

[G.R. No. 1358. October 23, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LORENZO DUUAN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

ARELLANO, C.J.:

The conclusions reached by the judge below are supported by the evidence. The court has properly decided that the defendant is guilty of malversation, and not of *estafa* or any other crime. His guilt consists in his misuse of public funds placed in his possession, as municipal president, for safe-keeping. The municipal treasurer testified that there was no safe in the municipality of Polangui, and the deputy provincial treasurer stated that he had been informed by the municipal treasurer that the money had been placed in the custody of the municipal president because he had the police at his disposal, and because it was dangerous to send specie to the provincial capital. The deputy also testified that it was the custom of the municipal treasurer to remit funds to the provincial treasury in care of the municipal president, and that it was a custom prevailing in the province for the presidents to take charge of money to be sent to the provincial treasury.

It is a legal doctrine, based upon the provisions of section 2, article 392, of the Penal Code, that the use by an officer for private purposes, of funds in his custody, is converted into or becomes equivalent to an embezzlement if the money so misapplied is not restored. Hence it follows that when, as in this case, the money has been restored, the offense committed is that of misapplication under article 392 and not the offense of embezzlement under article 390. The whole question is reduced to determining whether the misapplication did or did not cause an injury to the public service. The judge below reaches an affirmative conclusion upon this point, but it is well settled that "the contents and mutual relation of the paragraphs of article 392 (407 of the Spanish Code) in addition to the express terms of the first paragraph, require for the infliction of the penalties prescribed therein, evidence of the

existence of the characteristic circumstance, which must be fully proven and can not be presumed, that the service has suffered some irregularity by reason of the malversation—not the malversation itself, but some other detriment derived therefrom or some irregularity which is distinctly prejudicial to the good order, policy, and regular course of the public administration. As the judgment appealed in the case cited had drawn the conclusion of the existence of this circumstance without proof of facts upon this point, it was held that the court below had erred in misapplying section 3, paragraph 3, of the article cited.” (Judgment of the supreme court of Spain of March 20, 1884.)

Consequently, as the record contains no evidence tending to show that any injury of this kind has been suffered, we consider that the offense properly falls within article 392, but that paragraph 3 and not paragraph 1 of this article should be applied. The defendant, Lorenzo Duran, is therefore condemned to the penalty of two years and one day of suspension from office and to the payment of a fine of 301 pesos. Thus modified^ the judgment below is affirmed, with the costs of this instance to the defendant.

Torres, Cooper, Willard, Mapa, and McDonough, JJ., concur.
