

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. T. E. SANTOS,
DEFENDANT AND APPELLANT.***G.R. No. 4758. February 16, 1909*

Ponente: TORRES, J.

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On July 30, 1907, J. P. Fitzgerald, deputy of the provincial treasurer, went to the office of the accused, who was at the time the municipal treasurer of Polo and deputy of the provincial treasurer of Bulacan at the same town, to inspect the accounts of the municipal treasury. The accused, Teodoro E. Santos, on being asked whether he had on hand all the money in his charge, replied in the affirmative, saying that the sum of P300 belonging to said treasury was in the hands of Pio Valenzuela for the purposes of exchange and taking up money of the old coinage. The said money was at once recovered from Valenzuela's possession by order of the accused, through one Procopio Espiritu.

After checking the accounts of the municipal treasury, it was noticed that there was a shortage of P52.93, which amount the treasurer stated was in the hands of Gualberto Santos, also for exchange, less P2.93, which difference he supposed was due to some error in the accounts, the balance of P50 having been refunded on the following day, the 31st. When the defendant's accounts were carefully examined a few days afterwards, on checking the said accounts with the money found in the safe, including the above sums of P300 and P50, there still appeared to be a shortage of P15.85.

It was proven that, prior to the dates above referred to, the district auditor, Mr. Richmond, on being informed that the accused had delivered P600 to Pio Valenzuela to be exchanged for Philippine coins of the old issue, advised the accused through Vicente Tagle, that he should never withdraw funds from the municipal safe under any consideration; the accused was also advised by the provincial treasurer, Mr. Goodhart, who likewise learned that the accused had delivered \$40, gold, belonging to the municipality, to a friend of his, that, should he do so again, he would be taken before the courts. The accused alleged that, in compliance with circular orders received from his superiors he was endeavoring to collect a larger amount of coins of the old issue by means of exchange.

A complaint having been filed for the above reasons and the proper proceedings instituted, the trial court, on January 28, 1908, sentenced the accused Teodoro E. Santos to the penalty of fourteen months of prison correccional, to suspension for three years from all public office, right of suffrage, profession or office, to pay a fine of 10 per cent of the amount of P365.85, to refund P15.85 to the treasury, and to pay the costs. From this judgment the accused has appealed, his motion for a new trial having been denied.

It does not satisfactorily appear from the record that funds belonging to the municipal treasury of the pueblo of Polo, Bulacan, have been misappropriated or abstracted to the prejudice of the public interests. The sum of ₱350 was taken from the said treasury to be exchanged for coins of the old issue, the collection of which had been ordered in compliance with the purpose of the administration, as shown by the evidence.

Therefore the accused disposed of the money, not for the purpose of benefiting himself or applying the same to

other than its proper object, but with the lawful intent to facilitate the execution of an administrative measure; that is, the withdrawal of coins of the old issue, it being immaterial whether the withdrawal was effected by means of coins of the new issue or by notes.

But disregarding the said P350, the accused Santos, has been charged with the misappropriation of the sum of P15.85, and the evidence offered in the case is not conclusive or satisfactory as to such misappropriation.

The examination of the safe and accounts of the funds intrusted to the accused took place in the latter's presence, on July 30, a shortage of P352.93 was found, and, deducting from the said amount the above-mentioned P350, the difference of P2.93 was charged to some error in accounting; but, on making a new revision of accounts a few days later, in the absence of the accused treasurer, a larger shortage appeared—that is, the sum of P15.85. The accused having been informed of this, requested the deputy of the provincial treasurer, Mr. Fitzgerald, to again check up the accounts in his presence; this the deputy refused to do, notwithstanding the former's statement that he was ready to refund any shortage that might appear. It is further set forth by the accused that the provincial treasury was still indebted to him for his salary of July, i. e., P26.66.

Under such circumstances, this court can only accept the report of July 30, showing the result of the examination and revision of accounts made in the presence of the accused; this evidenced a shortage of P352.93, which amount the responsible treasurer accounted for; but the report of August 5 can not be accepted for the reason that the accused was not present when the accounts to which it refers were inspected, nor does it appear that he agreed to the result; the previous liquidation referred to in the said report of July 30, has not been shown to be incorrect, so that the later report of August 5 could be admitted against the former.

Therefore, as the evidence in support of the charges made by the prosecution does not prove the guilt of the accused beyond a reasonable doubt, he must be acquitted, inasmuch as the presumption of innocence exists in his favor unless the contrary is duly proven.

For the reasons above set forth, we are of the opinion that the accused Teodoro E. Santos should be and he is hereby acquitted, with costs de oficio.

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

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