

[G.R. No. 443. November 13, 1901]

**THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. IRA VAN CAMP,
DEFENDANT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

There was but little dispute over the facts in this case. Ira Van Camp was employed by the Pacific Oriental Trading Company in the month of May, 1901. On the 28th of that month the manager of the company gave him orders to go to Tarlac to collect a sum of money which was owing to the company from one Buford and to return that night. The accused did as ordered, receiving from Buford 1,900 pesos, which he brought with him to Manila, where he arrived at 7.30 p. m. There was no person present at the offices of the company when he arrived other than Mr. Rogers, to whom the accused delivered 1,600 pesos, stating that he had collected the same from Buford. The following day the accused went to the office and saw that the 1,600 pesos were delivered to the cashier and credited to the account of Buford, giving to the cashier an order of Buford's for a new invoice of merchandise which the company refused to fulfill on the ground that Buford had not paid more than 1,600 pesos.

We are of the opinion that it clearly appears from the proofs adduced that the accused never stated on any of the occasions when speaking to the persons connected with the company that the sum collected from Buford was 1,900 pesos and not 1,600 pesos, although he did state to the cashier that within a few days he would pay in \$150, gold, to be placed to the credit of Buford. This was when they had already refused to make further sales to Buford on credit. On the 29th, as Ira Van Camp contends, but, according to the cashier, on the 31st, the accused asked how much he had to his credit by way of salary and reimbursement of expenses and he was informed that the sum amounted to 167 pesos. He then paid the cashier 33 pesos and told him to place the sum of 200 pesos to the credit of Buford, which was done.

The accused testified that he brought with him to Manila the 1,900 pesos and that he could not pay the balance of 300 pesos the following day for the reason that he did not have that sum. He testified that he used these 300 pesos because he believed that the balance owing to him from the company amounted to that sum. We can not credit this statement. The salary which the accused received was 250 pesos per month and 2 1/2 pesos daily for payment of expenses. He had collected all that was due him up to May 1. During the month of May he had collected 98 pesos in Calumpit which he had applied to the payment of his expenses at the request of the assistant bookkeeper, according to the contention of the accused. During the month of May he had collected 25 pesos on account of his salary. Under these circumstances he should have known that he could not have to his credit a sum equivalent to the 300 pesos which he retained.

The facts which appear in this case constitute the crime of embezzlement, prohibited and punished by article 535, paragraph 5, of the Penal Code. It is not necessary to determine whether the amount appropriated was 100 or 300 pesos, since the penalty is the same in either case. The determination of this point would depend, perhaps, upon the question whether the payment of the 33 pesos and the transfer of this sum and the other 167 pesos from the account of Van Camp to that of Buford took place on the 29th or the 31st.

The Court of First Instance considered that the last paragraph of article 535 modifies the entire article and not only paragraph 9 thereof; therefore the judge imposed a fine of 400 pesos. We consider that in this the court committed an error. It appears from an examination of the Penal Code of 1850 that article 535 of the prevailing Penal Code is composed of four of the articles of the former Code. Subdivision 9 of article 535, together with the paragraph referred to, is found in the former Code as a separate article under No. 453. We can not hold from the mere union of these articles that it has been the intention of those charged with the compilation of the Code to make this paragraph, which formerly modified article 453 only, a modification likewise of the other three articles. By its very import it can not be applicable to some of the numbers of the existing article, such for example as Nos. 7 and 8. The crimes referred to in those numbers can not exist without deceit. In all cases where the same numbers may be applicable it is indispensable that there be present an intention to defraud, and in the absence of such there can not be a conviction thereunder. That portion of the sentence therefore must be reversed. The penalty applicable to the crime of embezzlement when the amount appropriated exceeds 250 pesetas and does not exceed 6,250 pesetas is that of *arresto mayor* in its medium degree to *prision correctional* in its minimum degree. We assign as the penalty which must be imposed upon the accused that of four months and one day of *arresto mayor* instead of the penalty

imposed by the Court of First Instance. In this respect the sentence of the Court of First Instance is reversed but affirmed in all other respects. The cause is remanded to the trial court for the purposes necessary in accordance with law, with costs on appeal.

It is so ordered.

Arellano, C. J., Torres, Cooper, and Mapa, JJ., concur.

Ladd, J., did not sit in this case.

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