

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. THOMAS NIMROD MCKINNEY, DEFENDANT AND APPELLANT.

G.R. No. 23824. September 04, 1925

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-23824/>

STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the City of Manila, finding the appellant, Thomas N. McKinney, guilty of a violation of section 7 of Act No. 2581 of the Philippine Legislature, in that at the times stated in the information he had sold in the City of Manila certain speculative securities, to wit, shares of the Philippines-American Company, Inc., without having previously obtained a written permit from the Treasurer of the Philippine Islands, as required by section 2 of said Act. Upon hearing the cause the trial judge found the accused guilty and imposed upon him a fine of P2,500, with subsidiary imprisonment in case of insolvency and required him to pay the costs.

It appears that the appellant has been resident in the Philippine Islands for many years, but in the year 1920 he was in the United States and upon the occasion of said visit procured articles of incorporation to be taken out in the County of Los Angeles, California, for a corporation to be known as the Philippines-American Company, Inc. From the amended articles, acknowledged on August 13, 1920, it appears that the capital stock actually subscribed was \$400, consisting of forty shares of the face value of \$10 each. The subscribers to these forty shares were: D. A. Lobaton, twenty shares; A. Angelo, ten shares; and T. Nimrod McKinney, ten shares. The idea apparently in the head of the promoters of the enterprise was to engage in export and import trade between the Philippine Islands and the United States, and the appellant soon came to Manila to start the enterprise in the Philippine Islands, acting in the character of vice-president and manager of the company.

Early in the year 1921, McKinney applied to the Bureau of Commerce and Industry of the Philippine Government for a provisional license for the Philippines-American Company to transact business in these Islands, This license was granted. He then advertised in the papers that the company needed employees, and Nemesio de la Peña applied for a job. He was told by the appellant that the company needed an employee who could put P10,000 into the business in the form of a subscription to five hundred shares. Nemesio went away and consulted with his father, Cornelio de la Peña, who returned with him to interview the appellant. Upon this occasion the appellant was informed that the De la Peñas had no ready money, but that the father, Cornelio, was prepared to subscribe for P5,000 of the stock of the company and to secure his subscription he proposed to execute a mortgage on real property. This proposition was accepted, the mortgage was executed, and Cornelio de la Peña was given a certificate for two hundred and fifty shares of the company's stock. Nemesio was thereupon admitted as an employee of the company in the capacity of clerk and bookkeeper. At the same time Nemesio himself appears to have agreed to take some of the shares, to be paid for out of his earnings as an employee of the company. Later, by mutual agreement between the appellant and Cornelio de la Peña, the subscription of the latter was withdrawn and the mortgage given to secure the subscription was cancelled. But the shares that had been paid for out of

Nemesio's earnings were left with De la Peña in the form of a paid up certificate.

It further appears that in December, 1921, one Manuel V. Gallego, an attorney, paid to the appellant the sum of P3,000, as the price of one hundred and fifty shares of the company. This subscription was made in response to a promise by the appellant to give Mr. Gallego the position of attorney for the Philippines-American Company with a salary of P200 a month, with office quarters in Manila and office supplies free, and with the further privilege of engaging in private practice. Pursuant to this agreement Gallego, after having paid for the shares, entered upon the discharge of his duties as attorney for the company.

After this relation had continued for about a year, D. A. Lobaton, the president of the company, arrived in the Philippine Islands from Los Angeles, and in the course of interviews with him Gallego got the impression that the company had little or no ready capital and that he had been duped. As a result Gallego began a civil action against the appellant, and later the present prosecution was instituted.

The prosecution proceeds upon the idea that the sales of shares effected to Cornelio de la Peña and M. V. Gallego were sales of speculative securities, within the meaning of section 1 of Act No. 2581; and it does not appear that the appellant had obtained any written permit from the Treasurer of the Philippine Islands to make such sales.

The solution of the case depends upon the interpretation to be given to subsection (a) of section 1 of Act No. 2581, containing the definition of "speculative securities." In the part here material to be quoted said section reads as follows:

"* * * The term 'speculative securities' as used in this Act shall be deemed to mean and include:

"(a) All securities to promote or induce the sale of which profit, gain, or advantage unusual in the ordinary course of legitimate business is in any way advertised or promised."

We are unable to sustain the view of the law proposed by the Attorney-General and adopted by the court below. The offering of the positions of clerk and attorney respectively to the intending subscribers undoubtedly involved an advantage to them, but we are unable to see that the offering of these positions was, in the sense intended by the statute, "unusual in the ordinary course of legitimate business." The employment of persons for positions such as these employees were called to nil is an ordinary incident in the business of any successful enterprise; and there was nothing extraordinary in requiring them to qualify for employment by subscribing for stock. As we read the provision above quoted it was apparently intended to catch promoters who hold out promises of extraordinary advantage deriving from possibilities inherent in the stock, and we are of the opinion that it cannot fairly be interpreted as including a promise of employment conditioned upon the fact of the employee subscribing for shares.

The judgment appealed from must be reversed and the appellant absolved from the information. It is so ordered, with costs of both instances de oficio.

Avanceña, C. J., Johnson, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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.