

UNITED STATES, PLAINTIFF AND APPELLEE, VS. EUGENIO KILAYKO, DEFENDANT AND APPELLANT.

G.R. No. 10891. August 18, 1916

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10891/>

JOHNSON, J.:

This defendant was charged with the crime of estafa. The complaint alleged:

"That on, after, or about the 14th of January, 1915, in the jurisdiction of the municipality of Iloilo, Philippine Islands, the aforesaid accused voluntarily, illegally and criminally, by means of fraud and deceit, bought from Leonora Lozano and Dolores Genoves a parcel of land composed of lots Nos. 356 and 804 of the cadastral survey of Iloilo, (record No. 4, case No. 9739), with the house situated thereon, for the sum of P1,400, with the express obligation to pay said amount in the act of sale; the said accused by means of fraud and deceit took from the vendors and carried off the document of sale signed by them and the husband of Dolores Genoves, saying he would carry it to a notary public the same afternoon, the 14th of January, 1915, and that on the following morning he would pay the total amount for said real estate, P1,400; but said accused in place of paying the vendors delivered to them a document which was not a payment nor was it the object of the contract between them; and, after fraudulently obtaining the title to the real estate and feigning to be the owner of the same, alienated, incumbered and sold the same to C. N. Hodges for the sum of P3,000, on the 17th or 18th of January, 1915, the aforesaid accused appropriating the aforesaid property to his own use and personal gain to the damage and prejudice of Leonora Lozano and Dolores Genoves; acts committed with violation of the law."

Upon said complaint the defendant was arrested, arraigned, tried, found guilty of the crime charged in the complaint, and was sentenced to be imprisoned for a period of two years of presidio correctional, to indemnify Leonora Lozano and Dolores Genoves, in the sum of P1,400, in case of insolvency to suffer subsidiary imprisonment, and to pay the costs.

From that sentence the defendant appealed to this court. The appellant presents a question of fact only. He alleges that the proof adduced during the trial of the cause does not show that he was guilty of the crime of estafa, beyond a reasonable doubt.

An examination of the record shows that certain facts are not denied.

First. That on the 14th of January, 1915, the appellant entered into an agreement with Leonora Lozano and her daughter Dolores Genoves, with the consent of the latter's husband Vicente Villareal, to purchase certain parcels of land which are described by number in said agreement for the sum of P1,400, while the said agreement contained a statement that the purchase price was P2,500.

Second. That on the 15th of January, 1915, the defendant gave or delivered to the said Leonora Lozano a document in the words and figures following:

"By these presents I make known that I agree that Señora Leonora Lozano y Dolores Genoves may dispose of the rentals of the house which I have bought, during such time as I have not paid them the P1,400 which I owe

them. Iloilo, Jan. 15, 1915. (Sgd.) Kilayko."

Third. That on the 17th of January, 1915, the defendant and appellant sold, by means of an alleged public document, the parcels of land in question to C. N. Hodges for the sum of P3,000; that said mentioned document was ratified before a notary public by the defendant on the 18th of January, 1915.

It is contended by the said Leonora Lozano and Dolores Genoves that, when they sold said parcels of land to the defendant on the 14th of January, 1915, it was then and there mutually agreed that the defendant should pay to them in cash the sum of P1,400 upon the delivery of the deed of sale of the same; that immediately after said deed of sale had been signed by the vendors the defendant represented to them that he desired to take said document to a notary public; that while the vendors objected to the delivery of the deed until they were paid, yet, by reason of the representation of the defendant, they did deliver to him said deed; that on the next day (January 15th) the defendant, instead of delivering to them the said sum of P1,400 in cash, insisted upon their accepting the contract quoted in paragraph 2 above by virtue of which the vendors were to wait for the payment of the sum of P1,400 until that amount could be collected from the rents of the property claimed to have been sold.

The defendant and appellant admits that he agreed to purchase the parcels of land in question for the sum of P1,400; that he inserted in the body of the deed of sale the sum of P2,500 instead of the sum of P1,400 in order that he might obtain some advantage thereby in the sale of the property. He denies that the deed of sale from Leonora Lozano and Dolores Genoves had been delivered to him in accordance with their contention. He asserts that said document or deed of sale had been executed and delivered by them to him voluntarily and before a notary public, and that they had agreed to accept or receive the payment for said parcels of land in accordance with said document found in paragraph 2 above. Leonora Lozano is a widow of ninety years of age. She and her co-vendors emphatically deny that they sold the land to the defendant under the conditions mentioned by him. They insist that they were to receive in cash, upon delivery of the deed of sale, the sum of P1,400.

The document or deed of sale by Leonora Lozano and her daughter to the defendant (Exhibit A) appears to have been signed by Ciriaco Neysio and to have been acknowledged by a notary public, Jose Evangelista. The acknowledgment of the notary public is dated the 14th of January, 1915. The vendors swear positively that the only persons who were present at the time said document (Exhibit A) was executed were themselves and the defendant. They swear positively that the witness Ciriaco Neysio was not present. They swear positively that they did not sign said document in the presence of a notary public. The judge below did not believe that Ciriaco Neysio was present at the time the deed of sale was executed. Neither did he believe the declaration of the notary public when he said that the vendors were present and signed said document before him. Commenting upon the evidence of the notary public the lower court said, after stating that the same notary public had on other occasions taken the acknowledgment of persons without having them present:

"I have not a doubt that he (the notary public), rather than acknowledge the truth of the matter, perjured himself and that he did not see this old woman sign it—she did not acknowledge it before him and he did not go to her house. His clerk did the same thing. I do not believe he was present. I do not believe he saw these parties sign this paper, as he swore he did. I do not believe that he and Evangelista saw the defendant deliver any note for P1,400 due April 30th. I believe that the vendors in this case swore to the truth in preference to the defendant and his witnesses."

Judge Powell did not believe the statement of the notary public that the vendors in the present case had appeared before him and acknowledged that he had executed and delivered the contract of sale of the said parcels of land, for the reason that the same notary public had admitted that in other cases he had made false statements with reference to the appearance of persons before him who had executed documents. The notary public admitted that in other cases he had taken acknowledgments in the absence of persons executing contracts. That fact certainly

influenced the lower court in not believing the declaration of the notary public. In our judgment it was sufficient. The lower court believed the declarations of the vendors, Leonora Lozano and her daughter. He did not believe the statement of the alleged witness nor that of the notary public. There is nothing in the record which would justify us in reaching a different conclusion.

We are of the opinion that the evidence adduced during the trial of the cause shows, beyond a reasonable doubt, that the defendant induced Leonora Lozano and her daughter to execute said contract of sale {Exhibit A) upon the condition that he would pay upon the delivery of the same the sum of P1,400 cash, and that then and there the defendant did, by means of false and fraudulent representations, obtain possession of said contract without intending to pay the said P1,400 for the purpose of defrauding said vendors and for the purpose of selling said lands to a third party, which he did upon the 17th day of January, 1915. These facts clearly show that the defendant is guilty of the crime charged in the complaint. After a careful examination of the record, we are fully persuaded that the sentence of the lower court is in conformity with the evidence adduced during the trial of the cause and the law applicable thereto, and that the sentence of the lower court should be and is hereby confirmed, with costs. So ordered.

In view of the finding of the lower court with reference to the conduct of the notary public Jose Evangelista, not only with reference to the execution of Exhibit A mentioned above but in other cases to which the lower court makes reference in his decision, we would respectfully recommend that the Attorney-General investigate the conduct of said notary public, with a view of disciplining him by depriving him of his notarial commission, if it is found that he has been abusing his authority as a notary public.

Torres, Trent, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.