43 Phil. 728

[G. R. No. 18536. September 11, 1922]

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

D E C I S I O N

STATEMENT

The following information was filed against the defendant by the city fiscal of the City of Manila:

> "The undersigned accuses Venancio Concepcion of a violation of the provisions of Act No. 2747, of the Philippine Legislature, committed as follows:
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> "That at all times herein mentioned, in the City of Manila, Philippine Islands, the said accused was the president of the Philippine National Bank, a corporation created by Act No. 2612 of the Philippine Legislature, and was a member of the board of directors of said bank; that the Philippine Vegetable Oil Company is a Philippine corporation, engaged in business in the city of Manila; that at the time of the declaration of war by the United States against the Empire of Germany and its allies, in the year 1917, it was found that six thousand (6,000) shares of the stock of the said Philippine Vegetable Oil Company were the property of alien enemies of the United States, which said shares were thereafter seized by the Alien Property Custodian, pursuant to the authority vested in him by the Act of Congress of October 6, 1917, entitled: 'Trading with the Enemy Act;' that thereafter the Alien Property Custodian advertised the said six thousand (6,000) shares of the stock of the said Philippine Vegetable Oil Company for sale at public auction to be held at Manila, in the Philippine Islands, on or about the month of April, 1919; that one Phil. C. Whitaker, at that time the president of the

said Philippine Vegetable Oil Company, informed the said accused, Venancio Concepcion, that it was the intention of the said Whitaker to bid at the auction sale of said six thousand (6,000) shares of the stock of the said Philippine Vegetable Oil Company for the purchase of the same for and on behalf of the said Philippine Vegetable Oil Company ; that the said accused then informed the said Whitaker that he, the said accused, also intended to bid at the auction sale for the said shares; that thereupon it was agreed between the said Whitaker and the said accused that to avoid competitive bidding at the said auction, the said accused would refrain from bidding, and that he would cause a loan to be made to the said Philippine Vegetable Oil Company from the funds of the Philippine National Bank of a sum sufficient to pay for the said shares if bid in at said auction sale by the said Whitaker, and the said Whitaker agreed, in consideration of the said undertaking of the accused, that if he succeeded in bidding in the said shares for the Philippine Vegetable Oil Company, he would cause the said Philippine Vegetable Oil Company to sell two hundred (200) of said shares to the accused at cost and lend him the money with which to pay for the same; that pursuant to said agreement the said accused refrained from bidding at the said auction sale, and five thousand eight hundred (5,800) of the said six thousand (6,000) shares of the stock of the said Philippine Vegetable Oil Company were, at the said auction sale held in Manila, Philippine Islands, in the said month of April, 1919, sold by the Alien Property Custodian to the said Philippine Vegetable Oil Company; that the said accused in the city of Manila, Philippine Islands, caused a loan to be made to the said Philippine Vegetable Oil Company in the sum of seven hundred and twenty-five thousand pesos (P725,000) Philippine currency, to enable it to pay for the said shares, and the said Whitaker, as president of said Philippine Vegetable Oil Company, in consideration of the said loan and of the abstention of the accused from bidding at the said auction sale, caused two hundred (200) of said shares to be issued to the said accused, Venancio Concepcion, and accepted the note of the said accused for the sum of twenty-five thousand pesos (P25,000) and payable on demand to the Philippine Vegetable Oil Company in consideration thereof; that the said two hundred (200) shares were thereupon duly registered in the books of the Philippine Vegetable Oil Company as the property of the accused; that on the 15th day of July, 1919, he was paid the sum of two thousand pesos (P2,000) as his dividend on such shares; that thereafter, to wit, on or about the 2d day of September, 1919, at Manila, in the Philippine Islands, the accused informed the said Whitaker that he desired to sell

> the said two hundred (200) shares of the stock of the Philippine Vegetable Oil Company, whereupon the said Whitaker, on behalf of the said Philippine Vegetable Oil Company, agreed with the accused to purchase the said shares at an advance of fifteen thousand pesos (P15,000) over the price at which they were bought by the accused; that on or about the 2d day of September, 1919, in Manila, Philip pine Islands, pursuant to said agreement, the said shares were transferred by the accused to the Philippine Vegetable Oil Company, and his said note for twenty-five thousand pesos (P25,000) was cancelled and returned to him; that on the 2d day of September, 1919, the Philippine Vegetable Oil Company issued and delivered to the accused its check on the bank of the Philippine Islands, to the order of the said accused, for the sum of fifteen thousand pesos (P15,000) Philippine currency, which said check was cashed by the said accused and the full amount thereof received by him in payment of the difference between his said note and the increased price at which the said two hundred (200) shares were sold by him to the Philippine Vegetable Oil Company.
>
> "Contrary to law."

Upon the charge, he was tried and convicted of a violation of the provisions of section 17 of Act No. 2747 of the Philippine Legislature, and sentenced to pay a fine of P5,000 and costs, or to suffer a subsidiary imprisonment for a period not to exceed six months.

The opinion of the trial court is exhaustive and contains a complete and careful analysis of all the facts shown at the trial. Among other things the court in its opinion says:

> "It will be observed from the testimony quoted, that the witness Whitaker did not make any agreement with the accused, except that the latter could get any number of shares that he may desire at cost price. Absolutely no conversation was had with respect to the money with which the price of the shares that would be sold at auction should be paid; neither was there anything said in that conversation with reference to any loan, and it appears from the testimony of the said witness that he had no knowledge of the manner of acquiring the funds with which to pay the 5,800 shares.
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> "From said declarations it can clearly be seen that between the accused and Phil. C. Whitaker there was no stipulation or agreement regarding the loan of

P725,000, and there is not the slightest indication that in said conversation it was stipulated, as alleged in the complaint, that said loan was granted by the accused in consideration of the previous understanding between him and Whitaker that the Philippine Vegetable Oil Company would transfer to him at cost price all the shares he may desire.

"Aside from the fact that the theory of the prosecution regarding this point does not agree with the testimony of the witness Whitaker, the only one who could be in a position to declare something regarding the essential allegations contained in the complaint, the other proof of the prosecution indicates that there did not exist any contractual relation between the loan obtained from the Philippine National Bank and the alleged agreement had between the accused and Phil. C. Whitaker.

"It having been demonstrated, as it was, that the evidence of the prosecution has not established the essential allegation contained in the complaint that the accused had taken any part of the shares sold by the Alien Property Custodian, in consideration of the loan of seven hundred and twenty-five thousand pesos by him granted the Philippine Vegetable Oil Company nor of the previous understanding which existed between said accused and Phil. C. Whitaker that the former would abstain from taking part in the sale at public auction of the said shares, and that he would grant said loan in exchange of the two hundred of said shares to be given to him, it necessarily follows that the accused cannot be found guilty of having obtained by indirect means a loan from the Philippine National Bank, of which he was president, contrary to section 35 of Act No, 2747.

"We will examine the other contention of the prosecuting officer that the facts established constitute likewise a violation of paragraph 2 and subsection (*b*) of section 17 of the same Act.

"In examining this other aspect of the case, the first question that presents itself is whether or not the complaint herein filed contains allegations upon which the court may find the accused guilty of said violation, in case such finding is borne out by the evidence. The defense insists that the accused cannot be convicted of said violation because there is not in the complaint any allegation to the effect that the accused granted the loan without authorization of the board of directors of the National Bank, and has, consequently, exceeded or overstepped the

powers conferred on him by the aforesaid Act.

"The conclusion must, therefore, be that there being categorical and sufficient allegations in the complaint, to the effect that the accused, being president of the Philippine National Bank, granted the Philippine Vegetable Oil Company a loan of seven hundred and twenty-five thousand pesos, which constitutes an overstepping of his only powers defined in paragraph 2 of section 17 of Act No. 2747, the accused can be convicted of said violation, if it is established by the evidence.

"From the facts just related, it is inferred that the accused, and not Vicente Gaskell, as is claimed by the defense, granted the loan of seven hundred and twenty-five thousand pesos to the Philippine Vegetable Oil Company, and that said act constitutes a flagrant violation of paragraph 2 of section 17 of Act No. 2747, which empowers the president of the Philippine National Bank to grant loans only on negotiable instruments for periods of time not exceeding four months, and in amounts which can in no case exceed fifty thousand pesos.

"With reference to the intimation of the prosecuting officer that the accused is likewise guilty, according to the evidence, of a violation of subsection (*b*) of section 17, the court is of the opinion that, although it was established by the evidence, the accused cannot be convicted of said violation, because it has not been sufficiently alleged in the complaint, nor from the terms in which it is written can it be inferred that the accused was also guilty of said violation; besides the evidence in regard to this point is not sufficiently conclusive and convincing to serve as a basis for a conviction. It may not be amiss to remember, in discussing this point, that the witnesses for the prosecution, who were members of the board of directors of the Philippine National Bank at the time alleged in the complaint, testified in a manner so uncertain and vague that from the whole of their testimonies, it cannot be deduced with even relative certainty that the members of the board of directors of said Bank did not really have knowledge of the contents of the report of the department of loans and discounts.

"Summarizing all the foregoing, the court finds: (*a*) That the accused is not guilty of a violation of section 35, nor of subsection b of section 17 of Act No. 2747, and (*b*) that the evidence of the prosecution conclusively proves that the accused is guilty of a violation of paragraph 2 of the said section 17, because, overstepping

> his powers and without authorization from the board of directors of the Philippine National Bank, he granted the Philippine Vegetable Oil Company a loan for the amount of seven hundred and twenty-five thousand pesos, a sum which up to this date has not been reimbursed by the entity indebted."

No demurrer was filed to the information, and no motion was filed to make it more definite and certain.

During the trial the prosecution called some of the directors of the Philippine National Bank as witnesses, and this or a similar question was asked:

> "Q. Please see this document Exhibit B of the prosecution which I show you, and, after having known its contents, I request that you tell the court if, among the various matters which have been discussed by the board of directors of the Bank on that date, May 21, 1919, the concession of any loan of P725,000 or of any other loan of a greater amount to the Philippine Vegetable Oil Company was discussed ? "

To which the defendant made the following objection:

> "Mr. Welch. We object to the question and to all this line of questions to the directors of the Bank, with respect to what they remember of the meetings of the board of directors, for being irrelevant, incompetent, and immaterial."

The objection was overruled, and an exception duly taken, and the directors were permitted to testify in substance, over the objection of the defendant, that they had never authorized the loan, and that it was made without their knowledge or consent.

When the prosecution rested its case, the defense filed a motion for an acquittal, which was extensively argued pro and con. Among other things, the Fiscal contended:

> "There was a violation of the second paragraph of section 17, and also of subsection b of this same section, in so far as this section 17 speaks of the duties of the president, principally of the duty which the president has to inform the

> board of directors of the loans which are being granted. Among the other sections, which the prosecution contends that have been violated, is section 35, which says that the National Bank shall not grant loans, directly or indirectly, to any of the members of the board of directors, or to the assessors of the same, etc."

Upon the making of this statement by the fiscal, the attorneys for the defendant asked for the dismissal of the case against him on the ground "that the prosecuting officer asked for the conviction of the accused, basing the complaint over two sections absolutely different, which cannot be combined in only one complaint."

The court:

> "You may proceed, but, as is seen in the complaint, the prosecuting officer has not charged any specific violation of any section of Act No. 2747. The first paragraph of the complaint simply says: The undersigned accuses Venancio Concepcion of a violation of some of the provisions of section 17 of Act No. 2747. The question as to what section of the law has been violated by the accused is to be determined by the court rather than by the prosecuting officer. The prosecuting officer may now think and contend that sections 17 and 35 have been violated; the attorneys for the defense could have thought that the allegations of the complaint constitute a violation of section 42, but, in the end, it is the court who must determine, first, whether there existed a violation of the law; in the second place, what section has been violated, or, finally, whether no law was violated."

The court later overruled all the motions of the defendant in which it said:

> "Let there be stated in the record the exception of the attorneys for the defense to the ruling of the court on the motion for dismissal which was presented, and to the resolution in writing: dated August 17, 1921."

From the judgment of conviction, the defendant appeals, and assigns the following- errors: "The court erred:

"I. In denying defendant's motion for discharge at the close of the People's case.

"II. In finding that the complaint charged a violation of sections 17 and 49 of Act No. 2747.

"III. In finding that an infraction of paragraph 2 of section 17 of said Act constitutes a crime.

"IV. In finding that the issuance of checks, Exhibits H to H-6 inclusive, was to pay the balance of the purchase price of the stock bought from the Alien Property Custodian.

"V. In finding that the discount of the note for P725,000 did not become effective until defendant placed his initials upon the note.

"VI. In finding that the loan of P725,000 was not reported to the board of directors of the Philippine National Bank.

"VII. In finding that the complaint clearly states that defendant, as president, solely by himself granted the Philippine Vegetable Oil Company a loan of P725,000.

"VIII. In finding that the allegation of fact last above set forth is made independently of the other allegations that exist in the complaint.

"IX. In finding that the defendant personally and not Vicente Gaskell made the loan of P725,000 to the Philippine Vegetable Oil Company.

"X. In finding defendant guilty of a violation of paragraph two of section seventeen of Act No. 2747."

Johns, J.:

Section 17 of Act No. 2747 of the Philippine Legislature, approved February 20, 1918, is as follows:

"The affairs and business of the National Bank shall be managed by a board of directors consisting of the president of the bank, who shall be chief executive

thereof and chairman of the board at the same time, one vice-president, who shall assist the president and act in his stead in case of absence or incapacity, and five members elected as hereinafter provided.

"The president of the bank shall have power to make loans on commercial paper for periods of time not to exceed four months and in sums not exceeding fifty thousand pesos in any one case, but he is required to submit a report on each such loan to the board of directors at its next succeeding session.. It shall also be his duty-

"(*a*) To make, with the advice and consent of the board of directors, all contracts on behalf of the said bank and to enter into all necessary obligations by this Act required or permitted;

"(*b*) To report weekly to the board of directors the main facts concerning the operations of the bank during the preceding week and to suggest changes in rates of discount, exchange, or of policy which may to him seem best;

"(*c*) To furnish, upon request of the Secretary of Finance or of the Governor-General of the Philippine Islands, any information in his possession regarding the operation of said Bank. Section 35:

"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 42:

"No fee or charge of any kind by way of commission shall be exacted, demanded or paid, for obtaining loans, and any officer, employee, or agent of the bank exacting, demanding, or receiving any fee for service in obtaining a loan or for use of his influence to obtain a loan shall be punished as hereafter established for violation of this Act."

Section 46:

> "All banks not organized and transacting business under a charter granted by the Philippine Legislature expressly exempting them from the restrictions and penalties of this section, and all persons or corporations doing the business of bankers, brokers, or savings institutions, are prohibited from using the word * national' as a portion of the name or title of such bank, corporation, firm or partnership; and any violation of this prohibition committed after ninety days subsequent to the date of enactment of this Act shall subject the party chargeable therewith to a penalty of not less than one hundred pesos for each day during which it is committed or repeated."

Section 49:

> "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."

It will be noted that, although the Fiscal contended that the defendant should have been convicted under the information for a violation of section 35, and for making an excessive loan under paragraph 2 of section 17, and for failing to make a weekly report, as provided by subsection (*b*) of section 17, the trial court, upon the facts shown in the record, acquitted the defendant of the violation of section 35, and held that the information did not charge a crime under subsection (*b*) of section 17, and convicted him of making an excessive loan under section 17. Hence, the question presented is whether or not the conviction of the defendant for making an excessive loan should be sustained.

There are fifty different sections of the Bank Act, including numerous subsections, and the information alleges:

> "The undersigned accuses Venancio Concepcion of a violation of the provisions of Act No. 2747 of the Philippine Legislature committed as follows." The information does not make any reference to the violation of any specific section. That is to say, it does not charge the defendant with the violation of any specific section of the Banking Act. Hence, it became a matter of law for the court to construe the information, and to say what crimes, if any, are alleged which defendant has committed. It says that the defendant was president of the

> Philippine National Bank, a corporation, and a member of its board of directors; that the Philippine Vegetable Oil Company is a corporation doing business in the city of Manila; that at the time of the declaration of war by the United States against Germany, it was found that 6,000 shares of the stock of the Philippine Vegetable Oil Company were the property of alien enemies; that they were seized by the Alien Property Custodian; and advertised for sale in the month of April, 1919; that P. C. Whitaker, then the president of the Philippine Vegetable Oil Company, informed the defendant that it was his intention for and on behalf of the Philippine Vegetable Oil Company to bid at the auction sale for the purchase of the stock; that the defendant informed Whitaker that he also intended to bid; that it was agreed between them that the defendant would refrain from bidding and would cause a loan to be made to the Philippine Vegetable Oil Company from the funds of the Philippine National Bank of a sufficient amount to pay for the shares of stock, if Whitaker should become the purchaser, and that in consideration thereof, Whitaker agreed that if he did become the purchaser he would cause the Philippine Vegetable Oil Company to sell 200 shares of stock to the defendant at actual cost, and lend him the money to pay for the stock; that pursuant thereto the defendant refrained from bidding, and that 5,800 of the 6,000 shares were sold by the Alien Property Custodian to the Philippine Vegetable Oil Company; that the accused "caused a loan to be made to the said Philippine Vegetable Oil Company in the sum of seven hundred and twenty-five thousand pesos (P725,000) Philippine currency, to enable it to pay for the said shares," and in consideration thereof, the Oil Company caused 200 of the shares to be issued to the defendant, accepted his promissory note for the sum of P25,000 in payment thereof, payable to the order of the Oil Company; that the 200 shares were duly registered as the property of the defendant upon which he was paid P2,000 as Ms dividend on July 15, 1919; that a third party wanted to purchase defendant's stock at an advance, and he advised Whitaker that he wanted to sell, and that Whitaker agreed with the defendant to purchase it at the price of the offer which was an advance of P15,000; and that on September 2, 1919, the defendant sold his stock to the Oil Company and received his cancelled note.

After quoting the material testimony, the trial court acquitted the defendant of any corrupt agreement with Whitaker, and also of any violation of subsection (*b*) of section 17, and the remaining question is whether the information will sustain the conviction of the defendant

under paragraph 2 of section 17.

It is very apparent from the record that the information against the defendant was drawn upon the theory that he had entered into a corrupt agreement with Whitaker to furnish the Oil Company the money to purchase the stock at the auction sale, in consideration of which the defendant was to have 200 shares of the stock at the price at which they were purchased, and that the receipt of the shares by the defendant was" the inducement for which he would cause the bank to make the loan to the Oil Company. It is also apparent that the case was tried upon that theory by the prosecution. The only evidence of any agreement between Whitaker and the defendant was that of Whitaker, who was called as a witness for the prosecution. His testimony tends to show that no such an agreement was ever made, and the trial court expressly found as a fact that no such agreement ever was made. It will be noted that the trial court specifically found as a fact that there was no agreement between Whitaker and the defendant by which he was to refrain from bidding- at the sale of the stock. The information alleges that the promise to issue 200 shares of the stock to the defendant was one of the considerations and inducements for the making of the loan, and upon that charge the defendant was acquitted by the trial court. Hence, we must accept it as a fact that the loan was not made with a corrupt agreement.

It is contended that the information alleges "that the said accused in the city of Manila, Philippine Islands, caused a loan to be made to the said Philippine Vegetable Oil Company in the sum of seven hundred and twenty-five thousand pesos (P725,000), Philippine currency, to enable it to pay for the said shares." But here, again, the trial court found as a fact that there was no agreement between Whitaker and the defendant that the bank should loan the Oil Company the money with which "to pay for. the said shares." Hence, all that we would then have left of the information upon which the prosecution now relies is the bare, naked allegation that the defendant "caused a loan to be made to the said Philippine Vegetable Oil Company in the sum of P725,000," upon which the prosecution claims the conviction should be sustained for a violation of paragraph 2 of section 17. Although the information was drawn, the evidence introduced and the defendant prosecuted upon the theory that he had entered into a corrupt agreement with Whitaker to loan the money of the Bank for his personal use and benefit, when the Government rested its case, and the defendant filed his motion for an acquittal, it for the first time developed that the prosecution claimed that under the allegations made in the complaint, and upon the facts proven, the defendant was guilty of, and should be convicted for, a violation of paragraph 2 of section 17, and subsection (*b*) of section 17 of Act No. 2747, and the court later overruled the motion, to discharge the defendant. The Government then claimed that three different crimes are

alleged in the information, and that the defendant should be convicted of all three, and that, through his failure to demur, defendant has waived his legal right to object to any duplicity in the information, citing the case of United States vs. Sarabia (4 Phil., 566), where the court held :

> "With reference to these objections to the complaint, it may be said that the defendant in the court below was represented by the same American lawyer who represents him in this court. That lawyer was present and took part in the trial in the court below. He was of course furnished before the trial with a copy of this complaint. He made no objection to its sufficiency, either by demurrer or motion or in any other way. Evidence was produced at the trial to show when the offense was committed. He made no objection to this evidence on the ground that the time the offense was committed was not stated in the complaint. Evidence also was presented to show where the offense was committed. He made no objection to this evidence on the ground that the place where the offense was committed was not stated in the complaint * * *. The alleged defects in the complaint which his counsel now points out must have been as apparent to such counsel then as they are now, and why, if the complaint was in fact insufficient and if from it he could not understand the acts with the commission of which his client was charged, he did not take some action to secure further information, does not appear. The presumption would be, from his failure to seek any further information, that he was sufficiently informed of the charge and was satisfied with the complaint, understood what it meant, and was willing- to go to trial on the assumption that it was sufficient. * *
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> "The general rule in the United States is that an objection to the complaint, to be available in the appellate court, must have been raised below. In Coffey vs. United States (116 U. S., 436) it is said, at page 442."

That is not this case. Here, the defendant duly objected to any evidence by the directors tending to show that the loan was not authorized by the board of directors, and when the prosecution rested its case, moved for the discharge of the defendant in the trial court upon the identical questions now presented in this court, and it is very evident from the record that throughout the trial of the case, it was the original theory of the prosecution that the defendant was being prosecuted for the making of a corrupt agreement with Whitaker, and

that the defendant did not have any notice or warning of any other or different theory until the arguments were made on the motion for acquittal when the defendant promptly objected to any such a construction of the information.

In United States vs. Nery (4 Phil., 158), this court held that:

> "An offense against the superior 'authority in the Constabulary' is not a cognate offense to an offense against the sovereignty or laws of the State.

"The court cannot, under a complaint for sedition, find the defendant guilty of the crime defined in section 1 of Act No. 619.

> "When a person is charged in a complaint with a crime, under the provisions of General Orders No. 58, and the evidence does not show that he is guilty of the crime charged, but does show that he is guilty of some other lesser offense, the court may sentence him for the other lesser offense, provided the lesser offense is a cognate offense and is included in the complaint filed with the court."

And in United States vs. Nubia (4 Phil., 456), this court held that:

> "Under a complaint charging the defendant with a violation of paragraph 1 of article 491 of the Penal Code, relating to *allanamiento de morada*, he cannot be convicted of a violation of paragraph 2 of the same article."

The crime of violating paragraph 2 of section 17 of Act No. 2747 is not embraced within, and is not a part of, the crime for a violation of section 35. They are separate and distinct offenses under separate provisions of the Act. Hence, assuming that the complaint only alleges a crime for the violation of section 35, standing alone, a conviction under paragraph 2 of section 17 could not be sustained.

Paragraph 3, section 6, General Orders No. 58, which is the Organic Law of the Philippine Islands, says:

> "The acts or omission complained of as constituting the crime or public offense in

> ordinary and concise language, without repetition, not necessarily in the words of the statute, but in such form as to enable a person of common understanding to know what is intended and the court to pronounce judgment according to right."

And section 11 says:

> "A complaint or information must charge but one offense; except only in those cases in which existing laws prescribe a single punishment for various allied offenses."

Centuries past have proven that it is a wise provision of the law that before a defendant can be convicted of a crime his guilt must be established beyond a reasonable doubt. There is a marked distinction between the language used in, section 35, under which this Court sustained a former conviction of the defendant, and the language used in paragraph 2 of section 17.

Section 35 says:

> "The National Bank shall not, directly or indirectly, grant loans to any of the members of the board of directors of the bank, etc."

This is a positive, direct, express prohibition, and the language is clear, definite and certain. Paragraph 2 of section 17 says:

> "The president of the bank shall have power to make loans on commercial paper for periods of time not to exceed four months and in sums not exceeding fifty thousand pesos in any one case, but he is required to submit a report on each such loan to the board of directors at its next succeeding session."

While this might be construed as a limitation upon the power of the defendant to make a loan in excess of P50,000 without the approval of the Board of Directors, there is no express provision against the making of such a loan. It is only by implication, inference and construction that the making of an excessive loan is prohibited. That is to say there is no

express provision of the statute against the making of an excessive loan, and section 49 of the Act says:

> "Any person who shall violate any of the provisions of this Act shall be punished, etc."

It must be admitted that there is no express provision against the making of an excessive loan, and it is only by inference or construction that such a prohibition is found to exist in paragraph 2 of section 17. There is far more reason why language used in a criminal statute should be clear, definite and certain than the language in an information. If in a criminal case the information should be "in ordinary and concise language," there is much stronger reason why the statute creating the crime should be in ordinary and concise language, and that any reasonable doubt in its construction should be resolved in favor of the defendant.

The bank itself had the power to make the loan. As the trial court says, the testimony of the members of the board of directors was vague and uncertain, "and that it should not be found as a fact that its members did not have any knowledge of the report of loans and discounts."

Among other things, the consolidated report of loans and discounts made by Mr. Gaskell, and which is a part of the corporate records, shows that between May 14 and May 20, the bank had made time loans to the Philippine Vegetable Oil Company amounting to P3,941,000, and then had an outstanding balance against it of P17,219,360, and that between the same dates, it had paid P2,705,000, which still left the same outstanding balance, and that between May 7 and May 13, it had time loans of P1,594,000 and an outstanding balance of P15,983,360.

The board of directors either knew or should have known of all of such transactions, and when they claimed that they did not, it was an admission by them of a gross neglect of official duty.

These financial statements were a part of the corporate records of the bank, and were made in writing by the manager of loans and discounts of the Bank.

The record and their testimony show that they were a "dummy" rubber stamp board of directors, and that they were grossly negligent in the performance of their respective duties. They either knew or should have known at the time that the Philippine Vegetable Oil

Company was indebted to the Bank in the sum of P17,219,360, and yet not one of them made any objection or offered a word of protest, and it is very apparent that, if the loan in question had been formally submitted to them for approval, they would have formally approved it. As a matter of fact, they did know and they did approve of loans to the Philippine Vegetable Oil Company aggregating P17,219,360.

Again, the loan of P725,000 was made on May 16, 1919, and it appears from the original report of the manager of loans and discounts, which it was the duty of the directors to have read and examined, that from May 7 to May 13, the bank had made time loans to the Philippine Vegetable Oil Company of P1,594,000, and that it then had an outstanding balance against it and in favor of the bank of P15,983,360. The loan in question here was made on May 16. How then can the directors claim or assert that such things were done without their knowledge, and that they did not approve of the loan of P725,000 made on May 16 ?

Through the previous actions and conduct of the directors, so far as they were concerned, the defendant was authorized to make the loan at the time and in the manner in which it was made, and there are strong reasons for contending that the directors are estopped by their conduct to say that they did not authorize the loan, and that in truth and in fact, by and through the conduct of the directors, the loan was made by the Bank itself, and that the directors are just as much responsible for the making of the loan as the defendant.

The Organic Law says that an information should be drafted “in ordinary and concise language,” and “that a complaint or information must charge but one offense; except only in those cases in which existing laws prescribe a single punishment for various allied offenses.”

Analyzed and tested by the rule of “ordinary and concise language,” the information does not charge the defendant with the specific violation of any of the provisions of section 17. It is true that it says the defendant “caused a loan to be made to the said Philippine Vegetable Oil Company” for P725,000. It may well be contended that this is not equivalent to saying that the defendant personally made a loan of the bank’s money. If that had been the purpose and intent of the pleader, it would have been a very easy matter to have charged the defendant with making an excessive loan in “ordinary and concise language.”

The average experienced attorney upon reading the information would advise his client that he was charged with having made a corrupt agreement with Whitaker by which he was to

receive stock in consideration of his causing a loan to be made by the bank to pay for the stock which was sold at auction, and that all other matters alleged were in the nature of inducements to show what the corrupt agreement was and how it was carried out.

In passing upon the motion to dismiss, the trial court says:

> "The prosecuting officer may now think and contend that sections 17 and 35 have been violated; the attorneys for the defense could have thought that the allegations of the complaint constitute a violation of section 42, but, in the end, it is the court who must determine, first, whether there existed a violation of the law; in the second place, what section has been violated." Neither the prosecution nor the defense should be permitted or required to speculate in the realm of doubt and uncertainty as to what is alleged.

The Organic Law says:

> "The acts or omission complained of as constituting the crime or public offense in ordinary and concise language, etc,"

To the ordinary pleader, the offense is described in "ordinary and concise language," and tested by that rule it charges the defendant with having made a corrupt agreement with Whitaker in violation of the provisions of section 35, and upon that charge, he was acquitted by the trial court.

When the prosecution called the directors to testify that they had not approved the loan, the defense promptly objected and duly excepted to the admission of the evidence. When the prosecution for the first time claimed in the argument upon the motion to acquit that the information stated three different crimes and that the defendant could be convicted of all or either, the defendant again promptly objected which was overruled and exception duly taken.

The case of United States vs. Sarabia, *supra*, is good law, and has been followed by numerous decisions of this Court, but in the instant case timely and prompt objections were made and overruled and exceptions duly taken.

The judgment of the lower court, convicting the defendant of a violation of paragraph 2 of

section 17 of Act No. 2747, is reversed, and the defendant, having been acquitted by the trial court upon all other charges, is discharged, with costs de officio. So ordered.

Street, Ostrand, and *Romualdez, JJ.,* concur.

CONCURRING

MALCOLM, *J.*,

I concur in the result for two basic reasons. In the first place, Venancio Concepcion should not be convicted of a crime which was not charged in the information. The city fiscal, being versed in criminal procedure, well knew that an information must charge but one offense. A reading of the information discloses that this one offense, and the nature and cause of the accusation of which the accused was informed, to use the constitutional phraseology, was the violation of section 35 of the law amendatory of the National Bank Charter. The information was framed to charge Venancio Concepcion with a violation of section 35 of Act No. 2747. It was only at the eleventh hour of the trial when it occurred to the fiscal that the defendant was guilty under the information of three distinct violations of the Bank Law. But even the prosecuting official saw the untenability of his position and showed a marked inclination to amend the information, which, however, it was too late to do, while the special counsel for the Philippine National Bank clung to the contention that the facts established by the evidence adduced at the trial constituted a violation of the provisions of section 35 of Act No. 2747. As the trial court arrived at the conclusion that the accused could not be found guilty of obtaining by indirect means a loan from the Philippine National Bank, of which he was president, in violation of section 35 of Act No. 2747, certainly the accused cannot now be found guilty of a violation of other provisions of the law.

Upon the assumption, however, that, when an accused goes to trial without objection on an information defective for multiplicity, he waives the right secured to him to demur to the information on that ground (Paraiso vs. U. S. [1907], 207 U. S. 368), and that the information contains facts sufficient to charge a violation of the second paragraph of section 17 of Act No. 2747, it is my opinion that the accused has not been proved guilty beyond a

reasonable doubt of having made a loan on commercial paper for a period of time exceeding four months, and in a sum exceeding P50,000, without submitting a report on such loan to the board of directors at its' next succeeding session, in contravention of the law above cited. The proof shows that the president of the bank submitted a report of the loan to the Philippine Vegetable Oil Company, in accordance with former practice, and that he followed the precedent established by his predecessors acting on authorized advice, when he considered the transaction a discount and not a loan.

Accordingly, I agree that judgment must be reversed and the defendant acquitted.

DISSENTING

ARAULLO, *C. J.,* **JOHNSON, AVACEÑA,** and **VILLAMOR***, JJ.,*

After a careful examination of the evidence produced during the trial of this case, the undersigned are of the opinion that the record plainly shows that the findings of the trial court are supported by the evidence, and that the inferences drawn from said findings are correct. Therefore, the judgment appealed from should be affirmed with costs.

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