

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAN TOK,
DEFENDANT AND APPELLANT.***G.R. No. 5183. March 21, 1910*

Ponente: ARELLANO, C.J.

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On the 27th of May, 1908, the complaint was filed against Tan Tok. The crime charged was estafa, consisting in that on the 1st of April, 1908, he had been sold upon credit a bale of gray cloth for P260, and this bale afterwards appeared included in an attachment, made on petition of Findlay & Co., of the store at No. 144 Calle Rosario, as of the property of another Chinaman named Uy Chieng Can and sold as a result of Findlay & Co.'s claim against this other Chinaman - Behn, Meyer & Co., who had sold the bale to Tan Tok, losing the price thereof. Had Tan Tok not assured Behn, Meyer & Co. that the store at No. 144 was exclusively his and that he had already severed connections with the business carried on by Uy Chieng Can, who conducted the store at No. 156 on the same street, he would not have been trusted with that bale of gray cloth valued at P260.

The order for the merchandise was given by Tan Tok to Behn, Meyer & Co. on March 26, 1908. On April 1 or 2 the bale was taken to the store at No. 144, which was supposed to belong to Tan Tok. On April 4, 1908, the document evidencing the debt for the price of the bale, that is, for P260, was signed. First it was signed with a square stamp, which meant nothing. The document was again taken to the store at No. 144 and was returned signed with another stamp which reads: "Benito Uy Chieng Can, Rosario, 156."

Tan Tok says that on March 29, 1908, the said store at No. 144 was sold by him to Uy Chieng Can.

So that when, on April 1 or 2, 1908, the bale of gray cloth ordered by Tan Tok on the 26th of March previous was received in the said store, it was in fact received in a store belonging to Uy Chieng Can, and this is how that document of debt for the price of the bale appears as signed by Uy Chieng Can; and Deogracias Zamora, a clerk in the employ of Behn, Meyer & Co., says that he called the matter to the attention of a principal employee of the firm, who had Tan Tok come to the office; but what the said employee did afterwards does not appear in the record.

Up to May, when the bale in question was in the possession of the sheriff for sale, the only thing done was to prosecute the criminal action for estafa.

In this class of operations where, with more or less caution, one relies upon a person's credit, there is no estafa. If a person already enjoyed credit and it was afterwards withdrawn, but subsequently, because of his apparently conducting his operations in a manner which appears to warrant it he again secures credit and does not pay for what he gets by reason of the credit thus continued, he does not thereby commit the crime of estafa, which it is evident he would not have committed by availing himself of the credit in the beginning.

To the creditor, the firm of Behn, Meyer & Co., is reserved the right to bring such civil action as may be proper for the recovery of the value of the merchandise sold upon credit, against the debtor, Tan Tok, or whoever may be

found to be indebted for its price.

The judgment of the Court of First Instance of the city of Manila is reversed, with costs in both instances de oficio. So ordered.

Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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