

[G.R. No. 880. November 14, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ROMAN SARMIENTO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

On the 1st of November, 1901, the defendant was a clerk in the custom-house at Manila. Whenever there was presented to him a petition asking that a license be granted to enable a vessel to engage in the coastwise trade it was his official duty to make out a note in triplicate showing the tonnage of the vessel and the amount of the fee charged for the license (which fee was at the rate of \$1 for each ton). This triplicate note, after approval by the head of the Department, was taken by the applicant to the cashier, the dues paid, one of the triplicate notes with the cashier's receipt returned to the defendant, who thereupon issued the license and delivered it and the note and the receipt to the applicant.

On the 4th or 5th of November Juan Urnales, a clerk of one Zapirain, presented to the defendant at his desk in the custom-house a petition for a license for the vessel *Dolores*. He presented at the same time the old license. This showed that the tonnage was \$325.73. Instead of making out the triplicate note for \$325.73 he made it out \$25.73. This, if done knowingly and intentionally, would constitute the crime of falsification defined in article 300, 4. The defendant in his testimony says that the mistake was unintentional. We can not credit this testimony. The evidence shows that under the pretense that the cashier would not receive silver dollars, but only bank bills, he got Urnales to give him the bag of \$326 which he (Urnales) was carrying, presented to the cashier the triplicate note showing the dues to be \$25.73, paid the sum of \$25.73, altered the payee's note by placing a figure "3" before the number "25.73," and delivered it to Urnales with the license. The fraud was discovered the day on which the payment was made. The next morning the defendant went to the hotel of Mr. Mobley, his chief, promised to repay the \$300 that morning and

deposited with him \$300 in bills as security for his undertaking. Later in the same forenoon he caused \$300 to be paid to the cashier. The defendant denies most of this testimony, but to our minds it is conclusive against him, notwithstanding the evidence of his good character and the alleged contradictions in the testimony of the witnesses for the Government pointed out in the brief of his counsel in this court.

What has been said disposes of the fifth, sixth, and seventh points of that brief.

The point is also made that the trial was void because part of the testimony was taken in English. It appears that the evidence referred to was taken at the preliminary hearing and not at the trial. Moreover, there is no claim that this in any way prejudiced the rights of the defendant. Under article 10 of General Orders, No. 58, it must be disregarded.

It is also claimed that the complaint states the crime of falsification with *estafa*, or both crimes, in violation of article 11 of General Orders, No. 58. The complaint does not support this claim. There are no facts alleged which show that the crime of *estafa* as defined in any one of the paragraphs of article 535 was committed. There is no allegation in the complaint that any money was received by the defendant from any one. The claim that the defendant voluntarily desisted from his unlawful purpose can not be sustained. He made no effort to return the money until after his crime had been discovered and became known at the custom-house.

The court below convicted the defendant under article 301, holding that the defendant was a private person. We can not agree with this conclusion. We think that he was a public functionary, and therefore included in article 300. The term "public functionary" is defined by article 401 as follows:

"For the purposes of this chapter and the preceding chapters of the present book, all persons who, by direct requirement of law, or by popular election, or by public appointment by competent authority, participate in the exercise of public functions, shall be regarded as public functionaries."

The defendant was a public functionary within this definition, and the offense was committed in the discharge of the very duties imposed upon him by his superiors.

The judgment below is in all tilings confirmed, except that the punishment is hereby fixed at twelve years and one day instead of six years and one day. The costs of this instance are

against the defendant. It is so ordered.

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

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

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