

43 Phil. 653

[G. R. No. 18535. August 15, 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

February 4, 1916, the Legislature of the Philippine Islands passed Act No. 2612, known as the charter of the Philippine National Bank, under which it was organized with plenary powers and a capital stock of P20,000,000 divided into 200,000 shares of the par value of P100 each, 101,000 of which to be subscribed, owned and held by the Government, and the remainder by private persons. Section 37 provides: "The National Bank shall never at any time, under any circumstances, directly or indirectly grant to any individual, company of individuals, firm, corporation, Insular, provincial or municipal government any real estate mortgage loan exceeding the sum of fifty thousand pesos, or any other loan exceeding the sum of three hundred thousand pesos."

Section 38:

"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. Said National Bank is hereby prohibited from making any loan directly or indirectly in excess of one thousand pesos to any member of the Philippine Legislature or to any official or employee of the Insular, provincial, or municipal governments except upon satisfactory real estate security."

Section 53:

“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.”

February 20, 1918, the Legislature passed Act No. 2747, entitled “An Act to amend in certain particulars Act Numbered Twenty-six hundred and twelve, entitled ‘An Act creating the Philippine National Bank,’ ” which provides:

“In order to explain certain provisions, increase the stability of the institution, and extend its powers, Act Numbered Twenty-six hundred and twelve, entitled ‘An Act creating- the Philippine National Bank,’ is hereby amended in certain particulars, so that hereafter the said Act shall read as follows:”

Section 35 of which provides:

“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:

“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.”

January 30, 1921, the Legislature passed Act No. 2938 entitled “An Act to amend Act Numbered Twenty-six hundred and twelve, entitled ‘An Act creating the Philippine National Bank,’ as amended by Act Numbered Twenty-seven hundred and forty-seven.”

It also provides:

“Act Numbered Twenty-six hundred and twelve, entitled ‘An Act creating the Philippine National Bank,’ as amended by Act Numbered Twenty-seven hundred

and forty-seven, is hereby amended in certain particulars, so that hereafter the said Act shall read as follows:"

Section 29 of this Act provides:

"The National Bank shall not, directly or indirectly, grant loans to any of the members of the board of directors, the general manager, assistant general manager, and employees of the bank, nor to agents or employees of the branch banks, and no loan shall be granted to a corporation, partnership or company wherein any member of the board of directors is a shareholder, agent or employee in any manner, except by the unanimous vote of the members of the board, excluding the member interested: *Provided*, That the total liabilities to the Bank of any corporation wherein any of the members of the board of directors is a shareholder, agent or employee in any manner, shall at no time exceed ten per centum of the surplus and paid-up capital of the Bank."

Section 42:

"All Acts or parts of Acts inconsistent or incompatible with the provisions of this Act are hereby repealed." Section 43:

"Any member of the board of directors of the National Bank who knowingly violates or knowingly permits any of the officers, agents, or servants of the Bank to violate any of the provisions of this Act, and any officer, employee, agent, or servant of the Bank who violates any of the provisions of this Act and any person aiding and abetting the violation of 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."

At all of the material times hereinafter stated, the defendant, Venancio Concepcion, was the duly elected, qualified and acting President of the Philippine National Bank, which was organized and continued to exist under the respective legislative acts.

June, 1918, what is known in the record as the Binalbagan Estate, Inc., was organized by the agriculturists in the provinces of Occidental Negros and Iloilo, with a capital stock of

P10,000. Its primary purpose was to foster the manufacture and refinement of centrifugal sugar and its by-products. Only P2,500 of the capital stock was paid, and, for a long time, little, if anything, was done. In 1920 its corporate interests were acquired by Phil. C. Whitaker and the defendant, who reorganized the company with a capital stock of P500,000 divided into 5,000 shares of the par value of P100 each, out of which Whitaker was issued a certificate for 1,865 shares and the defendant 1,615 shares, and the firm of Puno, Concepcion & Co. a certificate for 250 shares, and the remainder to other and different persons. In the month of November, 1920, the capital stock was increased to P1,500,000, and 6,053 shares of stock were issued to the defendant, portions of which he transferred to other persons, among whom were his immediate relatives. Notwithstanding the fact that the original capital stock was for P10,000, and that it was increased to P500,000 and again to P1,500,000, there is no registered document in the Bureau of Commerce and Industry in either case showing the increase of the capital stock of the estate. January 30, 1920, Whitaker, Luzuriaga, and the defendant entered into an agreement as partners to acquire and operate what is known as the "Palma" sugar central and hacienda in the municipality of Hog, Occidental Negros, a short distance from the property of the Binalbagan Estate. Under this agreement, Whitaker and the defendant were to each have 40 per cent and Luzuriaga 20 per cent. Concurrent therewith, the three entered into another agreement with Salvador Serra for the sale and purchase of his business known as central and hacienda "Palma" at an agreed price of P1,500,000, P150,000 of which was to be paid on or before June 30, 1920, when the property was to be actually conveyed, and to assume a mortgage on the property for P600,000, the remainder to be paid in three installments of P250,000 each, respectively, on or before June 30, 1921, 1922, and 1923. January 29, 1920, this contract was duly signed by all of the respective parties, and was duly witnessed and acknowledged before a notary public.

On January 10, 1919, Salvador Serra executed a mortgage upon all of this property in favor of the Philippine National Bank for P600,000, which was then owned and held by the bank, and in full force and effect.

On July 17, 1920, in the office of the Philippine National Bank and in the presence of the defendant and Whitaker, and in accord with the terms and provisions of the instrument of January 29, 1920, Salvador Serra made, executed and delivered a deed of conveyance of the property described in the contract of January 29, 1920, and at the same time and place, and as a part of the transaction, Whitaker delivered to Salvador Serra the check of the Binalbagan Estate drawn upon the Philippine National Bank for P750,000, which was honored and paid by the bank, and out of which it satisfied the mortgage, which it then held

on the "Palma" *hacienda*, for P600,000 with accrued interest amounting to P26,218.66, and gave Salvador Serra credit in his current account in its branch at Iloilo for P123,781.34, making a total of P750,000, which the defendant and his associates had agreed to pay under the contract of January 29, 1920, thus consummating the deal. On July 17, 1920, the Binalbagan Estate was indebted to the Philippine National Bank more than P3,000,000, and did not have the money with which to pay the check of P750,000. To provide the necessary funds, it executed its promissory note payable on sight for that amount to the Philippine National Bank, which was presented to Vicente Gaskell, then in charge of loans and discounts, who in turn presented the note to the defendant for his approval, and the defendant then and there approved the loan to the estate, and initialed the note "V. C.," which was his customary and usual method, of approving loans, and after the defendant approved the loan, the check of the Binalbagan Estate for P750,000 was honored by the bank, and the account of the Binalbagan Estate was then credited with the amount of P750,000.

In his weekly report of July 22, it appears that Gaskell made a report of the P750,000 loan to the Binalbagan Estate, but that no specific mention was made of the loan by the defendant in his report, and that no record of the loan was made in the corporate minutes of the Board of Directors as of July 23, 1920.

By the provisions of Act No. 2938, the capital stock of the bank was increased from P20,000,000 to P50,000,000.

Following an investigation, an information was filed in the Court of First Instance against the defendant, which was later amended, charging him, as President of the Bank, with a violation of the provisions of section 35 as it relates to section 49 of Act No. 2747 of the Philippine Legislature above quoted. In substance, and to the effect that, through the commission of such acts and in the making of the loan of P750,000 to the Binalbagan Estate, the defendant was guilty of a violation of section 35, and should be punished under section 49 of Act No. 2747. Upon this charge, he was arraigned, tried, convicted and sentenced to two years of imprisonment and to pay a fine of P5,000 and costs, from which the defendant appeals and assigns the following errors:

- I. The trial court erred in overruling the demurrer interposed by the defense on the ground that the facts alleged in the complaint do not constitute a violation of Act No. 2747.

- II. The trial court likewise erred in overruling the motion for dismissal, interposed by the defense, on the ground that the prosecution has not proved the essential facts alleged in the complaint.

- III. The trial court likewise erred in not ordering the striking out of the hearsay testimony of the witnesses for the prosecution, notwithstanding the petition of the defense, as well as in permitting the fiscal to ask leading questions on incompetent, immaterial and irrelevant facts, to the witnesses for the prosecution, and the latter to answer said questions which were objected to by the defense.

- IV. The court likewise erred in admitting as proof Exhibits B, C, D, E, F, F-1, G, H, K, L, P, V-15, X, Y, Y-1, AA, BB, CC, DD, FF, GG, GG-1, HH, HH-1 to HH-42, JJ, JJ-1, and JJ-2 of the prosecution, notwithstanding that they were objected to by the defense as being incompetent, irrelevant, and immaterial, for they are not the best proof and not having been duly authenticated.

- V. The trial court likewise erred in declaring that about the first months of the year, 1920, a great portion of the interests of the Binalbagan Estate, Inc., was acquired by Phil. C. Whitaker and the accused, V. Concepcion.

- VI. The lower court likewise erred in declaring that the firm of Puno, Concepcion & Co., Ltd., is exclusively composed of the accused and the members of his family.

- VII. The lower court also erred in declaring that the writing executed on January 29, 1920, by Salvador Serra, the owner of the *hacienda* and the central "Palma" in favor of Whitaker, Concepcion, and Luzuriaga was an option and not a purchase and sale,
- VIII. The lower court likewise erred in declaring that at the time in which the Binalbagan Estate, Inc., drew the check for P750,000 in favor of Salvador Serra, the same had obtained from the National Bank, under the signature and authorization of its president, the accused herein, several credits, overdrafts and loans, Which amounted to several millions of pesos.
- IX. The lower court likewise erred in declaring that the limit of the credit allowed by the National Bank to the Binalbagan Estate, Inc., in the week which terminated on the 22d of July," 1920, was P3,660,000.
- X. The lower court likewise erred in declaring that the Binalbagan Estate, Inc., had been obtaining credits from the Philippine National Bank for various amounts, against which it was obtaining loan³ for amounts which at times were included in the total sum of the credit allowed, and at times exceeded the limit of said credit.
- XI. The lower court likewise erred in not declaring that the concession by the Philippine National Bank to the Binalbagan Estate, Inc., of P750,000 on July 17, 1920, has been made with the unanimous consent of the members of the Board of Directors of the bank.

- XII. The lower court likewise erred in declaring contrary to section 10 of Act No. 2612, as amended by Act No. 2938, that the obligations contracted with the National Bank by virtue of the discount of negotiable papers, bills of exchange, and promissory notes, are loans.
- XIII. The lower court also erred in declaring that the opinion of the Insular Auditor, the ex-officio Auditor of the Bank, cannot in any manner serve as a standard of conduct for the officers of the bank.
- XIV. The lower court likewise erred in declaring that the sum of P750,000 given to the Binalbagan Estate, Inc., by the National Bank on July 17, 1920, was a loan granted on said date and not on the date on which the credit contract was perfected.
- XV. The lower court lastly erred in finding the accused guilty of the violation with which he is charged in the complaint, sentencing him to two years of imprisonment, and to pay a fine of P5,000 and costs of the action.

Johns, J.:

There is a clear and correct analysis of the facts in the exhaustive opinion of the trial court, and there is but little, if any, dispute about any of the material facts. The testimony is conclusive that the defendant either owned or controlled about 40 per cent of the capital stock of the Binalbagan Estate, which, at the time of the above transaction, ' was indebted to the Philippine National Bank more than P3,000,000. That the bank then owned and held a first mortgage lien upon the "Palma" property for P600,000, which it satisfied and discharged out of the proceeds of the check of Binalbagan Estate for P750,000. That is to say, as a result of the transaction, the bank satisfied its mortgage lien for P600,000 with accrued interest, and in lieu thereof took and accepted the unsecured promissory note of Binalbagan Estate for P750,000, and, including the amount of that note, the total

indebtedness to the bank then amounted to P3,952,672.77.

The testimony is also conclusive that the P750,000 loan was personally approved by the defendant, and was made upon his personal responsibility, and that, so far as it appears in the record, no other officer or director was ever consulted about the transaction or the making of the loan at any time prior to its consummation.

The testimony is also conclusive that on the very day that the note was presented to the bank by the Binalbagan Estate, the loan was consummated, and the amount of it was placed to the credit of the Binalbagan Estate, which in turn drew its check for the full amount of the loan, which was honored by the bank when presented.

In this connection, it will be noted that the capital stock of the bank was then P20,000,000, and the total amount of the indebtedness of Binalbagan Estate to the bank was P3,952,672.77.

Section 35 of Act No. 2747 provides: "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 37 of Act No. 2612, above quoted, limits the amount of any real estate mortgage loan to P50,000 or any other loan to P300,000.

There is no such limitation in Act No. 2747, and in so far as it is material to this opinion, section 38 of Act No. 2612 is identical with section 35 of Act No. 2747.

Defendant's counsel ably and adroitly contend that the limitation provided for in the act is upon the bank itself, and that it does not apply to the defendant, as President of the Bank.

The bank is a corporation organized by special act of the Legislature, and it could only act or operate through its officers and board of directors. While the corporation itself might be made subject to a fine for a criminal offense, it could not be imprisoned, and it will be noted that section 53 of the original Act, which is identical with the other two Acts, says:

"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."

The limitation in section 35 of Act No. 2747 says:

“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.” And section 53 of Act No. 2612 says:

“Any person who shall violate any of the provisions of this Act, etc.,” and provides for a fine or imprisonment or both, and it must be conceded that the bank itself could not be imprisoned for a violation of section 35.

It is very apparent that section 35 was intended to prohibit the making of any loan by the bank to an officer or director of the bank.

It is also claimed that the loan to the Binalbagan Estate was not a loan to the defendant within the meaning of section 35. He was the President and active Manager of the Bank, and was the owner and had under his control about 40 per cent of the capital stock of the Binalbagan Estate, which was also a corporation, which was then indebted to the bank more than 15 per cent of the capital stock of the bank. With the P750,000 loan, its indebtedness to the bank amounted to very little less than 20 per cent of the capital stock of the bank.

Upon that question, the case of *People vs. Knapp* (132 N. Y. Supp., 747), is square in point. There, third count of the indictment charged the defendant with violating subdivision 11 of section 186 of the banking law in the making of a loan to him as director by a loaning of the money to the copartnership of which he was a member, and that it was done through the direction, permission, advice, and procurement of the defendant.

The court 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. * * *”

An appeal was taken, and the lower court was affirmed in (206 N. Y., 373), and the case is reported in 11 Am. Ann. Cases, p. 243, in which the syllabus says:

“The prohibition in a statute forbidding a corporation to do an act extends to the

board of directors and to each director separately and individually." And the opinion says:

"As to the remaining counts the»defendant insists that the command that a corporation shall not do a certain act is not a command that the directors shall not do the act. A corporation, however, is a mere conception of the legislative mind. It exists only on paper through the command of the legislature that its mental conception shall be clothed with power. All its power resides in the directors. Inanimate and incapable of thought, action or neglect, it cannot hear or obey the voice of the legislature except through its directors. It can neither act nor omit to act except through them. Hence a command addressed to a corporation would be idle and vain unless the legislature in directing the corporate body, acting wholly by its directors, to do a thing required or not to do a thing prohibited, meant that the directors should not make or cause the corporation to do what was forbidden, or omit to do what was directed. We think, as the appellate division held, 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.

"* * * The Banking Law should be construed in accordance with the obvious intention of the legislature so as to permit flexibility and to prevent looseness in doing business. The prime object is to protect the public, including depositors, and after that to enable the stockholders to secure a fair return from their investment. Banking institutions are not created for the benefit of the directors. While directors have great powers as directors, they have no special privileges as individuals. They cannot use the assets of the bank for their own benefit except as permitted by law. Stringent restrictions are placed about them so that when acting both for the bank and for one of themselves at the same time, they must keep within certain prescribed lines regarded by the legislature as essential to safety in the banking business."

The only difference as to the facts is that; there, the money was loaned to a copartnership of which the defendant was a member, and, here, it is loaned to a corporation of which the defendant was one of the heaviest stockholders. Here, good faith on the part of the defendant and sound banking would not permit the personal satisfaction by him, as President of the Bank, of a first mortgage loan of P600,000, and the taking in lieu thereof,

and as a substitute therefor, of the unsecured promissory note of the Binalbagan Estate in which he owned and controlled at least 40 per cent of its capital stock, and it is very apparent that the defendant would never have authorized the loan of P750,000, or satisfied the mortgage of P600,000, if he had not been a heavy stockholder in the Binalbagan Estate. The fact that he was such a stockholder was one of the main inducements and the primary consideration for his approval of the transaction.

It will be noted that section 35 of Act No. 2747 does not contain any exception or proviso, and that section 29 of Act No. 2938, which was enacted in 1921, says:

“The National Bank shall not, directly or indirectly, grant loans to any of the members of the board of directors, the general manager, assistant general manager, and employees of the Bank, nor to agents or employees of the branch banks, and no loan shall be granted to a corporation, partnership or company wherein any member of the board of directors is a shareholder, agent or employee in any manner, except by the unanimous vote of the members of the board, excluding the member interested: *Provided*, That the total liabilities to the Bank of any corporation wherein any of the members of the board of directors is a shareholder, agent or employee in any manner, shall at no time exceed ten per centum of the surplus and paid-up capital of the bank.”

This section was enacted in 1921, and section 35 above quoted was enacted in 1918, and section 42 of Act No. 2938 expressly provides that:

“All Acts or parts of Acts inconsistent or incompatible with the provisions of this Act are hereby repealed.”

Defendant’s counsel vigorously contend that the P750,000 loan to Binalbagan Estate was reported to, and approved by, the Board of Directors; that section 35 of Act No. 2747 was repealed, and that section 29 of Act No. 2938 is the law under which the defendant should be prosecuted.

Construing section 29, the record here is conclusive that the defendant, acting and representing the bank, personally made and consummated the loan, and that upon his personal advice and instructions, the check was paid, and that personally, as President, he

satisfied the mortgage for P600,000. He not only authorized the making of the loan, but made the loan himself without the consent or the authority of the Board of Directors,, and the loan was consummated, and the bank parted with the money without the knowledge of the Board of Directors. It was a completed transaction. There is a marked difference between the authority of the president of the bank to promise or negotiate a loan and the making of the loan itself.

Section 29 of Act No. 2938 contemplates that no loan shall ever be made to any officer of the bank until such time as it is submitted to, and approved by, the unanimous vote of the Board of Directors, excluding the applicant for the loan. But, here, the loan was consummated and the transaction was completed several days before it was ever brought to the knowledge or attention of the directors, and, even assuming that they did ratify a loan of that character, it would not constitute a defense. The law was violated in the making and consummation of the loan without the knowledge or consent of the Board of Directors. If the Binalbagan Estate had applied to the defendant, as President of the Bank, for the loan in question, and if, upon its receipt, he had submitted the application to the Board of Directors recommending the loan, and acting upon his advice the Board had approved the loan, and the loan had been made after such approval by the board, another and different question would have been presented, and there would have been merit in such a defense, but that is not this case.

Even under section 29, the consent and approval of the Board of Directors was a condition precedent to the making of the loan in question, and the fact that the Board of Directors a few days after the offense was committed may have approved it would not be a defense to the commission of the crime. In other words, assuming that the Board of Directors did approve of a violation of the law, it would not aid the defendant. He was occupying a position of special trust and confidence, and was the president and head of the most important financial institution in the whole Philippine Islands. His powers and duties were defined and described in the corporate charter of the bank. It was organized under a special act, and the Government itself subscribed for, and was the owner of, the majority of its capital stock. It was the purpose and intent to make it a conservative, strong and safe bank, and numerous provisions were made in the Act for its safety and stability, among which was section 35 of Act No. 2747.

Here, you have the President of the Bank upon his own initiative and his sole approval authorizing, making and perfecting a loan of P700,000 to a corporation in which he owned and controlled 40 per cent of its capital stock. It was never the purpose or intent of the

corporate charter that any officer of the bank should have, assume or exercise any such arbitrary or autocratic power.

It is worthy of note that the material provisions of the law prohibiting a loan to an officer of the bank are almost identical in each legislative act. Also, that the punishment for a violation is the same in each Act.

Hence, we must assume that at all times, it was the purpose and intent of the Legislature that no loan should ever be made by the bank to any officer or director, except under the express provisions of the law.

The loan was made while Act No. 2747 was in force and effect and before the passage of Act No. 2938, and appellant's counsel vigorously contend that Act No. 2747 was repealed by Act No. 2938, and that the repeal of the one and the enactment of the other operated as a release and discharge of all crimes which were committed prior to the passage of Act No. 2938. In other words, that the Act of the Legislature released the defendant of any crime which he may have committed prior to January, 1921.

We do not believe that it was ever the purpose or intention of the Legislature to release anyone from a crime committed under either one of the Acts, and, in particular, as to the offense described in the information. As stated upon the question here involved, each one of the legislative acts expressly prohibits the bank from loaning any of its money to an officer or director, and the only difference is found in the latter portion of section 29 of Act No. 2938, which, upon the undisputed facts, is not material to the question involved here.

Section 42 of Act No. 2938 says:

“All Acts or parts of Acts inconsistent or incompatible with the provisions of this Act are hereby repealed.”

Upon the undisputed facts, there is nothing inconsistent or incompatible with either section 37 of Act No. 2612, or section 35 of Act No. 2747, as construed with section 29 of Act No. 2938. Each section expressly prohibits the making of a loan by the Bank to an officer, and the only difference is the proviso in section 29, which does not apply to the facts here. There is nothing in section 37 or in section 35 which is inconsistent or incompatible with section 29. Each of them was intended to prohibit the Bank from loaning¹ money to an officer of the bank.

Much stress is laid upon article 22 of the Penal Code, which says:

“Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony or misdemeanor, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving same.”

For the reason that the bank here was incorporated under a special Act, that article should be construed as it relates to article 7, which says:

“Offenses punishable under special laws are not subject to the provisions of this code/” This was construed in *United States vs. Cuna* (12 Phil., 241), in which this court held:

“Where an Act of the Commission or of the Philippine 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 prior to its repeal.”

Article 22 was further construed and applied in *United States vs. Parrone* (24 Phil., 29).

But, in the instant case, there is no change in the law for the punishment of the crime, and section 42 of Act No. 2938 limits the repeal to such portions only of the previous law as are inconsistent or incompatible with Act No. 2938.

Section 35 says:

“The National Bank shall not, directly or indirectly, grant loans to any of the members, etc.”

Appellant contends that the transaction involved here was a discount of the note of the estate as distinguished from a loan, and, hence, that it was not a violation of the law. Suffice it to say that, in enacting the law, the Legislature was not dealing with, and knew but very little, if anything, of, the subtle distinction between loans and discounts. Section 35 was

intended to prohibit any officer of the bank from borrowing or using any money of the bank for any purpose. Again, an analysis of the facts clearly shows that the transaction was a loan, and that it did not have any of the elements of a discount.

The face value of the original mortgage, which the bank held on the "Palma" *hacienda*, was P600,000, and the accrued interest was P26,218.66, and the amount of the check, which the bank gave to Salvador Serra was P123,781.34, the total amount of which was tP750,000, which is the identical amount of the note which was executed by the Binalbagan Estate to the bank at the time the deal was closed, hence, the evidence is conclusive that it was a loan as distinguished from a discount.

In August, 1916, a question arose as to the construction which should be placed upon sections 37 and 38 of Act No. 2612, and an opinion of the then Insular Auditor was rendered, which apparently gave color to the legal right of the Bank to defeat the purpose and intent of those sections, and the defendant claims that he was justified in his conduct through the previous acts and the established custom of the bank, and it is true that, in the ordinary course of business, but little attention was paid to the provisions of those sections. The Auditor was not the legal adviser of the Bank.

Section 25 of the original act expressly provides that:

"The Attorney-General of the Philippine Islands shall be attorney for said National Bank: Provided, however, That the Board of Directors of said bank shall have power to employ other attorneys in special cases."

Hence, it must follow that the Attorney-General was the legal adviser of the bank, and there is nothing to show that he was ever requested to, or that he ever did, render a legal opinion upon the construction which should be placed upon sections 37 and 38 of Act No. 2612. But giving the Auditor's opinion its broadest construction, it would not justify the commission by the defendant of the acts shown in the record. It might tend to mitigate, but it would not legalize the offense.

The record further shows that on September 15, 1916, Mr. Ferguson, as Acting President of the Bank, addressed a letter to Mr. Dexter, as Acting Insular Auditor, in which he says:

"We can readily see where loans directly made to Directors would be very

harmful, and it is a wise provision in the Act which makes this impossible, but there is a wide difference between loaning money to a Director, and discounting the single name paper or Bills receivable of a business house, with whom such a Director might be interested.”

As we have pointed out, the transaction here was a loan and not a discount.

Again, any mitigation of the offense is more than offset by the subsequent conduct of the defendant.

August 3, 1920, the defendant wrote a letter to the Governor-General in which he complains of official treatment, and clearly points out the serious financial condition of the Bank, in which, among other things, he says:

“If this Bank is compelled to adopt drastic measures as to the liquidation of its loans we would be placed in the position of having to shirk the responsibility for any serious consequences that may arise, and to point to the Department of Finance for insisting on such a policy.

“The policy of contraction which is now in force in the operations of the Bank and with the part payments on our loans to sugar centrals, our cash reserve will be up to the requirements next year aside from our ability to replenish our cash reserve in substantial amounts.”

The whole tenor of the letter clearly reveals that the defendant realized and was very uneasy about the condition of the bank, and yet seventeen days before that letter was written, he personally made an unsecured loan to the Binalbagan Estate for P750,000, because of the very apparent reason that he was one of its heaviest stockholders. We have given this case the careful consideration which its importance demands, and have examined each of the numerous assignments of error.

Defendant’s case was skillfully presented in an exhaustive brief by able counsel, but in the final analysis, the stubborn, undisputed fact remains that the defendant did personally make a large unsecured loan to a corporation in which he was one of its heaviest stockholders, and that the loan was consummated and the money paid over without the knowledge of the Board of Directors, and that it was made to the prejudice and injury of the bank, and to

further and promote his own personal interests, and that, as President of the Bank, he personally released the mortgage of the bank upon the property which his corporation acquired through the deal, and that upon the undisputed facts, it was done in violation not only of section 35 of Act No. 2747, but also of section 38 of Act No. 2612, and of section 29 of Act No. 2938.

Criticism is made of the penal clause, and its validity is attacked. It will be noted that it is the same in each act, and that a large discretion is given to the trial court, varying from a minimum fine to P10,000, or imprisonment not to exceed five years, or both fine and imprisonment. Its purpose was to prohibit a violation of any provision of the bank's charter, and to make the penalty correspond to the gravity of the offense, and that question was left to the discretion of the court.

The judgment of the lower court is affirmed, with costs. So ordered.

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