

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. PEDRO TOGONON, DEFENDANT AND APPELLEE.*G.R. No. 4676. January 19, 1909*

Ponente: ARELLANO, C.J.

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A criminal complaint was filed against the accused for the reason that in the months of October, November, and December, 1907, being at that time municipal president of the town of Corella, Province of Cebu, he received from W. Jayne Fosbury, superintendent of schools, the sum of P60 as rent for a house owned by the municipality which the said teacher had occupied during the quarter ending December, 1907. That by reason of his office, it was the duty of the said Pedro Togonon to take charge of the amount received by him as rental from municipal property and to deposit the same, as required by law, at the treasury of the said municipality, but that he willfully, unlawfully and feloniously refused and failed to account for it, and applied said amount to his own use. All contrary to law.

The complaint was demurred to on the ground that the facts alleged therein did not constitute a violation of Act No. 1740. The Court of First Instance of Cebu, before whom the complaint was presented, sustained the demurrer on the 24th of March, 1908; thereupon the fiscal appealed to this court. The appeal having been heard it appears:

That the trial court sustained the demurrer and ordered the complaint dismissed for the following reasons: That Act No. 1740 punishes persons who misappropriate funds that are in their hands by reason of their office; but that the court was not aware of any law by which it may be considered that the money received by the accused president, in the manner in which it was received, passed into his hands by reason of his office. That in a demurrer, nothing but the facts contained in the complaint are admitted, and that the allegation made therein that the said funds which passed into the possession of the accused under the circumstances set forth, were in his hands by reason of his office, is not a fact stated in the complaint, but the expression of an opinion of the fiscal, a thing which is not admitted by the demurrer in question. That the facts set forth in the complaint may serve as the basis for the presentation of a complaint under the Penal Code in force, but it is not for the court to determine which of its provisions are applicable to the case. For this reason the fiscal was ordered to file a complaint in accordance with the law and the facts set forth.

In this instance the fiscal alleges that the complaint presented is in accordance with the law and the facts set forth, and cites section 16i Act No. 1740 which reads:

"Any bonded officer or employee of the Insular Government, or of any provincial or municipal government, or of the city of Manila, and any other person who, having charge, by reason of his office or employment, of Insular, provincial or municipal funds or property, or of funds or property of the city of Manila, or of trust or other funds by law required to be kept or deposited by or with such officer, employee, or other person, or by or with any public office, treasury, or other depository, fails or refuses to account for the same, or makes personal use of such funds or property, or of any part thereof, or abstracts or misappropriates the same, or any part thereof, or is guilty of any malversation with reference to such funds or property, or through his abandonment,

fault, or negligence permits any other person to abstract, misappropriate, or make personal use of the same, shall, upon conviction, be punished by imprisonment for not less than two months nor more than ten years and, in the discretion of the court, by a fine of not more than the amount of such funds and the value of such property,"

and the question is, he says, whether the words "any other person who, having charge, by reason of his office or employment, of municipal funds, or of other funds by law required to be kept or deposited by or with such officer, employee, or other person who refuses or fails to account for the same, or makes personal use of such funds or property," may be applied to a municipal president who, as such president, receives the rentals of property owned by the municipality and fails or refuses to account for, or makes personal use, of the said funds. And his opinion is that they may be so applied.

There is no question but that they are applicable in the same manner and for the same reason that the provisions of articles 390, 391, and 392 of the Penal Code, which the said Act of the Philippine Commission has amended and repealed, would apply. The purpose of the Act was the formal repeal of article 392 as to the distinctions and subdistinctions stated in said article, and maintains the leading idea of the crime, distinguishing it from that of estafa committed by a private person. It being charged in the complaint that the accused, by reason of his office as municipal president, received money that belonged to and was owing the municipality, it is properly alleged that he received and kept it in his possession by reason of his office. And if, as averred in the complaint, he made personal use of such money without accounting for or delivering it as provided by law, it follows that the unlawful personal use made of the money so received comes within the meaning of, and the penalty imposed for, the crime of malversation defined in section 1 of Act No. 1740, the same as in articles 390, 391, and 392 of the Penal Code.

Therefore, the order of the court below sustaining the demurrer is hereby reversed, the dismissal of the complaint is set aside, and the trial shall proceed in accordance with the law. No special ruling is made as to costs.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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