

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. PATRICIO CALDITO AND TOMASA DE GUZMAN, DEFENDANTS AND APPELLEES.

G.R. No. 47694. June 10, 1941

Ponente: MORAN, J.

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MORAN, J.:

Prosecuted in the Court of First Instance of Pangasinan for a violation of the Usury Law, defendants Patricio Caldito and Tomasa de Guzman moved to quash the information alleging that the case comes within the original jurisdiction of the justice of the peace court. The motion was granted and from the order dismissing the case, the government appealed.

Section 10 of the Usury Law, as amended by Act No. 2992, provides in part as follows:

"Without prejudice to the proper civil action violations of this Act shall be subject to criminal prosecution and the guilty person shall, upon conviction, be sentenced to a fine of not less than fifty pesos nor more than two hundred pesos, or to imprisonment for not less than ten days nor more than six months, or both, in the discretion of the court, and to return the entire sum received as interest from the party aggrieved, and in case of nonpayment to suffer subsidiary imprisonment at the rate of one day for every two pesos."

In *People vs. Fajardo* (49 Phil., 206, 210) we ruled that "what determines the jurisdiction of the court in criminal cases is the extent of the penalty which the law imposes for the misdemeanor, crime or violation charged in the complaint. If the penalty does not exceed six months or a fine of 1*200, the justice of the peace court has original jurisdiction; otherwise, the Court of First Instance." Since the penalty prescribed in the aforequoted provision does not exceed six months or a fine of P200, the foregoing doctrine is unquestionably controlling on the jurisdiction question here raised.

But the Solicitor-General contends that as the law prescribes not only a fine of not less than P50 nor more than P200, or imprisonment for not less than ten days nor more than six months, or both, but also the return of the entire sum received as interest from the party aggrieved, and in case of nonpayment to suffer subsidiary imprisonment at the rate of one day for every two pesos, the penalty thus provided by law is in excess of that which may be imposed by justice of the peace courts, and, therefore, violations thereof come within the original jurisdiction of Courts of First Instance. This contention is predicated upon the theory that the return of the sum received as usurious interest is not merely a civil indemnity but an additional penalty, for it may be imposed in a criminal action "without prejudice to the proper civil action," according to the Language of section 10 of the Usury Law above quoted. But the ultimate result of such a theory is to render a person found guilty of collecting usurious interest liable to return twice the usurious interest collected, first in a criminal action, and again, in a civil case. That there is nothing in, the law which clearly justifies such conclusion seems to be unquestionable. A double indemnity of this kind constituting as it does constitute, a liability of exceptional gravity, should not be imposed unless the wording of the law is so clear as to admit of no possibility of mistake.

The words "without prejudice to the proper civil action" appearing at the beginning of section 10 of the Usury Law, and particularly the word "proper", can have no other meaning that that civil action lies only in proper cases, as where the offended party has reserved his right to institute it separately (U. S. vs. Heery, 25 Phil., 600; Rakes vs. Atlantic Gulf and Pacific Co., 7 Phil., 359; U. S. vs. Guysayko, 13 Phil., 292; People vs. Evia, 62 Phil, 546), according to the principle restated in Rule 107, section 1, paragraph (a), of the Rules of Court. But where there is no such reservation, and this is the situation contemplated in section 10 of the Usury Law, then the civil action is deemed instituted with the criminal action, and the judgment, aside from imposing the penalty provided by law, may compel the guilty person to return the usurious interest to the offended party by way of civil indemnity. That the return of the usurious interest cannot be regarded as a penalty or a part thereof, seems to be self-evident. On the one hand, it is in the nature of restitution of a thing criminally obtained, as provided in article 104 of the Revised Penal Code, and therefore a civil liability. On the other, the requirement that the usurious interest should be returned to the offended party, not to the government, is consistent only with the idea of civil indemnity and not with pecuniary penalty. There can be no question that the offended party may waive the payment, and this precludes all idea of penalty, for penalty can never be waived. As we have once held, "civil liability is due to the person injured, and criminal liability, to the sovereign." (U. S. vs. Heery, 25 Phil., 600, 607). Had the return of usurious interest been intended as a part of the penalty, the law would have provided the payment of a fine as much as the amount of the usurious interest collected. But the law not only does not so provide but prescribes a separate, specific fine of not less than P50 nor more than P200, meaning thereby that the usurious interest to be returned to the offended party is not a fine but a civil indemnity.

We hold, therefore, that the return of the usurious interest is a civil liability and is not a part of the penalty provided for the offense. In U. S. vs. Heery (23 Phil., 600, 610) we said: "does the fact that in this country civil liability is, as a general rule, determined in the criminal action, transform it into criminal liability and thus make it as a part of the punishment for the crime? Certainly the mere form of a remedy should not affect its substance. And there are many indications in the Penal Code that the civil liability, although imposed for the commission of crimes, was not intended to be merged into the punishment for the crime.

True that subsidiary imprisonment is provided by law in case of nonpayment of the fine or the usurious interest. But such subsidiary imprisonment cannot be added to the maximum penalty fixed by law for jurisdictional purposes. Section 4 of Act No. 1627 as amended by section 2 of Act No. 2131 provides that justice of the peace courts have original jurisdiction to try offenses where the penalty provided by law "does not exceed six months imprisonment or a fine of two hundred pesos, or both such imprisonment and fine." According to this legal provision, the subsidiary imprisonment which may be imposed upon the accused because of his failure to pay the fine, is not material to the jurisdiction of the court. What is material is the extent of imprisonment or the amount of fine that is provided by law as penalty for the offense. Where the penalty provided by law in any given case is six months imprisonment and/or a fine of P200, a justice of the peace court has jurisdiction thereof according to law, regardless of any subsidiary imprisonment which may be imposed upon the accused by reason of his insolvency in the payment of the fine. The lawmaker knew the possibility of a subsidiary imprisonment in such cases, and yet in an unmistakable language he provided that the jurisdiction of the justice of the peace court shall depend solely and exclusively upon the 200-peso fine and six months imprisonment as maximum penalty provided by law for the offense charged[^] and, therefore, the possible imposition of a subsidiary imprisonment can be regarded as a mere incident having no influence whatsoever upon the jurisdiction of the court. Subsidiary imprisonment depends upon a contingency which is the inability of the accused to pay a pecuniary liability. If the jurisdiction of the courts should be made to depend upon such contingency which may or may not happen, an anomalous situation may arise. Thus, if the penalty provided by law is exactly six months imprisonment and exactly P200 fine, and the possibility of subsidiary imprisonment is to be taken into account for the determination

of what court has jurisdiction, there would then arise the impossibility for the fiscal of determining the court where to file the information, whether in the justice of the peace court or in the Court of First Instance, for if it should happen that the accused may pay the fine, the case would come within the jurisdiction of the justice of the peace court, but that if the accused is unable to pay the fine and subsidiary imprisonment is to be imposed, then the case would come within the jurisdiction of the Court of First Instance. And to compel the prosecution to anticipate whether the accused may or may not pay in order to determine the jurisdiction of this or that court, is certainly not within the contemplation of the law on jurisdiction.

Notwithstanding our previous pronouncements to the contrary, we now hold, and will henceforth regard it as a settled rule, that subsidiary imprisonment, like accessory penalties (*People vs. Fajardo*, *supra*), is not essential in the determination of the criminal jurisdiction of a court.

Order is affirmed, with costs de oficio.

Avanceña, C. J., Diaz, Laurel, and Horrilleno, JJ., concur.

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