

6 Phil. 349

[G.R. No. 2415. August 07, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JAMES W. WALSH, JR.,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TRACEY, J.:

The defendant was charged under article 390 of the Penal Code with embezzlement of public property to the amount of P7,000, Philippine currency, which had come into his hands as Constabulary supply officer. He was convicted in the Court of First Instance of Masbate of the misappropriation of commissary stores and quartermaster supplies of the value of P4,055.36, Philippine currency, and sentenced to imprisonment (*prision mayor*) for ten years, with costs. The evidence fully supports the conclusions of the trial judge as to the misappropriation of the property, its character, and value.

On the preceding day, in the same court, the defendant had been tried and convicted and was, on the date of the trial therein, sentenced to ten years of *presidio mayor* for the embezzlement of Government funds while holding office as such supply officer. The dates covered by both charges and the witnesses heard were the same; both complaints were made under the same article of the code, the only difference being that in the first case the property was specified to be money and in the second stores and supplies.

We are of opinion that in these two cases but one crime was charged, for which he could not be twice put in jeopardy. The offense under article 390 can not be divided into as many crimes as there are public articles or classes of articles unaccounted for by the accused official. In this respect it differs from successive thefts of distinct articles. The defendant has been already tried and punished for this crime. He asserted this defense in the only way at that time available, in objecting to testimony and in his motion for a new trial, based upon copies of the complaint and sentence in the first case.

This judgment proceeds solely upon the ground that the defendant has already been tried and convicted of this offense.

The judgment of the lower court is reversed and the accused is ordered discharged at the expiration of the term of his first sentence, but without prejudice to any right that the Government may have to proceed civilly against him or his sureties, with costs *de officio*.

At the expiration of ten days judgment should be entered in accordance with this decision and the case remanded to the court below for execution of said judgment. So ordered.

Arellano, C. J., Torres, Mapa, and Willard, JJ., concur.
