

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. P. D. GARCES, DEFENDANT AND APPELLANT.*G. R. No. 10698. October 07, 1915*

Ponente: TRENT, J.

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The defendant in this case was municipal treasurer of the town of Misamis, Province of Misamis. An opium pipe and other prescribed articles were found by the authorities and delivered to him for safe-keeping. The defendant placed these articles in a drawer of an aparador in his office to be held until called for by the courts. On the 20th of August, 1914, this same opium pipe was found in the possession of Primo Valconcha, a half brother of Lucas Medina, who was a trusted employee and clerk in the office of the defendant. The defendant was thereupon charged with a violation of Act No. 1740 and found guilty.

Act No. 1740 is designed to protect the Government from loss of its funds and property through the acts of its agents which are prompted either by corrupt motives or neglect or disregard of duty. Section 1 enumerates the acts or omissions which are to be considered punishable by the law.

The section covers a wide range of official misconduct and includes the personal use of the funds or property; the abstraction, misappropriation, or malversation thereof by the agent himself; and lastly, the abstraction, misappropriation, or personal use thereof by any other person through the "abandonment, fault, or negligence" of the officer or employee who is legally responsible and accountable for such funds or property. Assuming, without deciding, that the pipe in question falls within that class of property mentioned in section 1 of Act No. 1740, can the conviction be sustained upon the facts as disclosed by the record?

The information charges the facts stated in the opening paragraph of this decision and alleges an infraction of Act No. 1740 by reason of the "abandonment and negligence" of the defendant. Clearly, if there was a crime, it did not arise from the personal use, abstraction, misappropriation, or malversation of the defendant himself. Conviction must rest upon the personal use, abstraction, or misappropriation by another person through the defendant's abandonment of the property or because of his fault or negligence. That the defendant did not abandon the property is clear. He put it in his own office and this office was kept locked, only himself and his trusted employee Medina having keys thereto. If, then, the defendant is guilty of a crime within the purview of Act No. 1740, it must be by reason of his fault or negligence. When we attempt to measure the negligence which pervades a particular act or omission, we must first determine upon a standard of care commensurate with the occasion, and then endeavor to ascertain how far short of this standard falls the act or omission in question. Did not defendant take the steps to guard the opium pipe which its value warranted? The clerk Medina was a trusted employee. It is not shown that he was not worthy of confidence to the extent the defendant relied upon him. He was given a key to the office; but this does not contribute to the defendant's misconduct, if any, in caring for the opium pipe. Doubtless, the defendant was under the necessity of allowing one of his employees to have a key to the office so that it might be opened promptly for the day's work when the defendant was not there. The only fact which tends to show the negligence of the defendant in caring for the pipe, therefore, is that he put it in a drawer of an

aparador standing in his office. By putting it there, he made it possible for all those who had access to the interior of his office to abstract the pipe. Just how feasible this was is not shown. It is not denied, however, that the aparador where the pipe was located, as well as the employees of the office, were constantly in view during office hours and that an attempt to abstract the pipe during that time would be attended with considerable risk of detection, while Medina, by means of his key to the office, could abstract the pipe outside of office hours with comparatively no risk of detection, as he was a trusted employee. The pipe and other prescribed articles were, therefore, placed where it was possible but hardly probable that they would be stolen. It is quite true that, in the light of subsequent developments, the place selected by the defendant as a repository for these articles was not adequately protected against thieves. There was at least an error of judgment on his part in assuming that the aparador was a reasonably safe place in which to keep the articles in question. Ker's Wharton on Criminal Law (11th ed.), section 163, note 4, reads in part as follows: "To impose criminal responsibility, Sir J. F. Stephen (3 History Crim. Law, 11) maintains that there must be more, but no one can say how much more, carelessness than is required in order to create a civil liability. For instance, many railway accidents are caused by a momentary forgetfulness or want of presence of mind, which are sufficient to involve the railway in civil liability, but are not sufficient to make the railway servant guilty of manslaughter if death is caused.' But the better view is that the only difference between criminal and civil procedure in such case is that in the first there can be no conviction if there be reasonable doubt of guilt, while in the second the verdict goes with preponderance of proof."

Applying either test to the conduct of the defendant in the case at bar, we cannot say that we reach the conclusion that he was criminally negligent in caring for the opium pipe. Neither its utility nor its value was great enough to make its acquisition to be desired by any great number of persons. It was, in fact, under lock and key during those hours of the day and night when no one was around to look out for it. During office hours its theft was attended with such a risk of detection as to dissuade most persons from the attempt. There being no suspicion in our minds that the defendant intentionally left the pipe where it could be easily abstracted, we conclude that he is not guilty of the crime charged.

The judgment appealed from is reversed and the defendant is acquitted, with costs de officio. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

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