

[G.R. No. 2914. November 28, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANTONIO GAVIRA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

ARELLANO, C.J.:

This is a prosecution for *estafa*. The defendant having been convicted in the court below, appealed to this court, where the case was duly argued and submitted, counsel for the accused having shown that the latter did not commit the crime with which he is charged. And in fact he did not. The five persons who delivered to the defendant the 10 pesos in question, each contributing 2 pesos for the purpose of procuring their *cedulas* for the year 1903, and who were given memorandum receipts for the amount thus paid, were not injured in any way. They paid the price of their *cedulas* on the 8th of February, 1904, and on the 6th of April of the same year each received his *cedula*.

But these 10 pesos were not paid into the provincial treasury either in the month of February or March when the accounts of the municipal treasury of which the defendant was in charge were examined, nor in the months of April or May. It was in the latter part of May when the payment to the defendant of the 10 pesos in question by the five persons above referred to was discovered by a deputy of the provincial treasurer who seized a stub book which the defendant had at his house. These are the facts in the case, and the Attorney-General is of the opinion that the defendant should be acquitted of the charge of *estafa* with the costs *de oficio* without prejudice to the filing of a new complaint for embezzlement of public funds.

The judgment of the court below is accordingly reversed and the defendant acquitted with the costs of both instances *de oficio*. After expiration of ten days from the rendition of final judgment the case will be remanded to the Court of First Instance for execution. So ordered.

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

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