

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISMAEL TABOTABO, DEFENDANT AND APPELLANT.*G.R. No. 4542. September 29, 1908*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-4542/>**TORRES, J.:**

Ismael Tabotabo was appointed municipal treasurer of the town of Tuburon, Island of Cebn, to act at the same time as deputy provincial treasurer, on the 2d of April, 1904; he held offtioe until the 10th of September, 1905, when he was discharged by the provincial treasurer for the reason that he.was found short in the sum of P3,614.23, which he had misappropriated.

Early in September, 1905, J. S. Stevenson, a deputy of the provincial treasurer of Cebu, called at the municipal treasury of Tuburan and proceeded at once to examine the books, accounts, and other documents kept by the accused Tabotabo. It appeared from the investigation that Tabotabo, as such municipal treasurer, ought to have had on hand on the said 10th day of September, the date of the examination, the total sum of P6,800.09, made up as follows:

General funds	
P1,915.15	
School funds	
210.94	
Loan	
431.10	
Exchange of Mexican currency	
3,938.32	
Collections as deputy provincial treasurer	
304,58	
Total	
6,800.09	

After an examination of the municipal funds, made in the presence of the accused and of some of the clerks of the treasury, and upon making up accounts, the following amounts, checks, and goods only were found, to wit:

Check	
80.12	
Philippine currency	
2,656.59	
Mexican currency, at the exchange of" 1.30 per peso.	
394.55	
Ten and a half sacks of rice, at 5.20 per cavan	
54.60	

Total	
3,185.86	

A comparison between the latter sum and the former one discloses a difference of P3,614.23 against the accused municipal treasurer, in respect to which the said officer, in whose charge the money was, offered no reason or explanation whatever, how it disappeared and why it was not found in the safe when the examination by the deputy provincial treasurer was made.

For the foregoing reason a complaint was filed by the provincial fiscal on the 6th of July, 1906, charging Ismael Tabotabo with the crime of misappropriation of public funds; proceedings were instituted, and the court below rendered judgment on the 23d of February, 1907, sentencing the accused to pay a fine of P3,614.23, an amount equal to that misappropriated, to pay an indemnity of the same amount, with legal interest thereon, to the surety company in Manila which, as bondsmen for the accused, paid the money embezzled by him as municipal treasurer and deputy of the provincial treasurer of Cebu, and in case of nonpayment of the line and indemnity, to suffer the corresponding subsidiary imprisonment, not to exceed the period of six months, and to pay the costs. From said judgment the defendant has appealed.

By the facts stated above, fully proven in this case, the existence of the crime of misappropriation of public funds, defined and punished by article P392 in connection with article 390, No. 3, of the Penal Code, has been conclusively demonstrated, inasmuch as the accused, as municipal treasurer and deputy provincial treasurer, ought to have had on hand on the 10th day of September, 1905, the sum of P6,800.09, the aggregate of several sums received from various sources of revenue, according to the books, accounts, and documents on file at the municipal treasury of Tuburan. However, when his cash was examined on that day by a deputy of the provincial treasurer of Cebu, it was found that he only had on hand P3,185.86 as the aggregate of several amounts, of a check, and of the value of a number of cavanese of rice in his charge. He was short the sum of P3,614.23, the whereabouts of which he has not satisfactorily explained, nor has he accounted for the proper disposition of the amount that was not found in the safe, where the law provides that the same should have been kept intact.

If it has been fully proven that, in consequence of the investigation made by a deputy of the provincial treasurer, and from an examination of the municipal safe of Tuburan by the said deputy in the presence of Tabotabo, the municipal treasurer, and of some assistants in said office, there appeared a shortage of the sum of P3,614.23, which the accused, as such municipal treasurer and deputy of the provincial treasurer, ought to have had on hand

and in the safe under his care, and that he could not show why the said amount was not in the safe, there can be no doubt as to the amount of the sum misappropriated, since the accused has not been able to satisfactorily show that it was less than that found upon examination of the books and documents kept by the accused himself.

The defendant pleaded not guilty, but, notwithstanding his denials, the record furnishes full evidence of his culpability as the sole and clearly convicted author of the crime in question.

From an examination of the accounts, documents, and books kept by the accused it appeared that he had received from the provincial treasurer P5,815.26 in Philippine currency to be exchanged for Mexican currency, of which sum he only returned to the said provincial treasurer P1,912.94, and kept in his possession P3,938.32; that, as a loan granted to the municipality of Tuburan by the Province of Cebu, the accused received P1,000 paid in two installments of P500 each, from which P568.90 was spent, but the balance of P431.10 was not found in the safe nor had the P1,000 been entered in the cashbook as the accused confessed, nor were entries made in the books of the municipal treasury of moneys received by the accused as treasurer and deputy provincial treasurer to be exchanged for Mexican currency; that there should also be in the safe P304.58 which the accused had collected as deputy provincial treasurer; and that, since April, 1905, until he was suspended from office, he failed to render accounts, a fact which constitutes by itself sufficient evidence to indicate the abnormal position he was in while performing his duties, as was afterwards shown.

Against the allegation of the accused, that he had delivered to Eduardo Roda, a deputy of the provincial treasurer, the sum of P2,266.55, packed in two boxes and a keg, according to the receipt signed by the latter on the 21st of August, 1905, offered in evidence as Exhibit 4, satisfactory proof is present in the case that the money contained in the said boxes and keg was not counted at the time when the same was delivered by Tabotabo to Deputy Roda, and that the boxes and keg were nailed down and tied up when received, and that the word *aproximadamente* written in the receipt, owing undoubtedly to the fact that the accused stated that the packages contained the amount, and because it was not counted at the time of the delivery; that the boxes and keg were closed when they reached the office of the provincial treasurer; and that, upon the packages being opened and the money counted in the presence of several witnesses, the treasurer found that they only contained P1,640.60, and not the amount stated in the receipt; therefore, there was a shortage of P626.37, which can not be included in the accounts, nor be credited to the accused.

In view of the merits of the case and of the documents exhibited therein, it is not possible to admit the allegation of Tabotabo that the sum of P57, paid by his predecessor in office as traveling expenses of councilors, should be deducted from his account, inasmuch as the defendant is only liable for the sum received from his said predecessor, and it is to be presumed that the said sum was not included in the inventory marked as "Exhibit B," which was made out at the time when he took charge of his office. If, as affirmed by the accused, he paid the said amount, it is none the less true that by his orders an entry was made in the cashbook in order that the same might be deducted from his account.

With reference to the sum of P72.70 which the accused paid Deputy Stevenson on a certain occasion, as the vale that the latter gave him has not been offered in evidence, it is to be presumed that the amount was refunded to him and the vale, as attested by Stevenson, recovered by the latter; therefore, no reason exists for deducting the amount from the sum which he has misappropriated.

The existence of the crime of misappropriation has therefore been unquestionably established, as well as the guilt of the accused, and the doctrine is laid down in the case of the United States vs. Melencio,[1] that (p. 338) :

"Under article 392 of the Penal Code, it is sufficient to prove that the defendant received in his possession certain sums of money, that he did not deliver them and did not have them, and could give no reasonable

excuse for the disappearance of the same."

Counsel for the defendant, while recognizing the short age or absence of the money, limits himself to discussing the extent of the misappropriation; but he should not be ignorant of the fact that it is not sufficient to allege that it was less than the amount stated in the complaint; it is indispensable to prove this in a satisfactory manner.

Assuming that the surety company has in fact paid the sum misappropriated, this payment by the bonding company, made by virtue of its obligation to guarantee the liability of their client, does not exempt the latter from the punishment provided for by paragraph 2 of the aforementioned article 392, which prescribes:

"If restitution be not made, the penalties prescribed in article 390 shall be imposed on him."

For the effects of the law, it is necessary that the restitution be made by the embezzler himself, or by a third person because of action taken by himself, for by so acting it would appear that he did not have the criminal intent to steal and appropriate to himself the money misappropriated, but that he simply misapplied it with the intention to make restitution thereof as soon as possible. Neither by his own acts, nor by any effort on his part has the accused made restitution of the amount embezzled by him; therefore, he has incurred the penalty imposed by paragraph 3 of article 390 of the Penal Code; and, considering that in the commission of the crime no mitigating nor aggravating circumstance is present, the penalty should be imposed on him in the medium degree.

By operation of the law, the surety company that paid the sum misappropriated has acquired the right to be reimbursed, by way of indemnity, out of whatever sum the embezzler may pay.

In view of the foregoing, it is our opinion that Ismael Tabotabo should be sentenced, and he is hereby sentenced, to the penalty of eight years and one day of presidio mayor, to suffer the accessory penalties of article 57 of the code, to pay as indemnity to the surety company the sum of P3,614.23, with legal interest thereon, to be disqualified from public office, right of suffrage, active and passive, profession or occupation during twelve years, and to pay the costs of both instances, without subsidiary imprisonment under article 51 of the code, and the judgment appealed from is hereby reversed in so far as it does not agree with this decision. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

[1] 4 Phil. Rep., 331.

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.