

[G.R. No. 2717. April 10, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELICIANO EJERCITO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

It was proven at the trial of this case that the defendant, Feliciano Ejercito, was the duly qualified and acting municipal treasurer of the town of Irosin, Province of Sorsogon, from April 15 to August 11, 1904, and that upon an examination of his books and accounts by the representatives of the provincial board he was found to be short 1,167.07 pesos.

It seemed at first that the amount of the shortage was 2,500 pesos but the defendant having satisfactorily accounted for certain items of disbursements, the said amount of 2,500 pesos was reduced, upon the completion of the examination, September 18, 1904, to 1,167.07 pesos. This latter sum included 253.45 pesos disbursed by the accused for payments which were subsequently disallowed by the provincial treasurer on the ground that they were illegal. On October 11, 1904, the provincial fiscal filed a complaint charging the defendant, Feliciano Ejercito, with the crime of embezzlement of public funds, alleging that the said defendant had willfully and maliciously taken from the municipal funds and applied to his own use the sum of 1,167.07 pesos in violation of the statute in such cases made and provided.

The case having been tried upon the said complaint, the court below, in a final judgment made and entered April 24, 1905, sentenced the accused to three years six months and twenty-one days' imprisonment (*presidio correccional*) and costs, and in case of insolvency to suffer subsidiary imprisonment, the same not to exceed one-third of the principal penalty, with the accessories prescribed in article 58 of the Penal Code, etc. From this judgment the defendant appealed.

During the trial and before the rendition of final judgment the accused paid into the provincial treasury of Sorsogon the sum of 1,167.07 pesos, as per receipt dated April 15 appearing on page 116 of the record. On account of the embezzlement of the said funds by the accused, some of the school and other provincial officials were unable to receive their salaries for several months, to the detriment and hindrance of the public service and to the prejudice of the said officials.

The acts committed by the accused constitute the crime of embezzlement of public funds as, defined in article 392, paragraph 1, of the Penal Code. The defendant as municipal treasurer took at least the sum of 913.62 pesos—that is to say, the balance due after the sum of 253.45 pesos is deducted from the amount stated in the complaint—and applied the same to his own use, to the prejudice and hindrance of the public service. There is no evidence that the defendant took the money with the intention of retaining the same indefinitely. After the examination of his accounts the accused became convinced of his guilt and refunded the sum of 1,167.07 pesos referred to in the complaint, which said sum included the 253.45 pesos unduly paid out by the accused and disallowed by the provincial treasurer as illegal.

In a decision rendered by this court in the case of the United States vs. Francisco J. Reyes,^[1] No. 2969, for embezzlement, it was said:

“Paragraph 2 of article 392 of the Penal Code provides that if restitution of the funds embezzled be not made, the defendant shall, upon conviction, be punished with the penalties provided in article 390, but does not fix the time within which the restitution should be made. Inasmuch as the liability of a defendant in such cases can not be determined until after the examination of his accounts has been fully completed, it would seem evident that the funds embezzled may be refunded during the trial and as soon as the exact extent of his liability is ascertained. It is during the course of the proceedings that the crime is investigated and established, and in a prosecution for embezzlement the amount embezzled and the guilt of the defendant are the two main things to be ascertained.

“Courts in rendering judgment in cases of embezzlement, where the defendant has diverted (*distraindo*) the funds entrusted to him, shall expressly find whether or not the amount embezzled was actually returned. If it appears that restitution was made during the trial or prior thereto, this fact shall be considered in favor of the accused, provided such restitution took place before the rendition of final

judgment. The law does not prescribe the time within which the funds diverted should be returned.”

The principles contained in the decision in that case are equally applicable to the case at bar. The two cases are very similar, with the exception that here we have to consider against the accused the fact that detriment and hindrance to the public service resulted from the commission of the offense.

This case is governed by the provisions of article 392 and not by article 390 of the Penal Code. The amount embezzled was refunded before the rendition of final judgment in the court below.

The defendant pleaded not guilty. Pie admitted, however, the misappropriation of the funds referred to in the complaint but alleged that he had lost vouchers amounting to 913.62 pesos. When required by the examiner to return the missing funds he stated that he would do so upon the completion of the examination then being conducted. He did not say how many vouchers had been lost and failed to give the names of the persons in whose favor they were made. He did not explain the circumstances under which they were lost.

We think that the guilt of the defendant has been sufficiently established. The amount embezzled should be reduced, however, to 913.62 pesos, thus giving the accused credit for the 253.45 pesos disbursed by him for unauthorized payments which were subsequently disallowed by the provincial treasurer. It does not appear that the defendant made these illegal payments knowingly and with the criminal intent of defrauding the Government. The defendant can not be held criminally responsible for the embezzlement of this latter amount. He is, however, civilly liable for the money unduly paid by him. It should be stated that the refund made by him to the Government included the said sum of 253.45 pesos.

No extenuating or aggravating circumstances having attended the commission of the crime, the penalty prescribed by law should be imposed in its medium degree.

The judgment appealed from should be reversed and the defendant, Feliciano Ejercito, former municipal treasurer of Irosin, is hereby sentenced to temporary special disqualification from holding any public office for a period of eight years and one day from the date hereof, and from exercising the right of suffrage, active and passive, profession or trade. He is further sentenced to pay a fine of 228 pesos, *centimos* and 4 *octavos* (or the equivalent thereof in Philippine currency), equal to 25 per cent of the amount embezzled,

and to pay the costs incurred in both instances. After the expiration of ten days from the date of final judgment let the case be returned to the court below for action in accordance herewith. So ordered.

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

^[1] Page 40, supra.
