

4 Phil. 627

[G.R. No. 2097. July 29, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PAUL B. WEISS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

The defendant was charged with the crime of embezzlement of public funds in the sum of P1,372.75. He was tried by the Court of First Instance of the Province of Sorsogon, found guilty of said offense, sentenced to be imprisoned for the period of ten years and one day of *presidio mayor* under paragraph 3 of article 390 of the Penal Code, to reimburse the Province of Sorsogon in the sum of P1,372.75, and to pay the costs. He was further sentenced to temporary absolute disqualification for the period of nine years and one day. From this sentence the defendant appealed to this court.

An examination of the evidence adduced during the trial of said cause demonstrates the following facts:

1. That the accused was in the month of November, 1903, a deputy treasurer of the Province of Sorsogon, and had been holding said office for some time prior thereto, and continued to hold the same until the 7th day of March, 1904, when he was suspended.
2. That the accused as such deputy treasurer had, in the months of November and December, 1903, collected various sums of money for and on behalf of the Province of Sorsogon.
3. That

he had in the months of November and December, 1903, taken and used such public funds so collected and applied them to his private purposes.

4. That on or about the 12th of the month of February, 1904, an examiner from the office of the Insular Treasurer arrived at the pueblo of Sorsogon for the purpose of examining the accounts of the provincial treasurer; that the said examiner proceeded at once to count the money in the hands of the said provincial treasurer; that the accused was present in the office while the money was so being counted; that said examiner found in the treasury money, checks, and papers of the value of P44,479.25 and that the books of the treasurer demonstrated that he should have had on hand the sum of P44,332.09 and 159.45 pesos, Spanish currency; that the 159.45 pesos, Spanish money, was of the value of P142.36, which, added to the sum of P44,332.09, would make the sum of P44,474.45, which would show that the actual cash on hand—that is to say, the difference between P44,479.25 and what the books showed he ought to have had on hand, or P44,474.45—is; P4.80. In other words, according to the statement of the examiner, the cash on hand exceeded the amount which the books showed he ought to have had on hand in the sum of P4.80. (Folio 34.)
5. The same examiner examined the books and accounts of the said treasurer again on the 7th day of March, 1904. According to this latter examination the actual cash on hand on that date was the sum of 553 pesos, Mexican, 5,787.50 pesos, Spanish money, and P58,273.05, and the books show that he ought to have had on hand the sum of P58,293.04 and 6,340.52 pesos, Spanish currency. The examiner said that the actual cash on hand was \$40 less than the amount which the books showed that he ought to have had on hand, and further stated that this deficit of \$40 was satisfactorily explained to him. (Folio 35.)
6. That the said examiner made a further examination of the accounts of the said provincial treasurer of moneys collected in various municipalities of said province. The result of said examination is found in Exhibit H attached to the record in said cause, which exhibit

shows that the defendant had collected in various pueblos of the Province of Sorsogon the sum of \$159.65, gold, and 1,211.47 pesos, Mexican, or the total sum of P1,372.75. (Folio 38.) The said examiner found that this sum had been collected by the defendant who had issued receipts for the same, and which sum the said defendant had not turned over to the treasurer of the said province.

7. That during the time the said examiner was examining the accounts of the said treasurer the said defendant desired to know of the said examiner the amount of the said deficit, and then and there offered to pay to the said examiner whatever sum was found to be short in his accounts. (Polios 46, 76, and 77.)
8. That the examiner never indicated to the defendant the exact amount of the deficit.
9. That on the 14th day of April, 1904, and after the commencement of the trial against him, the defendant paid into court the sum of P1,372.75, the amount which the Government claimed that the said accused had embezzled.
10. That the defendant had collected the said sum of P1,372.75 some two months prior to the said examinations of the accounts of the said provincial treasurer, and must have known that this sum had not been delivered to the treasurer.
11. That the defendant failed to give the said examiner any information concerning the fact that he had collected this sum and had not delivered the same to the treasurer, even though he was present during the said examination.

The only circumstance that could give rise to suspicion as to the intention on the part of the accused to appropriate finally to himself the money received by him as deputy provincial treasurer is the fact contained in the last paragraph above. But this fact is not conclusive. It was even probable that after the inspection and counting of the cash on hand the accused would have returned the money to the treasurer, thus effecting the restitution of the money, as was actually done. This

being go, the record only shows the fact that the accused applied to his own use the money then in his possession. And inasmuch as no detriment or hindrance of the public service resulted from the commission of this crime, we hold that the same falls under the provisions of paragraph 3, section 392 of the Penal Code.

The aggravating circumstance of abuse of confidence appreciated by the court below should not be considered, this being inherent in the crime itself.

Therefore the sentence of the court below is hereby reversed, and the defendant is hereby sentenced to pay a fine of P343, such amount being more than 5 per cent and no more than 25 per cent of the sum misappropriated by the defendant. He is also sentenced to four years of suspension, and to pay the costs of both instances. So ordered.

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

Carson, J., reserves his opinion.

Willard, J., did not sit in this case.