

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JOSE SABIO, SR., CITY JUDGE OF CAGAYAN DE ORO AND RANULFO M. SALAZAR, RESPONDENTS.

G.R. No. L-45490. November 20, 1978

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

For review on certiorari are: (1) the order of the City Court of Cagayan de Oro dated January 6, 1977 which granted the motion to quash the information for estafa filed against the accused in Criminal Case No. 33867, "People of the Philippines vs. Ranulfo Salazar" (L-45490); (2) the decision of the Court of Appeals in case CA-G.R. No. 16195-Cr, "People of the Philippines vs. Tan Tao Liap" (L-45711) which affirmed the decision of the City Court of Pasay City convicting the accused of the crime of estafa, and (3) the order of the Court of First Instance of Davao City in Criminal Case No. 2023, entitled "People of the Philippines vs. Daylinda Laguna" (L-42971) dated December 23, 1975 which denied petitioner's motion to quash. These cases are jointly considered in view of the similarity of the issue involved and which is whether or not the issuance of a postdated check, which is subsequently dishonored for insufficiency of funds, in payment of a pre-existing obligation constitutes estafa as defined and penalized under Article 315, par. 2(d) of the Revised Penal Code as amended by Republic Act No. 4885 and Presidential Decree No. 818.

G.R. No. L-45490:

The circumstances leading to this case are brief and undisputed. On May 29, 1975, the complainants, Ramon Yap and Tommy Pacana, leased to the accused, Ranulfo Salazar, the "Tanguili Night Club" situated in Cagayan de Oro City, for the monthly rental of P2,000.00. On May 23, 1976, Ranulfo Salazar paid P500.00 in cash and P1,500.00 in check (PBC Check No. C179-4555 postdated May 31, 1976) to Ramon Yap for the rental of the premises corresponding to the period from April 15 to May 15, 1976. However, when the check was presented to the bank for payment, the same was dishonored for lack of funds to cover the same. For failure of Ranulfo Salazar to make good his obligation, complainants instituted a suit for estafa against him, and on June 10, 1976, the First Assistant City Fiscal of Cagayan de Oro City filed with the City Court of Cagayan de Oro (for preliminary investigation) the following information:

"That on or about May 23, 1976, in Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, with intent to defraud and knowing that he had no money to pay, did then and there wilfully, unlawfully and feloniously issue a Philippine Banking Corporation Check No. C179 for P1,500.00 in favor of Ramon Yap dated May 31, 1976, in payment of and/or representing accused monthly rental of the Tanguili Night Club for April 15, 1976 to May 15, 1976, knowing fully well that said accused had no funds in the bank or the funds deposited by him is not sufficient to cover the amount of said check as evidence by the fact that when said check was presented for encashment, it bounces or was

dishonored for reason that there is no funds available and despite demands made, accused failed and refused and still fails and refuses to make good or pay the same, to the damage and prejudice of the offended party in the aforementioned sum of P1,500.00, Philippine Currency."[1]

On August 6, 1976, Ranulfo Salazar filed a motion to quash the information alleging:

"1. That the facts charged do not constitute an offense; and

"2. That the accused is not the drawer or the person who issued PBC Check No. C179-4555 in the amount of P1,500.00 subject matter of this litigation in favor of the complainant."[2]

An opposition to the said motion to quash was filed by the prosecution and after the parties were heard in oral argument, the City Court issued an order dated January 6, 1977 granting the motion to quash by ruling that since the check was issued in payment of a pre-existing obligation, no estafa was committed. Petitioner now seeks the nullity of said order on the ground that the same is not in accord with law, being an erroneous interpretation of the provision of Article 315, paragraph 2(d) of the Revised Penal Code and of Rule 112 of the Rules of Court.

G.R. No. L-45711:

The record shows that the petitioner Tan Tao Liap and the complainant were old friends. On several occasions from January to July, 1972, Tan Tao Liap borrowed money from Ngo Cheng which amounted to P9,000.00. It was only in the early part of August, 1972 that Ngo Cheng demanded from Tan Tao Liap the payment of his indebtedness plus the sum of P500.00 as interest.[3] Tan Tao Liap informed Ngo Cheng that he did not have sufficient funds to pay but that he might possibly be able to settle the debt about the end of the month as he was then expecting to receive some money at that time. Tan Tao Liap further proposed to pay the loan on a staggered basis and Ngo Cheng agreed to this proposal on the condition, however, that Tan Tao Liap would issue him three (3) checks, namely: (1) Check No. 7-442560 dated August 24, 1972 for P3,000.00; (2) Check No. 7442561 dated August 31, 1972 for P3,000.00 and (3) Check No. 7442562 dated September 1, 1972, for P3,500.00, all drawn against his account with the Consolidated Bank and Trust Company at Soler St., Manila.[4] The first check was deposited by Ngo Cheng with the Associated Bank at Pasay City and it was duly paid and cleared by the Consolidated Bank as Tan Tao Liap was able to deposit sufficient funds to cover the same.[5] Subsequently, however, Tan Tao Liap suffered business reverses and so what he did was to inform Ngo Cheng not to deposit the second and third checks which were to mature on August 31, 1972 and September 1, 1972, respectively, because of his inability to raise the amounts to cover said checks. As an alternative, Tan Tao Liap proposed to pay the balance in monthly installments of P300.00 until such time that he could raise enough funds. Ngo Cheng, however, turned down the offer and even told Tan Tao Liap that he was going to file a criminal case against him if he failed to deposit the amount for the two remaining checks.[6] At the instance of Ngo Cheng, Tan Tao Liap was charged by the City Fiscal of Pasay City with the crime of estafa on January 24, 1973 for issuing the third check (No. 7-442562, dated September 1, 1972, for P3,500.00) which was dishonored for lack of funds.

On November 9, 1973, the City Court rendered its decision convicting Tan Tao Liap of the crime of estafa despite its finding that the check was issued in payment of a pre-existing obligation.[7] Subsequently, Tan Tao Liap appealed the said decision to the Court of Appeals. However, on October 26, 1976, the Court of Appeals rendered judgment affirming that of the City Court of Pasay City. Not satisfied with the decision of the Court of Appeals, Tan Tao Liap now seeks a review thereof by this Court alleging that:

"THE COURT OF APPEALS ERRED IN CONSTRUING ARTICLE 315 OF THE REVISED PENAL CODE AS HOLDING PETITIONER LIABLE FOR ESTAFA FOR HAVING ISSUED A BAD CHECK EVEN IF THE CHECK HAD BEEN ISSUED IN PAYMENT OF A PRE-EXISTING DEBT."

G.R. No. L-42971:

The petitioner, Daylinda A. Lagua, is engaged in the logging business in Davao City under the business name "Manuel P. Lagua Logging Enterprises". Since October of 1973, the Lagua Enterprises had been buying their logging supplies and hardware on credit from the Gempesaw Hardware in Davao City, managed by Marcos Chua. The items delivered on credit to the Lagua Enterprises by the Gempesaw Hardware for the period from October, 1973 to June 20, 1974 amounted to P28,601.54. Demands were made for its payment and sometime in July, 1974, Daylinda Lagua issued Equitable Banking Corporation Check No. 22711219A, in the amount of P30,000.00, payable to Marcos Chua and postdated August 24, 1974, the difference in the amount being the accrued interests on the amount of P28,601.54, in payment of the obligation. Upon presentment after its due date, the said check was dishonored by the drawee bank for insufficient funds. Accordingly, a letter was sent to Daylinda Lagua demanding payment therefor, but she failed to pay. Consequently, an information was filed before the Court of First Instance of Davao City charging her with estafa, defined and penalized under Article 315, par. 2(d) of the Revised Penal Code, as amended by Republic Act No. 4885, committed as follows:

"That on or about August 24, 1974, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, well knowing that she did not have sufficient funds in the bank, did then and there wilfully, unlawfully and feloniously and with intent to gain issue and made out an Equitable Banking Corporation Check No. 22711219A dated August 24, 1974 in the amount of P30,000.00 in payment of an obligation from the Gempesaw Hardware owned by Marcos Chua; that upon pre-presentation of the above-mentioned check to the bank for encashment, the same was dishonored for insufficiency of funds and despite repeated demands made upon said accused to make good the above-mentioned check, the same refused and failed to make payment, to the damage and prejudice of the said Gempesaw Hardware owned by Marcos Chua in the aforementioned amount of P30,000.00." [8]

The case was docketed in the Court of First Instance of Davao City as Criminal Case No. 2023.

Upon arraignment, Daylinda Lagua pleaded not guilty. Thereafter, trial proceeded and the prosecution adduced its evidence, after which the accused filed a motion to dismiss the case, [9] claiming that upon the facts adduced in the case, it would appear that the postdated check was issued in payment of a pre-existing obligation and, therefore, no estafa was committed according to the rule enunciated in the cases of *People vs. Lilius* [10] and *People vs. Fortuno*. [11]

The prosecution opposed the motion alleging that the rule stated in the *Lilius* case had been superseded by Republic Act No. 4885, so that the crime of estafa is committed upon the issuance of a postdated check, subsequently dishonored, whether the issuance be in payment of a pre-existing obligation, or for an obligation contracted at the time the check was issued, when the issuance is attended by deceit constituting false pretense or fraudulent act. [12]

The motion to dismiss the case was denied on December 23, 1975, [13] and the motion for its reconsideration [14] was also denied on February 2, 1976. [15] Whereupon, Daylinda Lagua instituted the present petition.

As stated, the issue for determination is whether or not the issuance of a postdated check, which is subsequently dishonored for insufficiency of funds, in payment of a pre-existing obligation, constitutes estafa as defined and penalized under Article 315, par. 2(d) of the Revised Penal Code, as amended by Republic Act No. 4885 and

Presidential Decree No. 818.

Prior to its amendment, Article 315, par. 2(d) of the Revised Penal Code, read:

"Art. 315. Swindling (estafa).- Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

xxx xxx xxx

"2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

xxx xxx xxx

"(d) By postdating a check, or issuing a check in payment of an obligation the offender knowing that at the time he had no funds in the bank, or the funds deposited by him were not sufficient to cover the amount of the check, and without informing the payee of such circumstances."

Under said provisions, it was the rule that the mere issuance of a check with knowledge on the part of the drawer that he had no funds to cover its amount and without informing the payee of such circumstances, does not constitute the crime of estafa if the check was intended as payment of a pre-existing obligation. The reason for the rule is that deceit, to constitute estafa, should be the efficient cause of the defraudation and as such should either be prior to, or simultaneous with the act of fraud.[16]

In 1967, the law was amended by Republic Act No. 4885, eliminating the phrases "the offender knowing that at the time he had no funds in the bank" and "and without informing the payee of such circumstances." However, a presumption was included. The pertinent provisions of the law, as amended, now reads:

"Art. 315. Swindling (estafa).- Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

xxx xxx xxx

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

xxx xxx xxx

"(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act."

A comparative analysis of the two provisions will readily show that what has been established under the amendment is the prima facie evidence of deceit constituting false pretense or fraudulent act in case the drawer fails to deposit the necessary amount within three (3) days from notice of dishonor from the bank and/or payee or holder of the check. Likewise, the amendment has eliminated the requirement under the previous provision for the drawer to inform the payee that he had no funds in the bank or the funds deposited by him were not sufficient to cover the amount of the check.[17] Moreover, what is significant to note is that the time or occasion for the commission of the false pretense or fraudulent act has not at all been changed by the amendment. The false pretense or fraudulent act must be executed prior to or simultaneously with the commission of the fraud. Thus, under 315, paragraph 2(d) of the Revised Penal Code, as amended by Republic Act No. 4885, the following are the elements of estafa: (1) post dating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack or insufficiency of funds to cover the check; and (3) damage to the payee thereof. Now, it is asked: Is there deceit and damage when a bad check is issued in payment of a pre-existing obligation? It is clear that under the law, the false pretense or fraudulent act must be executed prior to or simultaneously with the commission of the fraud. To defraud is to deprive some right, interest, or property by deceitful device.[18] In the issuance of a check as payment for a pre-existing debt, the drawer derives no material benefit in return as its consideration had long been delivered to him before the check was issued. In short, the issuance of the check was not a means to obtain a valuable consideration from the payee. Deceit, to constitute estafa should be the efficient cause of the defraudation.[19] Since an obligation has already been contracted, it cannot be said that the payee parted with his property or that the drawer has obtained something of value as a result of the postdating or issuance of the bad check in payment of a pre-existing obligation.[20]

Finally, considering the absence of an express provision in the law, the postdating or issuance of a bad check in payment of a pre-existing obligation cannot be penalized as estafa by means of deceit, otherwise, the legislature could have easily worded the amendatory act to that effect. Since the language of the law is plain and unambiguous, We find no justification in entering into further inquiries for the purpose of ascertaining the legislative intent.[21] Moreover, laws that impose criminal liability are strictly construed.[22] The rule, therefore, that the issuance of a bouncing check in payment of a pre-existing obligation does not constitute estafa has not at all been altered by the amendatory act.[23]

The issue of jurisdiction was also raised by the petitioner in the case of *People vs. Sabio*, G.R. No. L-45490. It is contended that the City Court, acting pursuant to its authority to conduct preliminary investigations, cannot dismiss the case as a motion to quash can only be availed of in a regular trial where the court has jurisdiction to try the offense. It is further alleged that the purpose of a preliminary investigation is merely to determine a probable cause and not to rule on difficult questions of law. We see no merit in these contentions. There is no dispute that the information was filed before the City Court for purposes of preliminary investigation only, as the offense falls under the exclusive jurisdiction of the Court of First Instance. The check involved amounts to P1,500.00, hence, the imposable penalty for the offense is prision mayor in its medium period or an imprisonment ranging from eight (8) years and one (1) day to ten (10) years.[24] Under Section 78 of Republic Act No. 521, as amended by Republic Act No. 3969, the City Court of Cagayan de Oro City is authorized to conduct preliminary investigation.[25] When a power is conferred upon a court or judicial officer, it is deemed that all the means necessary to carry it into effect are included therein.[26] The power, therefore, conferred upon the City Court of

Cagayan de Oro City to conduct preliminary investigations carries with it the power to draw a conclusion after the investigation. It has been held that in the preliminary investigation proper, the Justice of the Peace may discharge the defendant if he finds no probable cause to hold the defendant for trial. But if he finds a probable cause, it is his duty to bind over the defendant to the Court of First Instance for trial on the merits.[27] Moreover, the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecutions, and to protect him from open and public accusation of a crime.[28] The City Court, therefore, acted within its jurisdiction in granting the motion to quash the information filed in this case.

WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

1. Dismissing the petition in case G.R. No. L-45490 for lack of merit;
2. Reversing the decision of the Court of Appeals in case G.R. No. L-45711, and acquitting the petitioner of the crime charged; and
3. Dismissing Criminal Case No. 2023, entitled "People vs. Daylinda Laguna".

No pronouncement as to costs.

SO ORDERED.

Castro, C.J., Teehankee, Muñoz Palma, Aquino, Santos, Fernandez, and Guerrero, JJ., concur.

Fernando, J., concurs in L-45711 and L-42971 (Criminal Case No. 2023) but dissents in L-45490 as explained in a separate opinion.

Barredo, J., concurs and dissents in a separate opinion.

Makasiar, J., joins Justice Barredo in a concurring and dissenting opinion with Justice Antonio in his dissent.

Antonio, J., dissents in separate opinion re-construction of Art. 315, 29d of the Rev. Penal Code as amended.

[1] p. 4, rollo of L-45490.

[2] p. 19, *ibid*.

[3] pp. 5-7, *tsn.* of September 7, 1973.

[4] pp. 7-8, *Id*.

[5] p. 13, *Id*.

[6] p. 14, *Id*.

[7] Decision of the City Court of Pasay City.

[8] Annex "E", p. 43, rollo of L-42971.

[9] Annex "C", p. 17, *Id*.

[10] 59 Phil. 339.

[11] 73 Phil. 407.

[12] Annex "F", p. 45, *Id*.

[13] Annex "A", pp. 14, Id.

[14] Annex "D", p. 31, Id.

[15] Annex "B", p. 15, Id.

[16] People vs. Lilius, supra; People vs. Fortuno, supra.

[17] Congressional Record, Senate, Vol. II, No. 37, March 20, 1967, 931-937.

[18] People vs. Quesada, 60 Phil. 515.

[19] People vs. Fortuno, supra.

[20] People vs. Lilius, supra.

[21] Velasco vs. Lopez, 1 Phil. 720.

[22] People vs. Manantan, 115 Phil. 657; Neidlinger vs. State, 88 S.E. 687; Crawford, The Constitution of Statutes, 460.

[23] "The amendment does not seem to have revoked the rule that issuing a bad check in payment of a pre-existing obligation does not constitute estafa under par. 2(d)." (Aquino, The Revised Penal Code, Vol. VIII, 1977 ed., 1611)

[24] Art. 315, Revised Penal Code, as amended by Presidential Decree No. 818, dated October 22, 1975.

[25] "Section 78. Jurisdiction of the City Court.- The City Court shall have like jurisdiction in civil and criminal cases and the same incidental powers as are at present conferred by law upon jurisdiction of the municipal courts of capital of provinces and city courts of chartered cities. It may also conduct preliminary investigation for any offense, without regard to the limits of punishment, and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court." (Underscoring supplied)

[26] Biron vs. Cea, 73 Phil. 673.

[27] Ngo Hoc vs. Aquino, 72 Phil. 90; U.S. vs. Banzuela, 31 Phil. 564; Biron vs. Cea, supra.

[28] People vs. Monton, G.R. No. L-33906, May 23, 1968.

CONCURRING IN L-45711 AND L-42971, BUT DISSENTING IN L-45490

FERNANDO, J.:

With due recognition of the merit that attaches to the opinion of the Court, ably penned by Justice Hermogenes Concepcion Jr., I regret that I cannot yield concurrence to the conclusion reached by the majority of my brethren: "The rule, therefore, that the issuance of a bouncing check in payment of a pre-existing obligation does not constitute estafa has not at all been altered by the amendatory act." [1] It follows therefore that I must cast a dissenting vote as far as L-45490 [2] is concerned. Notwithstanding the divergence of view as to the full force and effectivity that in my opinion should be accorded Republic Act No. 4885, I am in agreement with my brethren insofar as the reversal of the decision of the Court of Appeals in L-45711 [3] and the order of respondent Judge in L-42971 [4] for reasons other than that given in the opinion of the Court. I shall explain why.

1. It does not admit of doubt that the legislative purpose of Republic Act No. 4885 was precisely to cure an evil prevailing in the business world about the propensity to issue checks without sufficient funds. The legislative

body, after a thorough consideration of the matter, gave its approval to the amendment in question as a way to minimize, if not totally eradicate, that serious malady, the effect of which was to reduce well-nigh to vanishing point the negotiability of checks. Even if it were admitted that there could have been a more felicitous choice of language, still this Court, after a more sympathetic consideration, could have been led, without doing violence to language, to give it force and effectivity. This excerpt from the recent case of *Bocobo v. Estanislao*[5] finds pertinence: "As noted in *Sarcos v. Castillo*: 'It is fundamental that once the policy or purpose of the law has been ascertained, effect should be given to it by the judiciary. From *Ty Sue v. Hord*, decided in 1909, it has been our constant holding that the choice between conflicting theories falls on that which best accords with the letter of the law and with its purpose. The next year, in an equally leading decision, *United States v. Toribio*, there was a caveat against a construction that would tend "to defeat the purpose and object of the legislator." Then came the admonition in *Riera v. Palmaroli*, against an application so narrow "as to defeat the manifest purpose of the legislator." This was repeated in the latest case, *Commissioner of Customs v. Caltex*, in almost identical language.' Such an excerpt was quoted with approval in *Automotive Parts and Equipment Company v. Lingrad*. It is of the essence of judicial duty then to construe statutes to reflect fidelity to such a concept. In the apt language of Frankfurter: 'A decent respect for the policy of Congress must save us from imputing to it a self-defeating, if not disingenuous purpose.'"[6]

2. The above conclusion, from my standpoint, receives reinforcement from a fundamental civil law concept that the Court is not to refrain from utilizing a legal methodology explicitly recognizing the generative capacity of legislation. In plainer terms, a distinction has been made between the common law which has traditionally frowned on legislation encroaching on its terrain[7] and the civil law based as it usually is on a comprehensive code, the result of legislation embodying as much as possible principles of the widest generality and therefore enabling the judiciary to give it the most hospitable scope and, if necessary, even a latitudinarian construction. As was pointed out by Bean: "Civil law theorists, like their Anglo-American counterparts, have claimed a completeness and universality for their own principles. Unlike the common law, however, the source of those legal principles is not judicial precedent, but rather a legislatively enacted civil code. In orthodox civil law theory, the statute is conceived of as being the most satisfactory and perfect method of realizing justice,' and as the 'unique source of judicial decisions.' When no rule can be found which expressly covers a particular problem, civil law courts seek to discern from a statute or from a course of legislation, one or more principles which can be applied to situations substantially similar or analogous to (but not expressly covered by) the terms of the legislation. The formal concepts, in the German system, have been explained as follows: 'The principles that are basic to the Code carry the germ of further development in themselves. This development is by way of analogy. If a case is not regulated in the law but a legally similar case is regulated, then this provision is decisive in the deciding of the first case (*Gesetzesanalogie*) * * *. If no result can be reached through this process of analogy, then the decision must be drawn from the spirit of the whole law (*Recht*) considered as one system (*Rechtsanalogie*).'[8] It would be, in my view, more consistent with the interpretation of legislation amending the Revised Penal Code, the Spanish origin of which is still discernible, if that approach would be followed in the determination of whether or not the amendment in question really did attain its purpose. From such a standpoint, certainly my answer must differ from that reached by the majority of my brethren. It may not be amiss to state that one of the most eminent legal craftsmen to sit in the United States Supreme Court, the late Justice John Harlan, was partial to this particular civil law methodology as reflected by his opinions in *Welsh v. United States*[9] and *Moragne v. States Marine Lines, Inc.*[10] If even in a common law jurisdiction, there is receptivity to such a liberal spirit in the construction of statutes, it would seem to me that there should not be the least hesitancy on the part of the highest tribunal of this country when it considers an amendatory act to the Revised Penal Code to manifest a similar attitude.

3. In the light of the above, I am left with no choice except to dissent in L-45490. As far as L-45711 is concerned however, I concur in the decision reached, as there was no proof of criminal intent on the part of petitioner Tan Tao Liap. According to the opinion of Justice Concepcion Jr.: "Subsequently, however, Tan Tao Liap suffered business reverses and so what he did was to inform Ngo Cheng not to deposit the second and third checks which were to mature on August 31, 1972 and September 1, 1972, respectively, because of his inability to raise the amounts to cover said checks. As an alternative, Tan Tao Liap proposed to pay the balance in monthly installments of P300.00 until such time that he could raise enough funds. Ngo Cheng, however, turned down the offer and even told Tan Tao Liap that he was going to file a criminal case against him if he failed to deposit the amount for the two remaining checks. At the instance of Ngo Cheng, Tan Tao Liap was charged by the City Fiscal of Pasay City with the crime of estafa on January 24, 1973 for issuing the third check (No. 7-442562, dated September 1, 1972, for P3,500.00) which was dishonored for lack of funds." [11] An acquittal is certainly called for, it being evident that the element of mens rea was conspicuous by its absence.

I am likewise persuaded to concur in L-42971 due to a circumstance which for me militates against the conclusion that there was criminal intent. From the opinion of the Court, it would appear that the prosecution had rested its case. Then came a motion to dismiss. It was denied. To my mind, however, the very fact of compelling a debtor to issue a post-dated check should be construed as a sufficient warning to the creditor that the former might not be able to honor his commitment. To give him thereafter the right of harassment, thus transforming the prosecutor's office into a collection agency and enlisting the aid of the judicial branch, runs counter to my understanding of what a penal statute stands for. The very pressure exerted by the creditor could suffice to deprive effectively the freedom of choice on the part of a debtor hard-pressed to keep his business going. That does not give rise, in my view, to that degree of culpability that calls for criminal liability. Hence my concurrence.

[1] Opinion of the Court, 13.

[2] People of the Philippines v. Hon. Jose Sabio, Jr., et al.

[3] Tan Tao Liap v. Court of Appeals.

[4] Daylinda A. Lagua v. Hon. Vicente M. Cusi, Jr., et al.

[5] L-30458, August 31, 1916, 72 SCRA 520.

[6] Ibid, 524-525. Ty Sue is reported in 12 Phil. 485; Toribio in 15 Phil. 85 (1910); Riera in 40 Phil. 105 (1919); Caltex in 106 Phil. 829 (1959); Automotive Parts, L-26406, October 31, 1969, in 30 SCRA 248. The citation from Justice Frankfurter comes from Nardone v. United States, 308 US 338, 341 (1939).

[7] Cf. Pollock, Essays in Jurisprudence and Ethics 85 (1882) and Pound, Common Law and Legislation, 21 Harv. Law Rev. 383 (1908).

[8] Bean, The Legitimacy of Civil Law Reasoning in the Common Law, 82 Yale Law Journal 258, 265-266 (1972). The quotation is from Charmont & Chausse in their Commentary on the French Civil Code as quoted in A. Von Mehren, The Civil Law System: Cases and Materials for the Comparative Study of Law 60 (1957).

[9] 398 US 333 (1970).

[10] Ibid, 375.

[11] Opinion of the Court, 5-6.

CONCURRING AND DISSENTING OPINION

BARREDO, J.:

I dissent because I believe that the doctrine on which the majority opinion predicates its conclusion in all these three cases bears reexamination and should in fact be abandoned. With particular reference, however, to G.R. No. L-45711, I concur in the acquittal of the petitioner Tan Tao Liap on other grounds hereunder stated.

To my mind, the proposition that the issuing of a bouncing check in payment of a pre-existing obligation is not estafa is as inaccurate in theory as it is unrealistic. It is not in accord with the juridical concept of criminal fraud; it ignores the injury to the public interest involved in the impairment of the acceptability and negotiability of checks as an instrument of trading and commerce, which can conceivably approximate the economic havoc that could arise from loss of confidence in treasury notes as legal tender.

I am almost certain that the whole business community in the Philippines will be shocked by the seeming apathy of the Court in the face of the widespread clamor for relief from the appalling situation which bouncing checks have brought about in our country. Mr. Norberto Katigbak whom the Court has designated as *amicus curiae* precisely to assess Us on the effects of that unquestionably irregular and injurious practice on commerce and finance has underlined the staggering data that the amount involved in it had already reached 200 million pesos daily before the Central Bank banned overdrafts, after which the amount went down to the still enormous total of from 50 to 80 millions daily, and there is no telling it will not rise again. To be sure, the Supreme Court is not supposed to yield to the demands of any particular sector interested in the outcome of a case -- not even to apparent public opinion -- where the tenor and meaning of existing legislation does not permit such accommodation. Generally, the needed remedy in such happenstance would lie within the province of the legislature. But when a situation that by its nature ought to be covered by the criminal law tends to turn from bad to worse because of a judicial construction of the pertinent codal or statutory provisions leaving the door open to the perpetration with impunity of an act that is within the general character of the prohibited ones, I feel very strongly that the Court should take a second hard look at its past pronouncements and try to see if there is, within the ambit of its authority, any logical and realistic way of meeting the emerging or ensuing evil, playing, as it were, the role that a legendary little girl did to plug a hole in dikes of Holland. Indeed, it cannot be doubted that the proliferation of bouncing checks has been due to the immunity that the doctrine of no-estafa-in-bouncing-checks-issued-in-payment-of-pre-existing-obligations has created in favor of criminal opportunists. It is high time We examined and studied such doctrine again to find out if it is really as sound as it should be and to scuttle it if it is not so.

The doctrine relied upon by the majority was first enunciated in *People vs. Lilius*, 59 Phil. 339 thus:

"Inasmuch as these last three checks Exhibits B, C and F were issued in payment of a debt, even granting that the appellant issued them without sufficient funds to cover the amount thereof, and furthermore, that he acted fraudulently in issuing them, such act does not constitute the offense of estafa. The appellant obtained nothing under said checks. His debt, for the payment of which said checks were issued, had been contracted prior to such issuance. Hence the deceit, if there was any in the issuance of the questioned checks, did not precede the defraudation. On the other hand, the record does not show that the debt had been contracted through fraud. (Decisions of the Supreme Court of Spain of December 18, 1889, June 9, 1891, and January 16, 1906.)"

Later, in *People vs. Quesada*, 60 Phil. 515, the ruling was:

"Under the Revised Penal Code postdating a check, or issuing it in payment of an obligation, the offender knowing that at the time he had no funds in the bank, or the funds deposited by him in the bank were not sufficient to cover the amount of the check, and without informing the payee of such circumstances (Posfechando un cheque, o librandolo contra un banco en pago de una obligacion, sabiendo que al tiempo de hacerlo no tenia fondos, o no los tenia suficientes en dicho banco, sin advertir de tales circunstancias al tomador) is not a crime in itself. It is a part of article 315, which defines and punishes various forms of estafa or swindling. The payee or the person receiving the check must be defrauded by the act of the offender (article 315, No. 2 [d], Revised Penal Code). To defraud is to deprive of some right, interest, or property by a deceitful device, and No. 2 of article 315 provides that the false pretenses or fraudulent acts therein mentioned must be executed prior to or simultaneously with the commission of the fraud."

Still later, in *People vs. Fortuno*, 73 Phil. 407, it appeared that appellant "Fidel Fortuno rented from 'El Hogar Filipino' a room in the Crystal Arcade; and the rental having become due, he issued in favor of the latter a check for P60 drawn against the Bank of the Commonwealth. This check was, upon presentation to the bank for payment, dishonored for lack of funds." Holding that there was no estafa under these circumstances, this Court ruled:

"The issuance of a check with knowledge on the part of the drawer that he has no funds to cover its amount and without informing the payee of such circumstance, does not constitute the crime of estafa if the check was intended as payment of a pre-existing obligation, as in the instant case. The reason for this rule is that deceit, to constitute estafa, should be the efficient cause of the defraudation and as such should either be prior to, or simultaneous with, the act of fraud. (Cf. *People vs. Lilius*, 59 Phil., 339, 342; *People vs. Quesada*, 60 Phil., 515, 520.)"

Accordingly, the majority now holds that "(S)ince (in the circumstances contemplated) an obligation has already been contracted, it cannot be said that the payee parted with his property or that the drawer has obtained something of value as a result of the post-dating or issuance of the bad check in payment of a pre-existing obligation."

In other words, the majority asserts in effect that when a check issued in payment of a pre-existing obligation bounces, the payee suffers no defraudation. I submit that such view does not conform with the more realistic juridical concept of defraudation in the jurisprudence on estafa, which is undoubtedly more in consonance with the moral implications of the admittedly deceitful act involved and, importantly, with the negotiability and acceptability that checks should maintain as an indispensable instrument of convenience and security in trade and commerce.

There can be no debate in that the "postdating or issuing of a check in payment of an obligation when the offender had no funds therein, or his funds deposited therein were not sufficient to cover the amount of the check" is a false pretense or a fraudulent act, which in itself is already something to abhor. It is so characterized by Article 315, 2 (d) of the Revised Penal Code. This truth notwithstanding, the existing jurisprudence in this Court which the majority wants to perpetuate holds that there is no estafa when the obligation that is paid is a pre-existing one, for two reasons: (1) In such an instance, there is no damage or injury caused to the creditor and (2) the damage or injury that might be suffered by the payee, if any, would always be subsequent to the issuing of the check, hence the defraudation would not be prior to or simultaneous with the false pretense of issuing a worthless check as required by the text of the first part of Article 315, 2 (d) quoted in the majority opinion.

I cannot agree. As I see it, the flaw in such holding springs from the fact that it unnecessarily relates the requisite defraudation or damage only and exclusively to the pre-existing obligation, which naturally precedes the issuing

of the check and remains in a general sense unaffected by its bouncing. Thus, it is argued in some quarters that the issuing of a check in payment of a pre-existing obligation is just the equivalent of drawing and issuing a promissory note, which when unpaid on its due date gives rise to only a civil liability.

I do not see it that way. When someone makes a promise to pay a pre-existing obligation on a given date, whether such promise be verbal or in writing -- as in a promissory note -- it is obvious that the creditor takes it as nothing more than an assurance -- let us concede -- based however on a mere expectancy, such that when the expectancy fails to materialize and the debtor does not pay, the creditor does not feel deceived, even if he is naturally disappointed. Indeed, the creditor may in such event even suffer some kind of damage, as, when in anticipation of the promised payment, he contracts his own obligations predicated on the fulfillment of the promise and then he cannot comply because the promised payment does not materialize. Still, there would be no estafa, simply because in that case, there is no deceit but only the frustration of a hope born of the best of intentions.

But there is no parity between a promissory note, on the one hand, and a check, on the other. A check is a formal and definite representation that the drawer has money in the bank sufficient to cover the amount thereof on the date appearing thereon or whenever it should be duly presented to the bank for encashment. It does not merely connote an expectancy, it is a positive assertion of a fact, in the sense of an unconditional or absolute assurance that there would not be any hindrance to its being honored by the drawee bank. This fundamental point is to me self-evident.

Now, as I have already stated, the act of issuing a check when the drawer knows he does not have sufficient funds that can cover the amount thereof in the bank constitutes deceit, a false pretense, a fraudulent act. Under the law, all that is needed to make it criminal and a estafa is that there be proof of damage. And in this regard, the majority holds that "in the issuance of a check as payment for a pre-existing obligation, the drawer derives no material benefit in return as its consideration had long been delivered to him before the check was issued", for which reason, following Lilius, Quesada and Fortuno, it is claimed there is no estafa, since "the issuance of the check was not a means to obtain a valuable consideration from the payee."

Again, I disagree. The majority's pose ignores the rule long settled in this jurisdiction -- as early as 1907 -- that damage in estafa does not have to be either pecuniary or material. Disturbance of property rights is enough. (United States vs. Goyonochea, 8 Phil. 117; United States vs. Malong, 36 Phil. 821; United States vs. Sevilla, 43 Phil. 186 and People vs. Santiago, 54 Phil. 814.) In Santiago, *supra*, there was a reverse situation, because it was the accused who thru false pretenses was able to secure a check which however he never cashed or used. The Court held that although the check was not cashed, there was damage sufficient for estafa since in the meanwhile before the check could be cancelled, the drawer was unable to make use of the amount covered thereby, which is a realistic view. Now, similarly, it cannot be disputed that the receipt of a check by any person in payment of an obligation creates a new situation in the property rights of the recipient not only in relation to the satisfaction of the very obligation supposed to be paid but also in his other transactions and activities which somehow might have been made to depend precisely on the encashment of the check. The subsequent realization that the check is worthless correspondingly disturbs that situation. Thus, as very wisely held in the cases just cited, it cannot be truly said that the creditor is not damaged by the deceitful act of issuing the check with knowledge that it is worthless. I should also add importantly it is not necessary that some material benefit should have been derived by the debtor from his fraudulent act. According to Viada, quoting from the decision of the Supreme Court of Spain of April 7, 1888:

"CUESTION 2. Sera condicion precisa del delito de estafa que con ella logre su autor un lucro determinado, o bastara que con la misma se haya inferido un perjuicio a otra persona? -El Tribunal Supremo ha declarado que

basta esto ultimo: 'Considerando que no es condicion integrante del delito de estafa que su autor reporte para si propio determinado o conocido lucro, sino que se realiza siempre que por virtud de engaño generico o especifico, o de acto estimado por la Ley equivalente, se causa intencionalmente perjuicio a otra persona en su patrimonio, etc.' (S. de 17 de Abril de 1888, Gaceta de 4 de agosto.)" (6 Viada, Codigo Penal Comentado, 374.)

In other words, the defraudation in the estafa thru fraudulent acts defined in the Penal Code does not necessarily refer to the taking by the accused from the offended party of anything as long as the latter suffers some kind of damage in consequence of his false pretense.

Stated otherwise, my fundamental position is that the Court does not have to adhere to the precedents in Lilius, Quesada and Fortuno, but on the contrary, should overrule them, because the damage or injury that should be the criterion in determining whether or not there is estafa when a bouncing check is issued in payment of a pre-existing obligation need not be that related to the pre-existing obligation but rather, to that suffered by the creditor subsequent to the issuing of the check. Under this view, it is obvious that as required by Article 315, 2 (d), the false pretense or fraudulent act of issuing the fundless check is prior to the damage or defraudation.

It is to me inconceivable that with all the care, wisdom and perspicacity that went into the preparation of the Revised Penal Code, such a widely known malpractice of issuing bouncing checks necessarily causing damage to the parties concerned, if only in the disturbance of their property rights, could have been left out without any punitive sanction by the lawmakers, thereby deliberately leaving the same not only unpunished but, on the contrary, encouraged, to the great detriment of the commercial and banking community. I deny that those who framed the Revised Penal Code could have been guilty of such an unpardonable omission, especially when it is considered that precisely to be sure that no fraudulent act should escape due punishment, in Article 318, the Code expressly penalizes "any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter". In other words, read properly, the Revised Penal Code punishes as estafa all kinds of frauds and false pretenses causing damage to another. In my humble view, therefore, the seeming impotency today of those aggrieved by the issuance of bouncing checks to prosecute those responsible therefor is not in truth due to any fault of those who made the law. It is the jurisprudence -- faulty, in my considered opinion -- the majority is upholding that is to blame. In a word, the remedy is in Our hands. I cannot see any reason why We cannot act accordingly, when it is part of Our responsibility to see to it that the laws are construed and interpreted to enhance and protect the public interest. It is high time We tore down the sanctuary We have accorded veritable estafadores and engañadores thru Our decisions in the past, unless We are prepared to be entrapped in a pocket of quicksand of Our own making.

The foregoing discussion makes it unnecessary for me to elucidate at length on the effects of the so-called Padilla amendment. I can only say that said amendment has correspondingly facilitated the prosecution of any violation of Article 315, 2 (d) by providing for a presumption of bad faith in the event a check is not made good within the three-day period therein prescribed, where the payee has not been duly advised, upon its issuance, of a possibility that the same might not be fully funded. But it is not very clear to me that the presumption it has thus created can be deemed to retroact to the time of the contracting of the preexisting obligation, as seems to be the theory being upheld in some respectable sectors of the judiciary and of the bar.

My vote, therefore, is to grant the petition in G.R. No. L-45490 and to order respondent court to proceed with the trial of the accused, Ranulfo M. Salazar, for estafa under Article 315, 2 (d) as construed above; and to deny also the petition in G.R. No. L-42971 and to sustain the order of denial complained of.

In G.R. No. L-45711, I concur in the judgment acquitting the petitioner Tan Tao Liap, not because of the doctrine of pre-existing obligations but on the ground that his issuance of the checks in question was practically the

product of coercion and so, faced with the inability to make good two of said checks, he frankly informed the payee, his creditor, before the latter could negotiate the same, of the business reverses he had suffered, thereby showing good faith. There was actually no deceit in this case.

Makasiar J., concurs.

DISSENTING OPINION

ANTONIO, J.:

I dissent for the following reasons:

The decision of the Supreme Court of Spain of December 18, 1889, which was the basis of the rule enunciated in *People v. Lilius*[1] that the deceit must precede and be the efficient cause of the def-raudation, was actually predicated on the provisions of Article 548 of the Spanish Penal Code. The same is true with the decisions of the Supreme Court of Spain of June 9, 1891 and January 16, 1906, cited in the *Lilius* case.

Article 548 of the Spanish Penal Code states:

"1.º El que defraudare a otros usando de nombre fingido, atribuyéndose poder, influencia o cualidades supuestas, aparentando bienes, crédito, comision, empresa o negociaciones imaginarias, o valiéndose de cualquier otro engaño semejante que no sea de los expresados en los casos siguientes."

The afore-cited paragraph 1 of Article 548 of the Spanish Penal Code is the same as paragraph 1 of Article 535 of the Penal Code of Spain which was in force in the Philippines until the Penal Code was revised. Article 535, paragraph 1 of the Penal Code provides:

"The penalties prescribed by the next preceding article shall be imposed upon:

(1) Any person who shall defraud another by the use of any fictitious name, or by falsely pretending to possess any power, influence, qualification, property, credit, agency, or business, or by means of any similar deceit other than those hereinafter enumerated."

The same penal proviso is now embodied in paragraph 2(a) of Article 315 of the Revised Penal Code which provides:

"2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceptions." (Italics supplied.)

This is the class of estafa committed through fraudulent means, to wit, use of fictitious names, etc. in order to obtain gain or advantage. As a general rule, in order to constitute deceit there must be a false representation to a

matter of fact, a positive assertion of falsehood—which false statement or fraudulent representation must necessarily be made prior to or simultaneously with the delivery of the property, it being essential that such deceit, or fraudulent representation constitute the very cause or the only motive which induces the offended party to part with the thing.

Thus, delivery by the drawer to the payee of a fictitious draft with a fixed period for payment in exchange for a sum of money received from the latter, the drawer having neither credit nor funds at the place and with the person against whom the bill is drawn, payment being refused upon due presentation, was held as estafa under Article 535, No. 1, of the old Penal Code penalizing fraud thru false pretenses.[2] Similarly, where checks are issued by the defendant and he receives the money for them, and then he stops payment on the checks and does not return the money, and at the time he cashed the checks he intended to stop payment on them, the same was also considered as estafa under the same penal provision.[3] The Court also considered the following as instances of estafa under false pretenses, viz.: (a) where one signs a check with a fictitious name, falsely pretending that said check could be encashed, and then on the strength of such false pretense, obtains from the offended party money in exchange for the worthless check, he is guilty of estafa under the aforesaid article;[4] or (b) where a person falsely signs a check as an unremarried widow for the purpose of encashing a U.S. Veterans pension check, although her right to the pension has been extinguished because of her remarriage, she is also guilty of estafa under this article.[5]

Since the issuance of worthless checks in exchange for cash or other valuable consideration was already considered as estafa under false pretenses defined in paragraph 1 of Article 535 of the Penal Code which was in force in the Philippines, it would therefore be more in conformity with logic and sound reason to conclude that Act No. 3313 which was approved on December 3, 1926 was intended to cover other fraudulent acts. Act No. 3313 was incorporated as paragraph 10 of Article 535 of the old Penal Code. It provides thus:

"Art. 535. The penalties prescribed by the next preceding article shall be imposed upon:

xxx xxx xxx

10. Any person who in his own name or as an officer or member of a corporation, entity, or partnership shall issue a check or any other commercial document against a bank established or that may hereafter be established in these Islands in payment of a debt, or for any other valuable consideration knowing that he does not have at the time of its issuance sufficient provision of funds in the bank to cover its amount, or, having such funds, shall maliciously and feloniously sign his check differently from the signature registered at the bank as his authentic signature, in order that the bank shall refuse to pay the same; or shall issue a postdated check and at the date set for the payment of it, the drawer of the check does not have sufficient deposit in the bank to pay for the check. And any person who shall endorse in his own name or as an officer or member of a corporation, entity or partnership a check or any other commercial document payable upon demand or at some subsequent date knowing that the drawer of the instrument does not have sufficient funds in the bank against which it was drawn." (As added by Act No. 3313. Italics supplied.)

A careful analysis of the provisions of paragraph 10 of Article 535 will indicate that the estafa defined and penalized under paragraph 10 is distinct and different from the estafa thru false pretenses defined and penalized in paragraph 1 of the same article. Thus, under paragraph 10 of Article 535, "the issuance of a check or any other commercial document against a bank * * * in payment of a debt, or for any other valuable consideration", where

the person issuing it (1) knows that he does not have at the time of its issuance sufficient funds in the bank to cover the amount of the check; or (2) having such funds, shall maliciously and feloniously sign his check differently from the signature registered at the bank as his authentic signature, in order that the bank shall refuse to pay the check; or (3) postdates the check, and "at the time set for the payment of it, the drawer of the check does not have sufficient deposit in the bank to pay for the check" constitutes swindling or estafa and, therefore, subject to penal sanctions. The phrase "in payment of a debt" presupposes the existence of a prior obligation for the extinguishment or payment of which the check is issued. The fraud, therefore, consists in the fraudulent payment of the obligation, not in the contracting of the obligation. The false pretense or fraudulent act of issuing the worthless check to pay the obligation precedes the damage, which precisely materialized upon the dishonor of the check.

The Code Committee, in revising the Spanish Penal Code on estafa, placed paragraph 10 of Article 535 of the old Penal Code as Section 2, paragraph (d) of Article 315 of the Revised Penal Code. The phrase "in payment of a debt, or any other valuable consideration" in Act No. 3313 was simplified by the Code Committee and substituted with the phrase "in payment of an obligation".

However, in *People v. Fontana*,^[6] citing *People v. Quesada*,^[7] and *People v. Lilius*, *supra*, it was held that the issuance of a worthless check intended as payment of a pre-existing obligation is not estafa, as the deceit should be the efficient cause of the defraudation and as such it must be prior to or simultaneous with the commission of the fraud.

It was precisely to rectify this anomalous situation that Senate Bill No. 413 was introduced by Senator Ambrosio Padilla. Thus, the explanatory note of Senate Bill No. 413 reads:

"The issuance of checks as negotiable instruments has been abused by persons who have no bank deposits or have insufficient funds to cover the amounts of said checks. This bad practice has been utilized by drawers of checks to defraud innocent payees or indorsees. It disturbs banking transactions. It impairs the negotiability of checks. It is true that a check may be dishonored without any fraudulent pretense or fraudulent act of the drawer. Hence, the drawer is given three days to make good the said check by depositing the necessary funds to cover the amount thereof. Otherwise, a prima facie presumption will arise as to the existence of fraud, which is an element of the crime of estafa.

"The public interest, particularly the regularity of commercial payments thru checks, would justify the immediate approval of this bill." (*Italics supplied.*)

In his brief sponsorship speech, Sen. Padilla stated:

"In the same vein, it has been held that if the check is used in payment of an existing obligation, it can not be considered as estafa, even if the obligor had the fraudulent intent of issuing a check without funds and he knows that his check will be dishonored by the drawee bank. Now, this practice of issuing bouncing checks has had a very deleterious effect on our commercial transaction(s). As a matter of fact, even tax obligations are being paid by taxpayers whose checks are not good. And it has been reported once that even the Bureau of Internal Revenue has received a number of checks amounting to substantial amounts which are covered by bad checks, and the drawers of these checks are really animated by fraudulent intent to deceive the payee, to disturb banking transactions and to impair the negotiability and acceptability of checks as negotiable instruments.

"I was paying once certain fees to the City of Manila with my check, thru a messenger and I was informed that my check, or other checks of the same import, would not be acceptable because the fees should be paid in cash. I believe that this is not a good practice, because we should encourage the use of checks. However, if the use of checks can be abused and misused without any liability on the part of the drawer and to the great prejudice of the payee, then this obnoxious practice of not accepting checks even in the payment of taxes and fees may become the rule.

"So. Mr. President, I submit that public interest, particularly the regularity of commercial payments by checks, would justify the amendment of Article 315, Section 2, paragraph (d) of the Revised Penal Code as proposed in this bill." (Congressional Record of the Senate, Vol. II, No. 37, p. 932; pp. 2-3 of xerox copy of Congressional Record submitted by the Solicitor General, Italics supplied.)

"Senator Padilla: * * * The intention precisely is to discourage persons from making use of this device of issuing checks — not to pay their just obligations but to embarrass the payee as well as commercial transactions." (at p. 935, see p. 9 of xerox copy of Congressional Record submitted by the Solicitor General; Memorandum of Amicus Curiae, pp. 12-13. Italics supplied.)

It was, therefore, obvious from the discussions on the floor of the Senate that it was the intention of Congress to eliminate the two defenses available under the old provision which practically nullified the penal sanction of estafa thru the issuance of bouncing checks, to wit: (a) that the check was issued in payment of a pre-existing obligation; or (b) that the drawer of the check informed the payee that his funds deposited in the bank may not be sufficient to cover the amount of his check. The clear legislative intent was to penalize as estafa not only the issuance of a worthless check at the time of contracting an obligation, but also the payment in a fraudulent manner of an obligation already existing. The provision in question is not only concerned with the offense of obtaining money or property by false pretense. The making or uttering of the check and its dishonor is sufficient. For defraudation can take place not only at the time of contracting the obligation, but also at the time it is supposed to be paid. This fact is reflected by the procedural rule that the venue for the crime of estafa may be either in the place where the obligation was contracted or in the place where the check is dishonored. To hold that it is only the issuance of a bouncing check at the time of contracting the obligation that is punishable under paragraph 2(d) of Article 315 of the Revised Penal Code would render this provision as a mere surplusage, because this overt act is already covered by paragraph 2(a) of the same Article 315.

Senate Bill No. 413, as approved by the Senate and concurred in by the House of Representatives, was signed into law by President Ferdinand E. Marcos on June 17, 1967, and became Republic Act No. 4885. Subsequently, on October 22, 1975, President Marcos promulgated Presidential Decree No. 818, increasing the penalties for estafa committed thru the issuance of bouncing checks.

The provisions of paragraph 2 of Article 315 of the Revised Penal Code, invoked as the basis of the contention that the check should be issued and delivered prior to or simultaneously with the contracting of the obligation, states: "By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud." It must be noted that the phrase "that the obligation must be contracted at the time of the issuance of the check" does not appear in any text of the law.[8]

The term "fraud", in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.[9] The term "commission of the fraud" means the "swindling" or defraudation of the victim, who is the payee of the

bouncing check. The word "fraud" does not refer to the "false pretense or the fraudulent act", for that would be redundancy or surplusage.

The contracting of an obligation necessarily carries with it a promise to pay such obligation. Thus, when a person borrows money from another or purchases a thing on credit, he does so always with the promise to pay the debt or the article purchased. This promise may be an honest one, made in all good faith, with the clear intention of fulfilling it. Thus, if such good faith is shown, mere delay or inability to pay later on due to unavoidable circumstances on the part of the debtor does not make him criminally liable for estafa. On the other hand, the promise may be a fraudulent one, made in bad faith, with no intention to pay the debt at all, even from the beginning. In such a case, the promise is a mere false pretense, a positive assertion of falsehood to induce the creditor to lend the money or the trader to deliver the goods. This "false pretense" would be prior to or simultaneous with the contracting of the obligation. There cannot be any doubt that in such a case, the false pretense may be considered as the very cause or the only motive which induced the offended party to part with the thing. This could be a case of estafa under Article 315, paragraph 2(d) of the Revised Penal Code.

But fraudulent intent may not be easily ascertainable, in the absence of any overt act. Since fraud is a state of mind, it need not be proved by direct evidence but may be gathered from the nature of the act or from the circumstances of the case. Indeed, the character of the promise depends on the intention, the good or bad faith of the promisor, which, being subjective, is incapable of direct proof. There is no question that the legislature may, by appropriate legislation, create rules of evidence under which natural inferences from certain facts may become presumption of law. For example, the failure of a public officer to have duly forthcoming any public funds or property of which he is chargeable, upon demand by any duly authorized officer, is considered prima facie evidence of malversation.^[10] Hence, the second sentence of paragraph 2(d) of Article 315 supplies the legal presumption which would show prima facie that the promise made upon contracting the obligation is a mere false pretense or a positive assertion of a falsehood. The rule under paragraph 2(d) of Article 315 that "the failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit" is a rule of evidence and no more. It is intended to provide for prima facie evidence for the prosecution in such a way that whenever a person issues a postdated check or a check when he had no funds in the bank or his funds are insufficient to cover the check, and fails to make good the check within three (3) days from receipt of the notice of dishonor---the law creates the presumption that he acted with deceit or fraudulent intent. There cannot be any doubt also that the legislature may penalize the issuance of worthless checks, although the payee takes the check in payment of a pre-existing debt. This is precisely the purpose of this amendment which was enacted in furtherance of the public policy regarding this special sort of commercial fraud. The dishonor of the check in either case is the consummation of the defraudation or the commission of the fraud, within the intentment of the requirement that the "false pretense or fraudulent acts must be executed prior to or simultaneously with the commission of the fraud."

It has been argued that there could not be estafa because the offended party does not suffer any damage as a result of the dishonor of the check, as the existing obligation is not discharged. It can scarcely be argued with reason that under such circumstances, the crime of the offending party would, in any wise, be lessened because of the fact that the existing obligation is not extinguished. The issuance of the worthless check serves the purpose of delaying any action on the transaction, and constitutes at least a detriment or prejudice to the payee of the check. It is possible that the payee may deposit the same and, relying thereon, issue his own check to a third party in connection with a transaction or agreement which he may have had with the latter. It is not difficult to perceive the mischievous results that may ensue from the dishonor or rejection of the first check. His own check may bounce as a result thereof, rendering him liable for any damage or prejudice which the third party may suffer as a

consequence. It has been held that a check implies a contract on the part of the drawer that he has funds in the hand of the drawee for its payment or presentation.[11] It cannot be questioned that the dishonor of a merchant's or trader's check is tantamount or analogous to a slander of his trade or business, imputing to him insolvency or bad faith.[12]

In any event, as early as March 22, 1907, this Court held that mere "disturbance" in property rights "constitutes real and actual damage, and is positive enough under a rule of law to produce one of the elements constituting the crime of estafa.[13] Again, in a subsequent case promulgated on August 30, 1917, this Court reiterated the principle in *Goyenechea* that mere disturbance of the property rights of the complainants is considered real and actual damage within the intentment of the penal law on estafa.[14] The same principle was re-affirmed in *People v. Santiago*,[15] where this Court stated:

"The appellant contends that as the check was not cashed by the Bank of the Philippine Islands, and no attempt was made to cash it, no crime has been committed. The check issued to the defendant by the offended party was payable to 'cash', and therefore, negotiable. While the defendant had said check in his possession, the offended party could not dispose of the amount for which it was made out, and this was, at least, temporary prejudice sufficient to constitute estafa (*U.S. vs. Goyenechea*, 8 Phil. 117; *U.S. vs. Malong*, 36 Phil. 821)." (At p. 816).

Statistically, the greater bulk of dishonored checks consists of those issued in payment of pre-existing obligations. It was obviously because of this that the President of the Philippines promulgated Presidential Decree No. 818, increasing the penalty for estafa committed under paragraph 2(d) of Article 315 of the Revised Penal Code. To quote pertinent portions of the decree, particularly the "whereases":

"WHEREAS, reports received of late indicate an upsurge of estafa (swindling) cases committed by means of bouncing checks.

"WHEREAS, if not checked at once, this criminal act would erode the people's confidence in the use of negotiable instruments as a medium of commercial transaction and consequently result in the retardation of trade and commerce and the undermining of the banking system of the country.

"WHEREAS, it is vitally necessary to arrest and curb the rise in this kind of estafa cases by increasing the existing penalties provided therefor. * * *."

According to Mr. Norberto Katigbak, a well known financial columnist who appeared as "amicus curiae", the approximate total value of bouncing checks per day was close to 200 million pesos, and thereafter when overdrafts were banned by the Central Bank, it averaged between 50 million to 80 million pesos a day. According to him, the great volume of bouncing checks has made access to credit more difficult, hampered the expansion of business, and disrupted normal business transactions, with consequential serious repercussions on the economy; thus the explanatory note in Senate Bill No. 413, in P.D. No. 818, that "the issuance of checks as negotiable instruments have been abused by persons who have no funds or insufficient funds * * * to defraud innocent payees * * *". These practices disturbs banking transactions. It impairs the people's confidence in the use of negotiable instruments as a medium of commercial transaction and consequently results in the retardation of trade and commerce, and the undermining of the banking system. The public policy, in furtherance of which Republic

Act No. 4885 was enacted, is therefore clearly manifest.

The first and fundamental duty of the courts is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible. The construction of the statute should be made with reference to its purpose, and in harmony and in conformity therewith, in order to aid, advance, promote, support and effectuate such aim, motive, aspirations or object. A construction which would operate to impair, pervert, frustrate, thwart, or nullify the very purpose of the statute should be avoided.[16] This rule is applicable to penal statutes. Indeed, the canon that penal laws are to be strictly construed "is not an inexorable command to override common sense and evident statutory purpose." [17] Certainly, we cannot shut our eyes to notorious mischiefs which the law is intended to suppress.

At any rate, it is my considered opinion that the reprehensible act of issuing bouncing checks, albeit in payment of pre-existing obligations, should not go unpunished. At the very least, it should be penalized under Article 318 of the Code, which reads as follows:

"Art. 318. Other deceits.-- The penalty of arresto mayor and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.

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The foregoing section is suppletory to the preceding provisions of the Code on estafa and should be applied whenever the elements of deceit and prejudice are present.[18]

Makasiar, J., concurs.

[1] No. 38774, December 23, 1933, 59 Phil. 339.

[2] U.S. v. Mendezona, No. 4211, Nov. 18, 1908, 12 Phil. 72.

[3] Article 535, paragraph 1, of the old Penal Code; U.S. v. Lee Cheng Poe, 39 Phil. 466, No. 13969, Jan. 15, 1919.

[4] People v. Bisquera, 51 O.G. 248.

[5] People v. Samonte, L-12733, Apr. 29, 1959, 105 Phil. 1288.

[6] No. 48458, Nov. 7, 1941, 73 Phil. 407.

[7] No. 40846, Sept. 1, 1934, 60 Phil. 515.

[8] Act No. 3313; Act No. 315, par. 2(d) of Act No. 3815; and Republic Act No. 4885.

[9] 37 Am. Jur. 2d. 19, at Sec. 19.

[10] Article 217, Revised Penal Code, as amended by Republic Act No. 1060.

[11] Bull v. First Nat. Bank, 123 U.S. 105, 31 L. ed. 92.

[12] Araneta v. Bank of America, L-25414, July 30, 1971, 40 SCRA 144.

[13] U.S. v. Goyenechea, No. 3307, March 22, 1907, 8 Phil. 117.

[14] U.S. v. Malong, No. 12597, Aug. 30, 1917, 36 Phil. 821.

[15] No. 32455, Aug. 6, 1930, 54 Phil. 814.

[16] 73 Am. Jur. 2d. 360.

[17] Ibid., pp. 456-457.

[18] Decision, Supreme Court of Spain, July 9, 1896; Hidalgo,Codigo Penal 878.

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