

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE MADRIGAL ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 8051. March 28, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

The appellants in this case were charged in the court below with a violation of the short-weight provision of Act No. 1519, section 30. They were convicted and each of them sentenced to pay a fine of P200 and one-fourth of the costs, with subsidiary imprisonment in case of failure to pay the fine imposed.

The defendants were partners doing business under the firm style and name of Madrigal & Co., their principal business being the selling of coal at retail. The offices of the company were located at No. 1059 Muelle de la Industria, and their coal yard from which all orders for coal were filled was located about one mile distant. The orders for coal were received at the office and were telephoned from there to the weigher at the coal-yard, who thereupon weighed out the quantity of coal ordered and placed it upon the wagon for delivery. This was the practice followed in the case before us. On the 1st day of November, 1911, one Lee Tai gave an order to said company for the delivery at his restaurant at the Young Men's Christian Association in the city of Manila of 1 ton of coal. This order was immediately transmitted from the company's office to its coal yard and filled by the weigher weighing out the quantity ordered and placing it upon the wagon for delivery. In this particular instance a full ton of coal was not delivered, there being about 140 kilos short. A complaint was made against the four partners individually for a violation of section 30 of Act No. 1519 and a separate criminal information was filed against them. They were tried, convicted and sentenced as aforesaid.

The section alleged to have been violated reads, so far as is material to this case, as follows:

"Any person who, with fraudulent intent, alters any scale or balance, weight or measure, after it is officially sealed, or who knowingly uses any false scale or balance, weight or measure, whether sealed or not, or who fraudulently represents the weight or measure of anything to be greater or less than it is, shall be punished by a fine of not less than two hundred pesos, nor more than four thousand pesos, or by imprisonment for not less than three months, nor more than two years, or by both such fine and imprisonment, in the discretion of the court."

The position of the prosecution as stated in its brief is as follows:

"The prosecution contends that the evidence discloses an absolutely clear-cut situation: An order was given Madrigal & Co. for one ton of coal; in response to the order a delivery was made, accompanied by an invoice presented to the purchaser, representing that the delivery contained one ton of coal; the coal was accepted by the purchaser and subsequently, upon presentation of a bill representing that one ton had been delivered, the purchaser paid for one ton of coal; the delivery was not a full ton as represented by the invoice and bill. . These facts give rise to two questions: (1) Is this a 'fraudulent representation' as set forth in the statement? (2) Can the defendants be held criminally, responsible for this 'fraudulent representation?'

"The prosecution contends that such a representation is a fraudulent one as intended by the legislature. It is clear that the statute was never intended to penalize innocent misrepresentation of weights or measures. For example, a statute would be absurd, if it attempted to penalize a very fat man, who jestingly remarks that his true weight is only 103 pounds. So also if a person in a conversation erroneously states that the weight of a sack of rice is 2 cavans. But when something depends upon the correctness of the statement, when some one will be liable to pecuniary loss if the statement of weight is untrue, then we contend that under certain circumstances, such a statement would be a fraudulent representation within the statute, irrespective of any intent on the part of the person making it. In the case at bar, the mere fact of sending out a short delivery with a false invoice, is sufficient to constitute a fraud upon the purchaser and to be a fraudulent representation within the language of this clause of the section.

"It is true as a general rule that intent is an element necessary to constitute a fraud (23 Am. Dig., 1645). But this does not necessarily require that one who makes a fraudulent representation must have an actual specific intent to defraud. Even at common law, if A makes a misrepresentation regarding the financial responsibility of B, or that B is the payee of a note, whereby C is induced to advance money or credit, A is responsible for his statements and a fraudulent intent is imputed to him, either because he acts carelessly and without investigation, when investigation could be made (*Nevada Bank vs. Portland Nat. Bank, C. C.*, 59 Fed., 338), or because his statement was about a matter of which he had special knowledge (*Labay vs. City Nat. Bank*, 15 Colo., 339, 25 Pac, 704)."

We cannot agree with this argument when applied to a criminal action brought under the statute above quoted.

The statute uses the word "fraudulently." In the sense in which that word is generally used in law and from the definition of it which has become generally accepted, knowledge on the part of the person charged must be shown before a conviction can be had. Fraudulently selling coal short means knowingly selling it short weight. This, in turn, means that the party charged must himself sell the coal or it must be done by some other person through his induction or with his knowledge or consent.

The cases of *United States vs. Tria* (17 Phil. Rep., 303), and *United States vs. Estavillo* (19 Phil. Rep., 478), cited by the Solicitor-General in support of the conviction, do not, in our judgment, touch the question at issue. Neither do the decisions of this court relative to criminal libel. A special provision of the libel law makes the owner or proprietor responsible regardless of knowledge. No cases have been cited holding the proposition laid down by the prosecution, and we have been unable to find any. All the cases called to our attention or which we have been able to find are to the contrary. The supreme court of Minnesota has discussed a situation quite similar to that here presented. Section 5115 of the Revised Laws of 1905 of Minnesota reads as follows:

"Every person who shall injure or defraud another by using with knowledge that the same is false, a false weight, measure or other apparatus for determining the quantity of any commodity or article of merchandise, or by knowingly delivering less than the quantity he represents; or who shall retain in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used, in violation of the foregoing provisions of this section ; or who shall knowingly mark or stamp false or short weights or false tare on any cask or package, or knowingly sell or offer for sale any cask or package so marked shall be guilty of a misdemeanor."

This section was amended, repealed, or substituted by section 6 of chapter 156 of the Laws of 1911 of that State, which reads as follows:

"Any person who shall offer or expose for sale, sell, or use, or have in his possession a false scale, weight or measure, or weighing or measuring device, or any weight or measure or weighing or measuring device which has not been sealed within one year, as provided by this law, or use the same in buying or selling of any

commodity or thing; or who shall dispose of any condemned weight, measure or weighing or measuring device, or remove any tag placed thereon by any authorized employee of the department, or shall sell or offer or expose for sale less than the quantity he represents; or sell or offer or expose for sale any such commodities in the manner contrary to law; or shall sell or offer for sale or have in his possession for the purpose of selling, any device or instrument to be used to, or calculated to, falsify any weight or measure, or shall refuse to pay any fee charged for testing and sealing or condemning any scale, weight or measure, or weighing or measuring device, shall be guilty of a misdemeanor, * * * "

It will be noticed that the real difference, so far as we are at present concerned, between the two sections quoted is that in the one knowledge, that is, fraud, is required and in the other it is not. Speaking of that difference the supreme court in the case of *State vs. Armour & Co.* (118 Minn., 128), said, at page 131:

"It is at once apparent, on reading this section, that fraud is of its essence. On the other hand, it is equally apparent from the reading of the Act of 1911, that the things there penalized are mala prohibita, pure and simple, of which, in the contemplation of the law, intent to defraud or commit wrong is not an element. It is in this difference between the two Acts that, in our opinion, the purpose of the legislature in incorporating in the Act of 1911 the provision in question is to be found. In other words, the legislature wished to dispense with the difficult, and often insuperable, task of proving intentional wrongdoing on the part of the seller."

Expressing its final conclusion upon the effect of the Act of 1911 the court said:

"We hold that the Act of 1911 is broad enough to cover any case where a sale, offer to sell, or exposure for sale of less than actually represented is charged."

This decision was under review in the case of *State vs. People's Ice Co.* (144 N. W; Rep., 962), where a similar question was involved. In that case the court said, quoting from *State vs. Sharp* (121 Minn., 381):

"The question of intent is not material in this class of statutory offenses. Such statutes are in the nature of police regulations and impose a penalty irrespective of intent to violate them, the object being to require a degree of diligence for the protection of the public which shall render violation impossible."

The court also quotes from *State vs. Armour* and, speaking with reference to section 5115 as compared with section 5114 of the Act of 1911, says:

"Under this Act (referring to section 5115 of the laws of 1905), knowledge and intent were ingredients of the offense. Changing the law so as to omit the element of knowledge indicates that the legislature intended to eliminate the question of intent as an element of the offense."

From these cases it is clear that, as the section originally stood, conviction could not have been had under it without showing guilty knowledge in the selling of the goods; in other words, the defendant must have been shown to have knowledge of the misrepresentation. This necessity was recognized by the legislature and that difficulty was removed by the Act of 1911. Under that Act conviction can now be had without proof of knowledge.

The difference between the two laws of Minnesota, as set out in the two cases cited, presents in relief the precise question before us, especially in view of section 181 of Act No. 2339, passed February 27, 1914, to take effect on and after July 1, 1914. Under the wording of the statute the provisions of which we are considering, knowledge is an essential ingredient of the crime and no conviction can be had without showing knowledge.

It is the undisputed evidence that not one of the defendants had any knowledge that the clerk was delivering a less quantity than that asked for. The accused have not been connected by the evidence of the prosecution with the sale in any guilty sense and are not shown to have made a misrepresentation or committed a fraud, or of having been privy thereto. As a necessary result the conviction cannot be sustained.

In order to demonstrate such knowledge, or to present evidence from which it could be inferred, the prosecution, on the trial, sought to introduce evidence of short-weight sales which had been made by the partnership before and after the one set out in the information. This evidence was excluded by the court below as incompetent under the objection of the defendants. We regard this ruling as error. Under the theory upon which we are deciding this case, knowledge is, as we have just stated, a necessary element, and any evidence tending to demonstrate such knowledge is not only competent and material but very important. One of the means of establishing knowledge on a prosecution for a short-weight sale is to show other sales in which the purchasers were short-weighted, occurring either before or after the sale which is the basis of the action in which the evidence is offered, thereby establishing that the company systematically gave short weight.

The judgment appealed from is reversed and the appellants acquitted.

Arellano, C. J., Carson, Trent, and Araullo, JJ., concur.

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