

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CHARLES H. SLEEPER, DEFENDANT AND APPELLANT.*G.R. No. 22783. December 03, 1924*

Ponente: STATEMENT The following information was filed against the defendant in the Court of First Instance of Manila: "That on, during and between the 17th day of October, 1922, and the 16th day of April, 1923, both dates inclusive, in the City of Manila, Philippine Islands, the said accused was then and there appointed, qualified and acting secretary-treasurer of the Manila Building and Loan Association, a corporation duly organized and existing under the laws of the Philippine Islands with principal office in said city; that during said period the A. L. Ammen Transportation Co., Inc., deposited with said Manila Building and Loan Association the sum of P30,000 with interest at the rate of 7 per cent per annum with the condition that said sum could be withdrawn from said Association after 15 days' notice, and said accused, once in possession of said sum which he received in said City of Manila and in his aforementioned capacity instead of applying the said sum for the purposes intended therefor by the Manila Building and Loan Association and of rendering proper accounting of the disbursements made thereof, as it was his duty so to do, did then and there willfully, unlawfully, feloniously, and fraudulently fail to comply with his said obligation, but on the contrary, misapply, misappropriate, and convert said sum to his own personal use and benefit, to the damage and prejudice of said Manila Building and Loan Association in said sum of P30,000, equivalent to 150,000 pesetas. "Contrary to law." Upon which the defendant was tried, found guilty of estafa as provided in article 535, section 5, as it relates to article 534, section 3, of the Penal Code, and sentenced to two years, eleven months and eleven days of presidio correctional, from which the defendant appeals, contending that the court erred in the admission of the evidence of the witnesses Fisher and Haussermann, in admitting Exhibit M, and in finding the defendant guilty as charged. At the inception of the trial, Fred. C. Fisher, of the Manila Bar, was called to identify a paper known in the record as Exhibit M, to which the defense objected "on the ground that in the preparation of that paper the witness had acted as attorney for the defendant who claimed the privilege arising from that relation." After an examination of the exhibit, the court sustained the objection. Mr. Haussermann, whose name appears on the exhibit as a witness, was then called, sworn and allowed to identify the exhibit over the defendant's objection, and 3 later Mr. Fisher was recalled, and the court then reversed its decision, and he was allowed to testify, and Exhibit M was then introduced as evidence over the strenuous objection and exception of the defendant. JOHNS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-22783/>

STATEMENT

The following information was filed against the defendant in the Court of First Instance of Manila:

"That on, during and between the 17th day of October, 1922, and the 16th day of April, 1923, both dates inclusive, in the City of Manila, Philippine Islands, the said accused was then and there appointed, qualified and acting secretary-treasurer of the Manila Building and Loan Association, a corporation duly organized and existing under the laws of the Philippine Islands with principal office in said city; that during said period the A. L. Ammen Transportation Co., Inc., deposited with said Manila Building and Loan Association the sum of P30,000 with interest at the rate of 7 per cent per annum with the condition that said sum could be withdrawn from said Association after 15 days' notice, and said accused, once in possession of said sum which he received in said City of Manila and in his aforementioned capacity instead of applying the said sum for the purposes intended therefor by the Manila Building and Loan Association and of rendering proper accounting of the disbursements made

thereof, as it was his duty so to do, did then and there willfully, unlawfully, feloniously, and fraudulently fail to comply with his said obligation, but on the contrary, misapply, misappropriate, and convert said sum to his own personal use and benefit, to the damage and prejudice of said Manila Building and Loan Association in said sum of P30,000, equivalent to 150,000 pesetas.

"Contrary to law."

Upon which the defendant was tried, found guilty of estafa as provided in article 535, section 5, as it relates to article 534, section 3, of the Penal Code, and sentenced to two years, eleven months and eleven days of presidio correctional, from which the defendant appeals, contending that the court erred in the admission of the" evidence of the witnesses Fisher and Haussermann, in admitting Exhibit M, and in finding the defendant guilty as charged. At the inception of the trial, Fred. C. Fisher, of the Manila Bar, was called to identify a paper known in the record as Exhibit M, to which the defense objected "on the ground that in the preparation of that paper the witness had acted as attorney for the defendant who claimed the privilege arising from that relation." After an examination of the exhibit, the court sustained the objection. Mr. Haussermann, whose name appears on the exhibit as a witness, was then called, sworn and allowed to identify the exhibit over the defendant's objection, and 3 later Mr. Fisher was recalled, and the court then reversed its decision, and he was allowed to testify, and Exhibit M was then introduced as evidence over the strenuous objection and exception of the defendant.

JOHNS, J.:

Exhibit M is as follows:

"Manila, P. I.

"September 24, 1923.

"In consideration of the assumption by a group of American citizens, residents of Manila, of my obligation to the Manila Building & Loan Association, approximating P127,146.90, arising from the unauthorized conversion of funds of that corporation for which I was responsible in a fiduciary capacity, I agree that I will leave the Philippine Islands permanently as soon as possible; that I will at once resign from all positions held by me, including membership on boards of directors; that I will execute my demand note to F. C. Fisher, trustee, for the benefit of said contributors, for the full amount which may be paid on my account to the Manila Building & Loan Association; that I will, upon demand, transfer to F. C. Fisher, as trustee for the contributors above mentioned, all property now owned by me, other than personal effects, and particularly any and all interests in mining claims and mining companies, with authority to dispose of the same and apply the proceeds to the payment of said note.

(Sgd.) "C. H. SLEEPER

"Witness:

(Sgd.) "JOHN W. HAUSSERMANN"

We agree with counsel for the defendant that, in the absence of Exhibit M, the conviction could not be sustained. It appears that a short time before it was executed, Mr. Fisher was called to the office of the late Mr. McCoy, who was then the president of the Manila Building and Loan Association, and who held that position for a number of years along with the defendant as treasurer. At this conference it developed that the defendant was short in his accounts for a very large amount, and it was suggested that, to protect the honor and good name of the Americans in the community, an effort should be made to cover the shortage, and steps were taken along that line in which Mr. Fisher took more or less of an active part. It is conceded that he drafted Exhibit M in his own office in which the amount and the name of the association was left blank, and that later the blanks were filled in his own

handwriting.

With all due respect to counsel for the defendant, there is no evidence which shows or tends to show that in the preparing of this document or the raising of the funds, Mr. Fisher was acting as attorney for the defendant, or that he represented him in any manner. After the full amount of the shortage was obtained and the money with which to make it good was raised, Exhibit M was submitted to the defendant for his signature, and it was then signed 'by him in the presence of Fisher and of Haussermann, the latter of whom subscribed his name as a witness. At the time this was done, no other persons were present. There is no evidence which shows or tends to show that at or prior to his signing any questions were asked by the defendant, or that any statements or representations were made to him of any kind by anyone. Neither is there any evidence that Fisher claimed or represented that he was the attorney for the defendant in the transaction or that the defendant relied upon either of them as his attorney, or that the relation of attorney and client existed between the defendant and Fisher or Haussermann or either of them. It is true that the record shows that they had been lifelong personal friends, but there is no evidence that in preparing the document or presenting it for signature, or that in any other manner, Mr. Fisher was acting for or representing the defendant. It may be true that at the time the defendant signed the writing, and as a result of the shortage having been made good, the defendant expected to leave the country and avoid prosecution. Be that as it may, the record shows that when it was prepared, the defendant read the instrument and signed it voluntarily without asking any questions from anyone, and there is no evidence that any one promised him immunity from prosecution or that defendant relied on any such promise. The question as to whether or not Fisher was acting as attorney for the defendant was a fact to be determined by competent evidence like any other fact. Upon that point Mr. Fisher was the only witness, and he testifies positively that he was not attorney for the defendant and was not acting for him in the transaction. Opposed to his positive testimony there is nothing but conjectures and inferences. Upon that question the burden of proof was upon the defendant, and there was a failure of proof. It follows that the relation of attorney and client did not exist between Mr. Fisher and the defendant and that Exhibit M was not a privileged communication, and hence it was competent evidence.

It is conceded that the checks in question of the Ammen Transportation Company to the amount of P30,000 were drawn in favor of the Manila Building and Loan Association and delivered to the defendant as its treasurer, and that the identical checks were deposited in the bank to the credit of the association, and that its overdraft in the bank was reduced in that amount. Relying upon such facts, defendant's counsel vigorously and ably contend that he cannot be convicted of the crime charged in the information. That is the real question in this case. In a well-written opinion, the trial court overruled that contention and points out that during the trial, through his counsel, the defendant admitted that P20,000 was received from the Transportation Company between the 17th and 24th days of October, 1922, and the remaining P10,000 between the 9th and 16th days of April, 1923, for which the three certificates of deposit Nos. 1198, 1199, and 1303, Exhibits G, H, and L, were issued by the defendant. Also, that no entries were made in the books of the association of such amounts until about September 24, 1923, which is the date of Exhibit M, at which time the whole amount of the shortage was made good. In Exhibit M the defendant says that "in consideration of my obligation to the Building and Loan Association approximating P127,146.90, arising from the unauthorized conversion of funds of that corporation for which I was responsible in a fiduciary capacity, etc."

Notwithstanding the large overdraft of the association in the bank, it appears from the corporate books that about P100,000 in cash was supposed to be kept in the company's safe, and that when previous examinations were made by the auditor, the required amount of money was found to be in the safe in the shape of \$500 bills. It also appears that at the time the discovery of the shortage was made, the accountant appeared at the office of the company about 8 a. m. to investigate the corporate records. Mr. Sleeper then stated that he did not have the key to the safe, went away and returned about 10 a. m., and then opened the safe and the money was found to be intact. It was

pointed out by the trial court that in opening the same upon his return, the defendant had his back to the clerk and accountant, and that they could not see what he did. It is also pointed out that at the time the money was deposited by the Transportation Company, no corresponding slips or debits were made of the transaction, and for such reason, it was not entered in the books, and hence could not be detected by the accountant whose duty it was to examine the records of the company.

Upon that point, Manuel Peiia, a bookkeeper for the Loan Association, testified:

"Q. In what books of the Manila Building & Loan Association should the receipt of the 30,000 mentioned in the complaint appear?—A. In the cash book and in the ledger, and also in the book of interest payable.

"Q. Should a credit slip be made for that amount?—A. Yes, sir, so that it might be entered in the cash book and in the ledger.

"Q. Why was it not entered in those books?—A. Because there was no cash slip.

* * * * *

"Q. What did the defendant tell you when you asked him for the cash credit slips for the three amounts of P10,000 each?—A. He told me that he would see the auditor about it."

Among others counsel for the defendant at the trial made the following admission:

"That the funds in question described in the complaint do not appear upon the books of the Manila Building and Loan Association until on or after the 24th day of September, 1923, at which time the check, Exhibit O, was deposited to the credit of that association, and that this amount covered by the complaint was paid by Exhibit O, it being understood by this admission that the deposits mentioned in the complaint appear in the stub account of 'Bills Payable' dated October 24, 1922, numbered 1198 and 1199, respectively, and dated April 16, 1923, numbered 1303, those being the only entries in the books of the corporation of the three sums mentioned."

In an argument between counsel, when C. B. Moore was testifying as a witness for the defense, the force and effect of this admission was pointed out, and the attorney for the defendant made the following statement to the court;

"I did not admit, I could not admit, because I did not know, that it covered the specific amount charged in the complaint. I do not know that, and I ask that that admission be corrected on the record accordingly."

Based upon which the court made an order striking out the following portion of the admission:

"And that this amount covered by the complaint was paid by Exhibit O," on condition that the prosecution would have the right to prove that fact by other evidence, and it later called Rafael Fernandez, who testified that he had been a bank examiner since August 5, 1921, and that he had examined the books of the Loan Association several times in 1921, 1922, and 1923, and the last time on May 4, 1923. His attention was called to Exhibit G in which the association promised and agreed to pay the Ammen Transportation Company P10,000 fifteen days after written demand, with interest at the rate of 7 per centum, and Exhibit H which is also for another P10,000, both dated October 24, 1922, and asked whether these two bills payable had been entered in the books of the association.

"A. I would have seen them because I examined all the books of the Association.

"Q. Did anything attract your attention while examining the cash of the Manila Building & Loan Association at that time?—A. There were two things that came to my attention; the first being the big amount of the notes on hand—they were all P500 bills—and, second, that there was too much cash for such an association as the Manila Building & Loan Association kept in the vaults of that Association.

"Q. Up to what date were the transactions of the Manila Building & Loan Association entered in the books of the Manila Building & Loan Association at the time you made your examination on May 4, 1923?—A. February 28, 1923." He also testified to the same thing about Exhibit L, which is for another P10,000, executed on April 16, 1923.

"Q. So that you did not consider this transaction when you made your report to the Insular Treasurer?—A. No, sir, I did not.

"Q. Had you considered the P30,000, which is the amount of the transaction appearing in Exhibits G, H, and L, what would have been the effect in the balance that you found?—A. The balance would have been increased by the P30,000." Walter Brooks, as a witness for the prosecution, testified that he was a public accountant in the employ of Fleming, Percy, Smith & Seth who were the auditors for the Building Association, and that he examined its books in the year 1923 for the first time in June, "and other nine or ten occasions between then and September." That it was his duty to examine the cash on hand, and that in June, 1923, he went to the office of the association for that purpose, but found that Sleeper was absent, the safe was locked, and that no one present had access to it. He then testified:

"Q. Did you, on behalf of the firm of Fleming, Percy, Smith & Seth, examine the books of the Manila Building and Loan Association in June, 1923?—A. Yes, sir.

"Q. In the course of that examination, did you find the accounts and books in order?—A. No, sir.

"Q. Please inform the court what you did not find in order in the books of the Manila Building & Loan Association.—A. I found three bills payable missing from the books.

"Q. Showing you these three bills payable, marked as Exhibits G, H, and L, please inform the court whether these three exhibits have any connection with the three bills payable referred to by you in your previous answer, as missing.—A. These are the three bills which were missing from the books of the Association.

"Q. How did you happen to notice that these three bills payable, marked as Exhibits G, H, and L, were missing and did not appear in the books of the Manila Building and Loan Association?—A. I found that they were missing by checking the consecutive numbers of bills payable issued. These three numbers did not appear.

"Q. What steps did you take on finding that these three bills payable were unrecorded in the books of the Association?—A. I asked the bookkeeper, the only person present, for an explanation. His answer was: 'A' (Cont.) And he answered that he would refer my request for information to Captain Sleeper.

"Q. Did Captain Sleeper give you the desired explanation?—A. No, sir.

"Q. Did you ascertain the amount involved in those three bills payable, marked as Exhibits G, H, and L?—A. Yes, sir.

"Q. How did you ascertain the amounts involved?—A. By reference to the stubs of the bills payable issued.

"Q. Please explain to the court what should have been the correct procedure to properly record in the books of the Manila Building & Loan Association these transactions.—A. On receipt of the money or checks, a receipt would be given as a bill payable. The entry into the books would have been to the debit of cash and from there posted to the credit of bills payable.

"Q. What would have been the effect of such entries?— A. It would have charged cash with the amount received and added a like amount to the indebtedness of the Association under the heading of 'Bills Payable.'

"Q. And how could that cash so charged be cleared?— A. It could be cleared in two ways—by deposits into the bank or by cash disbursements.

"Q. Considering that the defendant received the checks', Exhibits C, D, and J, from the A. L. Ammen

Transportation Company, Inc., and that the receipt of these checks was not entered in the books of the association, and considering also that these checks were deposited at the International Banking Corporation, had the accused any means of appropriating the amount as represented by these checks ?—A. The effect of a payment into the bank account of a check which has not been charged to the cash is to substitute actual cash on hand by this check deposited in the bank.

"Q. Assuming that a large amount of about P100,000 appeared to have been carried as cash on hand, could that substitution of the amount involved in these three checks be mad?—A. Yes, sir.

"Q. Showing you this check marked as Exhibit O, drawn in the amount of P127,146.90, against the Hongkong & Shanghai Banking Corporation, by Mr. Fisher, do you know whether the amount involved in this check was paid to the Manila Building & Loan Association, and, if so, when ?—A. Yes, sir, it was in September, 1923.

"Q. Do you know whether the P30,000 represented by the checks, Exhibits C, D, and J, were included in this check, Exhibit O?—A. Yes, sir, they were included.

"Q. How do you know it?—A. I made a statement of receipts and disbursements by which the amount of that check was determined, and I included the three bills payable not recorded in the books in that amount.

"Q. Showing you this Exhibit Q, I ask you whether you recognize this document?—A. Yes, sir, I do.

"Q. Why do you recognize it?—A. It contains my signature.

"Q. To whom did you deliver this letter, Exhibit Q?— A. To Mr. Fisher.

"Q. Do you know whether this letter has any connection with the check, Exhibit O?—A. The letter you have just exhibited was given on the same date as the check, and I can only assume that there is a connection between that and the check.

"Q. What connection is that?—A. The connection between the letter and the check is that the letter was given to Judge Fisher at his request after ascertaining what the cash balance of the Manila Building and Loan Association should be.

"Q. Before or after including this P30,000?—A. After including the P30,000.

"Q. Do you know to how much did it amount, or it should amount, the cash on hand of the Manila Building and Loan Association, in June, 1923, when you examined the books of that Association here for the first time, according to the books of the corporation?—A. The balance appearing in the books at that time was short the amount of the three bills payable not entered."

The record shows that the witness Brooks is an experienced accountant, that he knows his business, and his testimony is clear and convincing and not disputed. He testifies as a fact that the P30,000 in question was included in and is a part of the gross amount of P127,146.90, which the defendant over his own signature admits was an "unauthorized conversion of funds of that corporation for which I was responsible in a fiduciary capacity." He also testifies that "the balance appearing in the books at that time was short the amount of the three bills payable not entered," the three bills payable about which he testifies being for the P30,000 here in question.

Upon all of such matters, there is no dispute or conflict in the evidence. The defendant having admitted in writing that he misappropriated the P127,146.90, and the testimony being undisputed that the P30,000 in question was a part of the P127,146.90, the proof upon that point is conclusive.

Assuming that to be true, the defendant contends that there is a fatal variance between the proof and the crime charged in the information. That point is not tenable. The information alleges in substance that the defendant once in possession of the P30,000 "instead of applying the said sum for the purposes intended therefor by the Manila

Building and Loan Association and of rendering proper accounting of the disbursements made thereof, as it was his duty so to do, did then and there willfully, unlawfully, feloniously, and fraudulently fail to comply with his said obligation, but on the contrary, misapply, misappropriate, and convert said sum to his own personal use and benefit, etc." The defendant was not misled or deceived by the information. In legal effect it charges him with taking the amount of the P30,000 evidenced by those checks, which was the property of the association, and wrongfully converting that amount of the funds of the association to his own use. In other words, that upon the receipt of the checks he took that amount of the funds of the association and converted it to his own use. Of course, he could not appropriate the checks, but the proof is conclusive that he did take the amount evidenced by the checks and converted it to his own use. He is not charged with estafa of the checks, but with estafa of the amount of money evidenced by the checks.

It is fair to say that defendant's counsel have made a very vigorous, able, and adroit defense. But in the final analysis, the stubborn fact remains that the defendant over his own signature admits the appropriation of the P127,146.90 and the proof is conclusive that the P30,000 in question enters into and is a part of that gross amount.

The judgment of the lower court is affirmed, with costs. So ordered.

Malcolm, Avancena, Villamor, and Ostrand, JJ., concur.

DISSENTING OPINION

JOHNSON, J.:

I fully agree with the reasoning and conclusions of Justices Street and Romualdez in their dissenting opinion. I cannot give my assent to a procedure which will permit a complaint for one crime and a conviction for another, as has been done in the present case, even though the accused is guilty of the other. Before that can be done, a new complaint or an amended complaint must be presented.

DISSENTING OPINION

STREET, J.:

It is plain enough that the appellant in this case was short in the funds of the Manila Building and Loan Association, on September 24, 1923, to the extent of P127,146.90; and if the information had charged the embezzlement of funds of the association to that amount, or less, without specifying what particular money was embezzled, the Government would have had a clear case. The fiscal, however, in drawing the information, saw fit to charge the appellant with the appropriation of the specific sum of P30,000, which had been deposited on two occasions with the association by the A. L. Ammen Transportation Co., Inc.; and unfortunately for the prosecution we know precisely what became of that money after the checks drawn by the Ammen Company reached the hands of the appellant, which is, that said checks were deposited by the appellant to the credit of the association in its proper account in a bank. This fact is admitted; and it seems to me that this must be the end of the charge of embezzling that money. The prosecuting officer simply made the mistake of being a little too particular in his accusation and hit upon transactions that were in fact straight.

But it is said that the P30,000, proceeds of the Ammen money, is merely part of the larger sum of P127,146.90, representing the appellant's shortage in the general funds of the association; and, as proving this, reliance is placed upon certain irregularities shown in the association's books with respect to the Ammen deposits, namely, that the

amounts received had not been debited to "Cash" in the cash-book and had not been credited to "Bills Payable" in the ledger, as should have been done. These irregularities show that the appellant was attempting to conceal a defalcation, but they do not prove that the appellant had appropriated the proceeds of the Ammen checks.

Walter Brooks, a public accountant, was introduced as a witness with a view to showing that the P30,000 in question formed a part of the larger amount for which the appellant is shown to have been short. This witness stated that when the proper entries in the cash-book and ledger were made, it resulted that the appellant's shortage was greater by P30,000 than it would have been if those irregularities had been disregarded. It was only in this sense that the witness meant to say, as I understand him, that the Ammen deposits were included in the larger amount; and this is far from showing that the appellant had embezzled those particular deposits.

In my opinion the appellant's offense did not consist in the misappropriation of the funds mentioned in the information, and hence he is entitled to an acquittal on the charge brought against him.

DISSENTING OPINION

ROMUALDEZ, J.:

With due respect to the majority, I dissent from its decision in the instant case. I believe that the accused is entitled to an acquittal on the ground that the crime alleged in the complaint was not proven.

He is accused of having misappropriated, to the damage of the Manila Building and Loan Association, of which he was secretary-treasurer, the sum of P30,000 received by him from the A. L. Ammen Transportation Company during the period between October 17, 1922, and April 16, 1923. This sum is represented by the checks C, D, and J. The decision of the majority cannot but admit the following with regard to these checks and their amount:

"It is conceded that the checks in question of the Ammen Transportation Company to the amount of P30,000 were drawn in favor of the Manila Building and Loan Association and delivered to the defendant as its treasurer, and that the identical checks were deposited in the bank to the credit of the association, and that its overdraft in the bank was reduced in that amount. Relying upon such facts, defendant's counsel vigorously and ably contend that he cannot be convicted of the crime charged in the information. That is the real question in this case." (*Italics are ours. See majority decision, folio 5.*)

If the accused deposited, as he in fact did deposit, in the International Banking Corporation in the name, and to the benefit, of the Manila Building and Loan Association the P30,000 paid by A. L. Ammen Transportation Company, Inc., there resulting from such an operation a reduction by an equal amount of the overdraft that then the aforesaid Manila Building and Loan Association had with said bank, it is clear that the accused did not misappropriate said P30,000.

But Exhibit M signed by the accused was introduced as evidence, wherein there is an admission of the fact of the sum of P127,146.90 having been misappropriated, and it is asserted that the P30,000, which is the subject-matter of the complaint, is a part of this amount.

The evidence, however, does not show, in my opinion, that the accused has ever understood that the P30,000 in question was included in the sum stated in Exhibit M. It must be taken into account that it is not the accused who prepared Exhibit M, but Mr. Fisher, who also did not know the precise amount that was to be stated in said document Exhibit M, and for this reason the space for the proper figures was left in blank. It was only a few minutes before the accused was caused to sign said Exhibit M on the morning of September 24, 1923, that Mr. Fisher filled out the space in blank, by writing the said sum of P127,146.90, which he copied from the letter

Exhibit Q, which had just then been delivered to him by Mr. Brooks.

And this amount of 5127,146.90, appearing on the letter Exhibit Q of Mr. Brooks addressed to Mr. Fisher, was obtained by an examination of the books of the company, made by Mr. Brooks in the said month of September, 1923, which books did not contain complete data, for the last entry made thereon was of February 28, 1923, the operations made by the company from said date up to September 24th of the same year not appearing, therefore, in said books.

Mr. Brooks took only those deficient books as his guide, and did not examine the contents of the safe in making his examination, as he expressly states in said letter Exhibit Q. He took into account against the accused the P30,000 that was the value of the checks C, D, and J, for the reason that the bills payable corresponding to said checks had not been entered on the books of the company. It must be noted that the very fact of the accused having issued said bills payable, which are Exhibits G, H, and L submitted for the signature of, and signed by, the president-manager of the Manila Building and Loan Association, removes all suspicion of concealment from said company by the accused of the receipt of said amount and could prevent the accused from taking from the safe of the company a sum equivalent to that represented by said bills payable, the corresponding stubs of which, Exhibits 2, 2-a, and 2-bf existed among the books of the company and were presented as evidence.

The fact that said bills payable were not opportunely entered on the books of the company really constitutes an irregularity, tending to show negligence on the part of said accused who kept said books, but under the facts in this case it does not necessarily imply bad faith, much less an intention to cheat, when there positively appear the legitimate and regular whereabouts of the sum of P30,000, the subject-matter of this action, deposited by the accused in the bank in the name and to the benefit of the Manila Building and Loan Association.

The evidence of record shows that the P127,146.90 stated in Exhibit M does not represent the true status of the account of the Manila Building and Loan Association on the 24th day of September, 1923, when said exhibit was signed. It also appears from the record that before signing Exhibit M, the accused did not have sufficient opportunity to verify the sum therein written, or to ascertain whether or not the sum of P30,000, the value of the checks C, D, and J, now the subject-matter of the instant case, was included therein.

It was not, therefore, sufficiently shown that the accused understood the P30,000, which is the subject-matter of the complaint, to have been included in his confession in Exhibit M nor that said sum must in justice be included in the amount written on said Exhibit M. Any sum of money that the appellant desired to confess in Exhibit M having misappropriated does not, and cannot, include the P30,000 mentioned in the complaint.

From this it follows that Exhibit M does not show the facts alleged in the herein complaint; and if said document is any proof at all of any crime, such crime is not alleged nor included in the complaint filed in this case.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.