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[G.R. No. 1468. March 14, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ALONSO P. GARDNER,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On January 20, 1903, the prosecuting attorney of the city of Manila filed an information in the Court of First Instance of that city charging the three defendants with the crime of the falsification of notes or documents equivalent to current money payable to bearer, in that on or about the 16th day of January, 1903, the said defendants, Gardner, Jameson, and Kilp, in the city of Manila, Philippine Islands, willfully, feloniously, and with intent to gain, forged two notes or documents which passed as current money under the laws of these Islands, with the intent of circulating them, and forged and attempted to make an imitation of two United States silver certificates of the value of \$10 each, money of the United States, altering and changing the numbers, seals, letters, and inscriptions on two \$1 United States silver certificates which pass as current money in the Philippine Islands, in order that they might appear on the face as of the value of \$10 each; this contrary to the statute in the case made and provided.

After the complaint was filed and before the trial commenced, at the request of the prosecuting attorney the case was dismissed with respect to the defendants Jameson and Kilp under the provisions of section 34 of General Orders, No. 58, and they were accordingly discharged, the prosecution being continued solely against Alonso P. Gardner.

From the testimony taken at the trial, it appears that on January

16,1903, while the accused, Gardner and James Jameson, were in the "Soldiers' Institute" situated in Santa Cruz, this city, Gardner ordered Jameson to go to a bookstore in front of the post-office to buy a bottle of mucilage and a blue pencil, and for that purpose gave him half a dollar. This was about half past 3 in the afternoon. Jameson got the mucilage and the pencil, Gardner not having told him for what he wanted them. As a witness Jameson identified one of the blue pencils which was shown him at the trial. Jameson's testimony is corroborated by 8. A. Presby, the owner of the Manila Stationery Company, who identified the witness Jameson, as also the pencil and a bottle of mucilage, which were exhibited to him as those which he had sold to Jameson between 1 o'clock and 2.30 that afternoon. Between 6 and 7 o'clock that night the witness Jameson, at the invitation of the accused, went by tram car to the Malate barracks, where they found a soldier, named William, with whom the accused had some conversation. They then left the barracks, and while passing by a tailor shop Gardner handed Jameson a bill asking him to change it for silver and promised to give him half its value. Jameson drew Gardner's attention to the fact that the bill was not good, to which Gardner replied that he knew that, and that he had made it with mucilage, saying to Jameson, "Go along, get it changed, and I will give you half." Jameson cashed the bill and received 25 pesos for it and then went up to the Soldiers' Institute, where he found Gardner. This witness described the bill which was so exchanged by him, together with the alteration which had been made in it, and identified the bill which was exhibited to him at the trial as the one which he had given to the Chinese tailor, numbered 54226499, and testified that this bill had been given him by the defendant Gardner, in whose possession he had also seen some Confederate bills. The silver certificate identified by this witness appears on page 91 of the record.

Jameson also testified that when he delivered to Gardner the money obtained by changing the note the latter gave him \$7 or \$8, and that Gardner at that time had another bill on which he had pasted a number "10" very similar to the bill which he had given the witness, and that this bill remained in Gardner's possession; that afterwards the witness

Jameson and defendant Gardner went together to the town of Calamba, where the witness saw that Gardner had nine Confederate f 10 bills which he tried to pass in a Filipino drug store; at the time he tried to pass these bills there were three persons unknown to the witness in the store, one of them an American and the other two Filipinos. The Chinaman Ah Fun, resident of Xo. 32 Calle Nueva, Malate, testified that he had given 25 pesos in exchange for an American bill upon which the number 10

had been pasted; that he did not observe this defect in the bill at first, as it was dark, but observed it very shortly afterwards and immediately went to the police station to complain. This witness identified the bill numbered 54226499 as the one which had been delivered to him by James Jameson, and testified that the latter told him it was a ten-dollar bill.

The witness William F. Kilp testified that he was with Gardner one Saturday night, the date of which he does not remember, in a house of prostitution in Sampaloc and that while in this house the witness attempted to pass a bill which he had received from the accused while they were together in the Soldiers' Institute a short time before; that he handed this bill to the owner of the house No. 106, that the woman shortly after returned it to him saying she could not change it because it was bad. This witness identified the bill on folio 91 of the record, numbered 36579681; he testified that after the woman returned the bill to him he handed it back to the accused who told him at the time that it was not a good bill and that he had got it from a man called Bennet; this witness also testified that he had seen some other Confederate bills in the possession of the defendant.

George W. Marshall, a detective, testified that he was in the Sampaloc station when the witness Kilp was taken there under arrest in connection with the attempt to pass a one-dollar bill raised to a ten, and identified the bill in question as that numbered 36579681, now on page 91 of the record. Jerome Patterson, a policeman, testified that he saw William P. Kilp in the house of prostitution No. 106 and that Kilp while there handed a f 10 note to the mistress of the house, who offered him 20 pesos for it; that upon this the witness asked Kilp why

he accepted 20 pesos for it when a Chinaman would give him 25 for it, to which Kilp replied that the Chinaman only had 6 or 8 pesos; that shortly after the woman received the bill she came back with it and refused to keep it, and that then Kilp approached the light for the purpose of examining it as did some others who were there and also the witness; that when the witness asked Kilp where he got that bill the latter told him he got it at No. 47 Balicbalic in a Chinese house; that just at this time a stranger who was lying on a bench there said that he was present when the bill was given to Kilp; that this man was about the same size as the accused and that after Kilp was taken to the police station the witness returned and looked for the man who had been lying on the bench but could not find him.

Maria Sanchez, the keeper of the house of prostitution, identified the defendant as having been in her house with the defendant Kilp, who tried to cash a \$10 American bill and said she was about to give him the change but observed on approaching the light that the number was stuck on to the bill; that she then returned it and said she would not change it because it was bad; that when Kilp was taken to the police station by Patterson, the police officer, it was found that the bill was bad; that while this was going on the defendant Gardner was sitting on a bench; this witness identified the bill numbered 36579681 as the same which had been handed her by Kilp.

Article 289 of the Penal Code provides that those who falsify bank notes or other instruments or documents payable to bearer, or coupons thereof, the issue of which has been authorized by law, or those who introduce such in the Philippine Islands, shall be punished by *cadena temporal* in its medium degree to *cadena perpetua* and a fine of from 6,250 to 62,500 pesetas.

The silver certificates in the record are documents payable to bearer or documents of credit duly issued by virtue of the federal laws in force in the United States, and are included in this article of the code as documents payable to bearer.

Each one of these certificates may be considered as paper money, the

purpose of which is to take the place of cash by a representative value, the same as any other document of credit, but they can not be considered to be money as they are not a commodity having an intrinsic value as has coined money.

The falsification of bank notes and of documents of credit payable to bearer and issued by the State, to which class the two certificates in question belong, is an act severely punished by the law as tending to bring such documents into discredit and because such offenses produce a lack of confidence on the part of the holders of said documents to the prejudice of the interests of society and of the State, and for this reason the law punishes this crime more severely than it does the counterfeiting of money, in consideration of the fact that it is easier to counterfeit such certificates, notes, and documents of credit payable to bearer than to make counterfeit coin, and that the profit which is derived therefrom by the forger of such documents is greater and the incentive for the commission of such a crime more powerful.

The falsification of these silver certificates was effected by pasting little pieces of paper, on each one of which the figure "10" appears, over the figure "1," which showed the true value of the certificate, and by obliterating with a pencil the number "1" wherever it appeared on the corners or sides of the certificates for the purpose of making it appear that each one of them was worth \$10 instead of \$1, and by this means the sum of 25 Mexican pesos was fraudulently obtained in exchange for one of the said bills or certificates.

The accused, Alonso P. Gardner, pleaded not guilty. In his sworn testimony he stated that on the night of the 16th of January, 1903, while at supper in the Soldiers' Institute, Jameson approached him and sat down beside him; that shortly afterwards Kilp arrived, who asked Jameson if he had any money and the latter replied affirmatively, placing a bill on the table and told him to take what money he wanted; that thereupon the witness picked up the bill, without noticing what it was and handed it to Kilp; that one afternoon Jameson put on a pair of trousers belonging to a man called Studemeyer and

shortly after found in the pocket of these trousers three Confederate notes, and when Jameson handed the witness one of these notes in Sampaloc, asking him if it was good, the witness looked at it and said, "No; it is not good;" that Jameson had more than two notes of this kind, from which the witness removed the numbers which had been pasted on to them; that when he went and looked for Jameson to whom he had delivered a watch for sale on the night of the 16th of that month, he found him in a Chinaman's store changing forged notes; that Kilp also passed a forged note that night; that the witness did not know by whom these notes were forged; that on the night of the 17th the witness and Kilp were in house No. 106 in Sampaloc, where he stretched out on a bench; that shortly after a woman aroused him asking him if a bill which she had was good; that Kilp then told her that he knew to whom it belonged and the witness replied that it belonged to one Bennet; that he knew that Kilp passed the false note in Sampaloc in exchange for silver and that Jameson did the same thing; he denied that he had received any part of the money which Jameson obtained for the false note; that on the 16th of January Jameson asked him for a peso with which to buy a bottle of mucilage, and the witness handed Jameson 30 cents, which was all the money he had; that nothing was said about buying a blue pencil; that while he was in Bilibid he endeavored to induce the said Kilp and Jameson to tell the truth and that they agreed to do so, but that only Kilp testified, and Jameson refused to do so fearing that he would be charged with perjury if he changed his testimony.

These excuses given by the defendant, Gardner, do not overcome the result of the evidence for the prosecution. The proof of the defendant's guilt is shown beyond a reasonable doubt; that Alonso P. Gardner altered two silver certificates of the value of \$1 each, for the purpose of gain, circulating and passing them as of the apparent value of \$10, and that he succeeded in cashing one of them and that with respect to the other his criminal purpose was frustrated because the fact that the bill was forged was observed at the time.

The testimony of the witnesses called by the defense do not show that Gardner had nothing to do with the alterations made in these two

certificates. The evidence is that the defendant bought a bottle of mucilage with which the figure "10" was stuck on a \$1 note over the figure "1" and provided himself with a blue pencil with which the other figures on the certificate were obliterated; that while he was in prison he endeavored to induce the witnesses Jameson and Kilp, of whose services he availed himself for the purpose of circulating the forged notes, to testify in his favor. This circumstance corroborates the testimony for the prosecution and gives greater weight and credibility to the witnesses against Gardner, who it thus appears is the sole principal by direct participation in the crime of falsification herein prosecuted.

No circumstances of mitigation or aggravation were' present in the commission of the crime and consequently the proper penalty should be imposed in its medium grade.

With respect to the points made in the brief for the defense, it is sufficient to show that Jameson and Kilp testified under oath at the trial as witnesses and not as accomplices in the crime, and that the conviction of the defendant rests not only on their testimony but also on other evidence for the prosecution and upon evidence in the record considered as a whole.

For these reasons we are of the opinion that the judgment of the trial court should be reversed and Alonso P. Gardner should be condemned to the penalty of seventeen years four months and one day of cadena temporal, with the accessories of the civil interdiction of the defendant during the period of the penalty, that of absolute perpetual disqualification and subjection to the vigilance of the authorities during his lifetime, to the payment of 25 Mexican pesos to the Chinaman Ah Fun, and to the payment of the costs.

Judgment will be entered accordingly, and the case will be remanded to the court below with a certified copy of this decision for execution. So ordered.

Arellano, C. J., Willard, and Mapa, JJ., concur.

*DISSENTING***McDONOUGH, J.:**

The defendant was charged with making and passing counterfeit money. He is not charged with falsifying " bank notes or other instruments or documents payable to bearer or their coupons whose issue may have been authorized by a law of the Kingdom," as provided for in Chapter III, article 289 of the Penal Code.

Chapter II of the Penal Code makes provision for the punishment of those who counterfeit money, whereas Chapter III relates to the falsification of bank notes, instruments of credit, stamped paper, etc. The two bills which were altered by the defendant, one of which was passed and the other offered and refused, are known as silver treasury notes of the United States, and are genuine bills of the denomination of \$1 each, which bills the defendant attempted to raise to the denomination of \$10 by pasting on each of them the figure "10." These treasury notes are made by law a legal tender for all debts, public and private, unless otherwise denominated in the contract, and are payable in coin. They are not "bank notes," nor are they " other instruments or documents payable to bearer"—they are money. (See act of Congress passed July 14, 1890, chap. 708.)

The other instruments referred to in article 289 evidently mean bonds or stocks or like instruments payable to bearer; and this construction is supported by the provisions of article 293, which provides for the punishment for counterfeiting " bonds payable to order or other documents of credit not payable to bearer."

It follows that the defendant should be punished under article 282 of Chapter II of the Penal Code for making counterfeit of money which is current in the Kingdom. If it be said that this article relates only to coined or metallic money, the answer is that the word moneda may properly be used in its commercial sense as a medium of exchange, and thus include paper money as well as metal money.

One of the definitions given to that word in the Diccionario Enciclopedico de la lengua Castellana is to that effect. Moreover, in subdivision 5 of that definition it is given the meaning of " corriente de legal y usual," and in subdivision 17 we find " moneda sonante " and " moneda metalica," showing that *moneda* is a generic word which includes legal-tender paper money as well as metallic money. This, too, is the translation given to the word in the official English translation of the Penal Code issued by the United States Government.

In Appleton's Spanish Dictionary *moneda* is defined as " Money, specie, coin." *Moneda sonante* is defined as " Hard money, specie," and *moneda corriente* is defined as "Currency."

This view that the punishment should be for counterfeiting or passing counterfeit money is supported by the provisions of article 280 of the Penal Code, which expressly fixes the penalty for counterfeiting the coined money of the Kingdom, viz, gold, silver, copper, and bronze, whereas article 282 is a sweeping one and includes all other money current in the Kingdom, which would, of course, include paper money.

It is important to determine whether the defendant shall be punished under article 289 or under article 282, for under the former article a penalty of at least seventeen years imprisonment must be imposed on the defendant, whereas under the latter article the longest term of imprisonment which can be given the defendant is four years nine months and ten days. The highest penalty that can be inflicted in the United States for counterfeiting treasury notes is a fine of not more than \$5,000 and imprisonment for not more than fifteen years, thus leaving it in the discretion of the court to impose such lesser penalty as the offense requires.

It seems to me that imprisonment for a term of seventeen years for raising a \$1 bill to \$10, and passing it is too severe a punishment for such an offense. If we may be so liberal as to construe the word " Kingdom " to mean " United States " or " Philippine Islands," as we must do to convict at all under the present law, we may well in the interest of justice hold that the word " moneda " includes paper money, and that the defendant may be convicted under Chapter II of the Penal

Code. I therefore favor reversing the judgment below, convicting the defendant of making and passing counterfeit money, and sentencing him to imprisonment for four years nine months and ten days, and to pay a fine of 1,000 pesetas.

DISSENTING

COOPER, J.:

The defendant, Alonso P. Gardner, was charged with the crime of falsifying notes and instruments passing current as money under the laws of the Philippine Islands, payable to bearer, and was convicted in the Court of First Instance and sentenced to imprisonment for the period of twelve years and one day.

The complaint in the case is as follows:

” The undersigned accuses Alonso P. Gardner, James Jameson, Win, F. Kilp, and each of them, of the crime of falsifying notes and instruments passing current as money under the laws of the Philippine Islands, payable to bearer, committed as follows:

”

That on or about the 16th day of January, 1903, in the city of Manila, Philippine Islands, the said defendants and each of them did willfully, unlawfully, and feloniously and with intent of gain and for the purpose of circulating the same, counterfeit and falsify two notes and instruments passing current as money under the laws of the Philippine Islands, in this, to wit: That the said defendants and each of them did, then and there, falsify, counterfeit, and make, and attempt to make an imitation of two United States silver certificates of the value of ten dollars (\$10) each, United States currency, by then and there so altering and changing the figures, stamps, lettering, and inscription on two one-dollar silver certificates, United States currency, passing

current in the Philippine Islands as money, as to make them appear on their face to be of the value of ten dollars (\$10) each, United States currency, contrary to the statute in such cases made and provided.”

Article 289 of the Penal Code, under which the conviction was made, reads as follows;

” Those who shall falsify bank notes or other instruments payable to bearer, or their coupons, whose issue may have been authorized by a law of the Kingdom, or those who shall introduce them into the Philippine Islands, shall be punished with the penalty of *cadena temporal* in its medium degree to *cadena perpetua* and a fine of from 6,250 to 62,500 pesetas.”

The evidence shows that the money which is alleged to have been counterfeited was a genuine \$1 United States silver certificate. The alteration consisted in cutting out from a Confederate bill the figure ” 10 ” and in pasting it in the upper corners of a genuine \$1 silver certificate. There was no attempt to change any of the written or printed part of the bill.

The questions which arise in the case are: (1) Was the offense charged in the indictment of the character defined and punished in article 289 of the Penal Code? (2) Did the alteration of the silver certificate in the manner shown by the evidence—that is, pasting the figure ” 10 ” cut from a Confederate bill over the figure ” 1 ” in the upper corners of a \$1 silver certificate—constitute the offense of counter-feiting money?

That a United States silver certificate does not come within the meaning of ” bank notes or other instruments payable to bearer, or their coupons, whose issue may have been authorized by a law of the Kingdom ” is evident when construed in the light of the legislation contained in the Code of Commerce, for, by examining these provisions we discover the character of the paper which was ” authorized by the law

of the Kingdom.”

By article 117 of the Code of Commerce the establishment of land, agricultural, issue, and discount banks, of loan and mortgage loan associations, and other associations, the purpose of which is industrial or commercial, is declared to be unrestricted.

Under article 179, Code of Commerce, banks are authorized by law to issue notes payable to bearer; by article 207 of the same code, mortgage-loan associations or banks are authorized to issue mortgage bonds and certificates to bearer; and by article 212 of the Code of Commerce, agricultural banks and associations are authorized to guarantee with their signature promissory notes.

It is evident from these provisions of the Code of Commerce what class of bank notes or other instruments payable to bearer, or coupons, have been authorized by the law of the Kingdom, and it is evident that a silver certificate issued by the United States Government does not come within the meaning of article 289.

This article is contained in Chapter III, Penal Code, while the counterfeiting of money is defined and punished under Chapter II of the Penal Code.

It will be noticed that a much heavier penalty has been fixed for counterfeiting bank notes or other instruments payable to bearer, or their coupons, than is prescribed for the counterfeiting of money. In the former case, the offense is punished by *cadena temporal* in its medium degree to *cadena perpetua* and a fine of from 6,250 to 62,500 pesetas, while for counterfeiting money under article 282 the punishment is *presidio correccional* in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.

The majority of the court have reached the conclusion that the defendant can not be convicted for the counterfeiting of paper money under chapter II, because the money referred to in articles 280 and 282 of said chapter relates solely to gold or silver coin.

The fact that such may be the case will not justify the conviction

of the defendant under another provision of law, which was intended to apply to an entirely different case.

But if it is true that the counterfeiting of paper money may be punished under article 282 of the Penal Code, still the facts in this case are insufficient to support a conviction. This offense is defined as follows:

“He who shall make counterfeit money, of the value of the genuine, by imitating money that is lawfully current in the Kingdom, shall be punished with the penalties of *presidio correccional* in its medium and maximum degrees and a fine of from 625 to 6,250 pesetas.”

There was no attempt on the part of the defendant to make a counterfeit \$1 silver certificate. The \$1 silver certificate passed by the defendant was a genuine bill. Nor was there any attempt to counterfeit a United States of 10 certificate. There is no resemblance whatever between the \$1 silver bill, as changed by pasting the figure “ 10 ” in the upper corners of the bill and a genuine United States \$10 silver certificate. Nor, as will be seen by a comparison, is there the least resemblance between a \$1 silver bill and a \$10 silver bill; they are of a different series and the engravings on the bills are in no respect alike. In the upper left-hand corner of a genuine \$10 bill there is the letter “ X ” with the word “ Ten ” printed across it, which is entirely different from the figure “ 10 ” on the \$1 silver bill; on the \$1 certificate appears the large figure of an eagle, while on the \$10 bill is a vignette of an eminent statesman. The other figures engraved on the respective bills are wholly dissimilar.

In forgery, as well as the counterfeiting of money, the rule is that there must be in the false thing a similitude to the supposed original. (1 Bishop, Cr. Law, 769.)

This similitude is entirely lacking, as before stated, between the bill passed by the defendant and a genuine \$10 silver certificate.

The bill has been sent up with the record. An inspection of it shows an extremely clumsy piece of work, and it can not be conceived how it could have been passed except by taking advantage of the darkness of night. The evidence in the record shows that there was an attempt to pass this bill on another person than the injured party, and the trick was at once discovered.

Ah Fun, the Chinaman on whom the bill was passed, seems to have taken it rather upon the representation by word that it was a \$10 bill than by being deceived by the appearance of the bill. He testified " it was in the nighttime and I could not see * * *; he said it was a \$10 bill; I thought it was a \$10 bill," and states that he discovered the fraud about five minutes after the defendant left.

Instead of this being a case of counterfeiting, it was a mere trick or device by which the defendant defrauded the Chinaman of the money he received in exchange for the bill.

The offense which the defendant has committed and for which he should be punished is *estafa*, and is defined in article 534 of the Penal Code, which reads as follows:

"A person who shall defraud another in the substance, quantity, or quality of things he may deliver to him, by virtue of an obligation, shall be punished—

"1. With the penalty of *arresto mayor* in its minimum and medium degrees, if the fraud should not exceed 250 pesetas in amount * * *."

The defendant should be acquitted of the offense with which he is charged, with directions that a complaint be instituted against him charging him with *estafa*, defined in article 534 of the Penal Code, the penalty of which is *arresto mayor* in its minimum and medium degrees.

There is quite a marked difference between this penalty, which is imprisonment from two to four months, and that of *cadena temporal*, under which the defendant has been sentenced by this court to

imprisonment for the period of seventeen years four months and one day.

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