

1 Phil. 179

[G.R. No. 367. March 26, 1902]

**THE UNITED STATES, COMPLAINANT ANA APPELLEE, VS FRANCISCO ENRIQUEZ,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The court is not agreed upon the merits of this case. We are all agreed that the amended complaint is insufficient and that the judgment must be reversed for that reason. We differ as to whether this defect should be disregarded and the defendant acquitted.

The amended complaint was presented on the 13th day of November, 1900, and in its substantial part it is as follows: The undersigned accuses Francisco Enriquez, defendant in cause No. 82, of the crime of embezzlement (*estafa*), committed as follows:

The said Francisco Enriquez on the 20th day of November, 1897, in Manila, Province of Manila, appropriated to himself the sum of \$4,243, an amount received by Francisco Enriquez in the capacity of agent, to the prejudice of his brothers, Don Eafael, Don Antonio, etc., from whom he lived separately, contrary to the statute in such case made and provided.

To this amended complaint the defendant demurred. The demurrer was overruled and he was placed upon trial and convicted of appropriating \$4,243 found to have been received by him as agent of his father; \$1,000 on September 13, 1883, and the balance on December 24, 1883.

The money was found to have been received by him as part of the purchase price of the house No. 2, in Calle Pundicion, Intramuros.

One purpose of a complaint is to notify the defendant of the transaction from which it is claimed the crime results, so that he can prepare his defense. If, after reading the

complaint, he, being a man of "common understanding," can not tell to what acts of his done in the past the complaint refers, it is insufficient.

In this complaint the *estafa* is alleged to have been committed on November 20, 1897. Time, Jiowever, was not a material ingredient in the offense of *estafa* here charged, and under the provisions of article 7 of General Orders, No. 58, that date need not have been alleged. When the date is not a material ingredient of the crime it alone furnishes, as a general rule, no means of determining what the transaction is to which the complaint refers. Everyone performs a great many acts in a single day. Which one of these acts is marked by the complaint as criminal must be identified in some other way than by the date. That is well illustrated by this case. It appears that this date, November 20, 1897, is the date of the inventory which the defendant presented as executor of the estate of his parents. His failure to include in this inventory the sum above referred to is alleged to have constituted the *estafa*. How could this date give the defendant any clue as to what act of his in connection with this inventory was charged as criminal, even assuming that he knew that this was the date of the inventory, and that it was the presentation of this inventory and not any other act of his committed on that day to which reference was had?

But it may be said that the amount appropriated is given, to wit, \$4,243. That amount, however, described nothing. There is no way of knowing what \$4,243 is mentioned. It appears from this inventory that he received over \$220,000. Under this complaint he could have been tried for the embezzlement of any \$4,243 included in that sum.

Besides all this, as a general rule the amount named is not descriptive of the offense, and the defendant can be convicted if the evidence shows a smaller amount embezzled.

The complaint does not show of whom he was agent. We do not see why, if this complaint is sufficient, he could not have been tried for appropriating, in November, 1897, any sum less than \$4,243 received from anyone by him as agent, provided it was shown that Don Kafael and Don Antonio Enriquez were prejudiced. In fact, this last statement is really the only thing which identifies the transaction.

If the defendant, on reading the complaint, had surmised that it referred to the sale in 1883 of this house on Calle Fundicion and had prepared his evidence to meet that charge, we see nothing that would have prevented the Government, when the case was called for trial, from proving a case entirely foreign to that transaction; as, for example, that on or about November 20, 3 897, A. had paid the defendant about \$4,200, which the latter had received

as a deposit with the duty of paying it to Don Rafael and Don Antonio.

It is plain that the complaint did not restrict the Government to proof of any defined specific transaction, and consequently that the defendant had no notice of the transaction which was to be investigated.

In view of a new trial, it is proper to "say that the letter of May 9,1883, and the receipt of September 13,1883, have, if genuine, an important bearing on the questions involved. Some proof of the authenticity of these documents should be made. The testimony of Cajigas is important. The accounts of his guardianship, if he presented any, should be produced for the purpose of corroborating or disproving his statements that he paid these sums in question at the date named.

For the reasons before stated the judgment is reversed and the cause remanded to the court below with instructions to that court to direct the filing of a new complaint or information against the defendant.

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

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