

Commonwealth v. Ponzi

Court:	Supreme Judicial Court of Massachusetts
Writing for the Court:	PIERCE
Citation:	Commonwealth v. Ponzi, 256 Mass. 159, 152 N.E. 307 (Mass. 1926)
Decision Date:	28 May 1926
Parties:	COMMONWEALTH v. PONZI.

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256 Mass. 159

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COMMONWEALTH

v. PONZI.

Supreme Judicial Court of Massachusetts, Suffolk.

May 28, 1926.

OPINION TEXT STARTS HERE

Appeal and Exceptions from Superior Criminal Court, Suffolk County; J. H. Sisk, Judge.

Charles Ponzi was convicted of larceny, and he excepts and appeals. Exceptions overruled, and appeal dismissed.[*160] [**308] W. H. Lewis, of Boston, for appellant.

M. Caro, Sp. Asst. Dist. Atty., of Boston, for the Commonwealth.

PIERCE, J.

On September 11, 1920, the grand jury for the county of Suffolk returned 22 indictments against the defendant, Charles Ponzi; 11 charging him with larceny in various counts, 10 with being accessory before the fact of larceny, and 1 with conspiracy to steal. On July 14, 1922, Ponzi moved that the cases be set down for trial. The record does not show the action of the court on the motion, nor does it show that any order was made that all cases were to be tried at one time. On October 23, 1922, the defendant was placed at the bar for trial on 12 of the 22 indictments. Although Ponzi protested and insisted upon a trial on all the indictments, the record does not disclose that he based his objection upon or called the attention of the presiding judge to an order of another judge, alleged by Ponzi to be made in response to his motion that all cases be set down for trial, which alleged order was to the [*161] effect that all the indictments should be tried at one and the same time.

At the trial of the 12 indictments, the jury returned verdicts of not guilty on December 1, 1922. On November 6, 1924, the defendant was placed at bar for trial upon 5 of the indictments untried. On November 20, 1924, the jury disagreed on 4 of these indictments, numbered 21, 22, 23, and 24, and the judge directed a verdict of not guilty on the remaining indictment, numbered 20. On February 18, 1925, the defendant was again set at bar for trial on the indictments numbered 21, 22, 23, and 24, on which the jury had disagreed; said indictments being newly numbered 9, 10, 11, and 12. Verdicts of guilty on all counts of all indictments were returned by the jury on February 26, 1925. On July 11, 1925, the commonwealth moved for sentence, and indictments 9, 10, and 11 were placed on file. Indictment 12, in three counts, charges Ponzi with the larceny of the property of one Bodenstab, as follows: Count 1, larceny of \$1,000 on July 8, 1920; count 2, larceny

of \$600 on July 16, 1920; and count 3, larceny of \$400 on July 20, 1920. On indictment numbered 12 the defendant was adjudged a common and notorious thief, under G. L. c. 266, § 40, and [**309] was sentenced to not less than seven nor more than nine years in state prison.

[1][2] The first exception shown by the record relates to the testimony of a public accountant, one Charles F. Rittenhouse, called by the commonwealth. Ponzi, who appeared pro se, on cross-examination asked the witness concerning a report made by the witness for the receivers in bankruptcy of the estate of Charles Ponzi, entitled 'Report on Special Investigation of the Financial Activities of Charles Ponzi,' and desired to be permitted to introduce 'that book' in evidence. Ponzi made no claim at the trial, and makes none in his brief, that 'the book,' if introduced in evidence would contradict in any way the testimony of Rittenhouse. The record does not disclose that 'the book' was used to refresh the recollection of the witness, but if it was so used the right of the defendant would be limited to an inspection by the jury of only so much of it as the witness testified [*162] refreshed his recollection. Commonwealth v. Haley, 13 Allen, 587;[Commonwealth v. Jeffs, 132 Mass. 5, 7;Capodilupo v. F. W. Stock & Sons, 237 Mass. 550, 130 N. E. 65](#). 'The book' was excluded rightly.

[3] The next exception deals with the introduction of what purported to be the original 'Universal Postal Treaty of Rome, Italy, 1906.' By the Constitution of the United States, 'all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.' Article 6, Const. U. S. The authority to negotiate the treaty in question is created by the United States Revised Statutes, §§ 398, 399 (U. S. Comp. St. §§ 587, 588):

'For the purpose of making better postal arrangements with foreign countries, or to counteract their adverse measures affecting our postal intercourse with them, the Postmaster General, by and with the advice and consent of the President, may negotiate and conclude postal treaties or conventions, and may reduce or increase the rates of postage on mail matter conveyed between the United States and foreign countries.'

The treaty offered in evidence was produced by one Edward Sands, who testified 'he was the Superintendent of the Foreign Mails of the United States Post Office Department, and had custody of certain government documents, to wit, postal treaties, which are called conventions, that 'we make with foreitn countries, and under which we conduct our postal business,' and that he had brought with him from Washington the 'Universal Postal Treaty of Rome, Italy, 1906.' He further testified that the document he produced was the original, and he identified thereon the signature of Theodore Roosevelt, once President of the United States, the signature of Elihu Root, once Secretary of State, and the signature of George Cortelyou, Postmaster General of the United States in 1906. He further testified that the Universal Postal Congress, held in Rome, was a diplomatic proceeding, and all actions of the convention are certified by the foreign relations officer to all countries concerned. The witness indicated the seal and called attention[*163] to the certification of the foreign relations officer on the seal, but testified he was not familiar with the signature thereon; that the foreign relations officer had transmitted the convention 'to the State Italian legation in Washington, which transferred it to the State Department and was in turn transmitted from the State Department to the Post Office Department, the Post Office Department had it signed by the Postmaster General, and the State Department secured the signature of the President of the United States.'

[4] Courts of the United States recognize the seals and signatures of the chief magistrate, of the heads of departments, and of the principal officers of the government, state and national, and will take judicial notice of the persons who from time to time preside over public office. York & Maryland Line Railroad v. Winans, 17 How. 31, 41, 15 L. Ed. 27; [Laffan v. United States](#), 122 F. 333, 335, 58 C. C. A. 495; State of Florida v. Gleason, 12 Fla. 190, 231. See cases collected in Jones, Evidence, §§ 111, 112. The evidence introduced established a prima facie case and no further affirmative evidence was necessary to prove either that the treaty was signed by a representative of the Italian government or that it was ratified by the Senate of the United States, as the defendant contends should have been done, before it was received in evidence. The record leaves it somewhat in doubt whether the exception taken to the admission of the treaty in evidence was not waived at the trial. The question raised thereby has been considered on the footing that the defendant did not intend to waive his general exceptions to the admission of the evidence. The evidence discloses no exception saved to the

use in evidence of the treaty and we are not permitted to infer that any issue of facts was thereby raised which was prejudicial to the defendant.

[5] The offer of the defendant, to prove through one Daniel H. Coakley that he (Ponzi) pleaded guilty to an indictment in the United States court for violation of section 215 of the federal Penal Code of 1909 (U. S. Comp. St. § 10385), use of the mails in pursuance of a scheme to defraud, because of the advice of Coakley, was refused rightly. Such evidence, if received, would not establish the innocence of Ponzi of the offense charged, nor [*164] prevent the introduction of the record of the federal court, should [*310] Ponzi elect to testify in his own behalf in the indictments of larceny. [Commonwealth v. Gallagher](#), 126 Mass. 54; [Commonwealth v. Galligan](#), 155 Mass. 54, 28 N. E. 1129.

[6][7] It is evident there was no double jeopardy; the larcenies were from different people at different times. 'The offense of conspiracy was not merged in the specific crimes afterwards committed in pursuance thereof, although the conspiracy was only a misdemeanor and the subsequent crimes were felonies.' [Commonwealth v. Stuart](#), 207 Mass. 563, 571, 93 N. E. 825, 828; [Commonwealth v. Marsino](#), 252 Mass. 224, 147 N. E. 859. There was no issue of fact on this question for the jury, moreover, no exception appears by the record to have been taken or saved to the refusal of the court to allow a 'special plea of double jeopardy and acquittal.' The offense of using the mail in pursuance of a scheme to defraud to which Ponzi pleaded guilty and was sentenced in the federal court was a different crime from the crime of conspiracy to commit larceny, from the crimes of larceny, and from the crimes of being an accessory before the fact to crimes of larceny. These were offenses against the state and the United States and were punishable in each jurisdiction under its laws. [Sexton v. California](#), 189 U. S. 319, 323, 324, 23 S. Ct. 543, 47 L. Ed. 833; [United States v. Marigold](#), 9 How. 560, 569, 13 L. Ed. 257; [Moore v. People of the State of Illinois](#), 14 How. 13, 19, 14 L. Ed. 306; [United States v. Cruikshank](#), 92 U. S. 542, 550, 23 L. Ed. 588; [Crossley v. California](#), 168 U. S. 640, 641, 18 S. Ct. 242, 42 L. Ed. 610; [Gilbert v. Minnesota](#), 254 U. S. 325, 41 S. Ct. 125, 65 L. Ed. 287; [United States v. Lanza](#), 260 U. S. 377, 382, 43 S. Ct. 141, 67 L. Ed. 314.

The motion in arrest of judgment presents no question of law or merit.

Exceptions overruled.

Appeal dismissed.