

G.R. No. 202, September 21, 1901 THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CARLOS RASTROLLO, DEFENDANT AND APPELLANT.

DECISION

TORRES, J.:

In civil proceedings instituted to obtain a preventive attachment to secure a debt contracted by Carlos Rastrollo in favor of D. Emeterio Ruiz, 1,121 feet of hose, among other property belonging to said Rastrollo, was attached at the instance of Attorney Florencio Gonzalez on behalf of Bon Gerardo Urbina. The attached property remained in the possession of the debtor, Rastrollo, who, with the consent of the attorney for the plaintiff, sold the same to the Manila Fire Department. Rastrollo failed to deliver the proceeds of the sale, which took place late in March of this year, to the attorney for the plaintiff, and only deposited the same in the court on the 4th day of June of this year, the day following the filing of the complaint charging him with the crime of embezzlement (*estafa*).

If the acts of which the accused is charged constitute any crime whatever it would be that of malversation of property attached by judicial order the crime defined and punished in article 395 in connection with articles 390 and 392 of the Penal Code. The act could not be regarded as constituting *estafa* under paragraph 5 of article 535 of the Code, because the property alleged to have been misapplied was not the subject of a mere private bailment but of a judicial deposit. This gives the depositary a character equivalent to that of a public official, and a breach of his obligation is similar to the violation of the obligations imposed by public office.

However, as the accused, Rastrollo, in selling the said hose, acted with the knowledge and consent of the attorney for his creditor, since it is proved that the said attorney agreed with the depositary that the proceeds of the sale should be delivered to him, and inasmuch as there is no proof, on the other hand, that the depositary, Rastrollo, appropriated or applied the proceeds of the sale of the hose to his own use or that of others, but has deposited the same in court, although somewhat tardily, it is evident that the defendant has contracted no criminal liability. His act does not include all of the elements which constitute the crime of malversation, or of any other crime, and the irregularity noted in his conduct is chargeable to the attorney for the creditor who might have been prejudiced thereby.

In view of the foregoing considerations, which are completely in accord with the penal law and the conclusions and merits of the case, the accused, Don Carlos Rastrollo, should be acquitted and the judgment appealed from reversed with costs in both instances *de officio*. It is so ordered.

Arellano, C. J., Cooper, Willard, Mapa, and Ladd, JJ., concur.