

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RAFAEL B. CATOLICO, DEFENDANT AND APPELLANT.***G.R. No. 6486. March 02, 1911*

Ponente: MORELAND, J.

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This is an appeal from a judgment of the Court of First Instance of the Province of Cagayan, Hon. Charles A. Low presiding, convicting the defendant of the crime of malversation of public funds and sentencing him to two months' imprisonment, to perpetual disqualification to hold public office or public employment of any kind, and to the payment of the costs.

It appears from the proofs of the prosecution that the accused as justice of the peace of Baggao, Province of Cagayan, on the 2d day of October, 1909, had before him sixteen separate civil cases commenced by Juan Canillas against sixteen distinct individuals, each one for damages resulting from a breach of contract; that said cases were all decided by the appellant in favor of the plaintiff; that each one of the defendants in said cases appealed from the decision of the justice of the peace and deposited P16 as required by law, at the same time giving a bond of P50, each one of which was approved by the court; that on the 12th day of said month the plaintiff in said cases presented a writing to the appellant as said justice of the peace, alleging that the sureties on the said bonds were insolvent and later demonstrated this to the satisfaction of the appellant; that thereupon the latter ordered the cancellation of the said bonds and, in the same order, required each of the appellants to file another bond within fifteen days; that, inasmuch as none of the appellants in said causes presented new bonds within the time fixed, the plaintiff in said causes applied to the appellant, as said court, for an order declaring final the judgment entered in each of the said sixteen cases and commanding the execution of the same, at the same time asking that the sums deposited by the defendants in said actions be attached (so called in the record) and delivered to him in satisfaction of said judgments; that the accused acceded to the petition of the plaintiff, ordered said sums attached and delivered same to the plaintiff, at the same time requiring of the plaintiff a bond of T50 for each attachment, conditioned that he would respond for the damages which should result from such attachment.

After this attachment (so called) the attorney for the defendants in the said sixteen cases presented a complaint against the appellant to the Court of First Instance, by virtue of which said court ordered that the plaintiff, Juan Canillas, deliver to the clerk of the Court of First Instance the sums deposited by the defendants in said actions. Canillas obeyed the order of the court and made the delivery as required.

Upon these facts the Acting Attorney-General recommends the acquittal of the accused. We are in entire accord with that recommendation. The case made against the appellant lacks many of the essential elements required by law to be present in the crime of malversation of public funds. The accused did not convert the money to his own use or to the use of any other person; neither did he feloniously permit anybody else to convert it. Everything he did was done in good faith under the belief that he was acting judicially and correctly. The fact that he ordered the sums, deposited in his hands by the defendants - appellants in the sixteen actions referred to, attached for the benefit of the plaintiff in those actions, after the appeals had been dismissed and the judgments in his court had

become final, and that he delivered the said sums to the plaintiff in satisfaction of the judgment which he held in those cases, can not be considered an appropriation or a taking of said sums within the meaning of Act No. 1740. He believed that, as presiding officer of the court of justice of the peace, he had a perfect right under the law to cancel the bonds when it was clearly shown to him that the sureties thereon were insolvent, to require the filing of new undertakings, giving the parties ample time within which to do so, to dismiss the appeals in case said undertakings were not filed, and to declare the judgment final. He believed that after said appeals had been dismissed and said judgment had become final, the sums deposited were subject to be applied in payment of the judgments in the actions in which said sums had been deposited and that he was acting judicially and legally in making such applications.

To constitute a crime, the act must, except in certain crimes made such by statute, be accompanied by a criminal intent, or by such negligence or indifference to duty or to consequences, as, in law, is equivalent to criminal intent. The maxim is, *actus non facit reum, nisi mens rea* - a crime is not committed if the mind of the person performing the act complained of be innocent.

In the case at bar the appellant was engaged in exercising the functions of a court of justice of the peace. He had jurisdiction of the actions before him. He had a right and it was his duty to require the payment by each appellant of P16, as well as the giving of a proper undertaking with solvent sureties. While, in dismissing the appeals and delivering the P256 to the plaintiff in said cases, he may have exceeded his authority as such court and passed beyond the limits of his jurisdiction and power, a question we do not now discuss or decide, it was, so far as appears from the record, at most a pure mistake of judgment, an error of the mind operating upon a state of facts. Giving the act complained of the signification most detrimental to the appellant, it, nevertheless, was simply the result of the erroneous exercise of the judicial function, and not an intention to deprive any person of his property feloniously. His act had back of it the purpose to do justice to litigants and not to embezzle property. He acted that honest debts might be paid to those to whom they were legally and justly due, and not to enrich himself or another by criminal misappropriation. It was an error committed by a court, not an act done by a criminal-minded man. It was a mistake, not a crime.

It is true that a presumption of criminal intention may arise from proof of the commission of a criminal act; and the general rule is that, if it is proved that the accused committed the criminal act charged, it will be presumed that the act was done with criminal intention, and that it is for the accused to rebut this presumption. But it must be borne in mind that the act from which such presumption springs must be a criminal act. In the case before us the act was not criminal. It may have been an error; it may have been wrong and illegal in the sense that it would have been declared erroneous and set aside on appeal or other proceeding in the superior court. It may well be that his conduct was arbitrary to a high degree, to such a degree in fact as properly to subject him to reprimand or even suspension or removal from office. But, from the facts of record, it was not criminal. As a necessary result no presumption of criminal intention arises from the act.

Neither can the presumption of a criminal intention arise from the act complained of, even though it be admitted that the crime, if any, is that of malversation of public funds as defined, and penalized in Act No. 1740. It is true that that Act provides that "In all prosecutions for violations of the preceding section, the absence of any of the public funds or property of which any person described in said section has charge, and any failure or inability of such person to produce all the funds and property properly in his charge on the demand of any officer authorized to examine or inspect such person, office, treasury, or depositary shall be deemed to be *prima facie* evidence that such missing funds or property have been put to personal uses or used for personal ends by such person within the meaning of the preceding section." Nevertheless, that presumption is a rebuttable one and constitutes only a *prima facie* case against the person accused. If he present evidence showing that, in fact, he has not put said funds or

property to personal uses, then that presumption is at an end and the prima facie case destroyed. In the case at bar it was unnecessary for the accused to offer any such evidence, for the reason that the people's own pleading alleged, and its own proofs presented, along with the criminal charge, facts which showed, of themselves, that said money had not been put to personal uses or used for personal ends. In other words, the prosecution demonstrated, both by the allegations in its information filed against the accused and by its proofs on the trial, that the absence of the funds in question was not due to the personal use thereof by the accused, thus affirmatively and completely negating the presumption which, under the act quoted, arises from the absence of the funds. The presumption was never born. It never existed. The facts which were presented for the purpose of creating such presumption were accompanied by other facts which absolutely prevented its creation.

On the other hand, if it be admitted that the crime, if, any, is that of estafa, as defined in paragraph 5 of article 535 of the Penal Code, then the presumption just referred to does not arise. Mere absence of the funds is not sufficient proof of conversion. Neither is the mere failure of the accused to turn over the funds at any given time sufficient to make even a prima facie case. (U. S. vs. Morales, 15 Phil. Rep.; 238; U. S. vs. Dominguez, 2 Phil. Hep., 580.) Conversion must be affirmatively proved, either by direct evidence or by the production of facts from which conversion necessarily follows. (U. S. vs. Morales, supra.)

The judgment of conviction is reversed and the defendant ordered discharged from custody forthwith.

Arellano, C. J., Mapa and Trent, JJ., concur.

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### **CONCURRING**

**CARSON, J.,**

I am strongly inclined to doubt the bona fides of the defendant in the transactions herein set out, but in the absence of proof beyond a reasonable doubt upon this point I concur in the judgment of acquittal of the crime charged in the information.

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