

47 Phil. 945

[G.R. No. 19676. February 07, 1923]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
GERARDO AGNIS, DEFENDANT AND APPELLANT.**

D E C I S I O N

ROMUALDEZ, J.:

While the accused was on May 9, 1921, discharging the function of his office as postmaster of the town of Dipolog, Zamboanga, a C.O.D. package arrived at that post office from the "Little Leather Library" of New York, addressed to R. Vic. Oliva. The accused notified the sendee several times, but the latter could not make the required payment in accordance with the nature of the correspondence, and asked him to advance the amount and to retain it until he could reimburse him. The accused retained the package without paying for it, and about July 28th of that year, he opened the package which proved to contain printed pamphlets which he carried to his house to show them to his sister.

At the inspection of that office on the 30th day of that month of July, the officer who made the inspection, Eugenio de Mesa, learned that there was such correspondence in that post-office, but that the package was not in the safe where it should have been kept. Asked as to the whereabouts of the package, the defendant brought it to the office by order of the inspector, saying that he had carried it to his house to show to his sister the pamphlets contained therein. The rules of the post-office as to correspondence of such a nature are to the effect that if a C.O.D. matter is not claimed and paid for by the sendee within sixty days from receipt, it must be returned to the sender.

If the pamphlets in question can be considered as the documents or papers contemplated in article 360 of the Penal Code, the application to the case now before us of this legal provision would be obvious. This court in the case of *United States vs. Orera* (11 Phil., 596), denned the terms "documents" or "papers" employed in said article 360 of the Penal Code, as: " 'A deed, instrument or other duly authorized paper by which something is proved,

evidenced or set forth,' * * * 'every deed or instrument executed by a private person, without the intervention of a public notary or of other person legally authorized, by which document some disposition or agreement is proved, evidenced or set forth,' * * *."

The pamphlets in question cannot be said to evidence a fact, agreement or disposition. They are rather merchandise as any other article usually sent by C. O. D. mail. For this reason we think that the act complained of does not come within the sanction of said article 360 of the Penal Code.

Neither is section 1952 of the Administrative Code, in connection with 2757, subsection (e), of said Code applicable to it, nor is article 362 of the Penal Code, because it does not appear from the evidence that the package in question was closed; on the contrary it appears that it could be opened on one end.

Nor can the act complained of be held to constitute theft since it is not alleged in the information, nor was it proven, that the accused took the package with intent of gain.

These are in substance the remarks of the Attorney-General, which we find correct, wherefore said officer recommends the dismissal of the case and the acquittal of the defendant.

We find this petition to be well grounded, and the judgment appealed from is hereby reversed and the appellant acquitted with the costs *de officio*. So ordered.

Araullo, C. J., Street, Malcolm, Avancena, Villamor, Ostrand, and Johns, JJ., concur.