

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCIANO RABOY, DEFENDANT AND APPELLANT.*G.R. No. 8509. July 26, 1913*

Ponente: JOHNSON, J.

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This defendant was charged with the crime of the larceny of four checks, issued by the Bureau of Education to one Guy D. Hawley. The value of the checks was P515.44. It appears that Mr. Hawley received the four checks on the 15th of August, 1912, at his office, and placed them in his pocket; that about five minutes thereafter he discovered that the checks were missing. Mr. Hawley was a teacher in the public schools of the municipality of Sorsogon. The defendant had been a teacher in the public schools of the municipality of Castilla in the year 1911. At the time of the commission of the alleged larceny, the defendant was employed in the office of the prosecuting attorney of the Province of Sorsogon. The office of the said Mr. Hawley and the office of the prosecuting attorney of the Province of Sorsogon adjoined. The defendant was in the office of the prosecuting attorney on the 15th of August, 1912.

Sometime in the month of September, the defendant obtained permission to visit Nueva Caceres. It appears that immediately after the defendant arrived in Nueva Caceres, he went to the office of the prosecuting attorney with the four checks in his possession, and inquired of the said prosecuting attorney how he might be able to collect the amount due upon the same. The checks had not been indorsed. They were regular Government checks, and required the indorsement of the payee before they could be paid. The defendant told the prosecuting attorney of Nueva Caceres that he had paid P90 for the said four checks. He said that he had purchased them from a child whom he had met in the street.

During the trial of the cause the defendant testified in his own behalf. He admitted that he had spoken to the fiscal of Nueva Caceres about the method of collecting the amount due on said checks; that he had told the fiscal that he paid P90 for the said checks; that he had purchased the checks from a child of 9 or 11 years of age. The defendant admitted on the witness stand that he had not paid P90 for the checks, and stated that he had paid the child P3. On the witness stand he stated that he had told the prosecuting attorney that he had paid P90 for the checks in order to be able to recover for the same a gratificacion from Mr. Hawley, their owner.

The lower court found that the proof adduced showed beyond a reasonable doubt that the defendant was guilty of the crime of larceny of the four checks. While the proof is wholly circumstantial, it seems to point directly to the guilt of the defendant. His story that he had purchased the checks from a child of 9 or 11 years of age for the sum of P3 seems to be exceedingly improbable. The checks amounted to P515.44. He was unable to give the name of the child or the particular place at which he had made the purchase of the checks. He admitted that he knew who the owner of the checks was from the moment he first saw them. Inasmuch as he knew who the owner was, there seems to have been no occasion whatever for his having made the inquiry of the prosecuting attorney of Nueva Caceres as to the method of collecting the money due for the same. Knowing who the owner was, what interest did the defendant have in knowing the method for the collection of the amount due? The attempt on the part of the

defendant to collect the amount due on said checks, when he knew who the owner was, amounts to an act of appropriation of the checks, and he is, therefore, guilty of the crime of larceny. (Paragraph 2, article 517, Penal Code; U. S. vs. Comis, 7 Phil. Rep., 332.)

The defendant and appellant insists that the checks had no value and that inasmuch as the penalty for the crime of larceny is based upon the value of the thing stolen, no penalty can be imposed upon him. This contention of the appellant is not tenable. The checks were checks of the Philippine Government, payable to the said Mr. Hawley. The face value of the checks was P515.44. In the case of the United States vs. Tan Jenjua (1 Phil. Rep., 38), this court said, speaking through Mr. Justice Mapa: "The amount which a document represents * * * must serve as the basis for grading the penalty corresponding to the crime."

In measuring the value of commercial paper, its value to the owner should be considered as its real value. (U. S. vs. Wickersham, 20 Phil. Rep., 440; decision of the supreme court of Spain, April 23, 1888.) In the present case Mr. Hawley was entitled to receive from the Government the sum of P515.44 (2,577.20 pesetas). The lower court considered the value of the checks to be less than 25 pesetas and sentenced the defendant to be imprisoned for a period of three months of *arresto mayor* and to pay the costs. In our opinion the judgment of the lower court must be reversed and the defendant must be sentenced to be imprisoned for a period of one year eight months and twenty-one days of *presidio correccional*, with the corresponding accessory penalties, and to pay the costs. So ordered.

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

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