

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RUPERTO T. SANTIAGO, DEFENDANT AND APPELLANT.

G.R. No. 8579. March 30, 1914

Ponente: CARSON, J.

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CARSON, J.:

The appellant in this case was convicted of the crime of estafa, and sentenced to five months of arresto mayor and to pay the costs of the proceedings.

The commission of the alleged offense is charged in the information as follows:

"That during or about the month of April, 1912, in the municipality of Iloilo, Province of Iloilo, Philippine Islands, the said accused, being an agent of The West Coast Life Insurance Company, and entrusted with collecting on policies of said company, did wilfully, maliciously, and criminally, with abuse of confidence and through deceit, collect from Felix Golez the sum of one hundred sixteen pesos and sixty-two centavos (P116.62), by means of delivery of the provisional policy No. 889A; and instead of turning in to the treasury of said company the amount so collected the said accused did appropriate the same to his own personal use, in fraud and to the prejudice of the said West Coast Life Insurance Company; an act committed in violation of the law."

The first question raised on this appeal goes to the jurisdiction of the trial court over the offense charged in the information. Relying on the case of the United States vs. Cardell (23 Phil. Rep., 207), it is urged that the offense as charged was triable in the Court of First Instance of Manila and not in Iloilo, it appearing that under defendant's contract with the insurance company, the premiums collected by the defendant were payable at its office in Manila. In that case, wherein the allegations of the information were substantially similar to those in the case at bar, we held that the Court of First Instance of Manila had jurisdiction of the offense charged, on the ground that under the contract by the defendant with the insurance company, the insurance premiums collected by him in Cebu were payable in the offices of the company in the city of Manila, and that the offense charged—that is to say, the failure to remit these premiums—was triable in Manila because it was consummated by the failure of the defendant in that case to turn over the funds at the office of the company in Manila. We did not hold in the former case, however, that the Court of First Instance of Cebu, where the premiums were collected, did not have concurrent jurisdiction with that of Manila; and we are of opinion that offenses such as that committed in the case at bar and in the case just cited, which are committed partly in one province and partly in another—that is to say, where some acts material and essential to the crime and requisite to its consummation occur in one province and some in another—the case may be tried in either.

In the case at bar the accused is charged with having collected the premium upon a certain policy in the Province of Iloilo and there and then appropriating the amount collected to his own use instead of turning it over to the company at its offices in Manila in accordance with the terms of his contract.

In accordance with our ruling in the case of the United States vs. Cardell (*supra*), the offense, if committed, was

partly committed in the city of Manila and partly in the Province of Iloilo. The failure to turn over the funds to the insurance company in Manila was an act material and essential to the crime, and requisite to its consummation. So, also, the alleged collection and appropriation of the premium in the Province of Iloilo and the failure to remit it to the company in Manila in accordance with the terms of the alleged contract was an act material and essential to the crime and requisite to its consummation. The offense having been committed partly in the Province of Iloilo and partly in the city of Manila we are of opinion that the Court of First Instance of that province had concurrent jurisdiction with that of Manila over the offense thus committed.

Under the strict rules of the common law, based upon the rule that indictments could be found in that county only in which the crime has been committed, it was at one time doubtful whether a crime committed partly in one county and partly in another could be punished in either. (Bacon Abr. Tit. Indictment; 4 Bl. Comm. 303; 1 Chitty Crim. L. 178.) Though it was held that the proper view was that such an offense is indictable in the county wherein it is consummated, it is now very generally provided by statute that where crimes are committed partly in one county and partly in another, the accused is indictable in either, and it has been held that such statutes are not repugnant to the constitutional provision that the accused shall be entitled to a trial in the county where the crime was committed. (Smith vs. State, 42 Florida, 605.)

Section 6 of General Orders No. 58 provides that: "A complaint or information is sufficient if it shows: * * * 4. That the offense was committed within the jurisdiction of the court and is triable therein."

As hereinbefore indicated, we are of opinion that in this jurisdiction, where the strict common-law rules touching the finding of indictments have no controlling influence, offenses committed partly in one province and partly in another, that is to say, where some acts material and essential to the crime and requisite to its consummation occur in one province and some in another, are triable in either province, the appropriate courts in each province having concurrent jurisdiction of such offenses under the provisions of the above cited section of General Orders No. 58.

No witnesses were called by the prosecution, but certain documents marked "Prosecution's Exhibits A, B, and C" were introduced without objection, and the defense admitted that the accused had collected the sum of P116.62 mentioned in the information and that he had not turned it over to the complainant company. Exhibit A is the formal appointment and contract of defendant as an agent of the insurance company. Exhibits B and C are reports of the defendant made to the company during the term of his employment as its agent.

The evidence for the defense is summarized by the Solicitor-General in his brief in this Court, as follows:

"The defendant, being duly sworn, testified in his own behalf substantially as follows:

"I am 28 years of age, married, clerk, and a resident of Iloilo. I was formerly an agent of the West Coast Life Insurance Company, and while acting as such wrote a policy for Adriano Hernandez, for which I was entitled to a commission of P101.67 for the first half year and an additional P101.67 at the time of the payment of the second semiannual premium. I did not collect the premium on this policy and have not received any commission upon it. I also wrote a policy for Cecilio Dayot, for which I am entitled to P51.48 commission and which the company has not yet paid to me. The regular agent of the company, Jose Maria Iguara, told me that he had collected the premiums on the above-mentioned policies. I also wrote policies for Messrs. Escarilla and Peralta, and Luisa Caraza upon which Mr. Iguara collected the premiums. I received certain advances from Iguara upon these policies, but have not been paid in full. I collected the premium on the policy written for Luis Golez, but have not turned it over to the company; Exhibit D is the receipt I gave him for the amount collected. The premium on the Golez policy was P116.62 and my commission thereon was P64.14; and as the company had been owing me P58 for some time I did not turn over the P52.48 due the company upon this policy. The company is indebted to me in the sum of P208 upon policies written by me. Some of this work was done prior to my appointment as agent of the West Coast Life Insurance Company, but I had an understanding

with Mr. Calvo, the company's general agent. Mr. Calvo did not settle with me in full for the work I did for him prior to my appointment as agent of the company, and told me to keep the first premium that I collected. My contract of employment with the West Coast Life Insurance Company calls for the immediate turning over of all premiums collected to the company's general agent. The practice of the agents here, however, has been to retain the commissions and send the balance of the premiums collected to the Manila office. Mr. Northcott was the general agent to whom I should report and send premiums after I had signed the contract with the company.

"Jose Maria Igpuara, being duly sworn, testified substantially as follows:

"I am 28 years of age, married, life insurance agent, and a resident of Iloilo. I am an agent of the West Coast Life Insurance Company, and as such know that the premiums on the policies belonging to Messrs. Hernandez, Dayot, and Colez, and Luisa Caraza have been paid. The defendant was employed by Calvo while the latter was the agent of the West Coast Life Insurance Company. As such subagent the defendant was responsible only to the agent who appointed him and, not to the company; that is, the company had nothing to do with him. When Mr. Gray, cashier of the company, came here he suspended the defendant as agent for the company. Mr. Gray then took charge of the premium on Governor Hernandez's policy and I was sent to collect it. Governor Hernandez told me that he could not pay the entire amount of the premium at that time, but gave me his promissory note for P116 to be credited on account of the premium due on his policy. Mr. Hernandez did not owe the defendant any commission on account of his policy that I know of. The defendant wrote policies for Luisa Caraza and Cecilio Dayot, and secured certain advances from some policy holders. When the defendant was dismissed I received a letter from Mr. Northcott, directing me to collect all of the papers in the hands of the defendant and I made a demand upon him for such papers as he had in his possession, but he has not delivered them to me.

"Ernesto M. Calvo, being duly sworn, testified substantially as follows:

"I am 33 years of age, single, and a resident of Iloilo. I was formerly agent of the West Coast Life Insurance Company for the Provinces of Panay and Negros. I appointed the defendant an agent of the company in February or March last. I was authorized to appoint agents the same as Mr. Northcott. I had a number of agents working for me down here and they looked to me for their commission. The agents appointed by me were also appointed by the company, because I was not allowed to appoint without the consent of the company. I do not owe the defendant anything; I don't know whether the company does or not. I told the defendant that if a settlement was not made with him he could take what was due him out of the first premium he collected. I had no right to do this, but did it in order to get him to work for my company, and to show him that I really came down here representing Mr. Northcott. I was not authorized to hold out any money on premiums collected, but directed to send all moneys collected to Manila. I have not made a settlement with the company yet for my services. The defendant and I were rivals and could not agree with each other at the time he asked for his commissions; I recommended to the company that the defendant be not appointed as agent, but he was appointed by the company on May 4. I think the defendant had already been appointed by the company when the policy of Felix Golez was written. I think I received this policy in April. On July 7 I received an order from the company to turn over all papers to Mr. Igpuara, and I did so. My contract with the company was the same as the document marked Exhibit A; but in addition thereto I had a letter from the company and verbal instructions from Mr. Northcott. Mr. Northcott told me I was authorized to do anything, hence he is responsible, if anybody is, and not I.

"Adriano Hernandez, being duly sworn, testified substantially as follows:

"I am 42 years of age, married, and am serving as provincial governor of Iloilo. I gave this defendant my promissory note for P116 at his request in order to assist him to make a payment. This promissory note was not made in consideration of any policy of mine issued by the West Coast Life Insurance Company. By request of the defendant I made the promissory note payable to Mr. Igpuara to whom the note was delivered by me. At that time my policy had been canceled, but later on I was given another physical examination and my policy

was renewed. Later, by agreement with Mr. Iguara and the defendant, I advanced the difference between the amount of the promissory note already given and the amount of the premium due on my policy in payment of my premium. I received a letter from the Manila office advising me that I could see this defendant about my policy instead of seeing Mr. Calvo. When I signed the promissory note for P116 I had in mind to help the defendant to make a settlement with the company."

Giving the accused the benefit of the doubt which arises on a review of the whole record, we think he must be acquitted of the crime with which he is charged. Upon a strict construction of the terms of his contract, it would seem to have been the duty of the accused to turn over to the company, or its duly authorized agent, the amount which he is alleged to have improperly retained, and await a settlement to be made thereafter of any claims he may have had against the company. But if, as a matter of fact, the company was indebted to him for commissions on policies secured by him, it would appear that he was acting under the express authority of one of the company's general agents in retaining the amount of this indebtedness, pending a settlement of his accounts with the company. The evidence of the defense on this point is not disputed.

With no evidence before us tending to prove that the accused was not justified in relying upon the instructions and authority of the company's agent in this regard we do not think that he can be held criminally liable for the retention of any amount which, in good faith, he believed the company was indebted to him.

The real question for determination in this case is, therefore, whether the accused, in good faith, believed the company to be indebted to him in the amount which it is charged and admitted he collected and failed to turn over. Upon this point we are of opinion that the evidence is not sufficiently conclusive to sustain a finding beyond a reasonable doubt. It is quite evident that there were differences between the accused and the company's local and general agents as to whom the commissions on various policies should be paid; and giving the accused the benefit of the doubt, we do not think that the evidence of record is sufficient to maintain a finding that his claim of indebtedness against the company was not made in good faith, in the honest belief that he was entitled to the commissions claimed by him.

The judgment of conviction and the sentence imposed by the trial court should therefore be reversed and the accused acquitted of the offense with which he is charged, with the costs in both instances de officio. So ordered.

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

Trent, J., dissents.

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