

6 Phil. 578

[ G.R. No. 2970. November 01, 1906 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE CRAME, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**ARELLANO, C.J.:**

The defendant in this case was convicted of the crime of misappropriation of public funds to the amount of 1,151.04½ pesos which he was found short in his accounts as municipal treasurer of Bacolod and deputy provincial treasurer of Occidental Negros; 3,194.54½ pesos were found in the safe instead of 4,345.59 pesos which should have been on hand. The court below as well as the Attorney- General, in his brief presented to this court, are of the opinion that the case is included in article 392 of the Penal Code—that is to say, that the crime committed is that of *distraccion* of public funds—but that there should be applied to him the provisions of paragraph 2 of article 390 which punishes the crime of *sustraccion* of public funds, on the ground that the money was not refunded in due time in order to justify the application of the provisions of article 392.

As a matter of fact, the money was refunded before final judgment was entered.

The court below was of the opinion that “in order to determine the liability incurred by the defendant it is sufficient that the facts giving rise thereto existed at the time the accused pleaded to the complaint—that is to say, before the commencement of the trial.” The court below further says in its decision that such is the doctrine laid down by the supreme court of Spain in its judgment of May 19, 1894, citing 3 Sup. Viada, 141.

“There being no evidence,” says the Attorney-General, “that the defendant appropriated to himself the amount of the shortage with the intention not to return the same, the crime with which he is charged should be qualified as mere

*distraccion* of public funds under article 392 of the Penal Code, but in view of the fact that the refund was not made in due time in accordance with paragraph 2 of said article 392, the accused should be punished in accordance with article 390 of the said code.”

The only thing that is found in the judgment of the supreme court of the 19th of May, 1894, is the precedent for the application of the provisions of paragraph 2 of article 392 that is to say, the imposition of the penalty prescribed in article 390. The doctrine is also laid down therein that a partial refund of the money does not liberate the defendant from the penalty provided in article 390 even though the crime be qualified as *distraccion* under article 392. This doctrine is still more clearly and explicitly laid down in the judgment of the 23d of May, 1896: “The fact that the Government recovered from the guilty official part of the amount embezzled after the shortage was discovered does not minimize the liability incurred by him, because the crime was consummated at the very moment the money was misappropriated, and the amount embezzled and the penalty to be inflicted upon the defendant is to be determined with reference to that time.” This judgment was rendered in a case where a tax collector was found 3,356.01 pesetas short in his accounts, the Government having recovered part of this amount upon the official bond and private property of the said official, 1,840.14 pesetas, leaving a balance of 1,515.87 pesetas. The supreme court of Spain held: “Article 407 (art. 392 of the Philippine Code) was not applicable because, according to the provisions of this article, where the refund is made, *as in the present case*, the penalty prescribed in article 405 (art 390 of the Philippine Code) should be imposed, it appearing from the affirmative finding of the jury to the fifth count that there was a shortage of 1,515.87 pesetas for which the Government has not been reimbursed. And for the purpose of inflicting the penalty prescribed in this article there should not be taken into consideration the final balance of 1,515.87 pesetas but the original shortage, 3,356.01 pesetas.”

Such, and no other, are the legal precedents contained in these two judgments of the supreme court of Spain, which are in no way applicable to the case at bar, where a complete restitution was made, there being no evidence of any detriment or hindrance to the public service, as there was sufficient money on hand at the time his accounts were examined. The case is, therefore, included in paragraph 3 of article 392 of the Penal Code.

We accordingly sentence the defendant to three years’ suspension from public office and to pay a fine of 285 pesos, Philippine currency, with the costs of both instances. After the

expiration of ten days from the date of final judgment let the case be remanded to the court below for execution. So ordered.

*Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.*

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