

NORWOOD THEODORE DENNIS, Appellant, v. REPUBLIC  
OF LIBERIA, Appellee.

ARGUED DECEMBER 8, 1924. DECIDED JANUARY 6, 1925.

*Johnson, C. J., Witherspoon and Bey-Solow, JJ.*

1. The time when the *animus furandi* attaches to the unlawful appropriation of goods and chattels depends upon whether or not the original taking was lawful or unlawful.
2. Stamps having been given defendant to sell on board a ship with instructions that those unsold were to be returned, the *animus furandi* existed when said defendant gave the unsold stamps to a third party to sell with intent to deprive the Government of Liberia of their value.
3. Consent obtained by fraud is not real consent, hence whenever an owner's consent to the taking of his goods is obtained by deception, said deception vitiates the consent, and the taker is guilty of larceny by trick.

Mr. Justice Bey-Solow delivered the opinion of the court:

Grand Larceny. This case comes up from the Circuit Court of the first judicial circuit, Montserrado County, February term, A. D. 1924.

In the court below the appellant was indicted and convicted of larceny, and final judgment was rendered upon the verdict and the findings of the jury to which final judgment the appellant takes exceptions, and brings the case before this court for review.

In January, 1923, Honorable Abayomi Karnga took the portfolio of Postmaster General of the Republic of Liberia. N. T. Dennis, appellant, was then one of the employees in the said department without regular and definite "status," but was soon thereafter made a disbursing clerk and stamp agent as the records show. Later in the said month of January, or early in February, however, he was promoted to the post of Assistant Secretary and Accountant. See evidence of Abayomi Karnga, Record page 1. Also, Record page 18.

In some way or the other appellant soon so ingratiated himself into the confidence of the Postmaster General that he had practically sole access to the stamps in a certain cupboard in the office, not excepting even the Secretary. See evidence of Abayomi Karnga Record page 1.

Postmaster General Karnga stated that Mr. Dennis, defendant, was the Assistant Secretary and Accountant in the Post Office Department, and as such it was not his duty to supply stamps, but

having implicit confidence in him he authorized him to supply stamps when requisitioned for by postmasters and stamp agents, and by his permission he alone had access to the stamp cupboard when stamps were requisitioned for. So whenever orders came for stamps he would deliver the keys to Dennis, the defendant, in order that he, Dennis might supply the stamps required. It was on those grounds he was able to have access to the stamps and other business of the office with one exception, he was not to sell stamps. He also stated that several stamps had been stolen from the office since his incumbency, of various denominations. Postmaster General says many of the stolen stamps have been recovered to the amount of \$334.00 odd, several of which were presented to him in the court below and identified.

Amongst those stamps identified, a goodly number of them were stamps newly arrived, and discovered in the possession of Edward Burphy Jr., a cadet or runner in the local post office. The Postmaster General describing them said these had recently arrived, and had been issued as centennial stamps to celebrate the founding of Liberia. Others the Postmaster General said he had recently had surcharged by the printer from one to two cents.

Upon the return of the surcharged stamps he ordered defendant Dennis to serve an order of Mr. Watts, the then stamp agent, to a thousand two cents stamps and a like quantity to Postmaster Gibson of Cape Palmas. Mr. Shadrach King was also supplied.

The Postmaster General said when these stamps were discovered and brought to him he could hardly believe that Mr. Dennis was implicated in the matter. Little Edward Burphy said, when he inquired of him in the presence of Mr. Dennis and Mr. Butler, that Mr. Dennis gave them to him. The Postmaster General asked Mr. Dennis did he hear what this boy was saying, and what had he to say about it? He, Dennis, the defendant, denied giving Burphy any stamps to sell for his personal benefit. On the day of the examination which was held in his office Dennis again denied giving Burphy any stamps to sell, but he admitted in the presence of the Postmaster General and in the presence of his lawyer, Counsellor Arthur Barclay, that he, Dennis, thinks the five cents stamps in the lot of stamps, he gave them to him, Burphy, but not the other stamps.

The two cents stamps, originally one cent, made him very doubtful with respect to Mr. Dennis' statement, because only the three

persons already named had these surcharged stamps to sell, namely: Watts, Shadrach King and Postmaster Gibson of Cape Palmas. Knowing this fact he could not understand how Burphy got in possession of the stamps as the stamps had not been issued generally, and Burphy said he did not get the stamps from any one else but defendant, Dennis, who being the only one who had access to the stamp cupboard, made it very cloudy with respect to the matter. The Postmaster General asked Mr. Dennis to explain the matter; Dennis, in reply, said he did not know how those particular stamps got out, unless some one else came and stole them. But the Postmaster General said that Burphy Jr., never worked in his office and he hardly ever went in there for anything, so far as he could remember.

From February, 1923 until the appellant's, Dennis', suspension on the 30th of May, 1923, the Postmaster General was accustomed whenever stamps were requisitioned for by the postmasters and stamp agents to hand his keys to the said appellant and request him or command him to supply the order while the former attended to other business, and took no notice of what the appellant was doing as he had implicit confidence in the latter. See evidence of Karnga, Record pp. 1, 9, 18. Butler's evidence, p. 10. Dennis' evidence, p. 13.

In addition to such general opportunity for going into the cupboard and having access where the stamps were kept, in March, 1923, the prisoner persuaded the Postmaster General to allow him to go aboard ships to sell stamps when as usual he was handed the keys of the stamp cupboard. He then took therefrom a quantity of stamps of which no check was made, or the price given, and upon returning from the ship despite his allegation of compliance with orders, apparently disobeyed the orders of the Postmaster General to return to the cupboard those stamps which the appellant reported that he had not sold. See evidence of Karnga, Record pp. 1 and 18. Butler, Dennis, pp. 10, 13, and Kaiser Cooper.

And further the prisoner alleged that there were certain five cents stamps with the picture of Ex-President Howard which he could not find in the cupboard, and on his additional solicitation and application on the above date, the Postmaster General permitted him to obtain two sheets thereof and some two cents stamps from Shadrach King, then stamp agent of the Post Office Department, Monrovia.

And further on the night of May 20, 1923, there came to the knowledge of the police authorities a big quarrel made at the residence of Mrs. Grace Kennedy in Monrovia, by one Edward Ballah Burphy Jr., a cadet in the local post office at Monrovia, who said that some one had stolen his box of sundry stamps given him for sale by the prisoner, appellant. In the investigation which followed when Ballah Burphy Jr., reaffirmed his statement, although N. T. Dennis, the prisoner, at first denied having given said stamps to Burphy Jr. for sale, he afterwards however admitted that he had given Burphy some five cents stamps amounting to five dollars according to appellant's own evidence, and of S. M. King and Kaiser Cooper.

By far the most difficult question that arises in respect to *animus furandi*, the guilty intention, is that of time, i. e. at which moment must the guilty intention exist in order to render an appropriation larcenous? Or the taking of articles, goods, larcenous.

The answer must differ according to whether the accused person's original possession was lawful or not.

The appellant N. T. Dennis was to return the stamps if not sold on board the ship which was the direct order of his superior officer, the Postmaster General; when the appellant gave the stamps to Burphy Jr. to sell then the *animus furandi* existed, in an evil intention to deprive the Government of Liberia of the stamps and their values.

The Postmaster General did not know that the appellant still retained possession of the stamps and had given them or a part of them to Burphy Jr. to sell, hence he never consented to the private understanding between the prisoner at bar and Burphy Jr.

Consent obtained by fraud is not true consent, hence whenever an owner's consent to the taking of his goods, is obtained by deception the *animus furandi*, the deception vitiates the consent. The taker is accordingly guilty of larceny by trick.

Upon the submission of the above facts and the evidence to the trial jury they returned a verdict of guilty against the appellant and upon said verdict final judgment was rendered.

This final judgment the appellant excepted to and appealed to this Honorable Court for review.

The records in the proceedings in this case furnish this court with sufficient light to enable the court to render such judgment as will

satisfy the ends of justice. Of all the exceptions taken in this case only one will have our comment, viz: "1. Because Your Honor disallowed the question put to witness King to wit: 'You make the court and jury to understand that the defendant was the bailee of the one cent stamps surcharged to two cents stamps at that time?'" Question was properly disallowed by the court below as the question only involved an issue of law.

As the evidence in the case supports the verdict of the jury this court only modifies the judgment of the court below, to the effect that the time of the imprisonment shall be one calendar year.

In all other respects the judgment of the court below be and the same is hereby affirmed.

*R. E. Dixon*, for appellant.

*L. A. Grimes*, Attorney General, for appellee.

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STANLEY C. CLARKE, H. E. SNETTER, E. J. WATTS, E. B.  
BURPHY SR., and NORWOOD THEODORE DENNIS,  
Appellants, v. REPUBLIC OF LIBERIA, Appellee.

ARGUED DECEMBER 11, 1924. DECIDED JANUARY 6, 1925.

*Johnson, C. J., Witherspoon and Bey-Solow, JJ.*

1. A principal is one who being present either commits an offense himself or aids another in its commission.
2. Principals are either of the first degree or the second degree; the former being those who actually with their own hands commit the offense, and the latter those who although they do not actually commit the act with their own hands are nevertheless present aiding and abetting.
3. In practice so immaterial is the distinction between a principal in the first, and a principal in the second, degree, that if a man be indicted as principal in the first degree proof that he was present aiding and abetting another in committing the offense, although his was not the hand which actually did it, will support the indictment. And if he be indicted as principal in the second degree proof that he was not only present, but committed the offense with his own hand, will support the indictment.
4. To make a communication privileged from introduction into evidence there must exist some such fiduciary relationship between the writer and addressee of the letter as attorney and client, husband and wife etc.
5. On the day the parcels were divided between appellants in the Post Office Department witness Burphy stated that defendant Clarke tried on some and asked defendant Dennis how they fit, and defendant Dennis