

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BENIGNO MARIFTO, DEFENDANT AND APPELLANT.

G.R. No. 33176. December 29, 1930

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The appellant was sentenced under section 2672 of the Administrative Code, for embezzlement of Government property, to suffer one year's imprisonment, to pay P10,000 fine, to indemnify the Government of the Philippine Islands in the amount of P95,965.70, with subsidiary imprisonment in case of insolvency, to disqualification for holding any public office within the Philippine Islands, and to pay the costs.

The judgment appealed from contains a complete exposition of the facts and questions involved in the case.

From the year 1919 to January, 1929, the appellant was a bonded warehouseman, having charge of the custody of the property and materials of the Bureau of Commerce and Industry on Engineer Island, within the City of Manila. In addition to being in charge of said property, his duties as such warehouseman were to fill the orders for materials made by the various division chiefs and foremen of the bureau, and, when the stock was exhausted, to make the proper requisition for more materials, through the director of the bureau. In the performance of his duties, he had some twenty-five subordinates assisting him, acting as sub-warehousemen.

In January, 1929, a committee was appointed by the Department of Commerce and Communications for the purpose of investigating the Bureau of Commerce and Industry. The committee was under auditor Federico Romero. The investigation consisted in taking a physical inventory of the materials in the appellant's custody, and it was discovered that a total of P95,965.70 worth of materials, chiefly timber, were missing. Auditor Romero then made his report of the investigation (Exhibit F) taking into account the result of the physical inventory of the property as compared with the registry books of the Bureau of Commerce and Industry. The appellant and his subordinates took part in the investigation, and upon its termination on March 27th, said appellant signed a statement admitting that the physical inventory was taken with his assistance and consent.

There is, therefore, no doubt that the materials amounting to P95,965.70 which were in the appellant's custody have disappeared.

But there is no evidence that the appellant has appropriated them to his own use. However, there is evidence to show that the materials disappeared because of the appellant's negligence and carelessness in the safe-keeping of said materials as a bonded warehouseman. In the fulfillment of his duties, the appellant has negligently relied upon his subordinates, and although two years before the investigation he became aware that some materials were missing, he took no steps to prevent further loss.

The defense suggests that the shortage of materials may be due, with reference to the lumber, to a loss in weight, the loss arising from sawing, and the pieces wasted, and also to the lack of experts to classify the lumber. But this does not excuse the appellant, for he had at his command an expert to classify the lumber, and the latter was

determined by measure, not by weight, and besides, he was granted certain allowance for the sawing and for the waste pieces.

Considering the great value of the missing materials, especially with regard to the lumber, the only rational explanation of the loss is that they were abstracted. Section 2672 of the Administrative Code penalizes not only those who personally misappropriate property in their custody, but also those who, through their abandonment, or negligence render it possible for others to abstract it.

We find the appellant's guilt proven beyond doubt, and affirm the judgment appealed from, with costs. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand and Romualdez, JJ., concur.

Johns and Villa-Real, JJ., dissent.

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