

5 Phil. 604

[G.R. No. 1524. February 12, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TRANQUILINO HERRERA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

The accused was found guilty of maladministration of public funds as defined and penalized in article 391 of the Penal Code, which is as follows:

“The public official who, through abandonment or inexcusable negligence, creates the opportunity as a result of which some other person carries off public funds or property, as set out in numbers 2, 3, and 4 of the previous article (that is to say, of a greater value than 125 pesetas) will be fined an amount equal to the value of the funds or other property taken.”

It appears from the evidence that the accused, being the municipal treasurer of the town of Alfonso, in the Province of Cavite, left municipal funds amounting to 618 pesos, 3 centimos, and 6 octavos, Mexican currency, in the municipal safe or strong box on the night of the 24th of April, 1903, and that upon the said night a party of bandits entered the town, broke into the municipal safe, and stole the above-mentioned amount therefrom.

There was no evidence introduced showing connivance between the accused and the bandits, but the trial court was of opinion that, there being no immediate need for all the money on hand, the accused should only have retained so much thereof as might be necessary for immediate use, and should have deposited the balance in the provincial treasury for safe-keeping, in accordance with the provisions of paragraph (e) of section 21 of the Municipal Code. The court estimated the amount which should have been deposited prior to the night of the robbery at 364 pesos, 90 centimos, and 2 octavos, and found the

accused guilty of criminal negligence in the loss thereof, and imposed upon him a fine in a like amount.

Paragraph (e), section 21, of the Municipal Code provides that the municipal treasurer shall have his office in the municipal building, and shall keep all moneys belonging to the municipality in the municipal safe or strong box, and it further provides that he may, to prevent accumulation of too large an amount of money in the strong box of the municipality, when especially authorized by resolution of the municipal council, deposit for safe-keeping with the provincial treasurer such sums of money as he will not be obliged to use at once, taking a receipt from the provincial treasurer. It is clear, therefore, that the first duty of the municipal treasurer is to conserve all municipal funds in the municipal safe or strong box, and only on special occasions, and when authorized by resolution of the municipal council, may he place a part of such funds in the hands of the provincial treasurer.

In this case no action had been taken by the municipal board, nor are we able to discover anything in the evidence which would sustain a finding that there was criminal negligence on the part of the treasurer in failing to make the deposit as indicated by the trial court.

The provisions authorizing the deposit of municipal funds in the provincial treasury are not mandatory upon the treasurer and therefore his failure so to do is not itself conclusive proof of negligence, and the mere fact that certain funds might have been preserved from loss had they been deposited in the provincial treasury is not sufficient to charge him with criminal responsibility for such loss.

The judgment and sentence of the trial court should be reversed, and the accused acquitted of the offense with which he is charged, with the costs of both instances *de officio*. So ordered.

Torres, Mapa, Johnson, and Willard, JJ., concur.