

## THE UNTRUSTWORTHY DECISION ON TRUST RECEIPTS

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Under a trust receipt, the person signing the document agrees to turn over to the bank the proceeds of the sale of the goods covered by the trust receipt. For years the debate on whether his failure to do so constitutes estafa has been raging. In its decision in the case of *Lee v. Rodil*,<sup>1</sup> the Supreme Court resolved this question in the affirmative. As will be shown in this article, the decision of the Supreme Court is inconclusive. The controversy remains burning.

### I. THE FACTS OF THE CASE

The petitioner in the case of *Lee v. Rodil* was the representative of C.S. Lee Enterprises, Inc. Said corporation opened a letter of credit with the Philippine Bank of Communications to pay for the purchase of twenty-three (23) cartons of laboratory culture media. The petitioner executed a trust receipt covering the laboratory culture media in favor of the Philippine Bank of Communications. C.S. Lee Enterprises, Inc. received the laboratory culture media, but it failed to pay the bank. Upon complaint of the Philippine Bank of Communications, the petitioner was charged with estafa pursuant to Section 13 of Presidential Decree No. 115.

The petitioner moved to quash the information on the ground that the failure to pay the Philippine Bank of Communications did not constitute estafa and that Presidential Decree No. 115 is unconstitutional. Because the Regional Trial Court denied the motion to quash, the petitioner elevated the case to the Supreme Court by filing a petition for certiorari. The Supreme Court threw out the petition.

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<sup>1</sup> 175 SCRA 100 (1989).

## II. MECHANICS OF A TRUST RECEIPT TRANSACTION

Originally, trust receipts were used by banks to finance importations. An importer applies to a bank for a letter of credit. The letter of credit authorizes the foreign exporter to draw a draft upon the bank opening the letter of credit for the price of the goods being ordered by the importer. In his application for the letter of credit, the importer promises to repay the bank for paying the draft to be drawn by the exporter. To secure the bank on the promise of the importer to repay it, the goods are consigned to the bank. The importer then signs a trust receipt in favor of the bank binding himself to hold the goods in trust for the bank, to turn over to the bank the proceeds from the sale of the goods to the extent of the amount due the bank, or to return the goods to the bank if he is unable to sell them.<sup>2</sup>

Later on, trust receipts were also used as a security device to finance domestic sales between manufacturers and dealers of cars. A bank or a financing company pays the assembler of cars for the unit which the distributor wishes to purchase. The cars are delivered to the dealer, who must sign a trust receipt in favor of the bank or financing company.<sup>3</sup>

## III. EARLIER JURISPRUDENCE

To properly understand and appreciate the ruling in the case of *Lee v. Rodil*, one must trace the earlier jurisprudence on trust receipts.

The first case in point is the ruling in the case of *People v. Yu Chai Ho*.<sup>4</sup>

The accused, the managing partner of a business firm, placed an order with a domestic company for the purchase of perfumes and soap from abroad. The order was forwarded to the seller and a bank financed the importation. The merchandise was consigned to the bank, who agreed to deliver the shipping documents to the accused upon his signing of a trust receipt. The domestic company in which the order was placed guaranteed the repayment of the purchase price to the bank. The accused sold the merchandise but did not pay the bank. The domestic company was compelled to pay the bank because of its guaranty. It then filed a case against the accused for estafa.

Under the terms of the trust receipt, the accused would hold the goods in trust for the bank and title to the goods remained with the bank.

<sup>2</sup> WHITNEY, THE LAW OF MODERN COMMERCIAL PRACTICES, 997-99 (2d 1965).

<sup>3</sup> *Id.* at 1000.

<sup>4</sup> 53 Phil. 874 (1928).

The accused was charged with estafa for misappropriating the goods to the prejudice of another.

Under the facts of the case, title to the goods remained with the bank. However, it was not the bank but the domestic company who was prejudiced when the accused did not pay the bank because the domestic company paid the bank pursuant to its guaranty.

The issue in the case was whether the phrase "to the prejudice of another" as used in Paragraph 5 of Article 535 of the Penal Code should mean "to the prejudice of the owner."

The Supreme Court resolved this question in the negative. It reasoned out:

As will be seen, the person whose interests are prejudiced through the conversion or misappropriation of the money, goods, or other personal property need not necessarily be the owner thereof; if such had been the intention of the authors of the Code, the phrase 'to the prejudice of another' would have read 'to the prejudice of the owner.'<sup>5</sup>

The next case is that of *People v. Papagayo*.<sup>6</sup>

A domestic company imported printing paper to be sold to the Bureau of Printing. A bank opened a letter of credit to pay for the printing paper. The printing paper arrived in three (3) shipments. The accused, who was the president and general manager of the domestic company, signed three (3) trust receipts in favor of the bank. The domestic company was paid in full by the Bureau of Printing. While it paid the bank for the first two (2) shipments, it made a partial payment only for the last shipment. The accused was charged with estafa.

In acquitting him, the Court of Appeals reasoned out:

As we analyze the evidence, the failure of the appellant to live up to the terms of the transaction entered between him and Philippine National Bank, as set forth in the trust receipts, Exhibits B-4, B-12 and C-2, could not give rise to a criminal action. Such transaction partakes of the nature of an open credit than that of pure agency. And in this class of bank operations, where, with more or less caution, the bank relies upon the commercial credit of a customer, there is no estafa in case of failure on the part of the latter to live up to the terms of the agreement. (*U.S. v. Tank Tok*,

<sup>5</sup> *Id.* at 877-78.

<sup>6</sup> 51 O.G. 199 (1955).

15 Phil. 538). Such failure only gives rise to a civil action.<sup>7</sup>

Then came a bombshell, the ruling in the case of *Samo v. People*.<sup>8</sup>

The accused imported cans of squids and sardines. A bank opened two letters of credit to pay for the importations. Upon arrival of the goods, the bank allowed the accused to take possession of them on the strength of two trust receipts she executed in favor of the bank. The trust receipts authorized her to sell the goods and to remit the proceeds of the sale to the bank or to return them if they were unsold. As the accused failed to account for the goods or the proceeds from their sale, she was prosecuted for estafa.

The Supreme Court affirmed her conviction, saying:

In the present case, petitioner does not deny that she executed the two trust receipts mentioned heretofore and the Court of Appeals found that, notwithstanding repeated oral and written demands by the bank, the petitioner had failed either to turn over to the latter the proceeds of the sale of the goods covered by the trust receipts, or to return said goods, if they were not sold. Consequently, we believe that said court correctly found her to be guilty of having violated the provisions of Art. 315 (1b) of the Revised Penal Code.

In the succeeding case of *People v. Cuevo*<sup>9</sup>, the Supreme Court became split.

The accused in that case was charged with estafa, because he allegedly signed a trust receipt for bags of corn and palay and misappropriated the merchandise or its value. The Court of First Instance of Manila quashed the case on the ground that a trust receipt is merely a secured loan.

Seven justices of the Supreme Court voted to reverse the order dismissing the case. However, since they failed to muster the required majority of eight (8) votes, the dismissal of the case was affirmed.

The majority opinion, which failed to prevail, reasoned out:

We hold that even if the accused did not receive the merchandise for deposit, he is, nevertheless, covered by Article 315(1) because after receiving the price of the sale, he did not

<sup>7</sup> *Id.* at 204-205.

<sup>8</sup> 115 Phil. 346 (1962).

<sup>9</sup> 104 SCRA 312 (1981).

deliver the money to the bank or, if he did not sell the merchandise, he did not return it to the bank.

These two situations are within the purview of Article 315(1)(b). The first situation is covered by the provision which refers to money received under the obligation involving the duty to deliver it (entregarla) to the owner of the merchandise sold.

The other contingency is covered by the provision which refers to merchandise received under the obligation to 'return' it (devolverla) to the owner.

The fact that in the first case the money was received from the purchaser of the merchandise and not from the bank does not remove it from the operation of Article 315(1)(b).<sup>10</sup>

Justice Pacifico de Castro dissented. He pointed out:

I consider the view that the trust receipt arrangement gives rise only to civil liability as the more feasible, before the promulgation of P.D. 115. The transaction being contractual, the intent of the parties should govern. Since the trust receipt has, by its nature, to be executed upon the arrival of the goods imported, and acquires legal standing as such receipt only upon acceptance by the 'entrustee,' the trust receipt transaction itself, the antecedent acts consisting of the application of the L/C, the approval of the L/C and the making of the marginal deposit and the effective importation of the goods, all through the efforts of the importer who has to find his supplier, arrange for the payment and shipment of the imported goods - all these circumstances would negate any intent of subjecting the importer to criminal prosecution, which could possibly give rise to a case of imprisonment for non-payment of a debt. The parties therefore, are deemed to have consciously entered into a purely commercial transaction that could give rise only to civil liability, never to subject the 'entrustee' to criminal prosecution. Unlike, for instance, when several pieces of jewelry are received by a person from the owner for sale on commission, and the former misappropriates for his personal use and benefit, either the jewelry or the proceeds of the sale, instead of returning them to the owner as is his obligation, the bank is not in the same concept as the jewelry owner with full power of disposition of the goods, which the bank does not have for the bank has previously extended

<sup>10</sup> *Id.* at 317-18.

a loan which the L/C represents to the importer, and by that loan, the importer should be the real owner of the goods. If under the trust receipt, the bank is made to appear as the owner, it was but an artificial expedient, more of a legal fiction than fact, for if it were really so, it could dispose of the goods in any manner it wants, which it cannot do just to give consistency with the purpose of the trust receipt of giving a stronger security for the loan obtained by the importer. To consider the bank as the true owner from the inception of the transaction would be to disregard the loan feature thereof, a feature totally absent in the case of the transaction between the jewel-owner and his agent.<sup>11</sup>

Sharing this thinking, Justice Claudio Teehankee wrote:

The goods imported by the small importer and retail dealer through the bank's financing remain of their own property and risk and the old capitalist orientation of putting them in jail for estafa for non-payment of the secured loan (granted after they had been fully investigated by the bank as good credit risks) through the fiction of the trust receipt device should no longer be permitted in this day and age.<sup>12</sup>

Next came the case of *Sia v. People*.<sup>13</sup>

The accused in that case was the president and general manager of a corporation which imported cold rolled steel sheets to be used for manufacturing office equipment. He signed a trust receipt in favor of the bank which opened the letter of credit to pay for the importation. As the bank was not paid, the accused was charged with estafa under Paragraph 1(b) of Article 315 of the Revised Penal Code.

Writing for the majority, Justice Pacifico de Castro penned a decision acquitting the accused saying:

In the absence of an express provision of law making petitioner liable for the criminal offense committed by the corporation of which he is a president as in fact there is no such provision in the Revised Penal Code under which petitioner is being prosecuted, the existence of a criminal liability on his part may not be said to be beyond any doubt.<sup>14</sup>

<sup>11</sup> *Id.* at 322-32.

<sup>12</sup> *Id.* at 321.

<sup>13</sup> 121 SCRA 655 (1983).

<sup>14</sup> *Id.* at 663.

Echoing his dissent in *People v. Cuevo*, Justice Pacifico de Castro added:

We consider the view that the trust receipt arrangement gives rise to civil liability as the more feasible, before the promulgation of P.D. 115. The transaction being contractual, the intent of the parties should govern. Since the trust receipt has, by its nature, to be executed upon the arrival of the goods imported, and acquires legal standing as such receipt transaction itself, the antecedent acts consisting of the application of the L/C, the approval of the L/C and the making of the marginal deposit and the effective importation of the goods, all through the efforts of the importer who has to find his supplier, arrange for the payment and shipment of the imported goods - all these circumstances would negate any intent of subjecting the importer to criminal prosecution, which could possibly give rise to a case of imprisonment for non-payment of a debt. The parties, therefore, are deemed to have consciously entered into a purely commercial transaction that could give rise only to civil liability, never to subject the 'entrustee' to criminal prosecution. Unlike, for instance, when several pieces of jewelry are received by a person from the owner for sale on commission, and the former misappropriates for his personal use and benefit, either the jewelry or the proceeds of the sale, instead of returning them to the owner as is his obligation, the bank is not in the same concept as the jewelry owner with full power of disposition of the goods, which the bank does not have, for the bank has previously extended a loan which the L/C represents to the importer, and by that loan, the importer should be the real owner of the goods. If under the trust receipt the bank is made to appear as the owner, it was but an artificial expedient, more of a legal fiction than fact, for if it were really so, it could dispose of the goods in any manner it wants, which it cannot do, just to give consistency with the purpose of the trust receipt of giving a stronger security for the loan obtained by the importer. To consider the bank the true owner from the inception of the transaction would be to disregard the loan feature thereof, a feature totally absent in the case of the transaction between the jewel-owner and his agent.

Five (5) justices concurred fully with the majority opinion, four (4) justices concurred in the result, while three (3) justices dissented.

In the companion case of *Sia v. Court of Appeals*,<sup>15</sup> the accused was acquitted on the strength of the ruling in the above-mentioned case. However,

<sup>15</sup> 166 SCRA 263 (1988).

the Supreme Court added by way of *obiter dictum* that had the acts involved been committed after the effectivity of Presidential Decree No. 115, the accused would have been criminally liable for estafa.<sup>16</sup>

#### IV. ANALYSIS OF THE DECISION

##### A. Invalidity of the Decision

The petitioner in *Lee v. Rodil* contended that Section 13 of Presidential Decree No. 115 is unconstitutional because it imposed imprisonment for non-payment of a debt in violation of Section 20, Article II of the Constitution. The Supreme Court rejected the argument of the petitioner. However, the question of the constitutionality of Section 13 of Presidential Decree No. 115 was decided by a division merely of the Supreme Court.

A division of the Supreme Court has no authority to pass upon questions of the constitutionality of a law or presidential decree. Section 4(2) of Article VIII of the Constitution provides:

*All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the members who actually took part in the deliberation on the issues in the case and voted thereon.*<sup>17</sup>

Since *Lee v. Rodil* was decided by a mere division of the Supreme Court, when it should have been taken up en banc, whatever pronouncement made in that case has no value as a precedent.

##### B. Non-Existence of a Deposit

Section 13 of Presidential Decree No. 115 states:

<sup>16</sup> *Id.* at 663.

<sup>17</sup> Italics supplied.

The failure of an trustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three Hundred and Fifteen, Paragraph One (b) of Act Numbered Three Hundred Eight and Fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.

Under Paragraph 1(b) of Article 315 of the Revised Penal Code, estafa may be committed:

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

The foregoing, however, is an inaccurate translation into English of the official text of the Revised Penal Code.

The Revised Penal Code was approved by the Philippine Legislature in Spanish. The Spanish text of Paragraph 1(b) of Article 315 of the Revised Penal Code reads as follows:

Apropiandose o distrayendo, en perjuicio de otro, dinero, efectos, o cualquiera otra cosa mueble, que hubiere recibido en *deposito*, comision o administracion o por otro titulo que produzca obligacion de entregarla o devolverla, aunque dicha obligacion estuviese afianzada totalmente o parcialmente, o negando haberla recibido.<sup>18</sup>

Since the Revised Penal Code was approved in Spanish, it is the

<sup>18</sup> Italics supplied.

Spanish text and not the English translation which is decisive and controlling.<sup>19</sup>

The Spanish text of paragraph 1(b) of Article 315 of Revised Penal Code requires that the goods misappropriated be received under deposit and not in trust.

When the goods covered by a trust receipt are delivered to the person who signed the trust receipt, the delivery does not give rise to a deposit. Article 1962 of the Civil Code declares:

A deposit is constituted from the moment a person receives a thing belonging to another, with the obligation of safely keeping it and of returning the same. If the safekeeping of the thing delivered is not the principal purpose of the contract, there is no deposit but some other contract.

First of all, in deposit the purpose of the delivery of the subject of the contract is safekeeping. This is the very essence of deposit.<sup>20</sup> This is what distinguishes deposit from an accessory obligation.<sup>21</sup>

On this point, Puig Peña observes:

La custodia, pues, ha de constituir el contenido unico, o por lo menos, el principalisimo del contrato, y por ello, como dijimos, se distingue el deposito de aquellas figuras que tambien la suponen, pero solo como emanacion de los mismos.<sup>22</sup>

In the same vein, Seix writes:

De suerte que no hay deposito sin que la *guarda o conservacion de la cosa y su restitution* fuera el objeto principal de la entrega de la misma; si esto se verifico con otro proposito, aunque resulte la obligacion de devolverla, tratarse de otro

<sup>19</sup> *People v. Yabut*, 58 Phil. 499, 503 (1933); *People v. Manaba*, 58 Phil. 665, 668 (1933); *People v. Balubar*, 60 Phil. 698, 703 (1934); *People v. Mesias*, 65 Phil. 267, 269 (1938); *People v. Abilong*, 82 Phil. 172, 174 (1946); *People v. Mangulabnan*, 99 Phil. 992, 999 (1956).

<sup>20</sup> MANRESA, *COMENTARIOS OF CODIGO CIVIL ESPAÑOL*, 896; SCAEVOLA, *CODIGO CIVIL*, 437, 461 and 466 (1933); VALVERDE, *TRATADO DE DERECHO CIVIL ESPAÑOL*, 632 (4d 1937).

<sup>21</sup> 4 CASTAN, *DERECHO CIVIL ESPAÑOL, COMUN Y FORAL*, 680 (13d 1986).

<sup>22</sup> 3 PUIG PEÑA, *COMPENDIO DE DERECHO CIVIL*, Vol. 2, 980.

contrato cualquiera, no del deposito.<sup>23</sup>

Secondly, in deposit, the property deposited must belong to someone other than the depositary.<sup>24</sup> Ownership does not pass to the depositary.<sup>25</sup>

Again, Puig Peña points out:

Como consecuencia de los interior, *el deposito no supone nunca traspaso de propiedad, ni siquiera traspaso de uso*; el depositario no puede alegar derechos de esto endole frente a la cosa.<sup>26</sup>

In deposit, the ownership of the property deposited is not vested upon the depositary because it is delivered merely for safekeeping.<sup>27</sup> If the depositary acquires ownership of the property deposited, the contract is not a deposit but a loan.<sup>28</sup>

In a trust receipt transaction, the person signing the trust receipt is actually the owner of the goods covered by the receipt. The goods merely serve as security for his indebtedness to the creditor in whose favor the trust receipt was executed.

On this precise point, the Supreme Court held:

Contrary to the allegation of the VINTOLAS, IBAA did not become the owner of the goods. It was merely the holder of a security title for the advances it had made to the VINTOLAS. The goods the VINTOLAS had purchased through IBAA financing remain their own property and they hold it at their own risk.<sup>29</sup>

Since the person signing the trust receipt is the owner of the goods covered by it, he cannot incur any criminal liability for misappropriating it. One who becomes the owner of an article and is indebted for the payment of

<sup>23</sup> 10 SEIX, ENCICLOPEDIA JURIDICA ESPAÑOLA 816.

<sup>24</sup> CASTAN, *supra* note 21, at 681; MANRESA, *supra* note 20, at 897.

<sup>25</sup> CASTAN, *supra* note 21, at 681; SCAEVOLA, *supra* note 20, at 437.

<sup>26</sup> PUIG PEÑA, *supra* note 22, at 980.

<sup>27</sup> Delgado v. Bonnevie, 23 Phil. 308, 312 (1912).

<sup>28</sup> People v. Montemayor, 5 SCRA 929, 932 (1962).

<sup>29</sup> Vintola v. Insular Bank of Asia and America, 150 SCRA 578, 584 (1987); Vintola v. Insular Bank of Asia and America, 159 SCRA 133, 143 (1988).

its price is not criminally liable for estafa.<sup>30</sup>

Thirdly, a depositary cannot use the property deposited with him. If he can use it, the contract ceases to be a deposit. It becomes a loan.<sup>31</sup>

Article 1978 of the Civil Code reads:

When the depositary has permission to use the thing deposited, the contract loses the concept of a deposit and becomes a loan or commodatum, except where safekeeping is still the principal purpose of the contract.

Thus, Escriche writes:

Ni el dominio, ni la posesion, ni el uso de la cosa depositada se trasfieren al depositario, a no ser que siendo de las que se suelen contar, pesar o medir, esto es, de las fungibles, se diese por cuento, peso o medida; en cuyo caso el deposito se convierte en *mutuo*, llamandose por eso deposito irregular, y el dominio pasa entonces al depositario con la obligacion de restituir otra tanta cantidad de la misma especie que la recibida.<sup>32</sup>

Likewise, if the depositary has the right to dispose of the property deposited, the contract is not a deposit but a loan.<sup>33</sup>

In a trust receipt transaction, the person signing the trust receipt can dispose of the goods covered by the trust receipt.

Section 4 of Presidential Decree No. 115 provides in part:

A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as the trustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the trustee upon the latter's execution and delivery to the entruster of a signed document called a 'trust receipt' wherein the

<sup>30</sup> United States v. Camara, 28 Phil. 238, 239 (1914).

<sup>31</sup> Baron v. David, 51 Phil. 1, 5 (1927); Castan, *supra* note 22, at 987-88; Scaevola, *supra* note 23, at 8118; Valverde, *supra* note 20, at 639.

<sup>32</sup> 2 ESCRICHE, DICCIONARIO RAZONADO DE LEGISLACION Y JURISPRUDENCIA, 658 (1874).

<sup>33</sup> Gavieres v. Tavera, 1 Phil. 71, 72 (1901); Javellana v. Lim, 11 Phil. 141, 144-45 (1908); Compañía Agrícola de Ultramar v. Nepomuceno, 55 Phil. 283, 287 (1930).

entrustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any one of the following:

1. In the case of goods or documents, (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: Provided, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the entrustee has complied fully with his obligation under the trust receipt; or (c) to load, unload, ship or tranship or otherwise deal with them in a manner preliminary or necessary to their sale; or

2. In the case of instruments, (a) to sell or procure their sale or exchange; or (b) to deliver them to a principal; or (c) to a depository or register; or (d) to effect their presentation, collection or renewal.

Consequently, a trust receipt transaction does not give rise to a deposit.

Fourthly, a depositor can ask at any time for the return of the property deposited, even if a period for its return was fixed in the contract.<sup>34</sup>

Article 1988 of the Civil Code states in part: The thing deposited must be returned to the depositor upon demand, even though a specified period or time for such return may have been fixed.

In a trust receipt transaction, the creditor in whose favor the trust receipt was executed cannot ask for the delivery of the proceeds of the sale of the goods covered by the trust receipt before the date of maturity of the loan. Thus, a trust receipt transaction involves a loan, for the creditor cannot ask for payment before the date for payment stipulated in the contract.<sup>35</sup>

Thus, a trust receipt transaction simply involves a loan. A loan cannot

<sup>34</sup> De los Santos v. Hodges, CA-G.R. No. 30281-R (March 12, 1964); PUIG PEÑA, *supra* note 22, at 991; SCAEVOLA, *supra* note 20, at 439.

<sup>35</sup> *Cia Agricola*, 55 Phil. at 287.

give rise to criminal liability for estafa.<sup>36</sup>

Indeed, for misappropriation of money to constitute estafa, the offender must be obliged to return the very coins or paper bills he received.<sup>37</sup> In a trust receipt transaction, it makes no difference to the creditor whether the money that the person who signed the trust receipt is tendering to him is money paid by the buyer of the goods covered by the trust receipt or obtained from another source. All that the creditor is interested in is to get paid.

### C. Non-Existence of a Trust

Even if it were to be assumed for the sake of argument that the misappropriation of goods received under trust constitutes estafa under Paragraph 1(b) of Article 315 of the Revised Penal Code, still a person who signed a trust receipt cannot be criminally prosecuted under this provision. Just as the Holy Roman Empire was neither holy nor Roman, nor an empire, a trust receipt does not create a trust.<sup>38</sup> A trust receipt does not create a fiduciary relationship.<sup>39</sup>

On this point, Professor Bogert wrote:

Although one giving a 'trust receipt' for goods to his seller or the lender of the price to him agrees in terms to hold the goods and their proceeds 'in trust' for the seller or lender, this modern credit device does not involve the use of the trust of the equitable type. It is a security transaction similar to a chattel mortgage. The remedies of the person for whom the goods and proceeds are held are at law. *There is no fiduciary relation.*<sup>40</sup>

In determining the nature of a transaction, the name given to it by the parties is not controlling. It is the essence of the transaction that is decisive. Thus, Groizard pointed out:

<sup>36</sup> *United States v. Villareal*, 27 Phil. 481, 483 (1914).

<sup>37</sup> *People v. Montemayor*, 5 SCRA 929, 932 (1906).

<sup>38</sup> *Motor Contract Co. v. Citizens and Southern National Bank*, 17 SE 2d 195, 198-99; *C.I.T. Credit Corporation v. Thursday Chevrolet Co.*, 130 So 2d 15, 20; *WHITNEY*, *supra* note 1, at 1000; 19 CALIF. L. REV. 261 (March 1931); *The Entruster's Right to Proceeds of Sale under Section 10 of the Uniform Trust Receipts Act*, 66 YALE L. REV. 931 (May 1957).

<sup>39</sup> *Wenger v. Gorman*, 112 N.E. 2d 494, 494.

<sup>40</sup> BOGERT, *THE LAW OF TRUSTS AND TRUSTEES*, 282. (2d 1972). (Italics supplied)

*No basta que el procesado haya dado al contrato, en virtud del cual haya recibido la cosa, el nombre de deposito, si realmente el titulo en virtud del cual entro en posesion de ella, no tiene ese caracter; si, por ejemplo, el inculpado no sabia la significacion que la palabra podia tener y si manejo despues los fondos y dispuso de las cosas con conocimiento de la persona que se supone depositante y, por consecuencia, sin que pueda admitirse que el titulo que se trato de apreciar reúne las circunstancias o los elementos esenciales y constitutivos del contrato de deposito.<sup>41</sup>*

While Groizard was writing about deposits, his observations can be applied *mutatis mutandis* to trusts. Thus, even if the parties call a contract a trust, if in essence it is not trust, it should not give rise to a trust.

#### D. Other Obligation to Return

The majority opinion in the case of *People v. Cuevo* witnessed a shift in the position of the Supreme Court. In the case of *Samo v. People*, the Supreme Court affirmed the conviction of the accused on the strength of its reasoning that the goods covered by the trust receipts were received under trust and the misappropriation of goods received under trust constitutes estafa.

In the case of *People v. Cuevo*, the majority opinion avoided the question of the correctness of the translation into English as "trust" of the word "deposito" in the Spanish text of Paragraph 1(b) of Article 315 of the Revised Penal Code. Instead, it sought to justify convicting the accused on the basis of the theory that goods covered by a trust were received under an obligation to deliver the proceeds from their sale or to return them.<sup>42</sup>

However, conviction for estafa in the case of a trust receipt transaction cannot be anchored on the existence of an obligation to deliver the proceeds from the sale of the goods or to return the goods.

First of all, for estafa through misappropriation to exist, ownership of the property delivered should not have been transferred to the accused. One cannot misappropriate property which belongs to him.<sup>43</sup>

On this precise point, Groizard observed:

De todo lo que acabamos de consignar resulta que la

<sup>41</sup> 6 GROIZARD, EL CODIGO PENAL DE 1870, 603 (2d 1914).

<sup>42</sup> *People v. Cuevo*, 104 SCRA at 317-318.

<sup>43</sup> *United States v. Figueroa*, 22 Phil. 269, 271 (1912).

cuestion cardinal que los Tribunales tienen que apreciar para declarar la perpetracion del delito de estafa, es si el tituto en virtud del cual la cosa ha entrado en poder del acusado, le ha transmitido legalmente la posesion y *no le ha transmitido el dominio.*<sup>44</sup>

Sharing this observation, Cuello Calon wrote:

Esto supone hallarse en posesion de la cosa transmitida por el propietario, el cual ha de haberla entregado con animo de despojarse de su posesion, *pero no de su propiedad.*<sup>45</sup>

In a trust receipt transaction, the so-called trustee is actually the owner of the goods covered by the trust receipt. Thus, the Supreme Court held:

Contrary to the allegation of the VINTOLAS, *IBAA did not become the real owner of the goods.* It was merely the holder of a security title for the advances it had made to the VINTOLAS. *The goods the VINTOLAS had purchased through IBAA financing remain their own property* and they hold it at their own risk. The trust receipt arrangement did not convert the IBAA into an investor; the latter remained a lender and creditor.<sup>46</sup>

Since the trustee is actually the owner of the goods covered by a trust receipt, he cannot incur any criminal liability for estafa. In fact, he cannot pay for his obligaton to his creditor by surrendering the goods covered by the trust receipt.

On this score, the Supreme Court ruled:

Since the IBAA is not the factual owner of the goods, the VINTOLAS cannot justifiably claim that because they have surrendered the goods to the IBAA and subsequently deposited them in the custody of the court, they are absolutely relieved of their obligation to pay their loan because of their inability to dispose of the goods.<sup>47</sup>

A person who disposes of what he owns cannot be held criminally

<sup>44</sup> GROIZARD, *supra* note 41, at 603.

<sup>45</sup> 2 CUELLO CALON, DERECHO PENAL 831.

<sup>46</sup> *Vintola*, 150 SCRA at 584; *Vintola*, 159-SCRA 143-44. Italics supplied.

<sup>47</sup> *Vintola*, 150 SCRA at 578, 584; *Vintola*, 159 SCRA 140, 144.



liable for estafa committed through misappropriation.<sup>48</sup>

Thus, in acquitting an accused of estafa for disposing of a boat he bought, the Court of Appeals reasoned out:

As owner, defendant's subsequent sales of the banca and motor was but the exercise of a right (to dispose of) appurtenant to dominion. It does not make him liable for the crime of estafa thru conversion as charged in the information of which he now stands convicted.<sup>49</sup>

Secondly, in estafa through misappropriation the offender must be under obligation to return exactly the same object which he received. He must not be obliged to deliver something of the same kind and quality.<sup>50</sup> When a person sells goods covered by a trust receipt, the buyer does not deliver the payment to him with instruction to give the proceeds of the sale to the creditor of the seller. In fact, he may not even know whether the goods are covered by a trust receipt. Normally, he would not care what the seller does with the money and whether or not the seller pays his creditor. On his part, the creditor does not particularly care that the payment to him should come from the proceeds of the sale of the goods covered by the trust receipt. He does not care about the source of the payment.

In the last analysis, a trust receipt transaction involves a loan. The person signing the trust should not be held criminally liable if he fails to repay the loan. The failure to comply with an obligation to pay a sum of money does not give rise to criminal liability for estafa.<sup>51</sup>

Thus, the Supreme Court decreed:

We are of the opinion and so decide that when the relation is purely that of a debtor and creditor, the debtor can not be held liable for the crime of estafa, under said article by merely refusing to pay or denying the indebtedness.<sup>52</sup>

Indeed, how can a person be held criminally liable for estafa for not

<sup>48</sup> *Abeto v. People*, 90 Phil. 581, 583 (1951); *People v. Ma Su*, 90 Phil. 706, 708 (1952).

<sup>49</sup> *People v. Joyce*, 63 O.G. 10163, 10165 (1966).

<sup>50</sup> *Figueroa*, 22 Phil. at 272; *Montemayor*, 5 SCRA at 932; 6 VIADA, CODIGO PENAL 445-46.

<sup>51</sup> *Figueroa*, 22 Phil. at 273; *Villareal*, 27 Phil. at 482-83.

<sup>52</sup> *U.S. v. Ibañez*, 19 Phil. 559, 560 (1911).

returning the goods covered by the trust receipt when he cannot pay for his obligation by delivering the goods to his creditor?

#### E. Imprisonment for Failure to Pay a Debt

One cannot be imprisoned for not paying his debt.<sup>53</sup> Section 20, Article III of the Constitution provides:

No person shall be imprisoned for debt or non-payment of a poll tax.

In the case of *Lee v. Rodil*, the petitioner attacked the constitutionality of Section 13 of Presidential Decree No. 115 on the ground that it violated Section 20, Article III of the 1987 Constitution.

The Third Division of the Supreme Court upheld the constitutionality of Section 13 of Presidential Decree No. 115. It reasoned out:

The criminal liability springs from the violation of the trust receipt.

We bear in mind the nature of a trust receipt agreement. This Court pronounced in the *Vintola* cases, 150 SCRA 578 (1987); G.R. No. 78671, March 25, 1988 that:

'xxx A letter of credit-trust receipt arrangement is endowed with its own distinctive features and characteristics. Under that set-up, a bank extends a loan covered by the letter of credit, with the trust receipt as a security for the loan. In other words, the transaction involves a loan feature represented by the letter of credit, and a security feature which is in the covering trust receipt.' (Emphasis supplied.)

Therefore, the loan feature is separate and distinct from the trust receipt. The violation of a trust receipt committed by disposing of the goods covered thereby and failing to deliver the proceeds of such sale has been squarely made to fall under Art. 315(1)(b) of the Revised Penal Code, which provides:

'x x x Swindling (estafa). - Any person who shall

<sup>53</sup> *Ganaway v. Quillen*, 42 Phil. 805, 812 (1922); *Tan Chong v. Stewart*, 42 Phil. 809, 816 (1922); *Serafin v. Lindayag*, 67 SCRA 166, 170 (1975).

defraud another by any of the means mentioned herein below shall be punished by:

xxx                    xxx                    xxx

'a. With unfaithfulness or abuse of confidence, namely:

xxx                    xxx                    xxx

'b. By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.'

The fact that the bank does not become the factual owner of the goods does not make the law unconstitutional (See the Vintola cases, *supra*). The language of the above-mentioned penal provision has been clarified by P.D. 115. The person who is prejudiced through the misappropriation or conversion of the goods need not be the owner, thereof; if such had been the intention of the authors of the Code, the phrase 'to the prejudice of another' would have read 'to the prejudice of the owner'. (People v. Yu Chai Ho, 53 Phil. 874, 877-878.)

Moreover, we agree with the Solicitor General who expressed the policy behind the law:

'Verily, P.D. 115 is a declaration by the legislative authority that, as a matter of public policy, the failure of a person to turn over the proceeds of the sale of goods covered by a trust receipt or to return said goods if not sold is a public nuisance to be abated by the imposition of penal sanctions. As held in *Lózano v. Martinez*, (146 SCRA 323, 338):

'xxx certainly it is within the authority of the lawmaking body to prescribe certain acts deemed pernicious and inimical to public welfare. Acts mala in se are not the only acts that the law can

punish. An act may not be considered by society as inherently wrong, hence, not malum in se, but because of the harm that it inflicts on the community, it can be outlawed and criminally punished as malum prohibitum. The State can do this in the exercise of its police power.

'In fine, P.D. 115 is a valid exercise of police power and is not repugnant to the constitutional provision on non-imprisonment for non-payment of debt.'

What the Third Division of the Supreme Court tried to do is to sever the link between a trust receipt transaction and the loan secured by the trust receipt. It also fell back on the police power of the State.

Shorn of all the legal niceties, the purpose of Presidential Decree No. 115 is to coerce debtors who finance their importations and purchases by threatening them with imprisonment. In defining a trust receipt transaction, Section 4 of Presidential Decree No. 115 referred to "the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster". This is an open admission that the transaction involves a loan.

To make use of a cliché, the first introductory clause of Presidential Decree No. 115 let out the proverbial cat out of the bag. It reads:

WHEREAS, the utilization of trust receipts, as a convenient business device to assist importers and merchants solve their financing problems, had (sic) gained popular acceptance in international and domestic business practices, particularly in commercial business transactions;

This is eloquent proof that trust receipts transactions involve loans. It states that trust receipts are used to finance the business operations of importers and merchants.

In a trust receipt transaction, the creditor is not interested in the purchase and sale of goods. He is not engaged in trading. He did not order the goods. It was the debtor who did so. Had the debtor not placed an order for the goods, the creditor would not have done so. The business of the creditor is furnishing credit facilities. He is not the owner of the goods covered by the trust receipt. It is the debtor who is the owner.

Criminal processes cannot be used to coerce payment of a civil

liability.<sup>54</sup> A penal statute which is nothing more than a debt collecting statute is unconstitutional.<sup>55</sup> The constitutional prohibition against imprisonment for failure to pay a debt cannot be evaded by distinguishing between the debt and the trust receipt transaction. The end-result is the same. The indirect imposition of imprisonment for failure to pay a debt is covered by the constitutional prohibition.<sup>56</sup> This prohibition cannot be circumvented by mere form, and the validity of a statute depends on whether or not the legislative objective is consistent with the constitutional guarantee.<sup>57</sup>

A law which makes it a crime for a debtor not to use his own money for any purpose other than the payment of his debts is unconstitutional.<sup>58</sup> In ruling that a contractor could not be held criminally liable, the District Court of Appeal of California reasoned out:

Any legislation that makes it a crime for one to use his own money for any purpose other than the payment of his debts is violative of Section 15 of Article I of the Constitution of this state, which expressly inhibits imprisonment for debt except in cases of fraud.<sup>59</sup>

In a trust receipt transaction, the creditor is not the actual owner of the goods in question. It is the person who signed the trust receipt who is the owner. Consequently, when he sells the goods, he is the owner of the proceeds from the sale of the goods. To punish him for not using his money derived from the sale of the goods to pay his creditor is to imprison him for not paying his debt.

The Third Division of the Supreme Court upheld the validity of Section 13 of Presidential Decree No. 115 on the basis of police power. First of all, the constitutional prohibition against imprisonment for failure to pay a debt is absolute.<sup>60</sup> Besides, the legislative power to prescribe punishment in criminal cases cannot be used to thwart the constitutional prohibition against imprisonment for failure to pay a debt.<sup>61</sup> If police power can be

<sup>54</sup> *State v. Scherr*, 101 N.W. 2d 77, 80; *Huggett v. State*, 266 N.W. 2d 403, 409.

<sup>55</sup> *Blanton v. Commonwealth*, 562 S.W. 2d 90, 94.

<sup>56</sup> *State v. Paint Rock Coal and Coke Co.*, 20 S.W. 499, 500 (Tenn. 1892).

<sup>57</sup> *People v. Roke*, 250 P. 2d 647, 650 (Cal. Dist. Ct. App. 1953).

<sup>58</sup> *State v. Janing*, 156 N.W. 2d 9, 11; *State v. Hocott*, 300 N.W. 2d 198, 200; *People v. Holder*, 199 P. 832, 834 (Cal. Dist. Ct. App. 1921).

<sup>59</sup> *Holder*, 199 P at 834.

<sup>60</sup> *Ganaway*, 42 Phil. at 806.

<sup>61</sup> *Roke*, 250 P. 2d at 650.

invoked as basis for sustaining a law that penalizes the failure to comply with a contract, where shall we draw the line? Can police power be invoked to punish buyers who fail to pay sellers? Can police power be invoked to imprison lessees who fail to pay their lessors? Is it not in the public interest to maintain confidence in contracts of sales? Is it not in the public interest to maintain faith in contracts of lease? What will be left of the constitutional guarantee against imprisonment for failure to pay a debt?

The constitutional protection against imprisonment for failure to pay a debt should be liberally construed, and doubts should be resolved in favor of liberty.<sup>62</sup>

It is noteworthy that the Supreme Court earlier ruled that if a transaction is not a deposit but a loan, a person cannot be imprisoned for not paying it.<sup>63</sup>

## V. CONCLUSION

The decision of the Third Division of the Supreme Court in *Lee v. Rodil* upholding the constitutionality of Presidential Decree No. 115 is inconclusive. Under Section 4(2) of Article VIII of the Constitution, all cases involving questions of constitutionality must be decided by the Supreme Court. Thus, the question of whether or not the failure of a debtor to turn over to his creditor the proceeds from the sale of goods covered by a trust receipt, remains a burning one.

A trust receipt transaction involves a loan. Failure to comply with it does not constitute estafa and should not be penalized with imprisonment. It is to be hoped that in the near future this question will be resolved decisively and conclusively in favor of human liberty. In this enlightened day and age, the ghost of Shylock must be finally laid to rest.

<sup>62</sup> *Sia v. People*, 121 SCRA 659, 665 (1983); *People v. La Mothe*, 163 N.E. 6, 8 (Ill. Sup. Ct. 1928); *Tudor v. Firebaugh*, 4 N.E. 2d 393, 395 (Ill. Sup. Ct. 1936); *Tegtmeyer v. Tegtmeyer*, 11 N.E. 2d 657, 661 (Ill. Sup. Ct. 1937); *Needen v. W. J. Anderson Corporation*, 23 N.E. 2d 74, 77 (Ill. Sup. Ct. 1939); *People v. Power*, 324 P2d 113, 114-115 (Cal. App. Dept. Super. Ct. 1958); *Stone v. Stidham*, 393 P. 2d 923, 925.

<sup>63</sup> *In re Guardianship of Tamboco*, 36 Phil. 939, 941 (1917).