

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SIMEON YUSAY, DEFENDANT AND APPELLANT.*G.R. No. 26957. September 02, 1927*

Ponente: VILLA-REAL J.

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This is an appeal taken by Simeon Yusay from the judgment of the Court of First Instance of Iloilo convicting him of the crime of theft, in accordance with the information, and sentencing him to one year, eight months and twenty-one days presidio correctional, with the accessories of the law, and to pay the costs of the action. And as the jewels redeemed by the accused were recovered by the owner, the latter is ordered to reimburse him in the sum of P80 with which he redeemed the same, with the interest on the loan.

In support of his appeal, the appellant makes the following assignments of error as committed by the trial court in its judgment, to wit: (1) The lower court erred in convicting the accused under the facts stated in the information; (2) in holding that the evidence presented by the prosecution was sufficient to sustain a conviction; and (3) in convicting the accused of theft when the facts presented, even if true, constituted estafa.

The prosecution tried to prove the following facts to the satisfaction of the trial court: Towards the end of March, 1926, Leonor Gil de Lazaro, the offended party herein, wishing to redeem certain jewels which she had pawned through Elpidio Ledesma, her cook, and Primitivo Magante, a friend, in the pawnshop of C. N. Hodges in the municipality of La Paz, Iloilo, took the corresponding pawn tickets, Exhibits C and D from her wardrobe. As she first had to prepare her husband's meal, she gave said tickets to her trusted servant, Remigia Mediavilla, so that the latter might take care of them, and afterwards completely forgot about them. One morning a week later, the servant asked her mistress's permission to visit her brother who was ill, taking the son of Leonor Gil de Lazaro for whom she acted as maid, with her. As the boy saw some guavas in a store underneath a house, which he wanted to eat, the servant went into said store to buy them, and there met the accused. On opening her purse for the money with which to pay for the guavas, the edges of the pawn tickets protruded, and the accused, seeing them, took them and, with a smile, said to the servant: "What have you here in this paper?" at the same time he unfolded and examined them. The servant replied that they were papers which her mistress had given her to keep for her. The accused, with the same smile on his lips and in a honeyed tone switched off the conversation saying: "Don't you know that your brother is lodging at my house? Don't you want to see him? He is upstairs in my house right now." As her object in asking permission was to see her brother, she went upstairs, taking the child with her, leaving the papers with the accused. After having visited her brother, and as the child wished to go home, Remigia went downstairs, meeting the accused below who inquired of her: "Where are you going?," and she answered that she was going home. After having gone a certain distance from the house, the servant remembered the two tickets and went back for them. The accused did not want to return them and said to her: "But what are you going to do with those good-for-nothing tickets?" The servant insisted upon their return and said: "Be that as it may, Simeon, you have to give them to me." The accused, still smiling, told her not to trouble herself as the tickets had been long overdue, and that he could not return them as he did not remember where he had put them and that perhaps the

wind had blown them away. The accused also advised her to run away if her mistress scolded her for the disappearance of said tickets, to run away because he would give her a share. When the servant saw that all efforts to secure the return of the tickets were futile, she returned to her mistress' house, and though at first she did not know what to do, at last she decided to make a clean breast of the matter to Leonor Gil de Lazaro. When her mistress learned what had happened, she told the servant to go back to the accused's house and get the tickets from him at any cost. The servant went to see the accused again and asked him to return the tickets to her. The only answer the accused gave her was that, if her mistress tried to beat her, she should escape because she was mean, and, if said mistress resorted to the courts, not to be afraid because being a lawyer, he would save her in case of necessity. In view of the fact that the accused did not want to return the tickets, Leonor Gil de Lazaro ordered her jewels redeemed, which consisted of two pairs of gold earrings set with diamonds, valued at P600, Exhibits A and B; but the pawnshop informed her that they had already been redeemed by the accused. Indeed, the accused had already presented himself at the pawnshop pretending to be the owner of the jewels, and redeemed them, identifying said jewels by means of the pawn ticket numbers, though he did not present them, stating that they had been torn, he being identified by other persons, who together with himself signed the receipts Exhibits E and F. When the Lieutenant of the Constabulary, Jugo V. Cunanan, presented himself at the accused's house with a search-warrant, the latter gave him Exhibits A, B, C and D.

The corresponding pawn tickets, Exhibits C and D, respectively, read as follows:

EXHIBIT C

"E. LOPEZ, JARO, ILOILO

"Dec. 7, 1925

"PAWNSHOP

"C. N. HODGES, Prop.

"The goods mentioned below have been deposited in this pawnshop as security for the sum of P30.00 taken as loan One pair earrings six diamonds.

"Said sum shall be paid on or before the end of ninety days with interest at three (3%) a month; failure to comply with this condition will render said articles the absolute property of the Pawnshop, which will dispose of them at public or private sale, as it may deem fit for the payment of the above-mentioned sum.

"No. 840685 By _____

"NOTE.—This may be renewed by paying the interest due one month after the date of this pledge. A fraction of a month shall be considered one month."

EXHIBIT D

"E. LOPEZ, JARO, ILOILO

"Jan. 16, 1926

"PAWNSHOP

"C. N. HODGES, Prop.

"The goods mentioned below have been deposited in this pawnshop as security for the sum of P50.00 taken as loan One pair earrings ten diamonds.

"Said sum shall be paid on or before the end of ninety days with interest at THREE (3%) a month; failure to comply with this condition will render said articles the absolute property of the Pawnshop, which will dispose of them at public or private sale, as it may deem fit for the payment of the above-mentioned sum.

"No. 845683 By _____

"NOTE.—This may be renewed by paying the interest due one month after the date of this pledge. A fraction of a month shall be considered one month."

The accused, testifying in his own behalf, said, in substance, that on November 25, 1925, Leonor Gil de Lazaro had borrowed P567 from him, giving him the corresponding receipt Exhibit 2; that he had several times requested the offended party to make payment but she did not; that about April 14, 1926, Leonor Gil de Lazaro's maid, named Remigia Mediavilla, came to his house bringing with her two pawn tickets belonging to her mistress which she offered to sell to him; that Leonor Gil de Lazaro knew that he was looking for some diamonds for a scarfpin; that the servant asked him P600 for said tickets, saying that with the proceeds of the sale her mistress wished to pay him the P567 which she owed him; that the accused did not wish to accept the proposition because besides paying the P600, he would have to redeem the jewels from the pawnshop; that in view of all this, the accused said to the servant: "You may tell your mistress, Señora Leonor, that if she is willing to accept P367, I will buy the tickets; at all events, I shall have to see what kind of jewels they are, and if they suit me or not;" that the servant left, and later returned saying that her mistress was willing to accept the sum of P367, which he had offered for said tickets, the period of redemption of which was about to expire; that the accused said to the servant: "Then leave these two tickets with me, because to-morrow I shall go to the pawnshop to redeem them; and as soon as I have redeemed them I shall send word to your mistress, Señora Leonor;" that the servant did so, and he, being a cautious and methodical man, immediately made a note of the numbers of said tickets, as also of the respective dates on which they were pawned, and the respective sums for which they had been pledged; that as he was very busy that day he mislaid the tickets; that on the following day he searched the house high and low for the tickets in order to take them to the pawnshop; that as his aunt, Paz Yusay, saw him very much troubled, she advised him to go to the shop even without the tickets, since he had noted down the numbers, the sums and the dates of the tickets; that in obedience to this suggestion he went to the pawnshop to redeem said jewels, stating that he had mislaid the tickets, but that he had made a note of the numbers, the dates and the amounts; that the pawnshop did not question his honesty and let him redeem the jewels; that after having redeemed said jewels, he sent word to the offended party, Leonor Gil de Lazaro that the pawn tickets she had sold were already redeemed, and that she could now arrange the receipts she had in his favor for what she owed him; that due to the confidence he had in the servant, and because being a very lenient man with his debtors, he gave her the receipt for the sum of P567, which said Leonor Gil de Lazaro owed him, with the injunction to deliver it to her mistress and tell her to renew it issuing a receipt for P200 in lieu thereof; that later on the servant returned bringing with her the note Exhibit 2, in which he had asked to be allowed to dispose of the P200; that two days later, Leonor Gil de Lazaro went to his house to ratify the sale of the two tickets, and taking advantage of the opportunity, he asked her to give him a receipt for the P200 and she replied that there was no need for it because the sum was a small one, adding that if she had been able to pay a debt of P600 to Isabel Araneta, she could also pay the sum of P200; that Leonor Gil de Lazaro also said to him: "Do not tell Lope of this transaction lest he might inform Cuyong about it;" that after many demands for the payment of the P200 she told him that she was not disposed to pay him, and that if he brought the matter before the courts, she would be glad of it, as that would give her a chance to recover her jewels without paying a cent, and at the same time the debt would be paid.

In cross-examination, the accused testified that when he learned that Leonor Gil de Lazaro was going to file a complaint against him, he made every effort to locate said tickets, and found them in one of his books and made the following remark to the person who had brought him the news: "Tell Señora Leonor that in this case there is no estafa, because I have the receipts here and, theoretically, the holder of a receipt is the owner thereof."

In rebuttal Leonor Gil de Lazaro and her servant Remigia Mediavilla denied everything asserted by the accused with respect to the sale of the tickets in question.

There is no question that the accused-appellant, without presenting the corresponding pawn tickets, making use only of their respective numbers and claiming to be the owner of the pawned jewels, succeeded in redeeming them after having himself identified. The only question of fact to determine is whether, as the prosecution contends, the accused-appellant took the said tickets from Remigia Mediavilla without the consent or the will of the same or of the owner of said tickets, or, as the defense contends, said tickets were sold by the owner, Leonor Gil deLazaro, to the accused through the servant of the former, for the sum of P367, which was applied to the account of the debt of the offended party to Simeon Yusay, and which amounted to the sum of P600.

Of course, Leonor Gil de Lazaro flatly denied the existence of said debt and the supposed sale of the tickets, being corroborated by her servant Remigia Mediavilla, who denied having taken the tickets in question for their sale to the accused on instruction of her mistress. Paz Yusay, aunt of the accused, attempted to corroborate her nephew in the supposed sale; but the trial court gave no credit to her testimony on account of its serious and irreconcilable contradictions. The fact that the accused, in order to redeem the jewels, had to pretend he was the owner, stating that the tickets had been torn, that he did not remember anything but the numbers, and that he went to the trouble of getting two persons to identify him, shows that the pretended sale was false. If Leonor Gil de Lazaro had really been indebted to the accused and, in payment of her debt, had sold him the pawn tickets referred to, the accused would not have been under the necessity of making any false representation, as it would have been more natural and easier for him to have told the pawnshop people that he had bought the tickets of the owner, and having requested the presentation of the same without result, it would have been much easier for him to find the person who had sold them to him, and to bring her to the pawnshop, than to appeal to other persons to identify him.

Briefly, then, it appears that the accused-appellant took the pawn tickets without the consent of the person who had them at the time of taking the same, or of the owner of the same, and without making use of said tickets, but only of their respective numbers, and representing himself to be the owner of the pawned jewels, he succeeded in redeeming them, signing the corresponding certificates of redemption.

The information filed in the present case in accordance with which the trial court found the accused-appellant guilty, reads as follows:

"The undersigned Provincial Fiscal of Iloilo accuses Simeon Yusay of the crime of theft, committed as follows:

"That on or about March 31, 1926, in the municipality of Iloilo, Province of Iloilo, P. I., the said accused did willfully, unlawfully, and feloniously, and with intent to gain; steal and take possession of two pairs of gold earrings set with diamonds, valued at P600, belonging to Leonor Gil, without the consent of the latter. Contrary to art. 517, paragraph 1, of the Penal Code.

"Iloilo, Iloilo, P. I, August 12, 1926.

"F. B0RR0ME0 VELOSO

"Provincial Fiscal of Iloilo"

The accused in this appeal contends that the facts alleged in the information and proved at the trial, constitute the crime of estafa and not of theft.

Article 517, case No. 1, of the Penal Code, reads as follows:

"ART. 517. The following are guilty of theft:

"1. Any person who, with intent to gain, but without the use of violence or intimidation against any person or the use of force upon anything, shall take anything which is the personal property of another without the latter's

consent."

According to Viada, there are five essential elements which constitute the crime of theft, namely: (1) Taking of personal property; (2) that said property belongs to another; (3) that said taking be done with intent to gain; (4) that, further, it be done without the owner's consent; and (5) finally, that it be accomplished without the use of violence or intimidation against persons, nor of force upon things.

Article 535, case No. 1 of the same Code is of the following tenor:

"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."

Viada, commenting on this article, says:

"The estafa provided for and penalized in this article consists in profiting to the damage of another, employing fraudulent means with abuse of his confidence. These means consist in the use of a fictitious name or in pretending to possess power, influence, or other qualities which one does not possess, or to make a false showing of property, credit, commission, enterprise or imaginary negotiations, or to make use of any other similar deceit not expressed in the following numbers of the article." (3 Viada, 486; decision of the Supreme Court of Spain of November 17, 1886.)

Let us now see whether the facts found come under either of the two legal provisions above quoted, or under both of them.

In the first place, we have the taking of the pawn tickets without the consent of the servant who had them, nor of the owner thereof. The accused took said tickets with intent to gain, inasmuch as he promised the servant a share, and he knew that since the tickets were payable to bearer,—for they did not bear the name of the owner—they were negotiable and the holder would be considered as the owner thereof and also of the jewels which they covered, and to which effect he sent word to the real owner, when he learned that the latter was going to file a complaint against him.

The taking of the pawn tickets by the accused-appellant without the consent of the owner, with intent to gain, without violence or intimidation against persons, or force upon things, by itself constitutes the crime of theft as provided for in article 517, case No. 1, of the Penal Code, above cited. In other words, the taking alone of the said pawn tickets under the subjective and objective psychological circumstances already expressed, was sufficient for the consummation of the crime of theft.

But the accused-appellant went further,—pretending that he was the owner of the pawned jewels, and without making use of the corresponding pawn tickets other than their respective numbers, he succeeded in redeeming them through the identification of his person.

Now then, what crime has Simeon Yusay committed by these acts?

There can be no doubt that the accused-appellant deceived the pawnshop in order to redeem the jewels, as, if he had not pretended to be the owner of the same and had not had himself identified, while he, himself, identified the jewels by the numbers of the pawn tickets, he could not have made the redemption. Of course mere deceit is not sufficient to constitute estafa as provided for in case No. 1, of article 535 of the Penal Code; it is also essential that there be defraudation or damage. In the present case, the pawnshop was obliged to return the jewels to Leonor Gil de Lazaro, when the latter presented herself to redeem them, otherwise, it would have to pay the value, which

constitutes a damage.

The redemption then, of the jewels in question, made by the accused-appellant through deceit consisting in having pretended to be the owner of the jewels and with damage to the pawnshop, constitutes the crime of estafa as provided for in case No. 1 of article 535 of the Penal Code.

In a case of theft of a Monte de Piedad pass book, and of the collection of the sum shown therein by the thief, pretending to be the owner of said pass book, the Supreme Court of Spain, in its decision of November 22, 1883, held that:

"Considering that the act of Jose Garcia Carballeira, in taking from Ramona Fernandez's trunk her personal cedula and a Monte de Piedad pass book, showing a deposit of 1,578 pesetas, constitutes the crime of theft: Considering that Carballeira's other acts in making collection from the Monte upon said pass book, may be held to have been done in furtherance and as a consequence of the theft, without constituting, independently of it, another crime on account of the lack of elements necessary for it, etc."

In another case in which the accused took a Monte de Piedad pass book and collected the sum deposited by the owner thereof, the Supreme Court of Spain held such an act constituted theft and not estafa, because with an evident intent to gain they took personal property without the consent of the owner, it being immaterial to this qualification of the crime that in order to collect the amount of the pass book they had made use of deceit, because this fact, subsequent to the taking that constituted the crime of theft, although it had the character of estafa, was really the necessary means which they employed in order to get the benefit of the effects of the crime, which profited them all, they having distributed the amount shown in the stolen pass book among themselves. (2 Hidalgo, 658.)

It must be noted that in the two cases decided by the Supreme Court of Spain the pass books were of no value and could not be of any value to those who stole them from their respective owners except so far as they were the means of collecting the money deposited from the Monte de "Piedad. The accused could not have gained anything from the taking of the pass books had they not been able to collect the deposits shown therein, and that is why the Supreme Court of Spain considered that while they made use of deceit in order to collect the amount shown in the pass books, yet the acts done by them, although they had the character of estafa, were no more than the furtherance and consequence of the theft.

In the present case, as we have said, the accused-appellant did not have to redeem the pawned jewels by presenting the stolen pawn tickets in order to gain by the theft, since, as said tickets were payable to bearer, he could have sold them and thus profited by the sale. The fact that Simeon Yusay preferred to redeem the jewels rather than to sell the pawn tickets, does not change the nature and juridical aspect of his act of taking the tickets, which, surrounded as it is, by all the essential psychological circumstances, has all the characteristics of the crime of theft. This is so certain that even had he not redeemed the jewels, he would still have been liable for theft. But when he made use of the pawn tickets' numbers in order to obtain, by deceit and with damage to the pawnshop, the redemption of the aforementioned jewels, he converted the theft of the tickets into a necessary means to commit estafa, because without the numbers of the stolen pawn tickets, he could not have identified the jewels and, consequently, would not have been able to redeem them.

Briefly, then, we find that when Simeon Yusay took possession of the pawn tickets in question, which were issued to bearer, with intent to gain and without the consent of the servant who had them, nor of their owner, and without using force, violence or intimidation, he committed the crime of theft defined in article 517, case No. 1, of the Penal Code; when he succeeded in redeeming the pawned jewels, claiming to be the owner thereof, to the damage of the pawnshop, he committed the crime of estafa provided for in article 535, case No. 1, of the same Code; and

in making use of the numbers of the stolen tickets without presenting them, in order to identify the jewels, he converted the theft into a necessary means to commit the estafa.

The accused, then, committed the crimes of theft and estafa, the former being a necessary means for the commission of the latter.

Let us now see whether the accused-appellant may be convicted, under the information herein, of both crimes of theft and estafa, or either of them.

In the information filed, Simeon Yusay is charged with having stolen and taken possession, with intent to gain, of two pairs of gold earrings set with diamonds, valued at P600, belonging to Leonor Gil de Lazaro, without her consent.

The facts proven show that the accused took and stole two pawn tickets issued to bearer, without the consent of Leonor Gil de Lazaro and, using the numbers of said tickets, but without presenting them, and misrepresenting himself to be the owner of the jewels mentioned in said pawn tickets, succeeded in redeeming them from the pawnshop in which they were pledged. If the pawn tickets were taken and stolen and not the jewels, which were voluntarily delivered to the accused by the pawnshop, although through false statements of the accused, said delivery cannot be qualified as theft under the provisions of the Penal Code now in force. And as it was not proved that the jewels were taken without the consent of the pawnshop in which they were pledged, nor of the owner, the accused cannot be convicted under said information in which he is charged with the crime of theft of said jewels, because to do so would be infringing upon the constitutional right of the accused "to demand the nature and cause of the accusation against him." (Sec. 3, Jones Law.)

On account of the discrepancy between the facts alleged in the information and those proven at the trial, said information must be dismissed and the accused acquitted, and another information should be filed in accordance with the facts proven.

For the foregoing, the judgment appealed is reversed, and the accused is acquitted of the charge, which is hereby dismissed with costs de oficio, the prosecuting attorney being required to present another information in accordance with the findings herein set forth. So ordered.

Johnson, Malcolm, Johns, Romualdez, JJ., concur.

DISSENTING OPINION

STREET, J.:

If, the acts done by the appellant in this case do not constitute theft (larceny) in the form charged in the information, then jurists and judges in the past have labored in vain. In their bare simplicity the facts are these: The offended party, Leonor Gil de Lazaro, was the owner of two sets of earrings, valued at P600, which she caused to be placed in pawn with C. N. Hodges for a loan of money in the amount of P50 and P30 on the two sets, respectively. While the earrings were thus held in custody by Hodges, as pledgee, the appellant presented himself at the pawnshop and, falsely representing himself to be the owner and pledgor, procured the jewels to be surrendered to him upon payment of the amount due upon the pledges. Having thus gotten the jewels into his hands, the appellant appropriated the same to his own use. It further appears—though this fact is not material to the case—that the appellant, prior to presenting himself at the pawnshop, had stolen the pawn tickets pertaining to these pledges from Leonor Gil de Lazaro, the true owner, and by this means was able to give the serial numbers of the pawn tickets, giving it to be understood that the pawn tickets had been accidentally torn and destroyed. This circumstance explains how he was able to impose on the pawnshop, but does not affect the fundamental fact that

he effected the redemption of the jewels by falsely claiming to be the true owner and pledgor.

The authorities are uniform to the effect that one who, with intent to appropriate, gets his hands on property by misrepresenting himself as owner, or agent of the owner, is guilty of the crime of theft. A leading English case on this point is found in *Rex vs. Pitman* (2 C. & P., 423), where it appeared that a thief, intending to steal a horse which had been placed in the stable of an inn by its owner, presented himself to the hostler of the stable and requested him to bring out "his" horse. The hostler, suspecting nothing and supposing the would-be thief to be the true owner of the horse, brought the animal out, whereupon it was mounted by the thief and taken away.

The rule enunciated in the decision above cited has been applied in innumerable instances by the courts of England and the United States. The most familiar illustration perhaps is the common case where an intending thief causes a common carrier to deliver to him the property of another by falsely representing himself to be the owner or shipper of such goods, or by any trick having the effect of such a misrepresentation, as by changing the baggage check, shipping tag, label, or other identification mark upon the goods. (36 C. J., 752, 772; 17 R. C. L., p. 18; *People vs. Miller*, 88 Am. St. Rep., 546; *Aldrich vs. People*, 115 Am. St. Rep., 166; *State vs. Homes*, 57 Am. Dec, 269; *Harris vs. State*, 12 Am. St. Rep., 355.) This doctrine has been extended to the broader proposition, now of universal recognition, that in any case where the original taking is without the consent of the owner, or where the consent of the owner is obtained by false pretenses, the appropriation of the property by the taker constitutes theft (36 C. J., p. 772). Under the title "Larceny" in *Ruling Case Law* we find it stated generally that if a person, with preconceived design to appropriate property to his own use, obtains possession of it by means of fraud or trickery, the taking amounts to larceny; and this proposition is supported by citations too numerous to be here repeated (17 R. C. L., p. 13).

A further consideration which shows that theft was committed, as against the owner of these jewels, when the appellant took them from the pawnshop, is this: The crime of theft is above all else an offense against juridical possession. The thief never acquires property (*dominio*) of the thing stolen, as against the owner. Now, can it be pretended that in this case the appellant acquired the property in the jewels as against the owner? Certainly not. He acquired only a manual possession, and the owner could without doubt have recovered the jewels from the appellant if they could have been reached by legal process.

There is nothing to the contrary of what has been said above, that amounts to anything, in Spanish jurisprudence. Indeed, the two Spanish decisions cited in the opinion of the court sustain the qualification of theft in cases very similar to this. In those two cases the accused had stolen pass books showing deposits in a bank and, falsely pretending to be the owners of such books, succeeded in withdrawing the money. In the case before us there was a theft, as the opinion admits, of pawn tickets and a subsequent withdrawal of the pawned jewelry by the thief on the pretense that he was the owner of such jewelry. The suggestion is made in the opinion of the court that the distinction between the present case and the two Spanish decisions is that in those cases the things stolen (deposit books) were not negotiable, while the pawn tickets are negotiable. This difference supplies no juridical basis for making a different decision in the present case.

In *United States vs. De Vera* (43 Phil., 1000), this court gave complete recognition to the principle that one who obtains possession of property from another by false pretenses, with present intent to convert the property to his own use, is guilty of larceny (see also *People vs. Trinidad*, p. 65, ante). It results that our former decisions are entirely in harmony with the decisions cited from the Supreme Court of Spain in sustaining the qualification of theft as applied to offenses similar to that now before us.

It is entirely true that the appellant in this case committed the offense of theft in taking the pawn tickets,— an offense which is not charged in the complaint—; and it is also true that he committed *estafa* against the owner of

the pawnshop when he effected the redemption of the jewels by means of the misrepresentation of ownership (U. S. vs. Gorme, 18 Phil., 323),—an offense which also is not charged in the complaint. But the fact that the acts done made the appellant amenable to prosecution for these-other crimes supplies no reason for refusing to convict him of the offense of theft as against the owner of the jewels, which offense is charged in the complaint.

The conviction of the appellant for the crime of theft should, in my opinion, be affirmed.

DISSENTING OPINION

VILLAMOR, J.:

I fully concur in Mr. Justice Street's dissent.

I only wish to add that if it is a fact that the accused previously stole and illegally took possession of the pawn tickets from which he took the numbers necessary to identify the jewels in question pledged at the pawnshop of C. N. Hodges, then the decision of the Supreme Court of Spain of November 22, 1883, cited in the (majority opinion strongly supports the dissent rather than the majority opinion.

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