

44 Phil. 126

[G. R. No. 19190. November 29, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
VENANCIO CONCEPCION, DEFENDANT AND APPELLANT.**

D E C I S I O N

MALCOLM, J.:

By telegrams and a letter of confirmation to the manager of the Aparri branch of the Philippine National Bank, Venancio Concepcion, President of the Philippine National Bank, between April 10, 1919, and May 7, 1919, authorized an extension of credit in favor of "Puno y Concepcion, S. en C." in the amount of P300,000. This special authorization was essential in view of the memorandum order of President Concepcion dated May 17, 1918, limiting the discretionary power of the local manager at Aparri, Cagayan, to grant loans and discount negotiable documents to P5,000, which, in certain cases, could be increased to P10,000. Pursuant to this authorization, credit aggregating P300,000, was granted the firm of "Puno y Concepcion, S. en C," the only security required consisting of six demand notes. The notes, together with the interest, were taken up and paid by July 17, 1919.

"Puno y Concepcion, S. en C." was a copartnership capitalized at P100,000. Anacleto Concepcion contributed P5,000; Clara Vda. de Concepcion, P5,000; Miguel S. Concepcion, P20,000; Clemente Puno, P20,000; and Rosario San Agustin, "casada con Gral. Venancio Concepcion," P50,000. Member Miguel S. Concepcion was the administrator of the company.

On the facts recounted, Venancio Concepcion, as President of the Philippine National Bank and as member of the board of directors of this bank, was charged in the Court of First Instance of Cagayan with a violation of section 35 of Act No. 2747. He was found guilty by the Honorable Enrique V. Filamor, Judge of First Instance, and was sentenced to imprisonment for one year and six months, to pay a fine of P3,000, with subsidiary

imprisonment in case of insolvency, and the costs.

Section 35 of Act No. 2747, effective on February 20, 1918, just mentioned, to which reference must hereafter repeatedly be made, reads as follows: "The National Bank shall not, directly or indirectly, grant loans to any of the members of the board of directors of the bank nor to agents of the branch banks." Section 49 of the same Act provides : "Any person who shall violate any of the provisions of this Act shall be punished by a fine not to exceed ten thousand pesos, or by imprisonment not to exceed five years, or by both such fine and imprisonment." These two sections were in effect in 1919 when the alleged unlawful acts took place, but were repealed by Act No. 2938, approved on January 30, 1921.

Counsel for the defense assign ten errors as having been committed by the trial court. These errors they have argued adroitly and exhaustively in their printed brief, and again in oral argument, Attorney-General Villa-Real, in an exceptionally accurate and comprehensive brief, answers the propositions of appellant one by one.

The questions presented are reduced to their simplest elements in the opinion which follows:

I. Was the granting of a credit of P300,000 to the copartnership "Puno y Concepcion, S. en C." by Venancio Concepcion, President of the Philippine National Bank, a "loan" within the meaning of section 35 of Act No. 2747? Counsel argue that the documents of record do not prove that authority to make a loan was given, but only show the concession of a credit. In this statement of fact, counsel is correct, for the exhibits in question speak of a "*credito*" (credit) and not of a "*prestamo*" (loan).

The "credit" of an individual means his ability to borrow money by virtue of the confidence or trust reposed by a lender that he will pay what he may promise. (Donnell vs. Jones [1848], 13 Ala., 490; Bouvier's Law Dictionary.) A "loan" means the delivery by one party and the receipt by the other party of a given sum of money, upon an agreement, express or implied, to repay the sum loaned, with or without interest. (Payne vs. Gardiner [1864], 29 N. Y., 146, 167.) The concession of a "credit" necessarily involves the granting of "loans" up to the limit of the amount fixed in the "credit."

II. Was the granting of a credit of 300,000 to the copartnership "Puno y Concepcion, S. en C.," by Venancio Concepcion, President of the Philippine National Bank, a "loan" or a "discount"? Counsel argue that while section 35 of Act No. 2747 prohibits the granting of a "loan," it does not prohibit what is commonly known as a "discount."

In a letter dated August 7, 1916, H. Parker Willis, then President of the National Bank, inquired of the Insular Auditor whether section 37 of Act No. 2612 was intended to apply to discounts as well as to loans. The ruling of the Acting Insular Auditor, dated August 11, 1916, was to the effect that said section referred to loans alone, and placed no restriction upon discount transactions. It becomes material, therefore, to discover the distinction between a "loan" and a "discount," and to ascertain if the instant transaction comes under the first or the latter denomination.

Discounts are favored by bankers because of their liquid nature, growing, as they do, out of an actual, live, transaction. But in its last analysis, to discount a paper is only a mode of loaning money, with, however, these distinctions: (1) In a discount, interest is deducted in advance, while in a loan, interest is taken at the expiration of a credit; (2) a discount is always on double-name paper; a loan is generally on single-name paper.

Conceding, without deciding, that, as ruled by the Insular Auditor, the law covers loans and not discounts, yet the conclusion is inevitable that the demand notes signed by the firm "Puno y Concepcion, S. en C." were not discount paper but were mere evidences of indebtedness, because (1) interest was not deducted from the face of the notes, but was paid when the notes fell due; and (2) they were single-name and not double-name paper.

The facts of the instant case having relation to this phase of the argument are not essentially different from the facts in the Binalbagan Estate case. Just as there it was declared that the operations constituted a loan and not a discount, so should we here lay down the same ruling.

III. Was the granting of a credit of P300,000 to the copartnership, "Puno y Concepcion, S. en C." by Venancio Concepcion, President of the Philippine National Bank, an "indirect loan" within the meaning of section 35 of Act No. 2747?

Counsel argue that a loan to the partnership "Puno y Concepcion, S. en C." was not an "indirect loan." In this connection, it should be recalled that the wife of the defendant held one-half of the capital of this partnership.

In the interpretation and construction of statutes, the primary rule is to ascertain and give effect to the intention of the Legislature. In this instance, the purpose of the Legislature is plainly to erect a wall of safety against temptation for a director of the bank. The prohibition against indirect loans is a recognition of the familiar maxim that no man may serve two masters—that where personal interest clashes with fidelity to duty the latter almost always

suffers. If, therefore, it is shown that the husband is financially interested in the success or failure of his wife's business venture, a loan to a partnership of which the wife of a director is a member, falls within the prohibition.

Various provisions of the Civil Code serve to establish the familiar relationship called a conjugal partnership. (Articles 1315, 1393, 1401, 1407, 1408, and 1412 can be specially noted.) A loan, therefore, to a partnership of which the wife of a director of a bank is a member, is an indirect loan to such director.

That it was the intention of the Legislature to prohibit exactly such an occurrence is shown by the acknowledged fact that in this instance the defendant was tempted to mingle his personal and family affairs with his official duties, and to permit the loan of P300,000 to a partnership of no established reputation and without asking for collateral security.

In the case of *Lester and Wife vs. Howard Bank* ([1870], 33 Md., 558; 3 Am. Rep., 211), the Supreme Court of Maryland said:

“What then was the purpose of the law when it declared that no director or officer should borrow of the bank, and ‘if any director/ etc., shall be convicted,’ etc., ‘of directly or indirectly violating this section he shall be punished by fine and imprisonment?’ We say to protect the stockholders, depositors and creditors of the bank, against the temptation to which the directors and officers might be exposed, and the power which as such they must necessarily possess in the control and management of the bank, and the legislature unwilling to rely upon the implied understanding that in assuming this relation they would not acquire any interest hostile or adverse to the most exact and faithful discharge of duty, declared in express terms that they should not borrow, etc., of the bank.”

In the case of *People vs. Knapp* ([1912], 206 N. Y., 373), relied upon in the *Binalbagan Estate* decision, it was said:

“We are of opinion the statute forbade the loan to his copartnership firm as well as to himself directly. The loan was made indirectly to him through his firm.”

IV. Could Venancio Concepcion, President of the Philippine National Bank, be convicted of a

violation of section 35 of Act No. 2747 in relation with section 49 of the same Act, when these portions of Act No. 2747 were repealed by Act No. 2938, prior to the filing of the information and the rendition of the judgment?

As noted along toward the beginning of this opinion, section 49 of Act No. 2747, in relation to section 35 of the same Act, provides a punishment for any person who shall violate any of the provisions of the Act. It is contended, however, by the appellant, that the repeal of these sections of Act No. 2747 by Act No. 2938 has served to take away the basis for criminal prosecution.

This same question has been previously submitted and has received an answer adverse to such contention in the cases of *United States vs. Cuna* ([1908], 12 Phil., 241); *People vs. Concepcion* ([1922], 43 Phil., 653); and *Ong Chang Wing and Kwong Fok vs. United States* ([1910], 218 U. S., 272; 40 Phil., 1046). In other words, it has been the holding, and it must again be the holding, that where an Act of the Legislature which penalizes an offense repeals a former Act which penalized the same offense, such repeal does not have the effect of thereafter depriving the courts of jurisdiction to try, convict, and sentence offenders charged with violations of the old law.

V. Was the granting of a credit of P300,000 to the copartnership “Puno y Concepcion, S. en C.” by Venancio Concepcion, President of the Philippine National Bank, in violation of section 35 of Act No. 2747, penalized by this law?

Counsel argue that since the prohibition contained in section 35 of Act No. 2747 is on the bank, and since section 49 of said Act provides a punishment not on the bank when it violates any provision of the law, but on a person violating any provision of the same, and imposing imprisonment as a part of the penalty, the prohibition contained in said section 35 is without penal sanction.

The answer is that when the corporation itself is forbidden to do an act, the prohibition extends to the board of directors, and to each director separately and individually. (*People vs. Concepcion, supra.*)

VI. Does the alleged good faith of Venancio Concepcion, President of the Philippine National Bank, in extending the credit of P300,000 to the copartnership “Puno y Concepcion, S. en C.” constitute a legal defense?

Counsel argue that if defendant committed the acts of which he was convicted, it was

because he was misled by rulings coming from the Insular Auditor. It is furthermore stated that since the loans made to the copartnership "Puno y Concepcion, S. en C." have been paid, no loss has been suffered by the Philippine National Bank.

Neither argument, even if conceded to be true, is conclusive. Under the statute which the defendant has violated, criminal intent is not necessarily material. The doing of the inhibited act, inhibited on account of public policy and public interest, constitutes the crime. And, in this instance, as previously demonstrated, the acts of the President of the Philippine National Bank do not fall within the purview of the rulings of the Insular Auditor, even conceding that such rulings have controlling effect.

Morse, in his work, *Banks and Banking*, section 125, says:

"It is fraud for directors to secure by means of their trust, any advantage not common to the other stockholders. The law will not allow private profit from a trust, and will not listen to any proof of honest intent."

JUDGMENT

On a review of the evidence of record, with reference to the decision of the trial court, and the errors assigned by the appellant, and with reference to previous decisions of this court on the same subject, we are irresistibly led to the conclusion that no reversible error was committed in the trial of this case, and that the defendant has been proved guilty beyond a reasonable doubt of the crime charged in the information. The penalty imposed by the trial judge falls within the limits of the punitive provisions of the law. Judgment is affirmed, with the costs of this instance against the appellant. So ordered.

Araullo, C. J., Johnson, Street, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

