

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. C. N. HODGES, DEFENDANT AND APPELLANT.***G.R. No. 44612. September 30, 1938*

Ponente: IMPERIAL, J.

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As a result of the second motion for reconsideration filed by the attorneys for the accused-appellant, the decision rendered in the case was set aside by resolution of August 25, 1938 and a rehearing was had in conformity with Rule 39 of the Rules.

The proven facts are not altered. We narrated them in the original decision in this wise:

The spouses Maximo Positos and Paulina Sombilla were the owners of two parcels of land identified as lots 2114 and 2837 of the cadastre of Bago, Province of Occidental Negros, and covered respectively by certificates of title Nos. 6173 and 6105, which lots had been sold with right of repurchase to Vicente Tampingco. As the period of redemption was to expire and they did not want to lose the lots, said spouses executed in favor of their son Demetrio Positos a general power of attorney in order that the latter might obtain a loan in his name secured by said lots. Possessed of said power, Demetrio Positos went to the City of Iloilo and, with the help of the broker Adolfo Abaya, applied to the accused for a loan of P2,500, offering the aforesaid two lots as security. The accused agreed to grant the loan, but suggested that the owners of the lots should first sell the same to him and that thereafter he would resell it to them together with another small lot of the accused having an area of 180 square meters and identified in the Jaro cadastre as lot 960-C and in the subdivision plan as lot 960-C-17. In the power of attorney, Exhibit C, executed by the Positos spouses in favor of their son Demetrio the proposed transaction was not specifically included, and the latter was not otherwise authorized to agree to it; but as his parents needed the money because the redemption had to be effected, Demetrio acceded and gave his conformity to the proposal of the accused. On February 12, 1930 the deeds of sale, Exhibits A and B, were therefore executed. Under the first deed, Demetrio Positos, as attorney-in-fact of his parents, sold lots 2114 and 2837 to the accused for the sum of P2,500; under the second, the accused in turn sold to Demetrio Positos, personally, the said two lots and lot 960-C of the Jaro cadastre, otherwise known as lot 960-C-17 of the subdivision, for the sum of P3,500. After the execution and signing of both instruments, the accused "deducted from the loan of P2,500 the following amounts; P420 as advance annual interest on the amount of P3,500, and P280 in payment of the realty tax then owing. The balance of P1,800 was delivered by the accused to Demetrio Positos. On February 9, 1931 the accused received the sum of P184.44 as part of the unpaid interest (Exhibit D); on March 31 of the same year, the sum of P220 also in payment of interest (Exhibit E); and on August 10, 1932, the sum of P300 likewise upon account of unpaid interest (Exhibit F).

In view of the foregoing facts, the provincial fiscal of Iloilo filed in the justice of the peace court of said city an information charging the appellant with a violation of the Usury Law in that he had collected illegal interest. After the preliminary investigation, the case was forwarded to the Court of First Instance of the province, and the fiscal filed a similar information. The usurious character of the interest collected by the accused and concealed in the

documents Exhibits A and B is shown by the following circumstances: Upon the signing of the instruments, the accused collected P420 in advance as interest on the loan of P3,500 at 12 per cent per annum, or from February 12, 1930 to February 12, 1931. He also deducted P250 in payment of the land tax owed by the Positos, but as this tax was in fact only P213.64, he consequently collected an excess of P66.36. Adding the latter sum to P420, there is a total of P486.36. This sum represents interest at the annual rate of 19.45 per cent with reference to the loan of P2,500, and interest at 13.6 per cent per annum with reference to the amount of P3,500, the resale price of the three parcels of land.

As yearly interest from February 12, 1931 to February 12, 1932, the accused collected the following sums: P184.44 on February 9, 1931 (Exhibit D), and P220 on March 31 of the same year (Exhibit E). The two amounts give a total of P404.44. This sum represents annual interest at 16.17 per cent on P2,500 and 11.55 per cent on P3,500.

As annual interest from February 12, 1932 to February 12, 1933, the accused received P300, it being stated in the receipt Exhibit F that it is part of the interest corresponding to said year. The sum of P300 represents interest at 12 per cent on P2,500 and 8.57 per cent on P3,500, but inasmuch as, according to the accused, said sum was only a part of the unpaid interest, he accordingly expected from the offended parties another amount for the same purpose.

It is inferred from what has been said that the accused had collected usurious interest from the Positos spouses or their attorney-in-fact, and said usurious interest having been stipulated in Exhibit B which together with Exhibit A shows the transactions designed by the accused as a means of violating the law, it is clear that both documents are illegal since they cover transactions prohibited by law and considered usurious.

In passing upon the first motion for reconsideration we stated that the accused could not be guilty of usury for having collected from the offended parties P300 as interest, because this sum does not exceed the limit fixed by law if P2,500 should be considered as the capital. We also held that the accused did not infringe the Usury Law by the fact that it was recited in exhibit F that the sum of P300 was part of the agreed usurious interest, because what is penalized by section 2 of Act No. 2655, as amended by section 3 of Act No. 3291, is the act of receiving directly or indirectly interest exceeding the fixed rate. The accused now contends that he cannot likewise be convicted as a result of his act in collecting interest for the years 1930-1931 and 1931-1932, because the violations have prescribed.

Section 1 of Act No. 3326, as later amended by section 1 of Act No. 3763, reads as follows:

"Section 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offences punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years, for any other offence punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years: Provided, however, That all offences against any law or part of law administered by the Bureau of Internal Revenue shall prescribe after five years. Violations penalized by municipal ordinances shall prescribe after two months.

"Violations of the regulations or conditions of certificates of public convenience issued by the Public Service Commission, shall prescribe after two months."

In accordance with clause (b) of this section, violations penalized by imprisonment for more than one month but less than two years prescribe after four years from their commission. The violations of the Usury Law committed by the accused for having collected usurious interest are punished by section 10 of Act No. 2655, as amended by

section 2 of Act No. 2992, by a fine of not less than P50 nor more than P200, or by imprisonment of not less than ten days nor more than six months, or by both at the same time, in the discretion of the court, the amounts received as interest from the offended parties being ordered returned, with subsidiary imprisonment in case of insolvency at the rate of P2 per day. Considering the extent of the penalty of imprisonment provided by law, the violations committed by the accused fall within the prescriptive period indicated in clause (b). According to the facts, the accused received the usurious interest on February 12, 1930, February 9, 1931 and March 31, 1931. Inasmuch as from the latter date until May 4, 1935, when the criminal case against the accused was commenced by the filing of the information in the justice of the peace court of Iloilo, four years, one month and three days had elapsed, it is clear that the said violations have prescribed in conformity with clause (6) of section 1 of Act No. 3326, as lastly amended by Act No. 3763 (People vs. Fuentes and Noroña, G. R. No. 42449 [62 Phil., 957]).

At the rehearing the prosecution has not advanced any reason for not applying the rule of prescription; on the contrary, it is admitted in the Solicitor-General's brief (page 21) that the aforesaid violations have prescribed, the ruling of this court in the case of People vs. Edesan and Edesan (G. R. No. 38888 [59 Phil., 906]), being cited.

For the reasons given, the appealed judgment is reversed and the accused-appellant acquitted, without any pronouncement as to costs of both instances. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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