit as such superintendent of the Iwahig penal colony, to the Bureau of Prisons of the Government of the Philippine Islands for payment three vouchers, to wit; First, one for three head of cattle already delivered amounting to one hundred and thirty-five (P135) pesos, for which he claimed and was allowed credit by the Bureau of Prisons in the said amount of one hundred and thirty-five (P135) pesos; second, two vouchers, to wit, one for thirty head of cattle to be delivered amounting to one thousand three hundred and fifty (P1,350) pesos, and one for twenty-eight fictitious head of cattle amounting to one thousand two hundred and sixty (P1,260) pesos, making a total for the two vouchers last above mentioned of two thousand six hundred and ten (P2,610) pesos, and for which he did receive from the said Bureau of Prisons warrants covering the said amount of two thousand six hundred and ten (P2,610) pesos, and on which warrants he did receive in money and did have in his possession the amount of two thousand six hundred and ten pesos, the property of the Government of the Philippine Islands, and all of which amounts, to wit, one hundred and thirty-five (P135) pesos and two thousand six hundred and ten (P2,610) pesos, so received by him and by him kept in his possession in credit and money as heretofore alleged, the property of the Government of the Philippine Islands, the said defendant, Carroll H. Lamb, failed to apply as a whole or in part to the payment of said cattle, but did knowingly, willfully, and feloniously embezzle and fraudulently convert and apply to his own use and benefit, knowing that it was public funds of the Government of the Philippine Islands; and that said defendant, Carroll H. Lamb, has failed to return or account for the said sum of two thousand seven hundred and forty-five (P2,745) pesos or any part thereof. All done contrary to the statute in such case made and provided, to the injury of the Government of the Philippine Islands, and within the jurisdiction of the Court of First Instance."

The prosecution contends that the following facts are conclusively established by the evidence of record:

"The defendant Carroll H. Lamb was a duly appointed, qualified, and bonded officer and employee of the Government of the Philippine Islands, to wit, superintendent of the Iwahig penal colony at Puerto Princesa, Palawan, P. I., from September 1, 1908 (Exhibit A), to December 31, 1911. On October 25, 1909, one Jose Fernandez sold and delivered to the colony 3 head of cattle of the value of P135. (Exhibit C and testimony, p. 6.) On October 31, 1909, a reimbursement warrant for P135, the value of the said 3 head of cattle, was issued by the Bureau of Prisons, and credited in the defendant's account. (Exhibit P and testimony, p. 40.) Said amount had never been paid to Jose Fernandez (testimony, p. 6). On October 3, 1910, Jose Fernandez delivered 20 head of cattle to the colony. (Exhibits D, K, N, U, W, and FF, and testimony, pp. 7, 14, 24, 50, 53, 61, 63.) At the time of the delivery of said 20 head of cattle Jose Fernandez claimed payment for the 3 head of cattle sold and delivered by him to the colony October 25, 1909. The defendant then ordered a voucher for 22 head of cattle (Exhibit D) to be made, covering 2 of the 3 head the payment of which was claimed by Jose Fernandez, and the 20 head sold and delivered to the colony on the date of the voucher. The defendant wanted Jose Fernandez to sell more cattle to the colony, making the number 50. Fernandez could not deliver the remaining 30 right away on account of the rains. The defendant said he could deliver them later, and to save time he ordered a voucher for 30 head of cattle (Exhibit E) to be made on the same date (testimony, pp. 6, 7, 14, 50, 51). On November 16, 1910, the defendant sent for Jose Fernandez and told him that he was going to pay him for the 22 head of cattle which he had already delivered, which the defendant did, after having Fernandez indorse a warrant in the office and in the presence of the provincial treasurer and cashing the warrant, giving him P986. The warrant so indorsed and cashed was for P2,336 covering the vouchers for 22 and 30 head, and was issued to Jose Fernandez and received by the defendant (testimony, pp. 8, 10, 11, 15, 16, 18, 21, 22, 23, 29, 30, 31, 32, 33, 34, 40, 46, and Exhibit F). On November 17, 1910, Jose Fernandez did neither sell nor deliver to the colony the 28 head of cattle which appear on voucher Exhibit G, nor did he receive the amount of M,260 (Exhibit Q) in payment thereof. The defendant received said amount as shown by his indorsement on Exhibit Q (testimony, pp. 9, 14, 40, 63, and Exhibits K, N, U, V, W, GG and KK). On November 28, 1910, Jose Fernandez delivered to the colony 29 head of cattle, which, together with the 1 head of the 3 the colony owed him in 1909, completed the delivery of the 30 called for in the voucher Exhibit E. Jose Fernandez had never received payment for the said 30 head the value of which was P1,350. This amount was included in the warrant Exhibit F which was cashed by the defendant on November 16, 1910. On February 28, 1911, the defendant had a voucher for 45 head (Exhibit M) prepared; but the same was canceled as it was found by his successor, Mr. Vance, to cover cattle already delivered to and paid for by the colony (testimony, pp. 33, 34, 54, 55, 60 and Exhibits L and M). Changes have been made in the daily and monthly reports of the division of animal industry after they had been submitted to the defendant, for the ostensible purpose of confusing the items and making it difficult to detect the fraud. The most important of said changes are those made in Exhibits X, EE, and FF (testimony, pp. 69, 75, 76, 85). The defendant was seen making changes on Exhibits EE and FF and working on a sheet of drawing paper Exhibit GG in the month of November, 1911 (testimony, pp. 79, 80, 82, 84, 85)."

The principal witness on whom the prosecution relied at the trial, without whose testimony the prosecution would have failed utterly to make out a case, was one Jose M. Fernandez, who, as will be seen from the foregoing, had an interest amounting to P1,485 in maintaining the charge set forth in the information that public funds had been appropriated to his own use by the defendant. Discussing the testimony of this witness in his brief in this court, the Acting Attorney-General makes the following observations:

"An unsuccessful attempt has been made to impeach the testimony of Jose M. Fernandez by producing contradictory affidavits made by him before the trial. The contradictions are mostly due to confusion in the numbers. As to the denial by Jose Fernandez of having signed a warrant for P2,336, it is explained by the fact that when he signed Exhibit F he believed that he was signing a warrant for the payment of 22 head of cattle (testimony, p. 24), and this was natural because when the defendant sent for him he told him that he was going to pay him for the 22 head. The testimony of Jose M. Fernandez in the trial is strongly corroborated by other

witnesses and by documents which have been introduced and admitted in evidence. To impeach the character of Fernandez, an attempt was made to show that he had been convicted of stealing cattle from the colony. Governor John H. Evans testified that while an investigation was started in the matter, the case was abandoned and no prosecution was made (testimony, p. 107). And innocence is always presumed, until the contrary is shown beyond reasonable doubt. * * *

"It is also contended by the appellant that the receipts on vouchers Exhibits C, D, E, and G, having been signed by Jose M. Fernandez, it is presumed that he had received the amounts thereof, in the absence of deceit. The signature to the receipts on Government vouchers cannot always be taken as evidence of payment, because the general practice is that receipts on vouchers are signed by the creditor before receiving the money. As to Exhibit G, while the signing of the receipt thereon by Jose M. Fernandez carries with it the presumption that he had sold the cattle appearing thereon to the colony, yet we have the positive testimony of Jose M. Fernandez, supported by the other witnesses and by the records of the colony, that he had never sold 28 head of cattle to the colony on November 17, 1910. On pages 9 and 14 of the testimony, Fernandez states that once he was required to sign some blank vouchers for the sale of coconuts. This explains why the signature of Jose M. Fernandez happened to appear on said voucher for 28 head of cattle which he neither sold nor delivered to the colony.

"The same contention is made by the appellant as to warrant Exhibit F. But we have already shown that when Fernandez signed it he was acting under the belief that he was signing a warrant for P986 for the 22 head of cattle for which the defendant told him he would pay him, as he did. Fernandez had confidence in the defendant and never suspected that he was indorsing a warrant for P2,336 instead of a warrant for P986, all that was due him at the time, and which he actually received."

Having in mind the very substantial monetary interest this witness had in establishing the guilt of the defendant, we think that these admissions and explanations of the Attorney-General as to his conduct and testimony are in themselves sufficient to justify us in holding that a conviction should not be maintained on his testimony in the absence of corroborative evidence of the most convincing and unimpeachable character. That he made several contradictory affidavits touching the very matters testified to by him at the trial in the court below is admitted, and even if it be granted, as claimed by the prosecution, that these "contradictions are mostly due to confusion in the numbers," they are certainly sufficient to raise a grave doubt as to the accuracy if not the veracity of the witness. The case for the prosecution rests largely on evidence introduced for the purpose of establishing the exact number of animals purchased and accounted for by the defendant in the course of a series of transactions extending over a considerable period of time. It will readily be seen therefore that the possibility that Fernandez may have been as "confused" and inaccurate "as to numbers" while on the witness stand as he admittedly was when he made these affidavits, vitally affects his credibility as the principal witness in this case. Furthermore, a cursory examination of the various affidavits made by this witness prior to the trial satisfies us that the contradictory statements made by him, under oath, and with reference to matters pertinent to these proceedings, are by no means limited to those which might have been occasioned by a "confusion of numbers;" and are such as to raise at least a reasonable doubt as to his veracity as well as his accuracy while on the witness stand. His explanations of the fact that his name appears indorsed on Exhibit F are in the highest degree unsatisfactory. This was a warrant for P2,336 on account of which he claims he only received P986. He testified that when he indorsed this warrant he thought it was a warrant for P986 on account of a delivery of 22 head of cattle, and that he did not notice that it was a warrant for a much larger sum. He says that he indorsed it without examining it because he relied implicitly on the statements of the defendant and did not suspect that he was being imposed upon. It appears however that he was a fairly intelligent man and accustomed to handling Government vouchers of this kind. The warrant in question is a very simple instrument indeed, and clearly sets forth the fact that it was made in payment of two separate deliveries of cattle, and it is not easy to understand how even the most careless and credulous indorser could have failed to notice that it evidenced a payment of P2,336 and not a payment of P986. It was indorsed, and payment

(either in whole or in part) made on account of it, in the office of the provincial treasurer of Palawan, who was there present; and it is almost beyond belief that the defendant would have undertaken to perpetrate so bold and reckless a fraud under such conditions in the absence of collusion between himself and the treasurer; but as will appear hereafter, the existence of such a fraudulent secret agreement is not even suggested in the record, and on the contrary the treasurer was called by the prosecution and with manifest frankness and truth related all that he knew in regard to the transaction, in a manner which leaves no reason to believe that he had the slightest desire to shield the accused, or to conceal anything which occurred on that occasion.

Fernandez' explanation as to the way in which his admittedly genuine indorsement was secured to the voucher for the 28 head of cattle which he claims he did not deliver (Exhibit G) is also somewhat far-fetched, though it is perhaps rather more reasonable than that given in regard to the indorsement of the warrant for P2,336 to which reference has just been made. He claims that having sold some coconuts to the colony he signed the voucher therefor in blank, and that this voucher signed in blank was thereafter filled out, without his knowledge, so as to evidence a delivery of 28 head of cattle. There is nothing¹ inherently impossible or improbable about this explanation of his signature attached to the voucher in question if it be assumed that the accused had formed a deliberate plan to misappropriate the funds of the colony; but his testimony as to the circumstances under which he signed the blank voucher is in the highest degree unsatisfactory, and is not of that convincing quality which should mark the oral statements of a witness who undertakes to explain away the natural inferences and conclusions to be drawn from documentary evidence submitted in the course of a criminal proceeding.

The accused was shown at the trial to have been a Government official whose services during a period of more than ten years in responsible and important offices had always been highly satisfactory, and whose record up to the time when these proceedings were instituted was apparently above suspicion. His conviction in this case can only be maintained by accepting as true the story told at the trial by this interested witness, and while we are not prepared to hold that this story is false, we do not feel that we would be justified in entering a solemn judgment holding it to be true, beyond a reasonable doubt, in the absence of corroborative evidence of the most convincing character.

The corroborative evidence introduced by the prosecution consists of the testimony of several witnesses as to certain matters testified to by Fernandez, and of documentary evidence including reports, records, accounts, and vouchers, the true meaning and import of which the prosecution sought to develop with the aid of expert accountants.

Aside from the documentary evidence, the main reliance of the prosecution in corroboration of the story of Fernandez is to be found in the testimony of the witnesses Johnson and Mendigoren. But the credibility of both these witnesses was successfully impeached in the court below, and their testimony falls far short of inspiring that degree of confidence in the story told by Fernandez which we hold to be necessary to justify us in maintaining a judgment of conviction in a criminal case.

Johnson at the time when he testified was a member of the Iwahig penal colony serving a sentence for embezzlement. Speaking of this witness the acting governor of the Province of Palawan, Mr. John H. Evans, testified with apparent reluctance as follows:

"Q. Will you state to the court your opinion of Johnson as regards integrity, character, and responsibility as you know from your own personal knowledge?—A. That is a thing I rather object to answering unless the court orders it answered, because I hate to take a person's character away or to attack it or say what I think of him, unless it has a particular bearing on the case.

"The Court (to witness). I direct you to answer the question.—A. As a man I would not trust his integrity,

because I have known him to misstate facts deliberately.

"Q. Have known him to deliberately and maliciously misstate facts regarding Mr. Lamb since Mr. Lamb left the penal colony?—A. Yes."

This testimony was admitted at the trial without objection, and despite its manifest irregularity in form and substance it is sufficient, when taken together with the admitted fact that the witness was serving sentence for the crime of embezzlement at the very time when he testified, to justify us in receiving his testimony doubtfully and to impose upon us the duty of scrutinizing it with painstaking care and even with suspicion, in so far as it tends to destroy the good name and fame of a former superintendent of the penal institution wherein the witness had served a part of his sentence. The importance of the testimony of this witness to the case made out by the prosecution and its vital relation to the testimony of the principal witness Fernandez which has already been commented upon, will readily appear from an examination of the following extract from an official report prepared some time prior to the trial by Mr. A. K. Hitchcock, district auditor, which appears on page 138 of the record:

"Mr. Fernandez made two sworn statements about the matter before me. The first one made was evidently confused with later deliveries of cattle made and his memory as to the dates when the events transpired was so faulty that the statement was practically worthless.

"I returned to Iwahig and got from the Mr. Johnson referred to above a comparatively clear statement of the facts and immediately returned to Puerto Princesa.

"Mr. Fernandez was again called in and informed that the statement made before me was apparently very faulty as to the dates and the exact circumstances under which the transactions occurred, and he was advised that if he had any book or memoranda upon the matter to which he could refer to correct these errors he would be allowed to make another statement. This was done and his second statement coincides practically with the statement made by Mr. Johnson."

As to the witness Mendigoren a strong suspicion if not a certainty of the falsity of his testimony, in part at least, is raised by undisputed evidence in the record tending to prove, though not conclusively, that notebooks of the style of the one in which he claims to have entered certain vital memoranda had not been introduced into the colony until after the date when he swore that he made the original entries; and by the further fact that the two written records which he claimed were entered by him and to which he was allowed to refer in order to refresh his memory, give strong internal evidence of having been prepared by different hands. A careful examination of the testimony of this witness leaves little room for doubt that he was primarily interested in furnishing corroborative evidence as to the statements made by the witness Fernandez, and only secondarily interested in disclosing the truth as to the facts in reference to which he testified and as to the source of his knowledge in regard thereto.

Aside from the documentary evidence and the testimony in connection therewith, the only evidence of any real value tending to corroborate the testimony of Fernandez other than that of Johnson and Mendigoren, is the testimony of the witness Clark. Clark was the treasurer of the Province of Palawan, and there is no reason to doubt the truth of his testimony. But while his testimony undoubtedly tends to corroborate the claim of Fernandez that he did not receive the full amount of the above-mentioned warrant for P2,336, it is by no means conclusive of that fact, and viewed from some standpoints it tends in some degree to rebut the charge that there was anything improper in the transaction, so far as Lamb was concerned. Clark was present at the time when the voucher Exhibit F was indorsed in his office by Fernandez, and he says that he saw the accused count over a part of the proceeds, he could not say how much, and deliver it to Fernandez. He could not say what was done with the rest of the money, and he does not appear to have had his attention directed especially to the transaction. Both Fernandez and the accused testified that the sum of P986 was paid on account of the 22 head of cattle; Fernandez

claiming that that was all that was paid him and the accused insisting that after counting out this amount, he afterwards counted out the balance in settlement of the amount due on account of 29 or 30 head of cattle delivered on another occasion. It will be seen that the real difference between Fernandez and Lamb is limited to the second transaction, and as to this Clark was unable to testify. He admitted that he did not know what was done with the balance of the money, which remained after Lamb counted out the amount due on account of the delivery of 22 head of cattle, and he does not seem to have heard the discussion between Fernandez and Lamb in which it was agreed that the sum of P986 counted out at that time, was on account of these animals. But that some such a discussion arose at the time when this payment was made there can be no doubt, for both Lamb and Fernandez are in agreement on that point. Manifestly it would not be safe to accept Clark's statement that he only saw a part of the money paid over, as a complete corroboration of Fernandez' denial of Lamb's assertion that after the payment on account of the 22 head had been discussed and settled, the parties then took up and discussed the payment to be made on account of the 29 or 30 head of cattle which Fernandez had delivered on another occasion, after which the balance of the proceeds of the warrant was paid over in settlement therefor. Lamb's explanation of his object in proceeding" in this way is not unreasonable. He says that as the warrant was drawn to cover two separate transactions, he thought it would avoid confusion to turn over the amount involved in each transaction separately, and thus prevent misunderstanding between himself and Fernandez.

The prosecution lays great stress on Clark's testimony to the effect that Lamb told him before the check was cashed that Fernandez was not to receive all the money, taken in connection with a letter which Lamb wrote to the Director of Prisons requesting that this warrant be sent through him. But while this evidence undoubtedly tends to support Fernandez' claim that he did not receive all the money it is by no means, conclusive upon this point, nor does it, as contended by the prosecution, conclusively establish the existence of criminal intent in the mind of the accused. In the first place it was shown at the trial that it was not unusual, in the administration of the affairs of the colony, to arrange to have payments made in the mode adopted on this occasion; in the second place, there seems to have been some question as to the precise number of the animals delivered and on account of which the warrant was prepared, and when Lamb told Clark that he did not want to indorse the warrant over to Fernandez, and preferred to get it cashed and to pay the amount due in cash—because "Fernandez was not to get all the money"—he might well have had it in mind that as a result of his settlement with Fernandez, it might develop that he was not entitled to be paid the full amount of the warrant; and finally, as we have remarked before, it is difficult to believe that if Lamb had any criminal intent in having the amount of this warrant paid through him, and if it was his purpose to deceive Fernandez as to its amount and feloniously to misappropriate and to keep for himself the greater part of it, he would have invited Clark's attention to the fact that all the money was not to be paid to Fernandez, and then attempt to perpetrate so bold a swindle in Clark's office, with Clark there present and in position to see and hear all that took place had he happened to have his attention directed to the transaction.

If Lamb did in fact appropriate this money, the only reasonable explanation of his conduct in this regard would seem to be that the intent to commit the crime was not formed until afterwards, and that at the time when he paid Fernandez for the 22 head of cattle, he retained the balance in perfect good faith because Fernandez had not yet delivered the other 30 head, or for some other sufficient reason. But this explanation is wholly incompatible with Fernandez' account of the transaction, as, if Fernandez is to be believed, Lamb must have willfully deceived him as to the amount of the warrant, and no reason suggests itself for his doing so unless he had already formulated his plan to misappropriate the amount which Fernandez claims was not paid to him.

Some additional testimony was taken tending to corroborate the story told by Fernandez, but except in so far as such testimony relates to, or derives its force from the documentary evidence, we do not deem it of vital importance, and from what has been said as to the testimony of the principal witnesses upon whom the prosecution relies in direct corroboration of Fernandez, we think it sufficiently appears that it falls far short of

furnishing corroborative evidence of "the most convincing and unimpeachable character," without which, as we have said, we would not be justified in accepting Fernandez' story as true, beyond a reasonable doubt.

A considerable amount of documentary evidence was introduced by the prosecution, but this evidence, reduced to its last analysis, derives its chief value from the daily, monthly, and annual cattle reports of the colony. These cattle reports purport to show the daily, monthly, and annual increases by purchase and births, and decreases by slaughter or disease. With the aid of an expert accountant from the office of the Insular Auditor, the prosecution undertook to show from a analysis of these cattle reports that there was a shortage in the number of animals turned over by the accused to his successor exactly equal to the number which Fernandez testified had not been delivered by him although vouchers purporting to evidence a purchase of that number had been prepared and submitted by the accused.

We have carefully examined these cattle reports in connection with the testimony of the witnesses, and we are forced to the conclusion that for the purposes for which they were offered in this case they are so manifestly unreliable that a judgment of conviction based wholly or in large part upon them should not be maintained. Changes have evidently been made in these reports, and the Attorney-General submits an ingenious and, it must be admitted, a forceful argument to show that these changes were made by the accused for the purpose of concealing his misappropriation of the cattle funds of the colony. But an examination of the reports shows that changes and corrections have been made in these reports which do not appear to have any possible connection with the charges against the accused; and these as well as those discussed by the Acting Attorney-General are so clumsily, crudely, and blunderingly executed as to raise at least a doubt that an intelligent, well-educated man, such as the accused was shown to be, could have made use of so transparent a device in an attempt to conceal his misconduct. Several witnesses were called who testified that they saw the accused examining these accounts on one occasion or another, but none of them were able to testify directly that they saw him making the changes which appear on the face of the reports or to any matter which would justify the inference that he did so. Manifestly, such evidence has little probative value in this connection, for the accused, as superintendent of the colony, had a right and even a duty to examine the reports at any time he thought proper to do so. The changes and corrections in the reports may well be accounted for by the fact that the clerks and others who had charge of their preparation were, for the most part, prisoners serving sentence in the colony, who do not seem to have been expert accountants, and who may have had a sinister purpose in thus destroying the usefulness of the reports as a check on their own connection with the cattle transactions of the colony. If we could assume that the defendant is guilty of the crime of misappropriation with which he is charged, it might well be inferred that he made these changes in order to hide his guilt—but we cannot assume, without satisfactory proof, that he falsified the reports in order to draw therefrom an inference as to his guilt of the crime with which he is charged.

As the officer ultimately responsible for the preparation and conservation of these reports we might, perhaps, be justified in holding that the fact that they appear to be so utterly useless and unreliable is in itself a suspicious circumstance, indicating a sinister intent on his part to conceal the facts which they should disclose, were it not that it appears from the record that for a considerable part of the time covered by the reports he was a desperately ill man, and that for much of this time he was absent from the colony; and further, that he was compelled to rely on the aid of unskilled and not altogether trustworthy convicts in keeping and preparing the records of the cattle transactions of the colony. Under the circumstances we are not prepared to draw any inferences unfavorable to the accused, from the fact that the reports in question serve rather to befog than to clarify the issues involved in this case.

Mr. Shafer, an expert property accountant, made a summarized statement or report of the colony's cattle transactions prior to October 31, 1911, a part of which is as follows:

"To date, October 31, 1911, our accounts show 395 head of native cattle at the colony, less 12 slaughtered for subsistence during October, 1911, which have not been credited to date. This leaves 383 to be accounted for. My inventory under date of October 31, 1911, shows 353 head including some 78 calves and all young branded cattle. The young branded cattle include 11 calves purchased in January and April of this year. The affidavit of Doctor Best above mentioned in connection with carabao, shows some 217 head of cattle including calves as having died during the year ending June 30, 1910. If this was credited it would account for 217 plus 353 head on hand, or 570 head, leaving a margin of 187 head to apply to the natural increase of the herd as Iwahig is charged with 383 head as noted. I attempted to determine the actual status of native cattle by the daily cattle reports but could not do so as these reports are so confused as to make a definite statement impossible."

Mr. Hitchcock, an expert accountant from the Auditor's office, also submitted a statement, or summarized report of the cattle transactions of the colony; and it is upon deductions drawn from his testimony in connection therewith that the Acting Attorney-General rests his contention that the facts disclosed by the documentary evidence of record corroborate the story told by the principal witnesses for the prosecution. But Mr. Hitchcock admitted that in compiling his report he relied on information acquired from an examination of the available cattle reports of the colony, of vouchers and other documents and of witnesses. Indeed it is very evident that his report is based in large part on these daily, monthly and annual cattle reports, which Mr. Shafer, another expert accountant, spoke of as "so confused as to make a definite statement impossible," and we may add that some of the data upon which Mr. Hitchcock appears to have relied in arriving at his conclusions were furnished by the very witnesses whose testimony the prosecution sought to corroborate by the introduction of those reports.

There is evidence in the record as to admissions on the part of Lamb of the possibility of the existence of indebtedness from the colony to Fernandez, and of assurances on Lamb's part, made to Fernandez, that if on investigation such indebtedness was found to exist, and the Government failed to pay it, he, Lamb, would be personally responsible; but in this connection we think it sufficient to say that, giving the accused the benefit of the doubt, there is no satisfactory proof in the record of conduct or admissions on the part of the accused incompatible with his claim of innocence of the offense charged in the information.

In conclusion, we would say that the prosecution undoubtedly made out a case against the accused, if the testimony of the principal witnesses for the prosecution could be accepted without reserve; but, having in mind the interest and the character of these witnesses, and the undisputed evidence as to his excellent reputation prior to the institution of these proceedings, we cannot maintain a holding that his guilt was proven at the trial beyond a reasonable doubt.

The judgment of conviction and the sentence imposed by the trial court should therefore be reversed, and the accused acquitted of the charges set forth in the information, and his bail-bond exonerated, with the costs of both instances de officio.

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

Torres, J., dissents.

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