

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MANUEL FRANCISCO, DEFENDANT AND APPELLANT.*G.R. No. 11049. November 02, 1916*

Ponente: CARSON, J.

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he defendant-appellant in this case was convicted in the court below of the misappropriation of public funds as that offense is defined and penalized by Act No. 1740, and sentenced to two months' imprisonment, to pay a fine of P30, with subsidiary imprisonment as prescribed by law in the event of failure to pay this fine, and to the payment of the costs.

The evidence clearly discloses that on the 19th of May, 1915, the accused was administratively suspended from the office of clerk of the Court of First Instance of Nueva Ecija upon a complaint filed with the Attorney-General charging certain irregularities in the conduct of his office, and that he was duly ordered to turn over the office to an acting clerk, designated for that purpose; that on that day he did in fact turn over funds said to be the funds of the office; that sometime in the preceding month of April, the accused had received the sum of P30 from one Manuel G. Velazquez, which it was understood was to be applied to the payment required for the republication of certain land registration proceedings had in a case bearing register number 7487; that the accused gave no written receipt, official or otherwise, evidencing the receipt of this money, and made no record of the transaction in his official records; that at the time when the funds and property of the office were turned over by the accused to his successor he made no mention of the receipt by him in the preceding month of the above-mentioned sum of P30 and did not turn it over to his successor; that an investigation was set on foot on the 2d of June, 1915, touching his receipt of this money and his failure to turn it over to his successor; and that on the 3d of June, 1915, the accused turned over the sum of P30 to the Oficina General de Registro de Terrenos de Manila, in payment of the fees for the republication of the proceedings had in case No. 7487, for the settlement of which the money had been given to him by Velazquez.

The accused admitted all the facts just set forth. In explanation of his conduct he testified that at the time when the money was handed to him by Velazquez, the exact amount of the fees to be forwarded to the General Land Registration Office in Manila had not been officially and definitely determined; that for that reason he did not want to accept the money at that time, but that Velazquez, who had been his life-long friend, and who lived at some distance from the clerk's office, insisted that he take the money and hold it until the amount of the fees should be definitely ascertained, and then remit the necessary amount to the general office in Manila, and if anything remained over, return it to its owner at his convenience; that it was distinctly understood by himself and Velazquez that the money was not turned over to him in his official capacity as clerk, and that for that reason no official receipt was given or asked for; that he put the three ten-peso bills received in a small drawer in his desk which he reserved for his personal use; that sometime thereafter, having pressing need for money and not being able to cash a salary check for P55, he took the P30 from the drawer and left his salary check in its place, awaiting a convenient opportunity to cash it; that when he turned over the funds and property of the office to his successor

he asked permission to leave his private drawer untouched; that on the 29th of May he took the check from the drawer with the permission of his successor for the purpose of cashing it, went to Manila on the 2d of June, cashed the check at the office of the Insular Treasurer, and sent P30 with a letter to the General Land Registration Office; that he sent the money on the very day that the investigation was instituted with regard to it, and before he knew that any such investigation was in progress.

His testimony as to the circumstances under which he received the money was corroborated by his friend Velazquez; and the fact that he took the pay check out of his private drawer in the clerk's office not long before coming to Manila on the 29th of May was corroborated by his successor who testified that he saw the check taken from the private drawer of the accused on that occasion.

From the foregoing relation of the facts it will readily be seen that the evidence for the prosecution established a prima facie case against the accused. Section 2662 of the Administrative Code (reenacting in substance the provisions of sections 1, 2, and 3 of Act No. 1740) after defining and penalizing the offense of embezzlement or malversation in office, prescribes that:

* * * * *

"The failure or inability of an accountable officer to have duly forthcoming any funds with which he is chargeable, upon the demand of any officer authorized to examine or inspect his office or the funds in question, shall be prima facie evidence that such missing funds have been put to personal uses by such officer, within the meaning of this section."

We think that despite the fact that no official receipt was given for the P30 entrusted to the accused, and although it is doubtless true that there was an understanding between the accused and Velazquez that the accused was to hold the money and pay over only so much thereof as might be necessary for the republication of the record in which Velazquez was interested and to return the balance to the owner, the irregularity of the form of the transaction did not change its substance and effect. One of the duties of clerks of Courts of First Instance is to receive such deposits and to pay over the moneys thus received to the officer designated to receive them, and the accused having accepted the money was charged with the performance of this duty in disposing of it.

The statute makes "the failure or inability of an accountable officer to have duly forthcoming any funds with which he is chargeable, upon the demand of any officer authorized to examine or inspect his office or the funds in question" "prima facie evidence that such missing funds have been put to personal uses by such officer." But such prima facie evidence may be rebutted by evidence disclosing that in truth and in fact, the funds were not put to personal uses by the accountable officer.

In the case at bar the evidence clearly discloses that the accused never did put the funds in question to "personal uses." True he placed the money received by him in a separate drawer, and thereafter substituted it with a salary warrant, but it is very evident that in so doing he was not attempting to make personal use of the funds for which he was accountable. On the contrary, he manifestly intended to keep the amount of these funds ready against the time when he could conveniently turn them over to the officer designated to receive them; and from the moment he received the money until he finally paid it over, he never did apply it to his personal uses or attempt so to do.

The proof in this regard does not depend merely upon his own statements. His account of the whole transaction, which has all the earmarks of truth, is fully corroborated in every important particular by the testimony of the witnesses, some of whom were called for the prosecution. The trial judge who convicted him evidently accepted the testimony of these witnesses as the truth, although he was of opinion that even if the explanation of his conduct offered by the accused were true, he was guilty, nevertheless, of the offense charged. But while we recognize that the official conduct of the accused in accepting the deposit of the money without giving the

prescribed receipt and in failing to account for it to his successor in office was irregular and such as to subject his conduct of his office to severe criticism, we are satisfied that he never intended to apply the money to his personal use or attempted to do so, and that he is not, therefore, guilty of the crime of misappropriation of public funds of which he was convicted in the court below.

Ten days hereafter let judgment be entered reversing the judgment convicting and sentencing the defendant-appellant and acquitting him of the offense with which he is charged in the information, with the costs of both instances de officio. So ordered.

Torres, Johnson, Moreland, Trent, and Araullo, JJ., concur.

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