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IN THE

Court of Appeals of Maryland

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CONTAINING CASES IN APRIL AND OCTOBER TERMS,
1890, AND JANUARY TERM, 1891.

REVISED AND ANNOTATED
BY
WM. H. PERKINS, JR.,
OF THE BALTIMORE BAR.

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cities. Manufacturers, builders, contractors, stockbrokers and many others are obliged from the very nature of their ordinary business to have bank facilities, equally with merchants. In *Porter v. White*, 39 Md. 613, the question was whether printers engaged in business in the City of Baltimore came within this class. The court decided that the managing partner of a firm of printers could borrow money, and endorse notes for the firm without showing express authority for that purpose from his copartner, and assigned as the reason, that "such authority would be implied from the existence of the partnership, and the nature of its business." The distinction between the powers of partners in trade and these partners in paving and grading seems to be very attenuated and unsubstantial; more especially, when we see that in the bond which they gave to the city to secure the performance of their paving contract, they described themselves as "trading under the firm of W. R. Weaver & Co." If I understand the opinion of the majority
44 of the court, the judgment *in this case is reversed because they are not a trading partnership.

Filed December 12th, 1890.

STATE OF MARYLAND *v.* STEVENSON ARCHER.

Decided July 1st, 1890.

STATE TREASURER; EMBEZZLEMENT. STATUTES. CONSTRUCTION; INTENTION; CRIMINAL LAW.

The intention of the Legislature must govern in the construction of all statutes. (*a*) p. 57

But if the language used is plain and unambiguous, the Legislature must be understood as meaning what they have expressly declared. p. 57

The Code, Art. 27, sec. 80, provides that "Any person holding office in this State, whether elected or appointed by the Governor, by the corporate authorities of Baltimore, or by any other authority legally authorized to make such appointments, who shall fraudulently embezzle or appropriate to his own use moneys, funds, or evidences of debt,

(*a*) As to the construction of statutes, see *Alexander v. Worthington*, 5 Md. 472, note (*d*).

which he is by law bound to pay over, account for, or deliver to the treasurer of this State, or to any other person by law authorized to receive the same, shall be guilty of a misdemeanor," etc. The title of the original Act was "An Act to punish the fraudulent embezzlement or appropriation of money, funds, or evidences of debt by persons elected to any office, or holding office under the Governor of this State * * * or under any other authority legally authorized to appoint to said offices." *Held:*

That under this section of the Code, the State treasurer could be indicted, and upon conviction punished for fraudulently embezzling or appropriating to his own use the money or funds of the State. pp. 58-60

Funds belonging to the State are held by him as treasurer, and when he ceases to be treasurer, whether by removal or otherwise, he is bound to pay over, account for, and deliver such funds to his successor in office, who is the person lawfully authorized to receive the same. Upon his failure to do so, his official bond would be liable in a civil action, and for the embezzlement of such funds by him while in office, the defendant in error would be criminally responsible. p. 59

He was bound to pay over, or deliver such funds to his successor in office, and the crime was complete when he embezzled or appropriated the same to his own use. The crime being complete, his subsequent removal in no manner affected his criminal responsibility. (*b*) p. 60

Penal statutes are to be fairly and reasonably construed according to the legislative intent, and courts will not, by a narrow and strained construction, exclude from their operation cases plainly within their scope and meaning. p. 57

The title of an Act may be considered if the body of the law is obscure or doubtful. (*c*) p. 61

Appeal as upon writ of error, from the Criminal Court of Baltimore.

*The opinion of the court, and the concurring opinion **45** of Chief Judge Alvey, furnish a full statement of the case.

The cause was argued before Alvey, C. J.; Robinson, Irving, Bryan, Fowler, McSherry, and Briscoe, JJ.

Charles G. Kerr, State's Attorney for Baltimore City, and *Wm. Pinkney Whyte, Attorney-General,* for the appellant.

Does sec. 80 of Art. 27 apply to the treasurer of the State?

(*b*) Cited in *Vansant v. State,* decided by the Court of Appeals at the Oct. Term, 1902 (Daily Record, Dec. 25th).

(*c*) Cited in *Henderson v. Md. Home Ins. Co.,* 90 Md. 52.

What are the rules, by which the proper construction of statutes is made?

Penal laws should not be so strictly construed as to defeat the obvious purpose of the Legislature; and though they are not to be extended by construction they should receive a rational interpretation. *House v. House,* 5 H. & J. 125; *Keller v. State,* 11 Md. 536; *Ruth v. State,* 20 Md. 441; *State v. Elborn,* 27 Md. 483.

And courts are bound to give effect to their plain and obvious meaning, and not to narrow the construction. *Germania v. State,* 7 Md. 1; *Parkinson v. State,* 14 Md. 195; *Wilson v. State, use of Davis,* 21 Md. 2; *State v. Leonard,* 6 Cold. (Tenn.) 310.

Statutes are to be construed so as to meet the legislative intent. That intention may appear from the occasion and necessity of the law. *Cearfoss v. State,* 42 Md. 403; *United States v. Lacher,* 134 U. S. 624.

It is perfectly manifest, from the title of the original Act, (1854, ch. 196,) that it was intended to apply to every public officer holding the funds, money or evidences of debt of the State. Recent events have given rise to doubts as to the construction of the body of the Act, and we are at liberty to look at the title for aid in its true interpretation. It was conceded, in the argument for the defendant in error in the court below, and will be doubtless admitted here, that if the words **46** of the title had *been followed in the enacting clause, that the case of the accused would be included within the terms of the Act. That both the title and the preamble of an Act are to be resorted to in case of doubt as to the effect of a statute and its true construction, has been decided by this court in a number of reported cases. *Canal Co. v. R. R. Co.,* 4 G. & J. 90; *Miller v. Cotton Factory,* 26 Md. 492; *Clark v. Baltimore,* 29 Md. 285; *Myer v. Car Co.,* 102 U. S. 11.

The Constitution of Maryland of 1851, which was in force when the Act of 1854, ch. 196 was passed, contained in sec. 17 of Art. 3, these words: "Every law enacted by the Legislature shall embrace but one subject, and that shall be described in the title." So that if there be doubts, a reference to the title is eminently proper in the case. And it seems to

us, that a reference to the language of the title puts the subject beyond the pale of disputation. These are the words:

"An Act to puish the fraudulent embezzlement or appropriation of money, funds or evidences of debt by persons elected to any office, or holding office under the Governor of this State, or under the corporate authorities of Baltimore, or under any other authority legally authorized to appoint to said offices."

Is it possible to exclude the treasurer of this State from the penalties of this Act, without interpolating after the words, "persons elected to any office," this language, "except the treasurer of the State?" Is this permissible in the construction of a penal statute? If the body of the Act was in *totidem verbis* with the title, could any sound argument be made, that the law did not include the State treasurer?

Taking, then, the title to aid the court in finding the legislative intent, does not common sense revolt at the proposition, that a law whose subject must be described *in the title **47** to meet the constitutional requirement, and whose title so describes the object to be the punishment of persons, elected to any office of this State, who shall fraudulently embezzle or appropriate "money, funds or evidences of debt," really was never intended to reach that officer, who holds more public money than any other public officer in the State?

Now, the well known definition of embezzlement is the fraudulent appropriation of money, etc., belonging to another, but which came lawfully into the hands of the embezzler; so this Act was intended to apply to every public officer, who has in his hands public money or securities, which he has received on account of the authority, under which he is appointed.

But are we driven to the title to resolve the doubts suggested as arising from the language of the enacting clause?

1. Any person, holding office in this State, whether elected or appointed by the Governor, or by any other authority legally authorized to make such appointments. (Here is a description of the person.)

2. Who shall fraudulently embezzle or appropriate to his own use, money, funds, or evidences of debt, which he is bound by law to pay over, account for, or deliver to the treasurer of

this State, or to any other person, by law authorized to receive the same. (This is the offense.)

3. Shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to the penitentiary for not less than eighteen months, nor more than ten years. (Here is the punishment.)

Was not Stevenson Archer, on the 2nd of January, 1890, "a person holding office in this State," "elected" on joint ballot by the two Houses of the Legislature? It not this a *concessum*? Did he not fraudulently embezzle, or misappropriate to his own use, money or evidences of debt belonging to
48 the State? The fact is *admitted by the demurrer; yet we are told that this language does not apply to him, but only to all other officers having financial relations with the State. How can this be? Is there "any person holding office in this State," except the treasurer, having in his possession "funds or evidences of debt" belonging to the State, which he is bound by law to account for or deliver to the treasurer of the State? Is not this very language descriptive of the treasurer, and of him alone? Clerks, registers, tax collectors and the like, hold the "money," of the State; but where is the "officer," save and except the treasurer, who holds "its evidences of debt," for which he is "accountable" to his successor in office, the only officer recognized under the Constitution as the hand of the State to receive its "bonds and evidences of debt," and the constituted custodian, under the law, of the bonds and certificates belonging to the State's Sinking Funds.

If this language does not refer to the treasurer, to whom does it refer?

But it was contended below that because the kind of "evidences of debt" are described as those "which he (the person holding office) is bound by law to pay over, account for, and deliver to the treasurer of the State," and that while holding office as treasurer the then incumbent was not bound to pay over and deliver them to himself as treaurer; therefore the law does not reach the accused "for he couldn't embezzle from himself." This argument, which was acquiesced in by the court below seems to us absolutely unsound.

To give the Act such a construction needs again the process

of interpolation, for it is necessary to insert the words *eo instanti* between "by law" and "to pay over, etc." So that the clause would read, "evidences of debt," which he is bound by law, *eo instanti*, to pay over, etc.: but the Act will bear no such construction.

*The accounting or delivery to the treasurer is not **49** limited to a time before the act of embezzlement took place. It was not an obligation to be performed in the present, but was an accounting or delivery *in futuro*, whenever by law the time arrived that the "person holding office" is to deliver the "evidences of debt" to the person entitled to receive them; as in case of this officer, whose term of office has expired, and whose successor has qualified; and the outgoing official is bound to deliver these evidences of debt to his successor, the then treasurer. The language used is descriptive of the trust. It refers to valuable effects lawfully in the hands of the embezzler, but impressed with the trust that, belonging to the State, he is to deliver them to the person legally authorized to receive them, to wit, his successor as treasurer, and at the time when his term of office has expired, and by law he is bound to give account of his stewardship.

The indictment charges that he was bound by law to deliver these "evidences of debt" of the State to his "successor in office," and this obligation is admitted by the demurrer; if, therefore, he has failed or refused to hand them over to his "successor in office," that act, unexplained, is conclusive evidence of the crime of embezzlement. Upon a statute similar in substance, this has been distinctly held to be good law. *State v. Leonard*, 6 Cold. 309; *State v. Cameron*, 3 Heisk. 85. See *People v. McKinney*, 10 Mich. 81.

Edgar H. Gans and *Bernard Carter*, for the appellee.

The question being one of statutory construction, it will be necessary first to state the rules by which the court should be governed in ascertaining the meaning of the Legislature.

RULE 1. When a penal statute is ambiguous, every reasonable doubt in its construction must be solved in *favor **50** of the traverser. Bishop on Stat. Crimes, secs. 194, 218; Schooner Enterprise, 1 Paine, 33-4; *Kent v. State*, 8 Blackf.

163; *People v. Howell*, 4 John. 301; *United States v. Wigglesworth*, 2 Story, 374.

RULE 2. The court has no power to correct a mistake or supply an omission, or put words into a statute in order to carry out the court's idea of policy or morals. *Maxwell v. State, ex rel. Baldwin*, 40 Md. 294; *Hawbecker v. Hawbecker*, 43 Md. 519, 522; *State v. Kirkley*, 29 Md. 103; *Alexander v. Worthington*, 5 Md. 485; *Collins v. Carman*, 5 Md. 529, 530; *Young v. Mackall*, 3 Md. Ch. 406; *Smith v. State*, 66 Md. 217.

RULE 3. No statutory offenses by construction. *Cearfoss v. State*, 42 Md. 407.

From these rules of statutory construction, and from the principles enunciated in the authorities referred to, it is evident that this court has nothing to do with the policy of allowing large offenders to escape when small ones are punished, nor with the question as to what the Legislature should have done when they were making this law. Nor should this court interpolate words into this statute for the purpose of having their ideas of justice carried out. Their only duty is to expound the law as they find it. The responsibility of any *causus omissus* or intentional exception of any person from the operation of the statute, rests with the Legislature. The simple question is, what has the Legislature said?

For the purpose of obtaining a clearer view of the statute, we shall eliminate all those parts of it which have nothing to do with this discussion, thus: The method of appointment, the character of the funds, *i. e.*, whether money, funds or evidences of debt, and the punishment, have nothing to do with question before the court. Nor has the phrase, "or to
51 any other person *by law authorized to receive the same," anything to do with this case; for it is evident that there is no person to whom the State treasurer is bound to pay over the State funds whilst he is State treasurer; and after his removal from office, he is bound by law to pay to no person but the State treasurer, his successor in office. This is the theory of the indictment; for it alleges in all the counts—"which he, the said Stevenson Archer, was bound to account for and deliver to Edwin H. Brown, treasurer of the State, to wit: The State of Maryland, duly appointed and qualified

his successor in office." There is therefore no other person except the treasurer to whom the appellee, by any possible construction, could be obliged to account.

The statute, with all the immaterial words eliminated, reads as follows:

Any person holding office in this State * * who shall fraudulently embezzle * * funds * * which he is by law bound to pay over, account for or deliver to the treasurer of this State * * shall be guilty, etc.

By the obvious and natural construction of this language the State treasurer is not embraced by its provisions.

1. The offense is to be committed by a person holding office; but it does not embrace all office holders. It expressly includes only those office holders who are obliged to pay over to the treasurer. Now the treasurer cannot be said to be obliged to pay over to himself; therefore he is not included by the terms of the statute.

2. The statute divides office holders into two classes: 1st. Those who are obliged to pay over, and 2nd. Those whose duty it is to receive. The offense can be committed only by those obliged to pay over. The treasurer is not one of those, for he is mentioned in the statute merely for the purpose of defining those who may embezzle. He cannot pay over to any one. The attempt to do so would be a violation of the duties of his office.

*3. It is impossible to conceive that the Legislature in- 52
tended to include the treasurer within the terms of this law. He is the most important financial officer of the government. To him are entrusted larger sums of money than to any other officer. If the Legislature had intended to include him within the terms of this penal law, would they not have done so, by plain and unambiguous words? Why is the expression — "who are bound to pay over to the treasurer" placed in the law? What meaning has it? Does it not evidently mean that a certain class of officers only are amenable to the punishment prescribed? And is not the treasurer mentioned in the law not as one of that class, but as being the person to whom that class must account? If the intention had been to include the treasurer, he would have been mentioned in express terms; or general language would have been used about

which there would have been no ambiguity. For example, if the law had read, "any public officer who shall embezzle any public funds intrusted to his charge, or of which he comes into possession by virtue of his office, shall be guilty, etc.," there would be no doubt of the liability of the State treasurer.

4. This view is strengthened by an examination of the title of the law. The title reads: "An Act to punish the fraudulent embezzlement or appropriation of money, funds or evidences of debt by persons elected to any office, or holding office under the Governor of this State, or under the corporate authorities of Baltimore, or under any other authority legally authorized to appoint to said office." Act 1854, ch. 196.

If the law had been drawn in accordance with the tenor of this title, the treasurer would have been included within its provisions. Yet with the attention of the Legislature specifically drawn to the treasurer, they depart from the title of the law and exclude the treasurer by making the law
53 applicable only to those who are *bound to pay over to him. The law is well settled that if there is any conflict between the enacting clause of a law and the title, the enacting clause is to prevail. The title may contract, but never expand the meaning of the enacting clause. *Lucas v. McBlair*, 12 G. & J. 17-18; *Hays v. Richardson*, 1 G. & J. 380; *Canal Co. v. R. R. Co.*, 4 G. & J. 91; *Davidson v. Clayland*, 1 H. & J. 546; *Kent v. Somervell*, 7 G. & J. 274.

5. It is suggested that the obligation of the traverser to pay over to his successor gratifies the terms of the law. This construction is manifestly erroneous, for the obligation to pay over is an obligation which must exist as one of the duties of the office. The statute is directed against persons holding office, and not against private persons. The obligation of the traverser to pay to his successor could not possibly arise until he had ceased to be a person holding office. This will more clearly appear by the following analysis of the statute: An analysis of the provisions of this statute makes it evident that the State treasurer was not intended to be included by its terms.

Every crime is made up of certain elements which must co-exist, or the crime cannot be said to have been committed.

Take the crimes of larceny and burglary as illustrations. In larceny there are four elements: 1. The taking and carrying away. 2. By trespass. 3. Of the personal goods of another. 4. With intent to deprive the owner permanently of his property therein.

The crime of larceny cannot be committed with any one of these elements lacking.

So as to burglary, which consists in: 1. A breaking and entering. 2. In the night time. 3. Into the dwelling house of another. 4. With intent to commit felony therein.

These illustration show that when a crime is analyzed, it is composed of certain elements, all of which *must co- **54** exist, or the crime is not committed. In the rough analysis of this statutory crime heretofore made, the appellee has attached the obligation to pay over, to the person, and not to the funds, and this is made the subject of special assignment of error.

The appellee thinks it makes no difference whether the obligation to pay is attached to the person, or impressed on the funds; and, in order to make this clear, will, in the following analysis, treat it as impressed on the fund. Analyzing the statute in this way, the statutory crime created by the Code, Art. 27, sec. 80, is composed of three elements: 1st. Any person holding office. 2nd. Who shall fraudulently embezzle. 3rd. Funds which he is obliged by law to pay over, account for or deliver to the treasurer of the State.

As we have seen, the crime cannot be committed unless these elements concur or co-exist. Two of these elements will not make the crime. Now, it is evident that these three elements, which constitute the crime, cannot co-exist in the case of the State treasurer. The crime must have some *punctum temporis*. If the crime is said to have been committed before the appellee was dismissed from office, then the third element of the crime is wanting, to wit: there were no funds which he was obliged to pay over, account for or deliver to the treasurer of the State, he being then the treasurer himself. If the crime is said to have been committed after he was discharged from office, then the first element of the crime is lacking, to wit: he was not then a person holding office. It is evident, therefore, that no *punctum temporis* can be sug-

gested at which the State treasurer, or one who has been State treasurer, can be brought within the analytic definition of this statutory crime. The State has exposed this difficulty in the very frame work of the indictment, which contains a legal contradiction; nor can any indictment be framed which
55 will *not contain the same contradiction. The indictment charges that on January 2, 1890, Stevenson Archer was holding the office of treasurer of the State, and that he then and there fraudulently embezzled funds which he was bound to account for and deliver to Edwin H. Brown, treasurer of the State, his successor in office. Now, on January 2, 1890, Edwin H. Brown was not treasurer of the State, but a private citizen, and at that time Stevenson Archer was not bound to pay him anything. Mr. Archer was arrested on April 10, 1890, and was not removed from office until April 15th, 1890. If the crime had been alleged, instead of on January 2, 1890, at any date anterior to April 15th, 1890, the same contradiction would exist, for in the nature of things, two persons cannot hold the same office at the same time, nor can a person have a successor in office until after he has ceased to occupy that office himself. *State v. Hebel*, 72 Ind. 364. If the State places the crime after April 15th, 1890, then it cannot allege, as is necessary, that at that time Stevenson Archer was holding office.

The fundamental and inherent fallacy of the State's case is shown by the fact that it cannot draw an indictment which is not self-contradictory. This contradiction may be taken advantage of by demurrer. *U. S. v. Smith*, 124 U. S. 525.

The cases cited by the Attorney-General to show that the refusal or failure to pay over by a retiring officer to his successor in office, is part of the crime of embezlement, do not so decide; and even if they did, they were decided upon statutes which materially differ in their terms from the statute under consideration. For example, *State v. Leonard*, 6 Cold. 309, merely affirms the doctrine of the common law as stated in Stephen Dig. of Cr. Law, 248, that failure to pay over to a successor in office is evidence of an antecedent
56 *embezzlement. The distinction between the failure to pay over to a successor in office, being evidence of an antecedent crime, and not a part of the crime itself, is fully shown

in *State v. Munch*, 22 Minn. 67; *People v. McKinney*, 10 Mich. 80.

There is no case deciding that failure to pay over to a successor is any part of the crime of official embezzlement. On the contrary, whenever it is desired to punish for such a failure, it is made a crime by a separate and distinct statute. *State v. Ring*, 29 Minn. 78; *State v. Munch*, 22 Minn. 67; *State v. Hunnicut*, 34 Ark. 562; *Hollingsworth v. State*, 111 Ind. 294; *State v. Leonard*, 6 Cold. 309; *People v. McKinney*, 10 Mich. 80; Howell Aannot. Stat. secs. 9149, 9150.

Robinson, J., delivered the opinion of the court.

The defendant in error was indicted under the Code, Art. 27, sec. 80, which provides that "Any person holding office in this State, whether elected, or appointed by the Governor, by the corporate authorities of Baltimore, or by any other authority legally authorized to make such appointments, who shall fraudulently embezzle or appropriate to his own use money, funds or evidences of debt, which he is by law bound to pay over, account for or deliver to the treasurer of this State, or to any other person by law authorized to receive the same, shall be guilty of a misdemeanor," etc.

The indictment charges that the "defendant in error," being the duly elected and qualified treasurer of the State, fraudulently embezzled and appropriated to his own use money and evidences of debt belonging to the State, and which he was bound to account for and deliver to Edwin H. Brown, his successor in office. The sole question is whether the offense thus charged comes within the provisions of the Code, or, in other words, *whether the Code provides for the pun- 57
ishment of the State treasurer who embezzles the State funds.

The question is a narrow one, and turns entirely upon the construction of the statute. A good deal was said about the general rules by which courts are governed in the construction of statutes; but these are too well settled to admit of much discussion. All agree that the intention of the Legislature must govern in the construction of all statutes. This rule lies at the bottom of all statutory construction. The law, it is true, in its tenderness for life and liberty, requires that

penal statutes shall be strictly construed; by which is meant that courts will not extend the punishment to cases not plainly within the language used. At the same time, such statutes are to be fairly and reasonably construed, and courts will not, by a narrow and strained construction, exclude from their operation cases plainly within their scope and meaning. As stated by Sedgwick on Statutory Law, 287, and quoted with approval by Bramwell, B., in *Foley v. Fletcher,* 28 L. J. Exch. 100: "The more correct version of the doctrine appears to be that statutes of this class are to be fairly construed and faithfully applied according to the intent of the Legislature, without unwarrantable severity on the one hand or equally unjustifiable lenity on the other; in cases of doubt the courts inclining to mercy." After all, then, it is the legislative intent that must govern in the construction of penal as in all other statutes. *Lyon's Case,* Bell Cr. Cas. 45; *Nicholson v. Fields,* 31 L. J. Exch. 233; *The Gauntlet* L. R. 4 P. C. Ap. 191; *United States v. Lacher,* 134 U. S. 624.

This intention is to be ascertained, primarily, of course, from the language of the statute itself, and, if the language used is plain and unambiguous, the Legislature must be understood as meaning what they have expressly declared. Now, 58 what is the language of the statute *under consideration? "Any person holding office in this State * * who shall fraudulently embezzle or appropriate to his own use, money, funds, or evidences of debt, which he is by law bound to pay over, account for, or deliver to the treasurer of the State," etc. Provision is thus made for the punishment of all officers who shall embezzle funds of the State which they are bound to pay over or deliver to the treasurer, but this, it is argued, does not include the treasurer because he cannot be said to be bound to pay over or deliver such funds to himself. If the statute stopped here, there might be some ground for this contention. But it does not stop here, having made provision for the punishment of such officers, that is to say, officers whose duty it is to pay over and account for to the treasurer; it further provides for the punishment of all officers who shall embezzle money, funds, or evidences of debt belonging to the State, which they are bound to pay over, account for or deliver "to any other person by law authorized to re-

ceive the same." Such is the plain and unambiguous language of the latter part of the enacting clause, and it would be difficult to employ language broader and more comprehensive. Thus the body of the Act not only provides for the punishment of such officers who shall embezzle State funds which they are bound to pay or deliver to the treasurer, but also for the punishment of all officers who shall embezzle money or funds of the State which they are bound to pay or deliver to any person lawfully authorized to receive the same. So the question comes to this: Did the defendant in error, embezzle or appropriate to his own use, moneys, funds, or evidences of debt belonging to the State, which he was bound to pay or deliver "to any person by law authorized to receive the same?" If he did, then the offense charged in the indictment is one within the very letter of the statute. The embezzlement being admitted by the *demurrer, the only **59** question is whether the funds embezzled were funds which he was bound to pay over, account for, or deliver to any person lawfully authorized to receive the same. And as to this there cannot be, it seems any question. He is the most important financial officer of the State. The entire revenue of the State, amounting to millions of dollars, is paid to him, and by him to be disbursed in the mode and manner provided by law. Besides this, the Sinking Fund, the productive and unproductive assets, are entrusted to his care and custody, and the surplus revenue remaining in the treasury, he is directed to invest from time to time, in State or other securities, all of which are committed to his keeping. These funds belong to the State, and are held by him as treasurer, and when he ceases to be treasurer, whether by removal or otherwise, he is bound to pay over, account for, and deliver such funds to his successor in office, who is the person lawfully authorized to receive the same. Upon his failure to do so, his official bond would be liable in a civil action, and for the embezzlement of such funds by him while in office, the defendant in error would be criminally responsible. Now, against this plain and obvious construction of the statute, what is the contention on the other side? There must be, it was argued, a point of time when the crime was committed, and it could

not be said to have been committed before the defendant was dismissed from office, because there were no funds which he was obliged to pay over or deliver to the treasurer of the State, he being the treasurer himself. Nor could the crime be said to have been committed after he was discharged from office, because he was not then a person holding office. So according to this contention, there was no point of time when the defendant could have committed the crime. The bare statement of such an argument is an answer to the argument
60 itself. There must *have been, it is true, a point of time when the crime was committed, and that point of time, was when the defendant embezzled the funds of the State in his possession, as its treasurer, and which he was bound to pay over, account for or deliver to any person lawfully authorized to receive the same. He was bound, as we have said, to pay over, or deliver such funds to his successor in office, and the crime was complete when he embezzled or appropriated the same to his own use. The crime being complete, his subsequent removal in no manner affected his criminal responsibility. He is indicted as Stevenson Archer, and as such he is answerable for a crime committed by him while holding the office of treasurer.

And, although his official character is gone, his personal responsibility for the crime thus committed remains. So looking to the face of the statute itself and construing the language used in its natural, ordinary, and common sense meaning, we all agree that the offense charged in the indictment is one strictly within the terms of the statute.

But, if there could be any question as to the construction of the words of the statute, the Title to the statute shows beyond doubt that the Legislature meant to provide for the punishment of every officer who shall embezzle or appropriate to his own use money or funds belonging to the State. Sec. 80 of Art. 27 of the Code is a codification of the Act of 1854, ch. 196, and the title to the Act reads as follows: "An Act to punish the fraudulent embezzlement or appropriation of money, funds or evidences of debt by persons elected to any office, or holding office under the Governor of this State, or under the corporate authorities of Baltimore, or under any other authorities legally authorized to appoint to said offices."

This language the counsel for the defendant in error admit is broad enough to include the treasurer of the *State; **61** and, although the title will not be permitted to control the express language of the Act, yet, if the language is somewhat obscure or doubtful, it may be considered to aid in the interpretation of the Act, and thereby give to the enacting clause a meaning consistent, rather than at variance, with the clear title of the Act. *Canal Co. v. R. R. Co.*, 4 G. & J. 90; *Clark v. Baltimore*, 29 Md. 285; *Shaw v. Ruddin*, 9 Ir. C. L. 214; *Brett v. Brett*, 3 Add. Ecc. 211; Hardcastle's Statutory Law, 94; *Myer v. Car Co.*, 102 U. S. 1.

So, if there be any doubt as to the precise meaning of the language used in the body of the Act now before us, which we by no means concede, yet, when construed in connection with this title, we are forced to the conclusion that the Legislature meant to provide for the punishment of every officer who shall embezzle funds belonging to the State, and which he was bound to pay over, account for or deliver to any person lawfully authorized to receive the same. Any other construction would, it seems to us, do violence not only to the plain and unambiguous language of the statute itself, but would in a measure defeat the wise and salutary purposes for which it was passed.

The object of the statute was to protect the State against loss from embezzlement of the State funds by State officers, and it would be strange, indeed, that the Legislature should provide for the punishment of all officers except the treasurer, who is the most important financial officer of the State, and by the official misconduct of whom the State might suffer the greater loss and injury. To such a strained and narrow construction as this we cannot agree.

Judgment reversed, and cause remanded.

*Chief Judge Alvey delivered the following concurring **62** opinion, in which Judge Irving united:

This case is brought into this court by the State, on petition and assignment of errors, from the Criminal Court of Baltimore. The indictment consists of four counts, all framed under the Code, Art. 27, sec. 80. The first count charges that

the accused, being the treasurer of the State, and as such having in his possession and custody certain bonds for the payment of money, the property of the State of Maryland, unlawfully and fraudulently did embezzle the same; and which bonds the accused was bound to account for and deliver to Edwin H. Brown, duly appointed and qualified, treasurer of the State, his successor in office.

The second count is like the first, except that it charges that the accused, being the treasurer of the State, and as such having in his possession certain bonds described, the property of the State, did unlawfully and fraudulently appropriate the same to his own use; and which said bonds the accused was bound to account for and deliver to Edwin H. Brown, the treasurer of the State, duly appointed and qualified, his successor in office.

The third count charges that the accused, being the treasurer of the State, was, as such treasurer, in possession of a large sum of money, the property of the State, and being so in possession of such sum of money, he unlawfully and fraudulently did embezzle the same; and which sum of money he was bound to pay over, account for and deliver to Edwin H. Brown, the treasurer of the State, duly appointed and qualified, his successor in office. And the fourth count is the same as the third, with the difference that it charges that the accused unlawfully and fraudulently did appropriate to his own use the sum of money mentioned in the third count.

63 *The accused demurred to each count of the indictment, and the demurrer was sustained and the indictment quashed.

By the assignment of errors it appears that the court below held that sec. 80 of Art. 27 of the Code, does not apply to or embrace the treasurer of the State, as one of the officers contemplated by that section; that the treasurer being the officer to whom the accounting is to be made, he is not one of the officers made liable to prosecution for fraudulently embezzling or appropriating to his own use the money or funds of the State. That no officer is liable to prosecution for embezzlement under the statute, unless at the time of such embezzlement or appropriation of the money or funds to his own use, he was bound to pay over, account for, or deliver

them to the treasurer; and that as the treasurer was not bound to account for, pay over, or deliver such money and funds until he had ceased to be treasurer, and then to his successor in his office, the conclusion is deduced that the provision of the statute has no application to the treasurer of the State, for any embezzlements that he may have committed while in office. Or, as contended by the counsel for the accused, the offense can only be committed by a person holding office; but the statute does not embrace all office holders. That it expressly includes only those office holders who are obliged to pay over to the treasurer; and as the treasurer cannot be said to be obliged to pay over to himself, therefore he is not included by the terms of the statute.

If this be the true construction of the statute it certainly shows our law to be lamentably defective in a particular most important to the protection of the people of the State. That all persons holding office in this State should be liable to prosecution for the embezzlement of public funds, save and except the one officer whose special duty it is to keep safely and render a *faithful account of all the money and funds of **64** the State that may have come into his hands or custody, is a state of things that no one could have supposed to exist. It is certainly not fair to the Legislature of the State to suppose that it could have intended such a state of the law to exist, when we see how comprehensive are the provisions of the statutes to secure a faithful accountability from all persons collecting and holding the public funds. But does this extraordinary exemption claimed for the treasurer result from a fair and reasonable construction of the statute? I think not.

The section of the Code, under which the accused has been indicted, employs these brief but comprehensive terms: "Any person holding office in this State, whether elected, or appointed by the Governor, by the corporate authorities of Baltimore, or by any other authority legally authorized to make such appointments, who shall fraudulently embezzle or appropriate to his own use money, funds or evidences of debt, which he is by law bound to pay over, account for, or deliver to the treasurer of this State, or to any other person by law authorized to receive the same, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced," etc.

Words more comprehensive than these could hardly be used to embrace every officer in the State accountable for public money or funds in his possession or control. There can be no question, of course, of the fact that the accused was an officer in the State, duly elected by competent authority, and that it was by virtue of his office that he became possessed of the money and bonds of the State, charged to have been fraudulently embezzled and appropriated by him. It is true, while he remained in office he was the financial agent and representative of the State to whom all other officers holding the State's funds were bound to account; but it does not follow that he was not also bound to account. While **65** he remained in *office, and was in the exercise of its functions, the form of accounting with himself was not observed; but from the moment he ceased to be the incumbent of the office, and there was a successor appointed and qualified, he was bound to account for and pay over all the money and funds that had come to his possession belonging to the State that had not been lawfully disbursed by him. This is the clear import of those provisions of the Constitution and laws of the State, prescribing his powers and duties, as it is of the oath of his office, and the bond given for the faithful discharge of those duties; and his duties of office have not been performed until he has fully accounted with and paid over to his successor all the money and funds for which he is bound to account. The words of the statute relied on as showing that the treasurer was not intended to be embraced, viz., "which he is by law bound to pay over, account for, or deliver to the treasurer of the State," do not show any such legislative intention. They do not show that the treasurer was intended to be excluded from the operation of the statute, but are only descriptive of the liability to account; and certainly the treasurer is bound to account to his successor. And therefore, if during the period of his incumbency of office, and thereafter, until he has fully discharged the duties of the office, by accounting for and paying over the funds belonging to the State, he fraudulently embezzles or appropriates them to his own use, he is clearly within the terms and purview of the statute, and liable to indictment for such embezzlement and fraudulent appropriation. For though it be true that he

does not account to himself while holding the office, yet, after his successor is apointed, he continues to hold an official relation to the department until he has fully discharged all the duties assumed by him, by fully accounting for and paying over the funds of the State to his successor; and until this be done he is an officer *within the meaning and sense **66** of the statute. He holds the money and funds of the State, not as his own, but in an official capacity of agent or trustee of the State, and as such he is liable for his frauds and embezzlements.

I concur with the rest of the Court, in the conclusion reached by them, and am decidedly of opinion that the judgment sustaining the demurrer and quashing the indictment must be reversed.

Filed July 3rd, 1890.

A. C. SHAEFFER, Edward Hoye and William Isaacs, Officers of Registration of the Sixth Precinct of the Nineteenth Ward, and James Bond, Clerk of the Superior Court of Baltimore City, *v.* GEORGE D. GILBERT.

Decided October 24th, 1890.

REGISTRATION OF VOTERS; QUALIFICATION OF VOTERS; COLLEGE STUDENTS; RESIDENCE; APPEALS.

The appellee was born in Harford County, and lived there, with his mother, until he was twenty-one years of age. He then removed to Baltimore City, and entered Morgan College as a student, where he lived for seven years engaged in the prosecution of his studies, except during vacation, when he was employed as a waiter at different summer resorts; and when the season was over he returned to the college. While thus pursuing his studies, he supported himself entirely by his own efforts; and once a year he visted his mother in Harford County, remaining there, each time, two or three days. Upon his arrival at the age of twenty-one years, he was registered as a voter in Harford County, but never voted there. Several years after his removal to Baltimore he procured a transfer of his registration as a voter in