

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

G.R. No. 5623. February 03, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The defendant herein is charged with having appropriated and applied to his own use the sum of P84.90 which was deposited with him as municipal treasurer and deputy provincial treasurer, municipality of Pasig, Province of Rizal.

After being informed of the complaint, the defendant pleaded guilty, stating that as soon as he became aware, at the time of the examination of his accounts, that the P84.90 were actually missing from the funds, he procured the immediate return of the same by depositing the money in the safe. He also testified the P84.90 were a part of the sum of P274.40 which represented the deposit made by the bidders on certain municipal contracts, which amount he did not enter in the books as cash, thereby following the practice of his predecessor.

In view thereof the court terminated the proceedings and entered judgment, holding the accused guilty of the crime of misappropriation of public funds and sentencing him to two months' imprisonment, to pay a fine of P20 and the costs, from which judgment the defendant has appealed.

The defense contends that the law which should be applied to this case is article 392 of the Penal Code, which, according to his understanding, was not repealed, except its paragraph 2, in so far as it penalizes the appropriation of public funds, which are not restored, as a crime of misappropriation. But the provisions of section 4 of Act No. 1740 are very clear, expressly providing that -

"Articles 390, 391, and 392 of the Penal Code of the Philippine Islands, in so far as the same may be in conflict with this Act, are hereby to that extent only repealed."

This section is construed in the case of *The United States vs. Vicente Calimag* (12 Phil. Rep., 687), in connection with the case of *The United States vs. Pedro Togonon* (12 Phil. Rep., 516).

The failure or inability of the official in charge of public funds or property to produce them upon the demand of the auditor or examiner of the accounts, is prima facie evidence that such missing funds or property have been put to personal uses, or used for personal ends by such person; and it is also prima facie evidence of misappropriation, within the meaning of this word under section 1 of Act No. 1740. If from this moment there is prima facie evidence of the crime of misappropriation (sec. 2) and the taking for personal uses is to be presumed as a crime, from the very moment the defendant fails to produce all the funds upon the demand of the auditor or examiner of the accounts, it is manifest that a subsequent act, as is reimbursement, in the true meaning of this word, can not in any way affect the existence of the crime, which is apparent from the absence of the funds in the hands of the depositary and the inability of the latter to produce them at the time of their demand by the inspector, auditor, or examiner of accounts.

The penalty imposed by the lower court being in accordance with the law, the judgment is hereby affirmed with the costs of this instance. So ordered.

Torres, Mapa, Johnson, Carson, Moreland, and Elliott, JJ., concur.

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