were willing to forego the benefit of a tax credit. The moment he opts to exercise a right granted to him by law, he must have waived the protection afforded by R. A. 1405.

What then, is the effect of P. D. 1156 on R. A. 1405? Certainly the former can not repeal the latter. Nothing in the decree nor in the implementing rules and regulation make any such implication. The old law and the decree can stand together without any visible trace of incompatibility. Neither is there an amendment for the old law for the decree does not make any such mention of an amendment.

From all the foregoing, it would seem, therefore, that P. D. 1156 gives the depositor-taxpayer a choice — either to make an indirect but truthful disclosure of wealth kept inside the bank vaults and be properly rewarded with a tax credit, or to simply forego the tax credit, suffer privately the fifteen percent tax on the interest earned in order to keep secret what he has kept behind the iron curtains of the bank vault.

P. D. 1156 is definitely a novelty — a novelty believed to be a necessary incident of the progress of the society. But certainly we cannot forget that once it was said that "the law is progressive and expansive, adopting itself to the new relations and interests which are constantly springing up in the progress of society; but this progress must be by analogy to what is settled."[33]

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[33] Section 4, Id.
[34] Chief Justice Greene, 1 I.R. 356.

R.A. NO. 4885: MORE THAN A CASE OF FAULTY STATUTORY DRAFTSMANSHIP?

by WENCELITO T. ANDANAR*

I PREFATORY STATEMENT

Act No. 3815, otherwise known as the "Revised Penal Code of the Philippines" is now more than a quarter and a century old.[1abc] Despite some otherwise well-intentioned revisions embodied therein and those amendments that followed its enactment, this piece of legislation has remained essentially a vintage of 18th-century thinking.[2ab] Article 315,

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* Ll.B. '78

[1a] By the royal decree of September 4, 1884 the Spanish Penal Code of 1870, as modified in accordance with the recommendation of the Code Commission for Overseas Provinces, was published and applied in the Philippines. Thus the old Penal Code, the immediate antecedent of the Revised Penal Code (Act No. 3815), was merely a modified version of the Spanish Penal Code of 1870. See AQUINO, Ramon. THE REVISED PENAL CODE Vol. I (Manila: Phoenix Press Inc., 1961) p. 1.

[1b] The Revised Penal Code is a mere retouching of the Spanish Penal Code of 1870 which in turn was based on the early Spanish Code of 1848. It is . . . so far as its philosophic foundation is concerned, at least 100 years old. As compared with the Spanish Penal Code of 1870, the Philippine Revised Penal Code of 1930 has undergone no important change of orientation or structure. See CODE OF CRIMES: prepared and submitted by the Code Commission (Manila: Bureau of Printing, 1950, 1954) p. 2.

[1c] The Supreme Court ruled that the old Penal Code took effect July 14, 1887 (U.S. v. Tamparong, 31 Phil 323). This code ceased to be of effect in December 31, 1931, when the Revised Penal Code by its express provision became effective on January 1, 1932. (See Art. 1 of Act 3815).

[2a] The Committee (referring to the Code Committee composed of Chairman Anacleto Diaz and members Quintin Paredes, Guillermo Guevarra, Alex Reyes and Mariano de Joya) does not therefore pretend that it has undertaken the codification of all penal laws, much less produced a modern code or one of advanced theories. What the Committee did was merely to revise the Penal Code and the laws related to the latter. for which reason this bill is termed "Revised Penal Code". See SPEECH of Representative Quintin PAREDES delivered on the floor of the House of Representatives on October 31, 1930, as sponsor of H. B. No. 3366 providing for the Revised Penal Code, cited in GUEVARRA, Guillermo. COMMENTARIES ON THE REVISED PENAL CODE (Manila: National Printing Co., 1946) Explanatory Notes, p. vi.

[2b] The new code . . . fails to answer the demands of modern progress with the concommitant growth and development of our institutions. See ALBERT, Mariano. THE REVISED PENAL CODE (Manila: University Publishing Co., Inc., 1946) Preface.

section 2, paragraph (d) even after the supposed amendatory R. A. No. 4885 is hardly an exception.

At the outset then, let us ask ourselves the following questions: What were the amendments brought about by R. A. No. 4885 on the law on bouncing checks? Is there a substantial departure of the law as amended from the old provision? To what extent has our decisional law on the subject been affected? What reasons impelled the then Congress of the Philippines to promulgate said amendatory statute? And finally, has the new law achieved its avowed primary objective?

This research paper seeks to answer the above queries and attempts to provide thereby some basic guidelines on the matter of check issuance.

II PRIOR TO R. A. NO. 4885

To appreciate the full import of R. A. No. 4885, it is essential that one has a background of what the law, both statutory and decisional, was before June 17, 1967.

A. STATUTORY LAW

Prior to June 17, 1967 The Revised Penal Code has provided that estafa under Art. 315, sec 2, par. (d) would be committted by "any person who shall defraud another . . . by means of . . . the following false pretense(s) or fraudulent act(s) executed prior to or simultaneously with the commission of the fraud . . . by postdating a check or issuing *such* check in payment of an obligation, the offender *knowing that at the time* he had no funds in the bank or that the funds deposited by him in the bank were not sufficient to cover the amount of the check *and without informing the payee of such circumstances.*"[2c] (Underscoring ours. Italized words were dropped by R. A. 4885)

Under the old provision, therefore, this type of estafa is committed, if the following elements are present:

1. That the offender has postdated or issued such check in payment of an obligation;

2. That he postdated or issued it, knowing that at the time he had no funds in the bank, or the funds deposited by him in the bank were not sufficient to cover the amount of the check:

3. That he did not inform the payee of such circumstances;

4. That the fraudulent pretense or fraudulent act was prior to or simultaneous with the commission of the fraud;

5. That the payee was actually defrauded.

[2c] PUBLIC LAWS AND RESOLUTIONS (Manila: Bureau of Printing. 1931).

B. DECISIONAL LAW

In the application and interpretation of the old provision, the Supreme Court and the Court of Appeals[3] have evolved the following doctrines which illustrates the meaning of the five elements of the offense, namely:

1. The provision applies to postdated check or any check, the word "such" in the first line of section 2, paragraph (d) being an error in the English translation.[4]

2. Issuing a postdated check in good faith, believing that sufficient funds would be deposited to pay the check when presented for collection, is not estafa.[5]

3. a) When the drawer tells the payee to hold the check for a few days without presentment and until he can deposit money which he expected to get, such information about the state of his account takes the case out of the operation of the Revised Penal Code.[6]

b) When the payee agrees to hold a check for four days to allow the drawer to deposit the needed funds, the payee is aware and properly informed of the state of the drawer's account.[7]

c) When the drawer says in reply to a query that he is not sure, if he had sufficient funds in the bank, the payee is properly informed of the state of the drawer's account.[8]

4. a) Issuing a postdated check in payment of a pre-existing debt or obligation is not estafa, for the deceit, if there is any in its issuance, is not prior to nor simultaneous with the act of defraudation.[9]

b) Issuing a check in substitution of a promissory note cannot give rise to estafa, because the drawer does not obtain anything by means of the said check.[10]

c) To constitute estafa, the deceit should be the efficient cause of the defraudation and as such should be either prior to or simultaneous with the act of fraud.[11]

5. If the payee is not actually defrauded, estafa is not committed, for to defraud is to deprive of some right, interest or property by a deceitful device.[12]

[3] While decisions of the Court of Appeals do not establish jurisprudence or doctrines in this jurisdiction, nevertheless its pronouncements on cases of first impression (undecided yet by the Supreme Court) still serve as a judicial guide to inferior courts. See Miranda et al. v. Imperial et al, 77 Phil 1066; Gaw Sin Gee v. Market Master of Divisoria et al, CA 46 O.G. 2617.
[4] People v. Fernandez, 59 Phil 615.
[5] People v. Villapando, 56 Phil 34.
[6] People v. Fernandez, supra.
[7] People v. Quesada, 60 Phil. 515.
[8] People v. Lilius, 59 Phil. 339.
[9] People v. Lilius, supra.
[10] People v. Canlas, CA 38 O.G. 1092.
[11] People v. Fortuno, 73 Phil 407.
[12] People v. Quesada, supra.

It is clear from the aforecited leading cases that estafa under Art. 315 section 2, paragraph (d) of the Revised Penal Code prior to R. A. No. 4885 cannot be committed by the mere issuance of a bouncing check, for the reason that various effective defenses are available, namely: FIRST— good faith of the drawer, meaning that at the time of the issuance of the check he did not know that he had no funds or that his funds were not sufficient to cover the check; SECOND—knowledge of the payee of the bad state of the drawer's account; THIRD— that its issuance did not result to actual defraudation; and FINALLY— that even if there was defraudation, the fraudulent issuance of the check was not prior to or simultaneously with the act of fraud. Consequently, pre-existing debts or obligations are beyond the coverage of the law.

Under this state of statutory and decisional law, it is not difficult to imagine that with the increased use of the check as a negotiable instrument in the rapidly expanding world of commerce, the problem of the bouncing check will inevitably become an evil of national proportion.

III R. A. NO. 4885 AND THEREAFTER

Commenting on the rampant problem of bouncing checks which plagued the country's business centers circa 1960, then Justice Carmelino Alvendia, a noted commentator on the Negotiable Instruments Law, deplored the fact that the Law on the Bouncing Check does not cover check issuance in payment of pre-existing debts or obligation and suggested that the evil could only be remedied by legislation.[13]

A. ITS BEGINNINGS: H. B. NO. 751 and S. B. NO. 413

The legislation adverted to by Justice Alvendia was House Bill No. 751[14] and Senate Bill No. 413[15]. Upon recommendation of the Joint

[13] To a query from a participant Justice Alvendia answered: The evil can only be remedied by legislation. As our law is at present, when a check is issued in payment of a pre-existing debt, even if it bounces, there is no estafa, no criminal liability. I understand, however, that there is a pending bill in Congress which makes it a crime to issue checks *whether paid for on existing obligation or not.* (Underscoring ours) . . . It is no longer the fact that somebody parted with his property in the belief that the check is good which is the only reason now that we can make it a crime of estafa . . . I think that will be very effective . . ." See ALVENDIA, Carmelino. The Effects of Forgery in a Negotiable Instrument. (INSTITUTE FOR LEGAL OFFICERS OF GOVERNMENT CORPORATIONS 1967 (Quezon City: U.P. Law Center Publications) p. 156.

[14] H.B. No. 751 was introduced by Congressman Edgar Ilarde on February 9, 1966 and referred to the Committee on Revision of Laws the same day. Committee Report 1511 recommended approval on May 4, 1966 in consolidation with H.B. No. 1039 with Congresswoman Magnolia Antonino as co-author. See HISTORY OF BILLS & RESOLUTIONS 1967, p. 96.

[15] S.B. No. 413 was introduced by Senator Ambrosio Padilla and submitted to the House on April 19, 1967. On May 16, 1967 the Senate asked for a conference in relation to H.B. No. 751 and appointed Senators Salonga, Liwag and Lagumbay as its conferees. See HISTORY OF BILLS & RESOLUTIONS 1967, p. 1230.

Conference Committee on the disagreeing provisions, Senate Bill No. 413 was adopted[16] and later became R. A. No. 4885.

We ask: What reasons impelled the then Congress of the Philippines to promulgate R. A. No. 4885? The answer to this query is found in the explanatory statements of the twin legislative measures.

The Explanatory Note to H. B. No. 751[17] had this to say: "A check, under the Negotiable Instruments Act, is a draft or order upon a bank or banking house, purporting to be drawn upon deposit of funds for payment at all events of a certain sum of money to a certain person named therein, or to him or order or to bearer and is payable instantly on demand. The prime purpose of the (check) is to facilitate business transactions. However, . . . this is not realized due to the issuance of rubber checks. Those who issue such checks escape criminal prosecution *especially when the checks are used to pre-existing obligations.* . . . Bankers, businessmen, and private individuals throughout the country are increasingly plagued by bad checks . . . This bill aims to protect business by penalizing bad check passers." (underscoring ours.)

Upon the other hand, in Senate Bill No. 413 we find the following explanatory statement of its author, Senator Ambrosio Padilla: "The issuance of a check as a negotiable instrument has been abused by persons who have no bank deposit or have insufficient funds to cover the amounts

[16] On May 18, 1967 the Senate and the House of Representative separately approved the report of the Conference Committee (composed of Senators Salonga, Liwag and Lagumbay and Congressmen Imperial, Durano and Concordia), as follows: "The Conference Committee on the disagreeing provisions of the two measures, viz: House Bill No. 751 entitled 'An Act Prohibiting the Issuance of Checks Without Corresponding Deposits of Funds', and Senate Bill No. 413 entitled 'An Act to Amend Section 2, Paragraph (d) Article Three Hundred Fifteen of Act Numbered Thirty-eight Hundred and Fifteen As Amended, otherwise known as The Revised Penal Code (re: issuance of checks)' after having met and fully discussed the subject matter in the conference, has come to an agreement and the conferees hereby recommend to their respective houses the following: *That Senate Bill No. 413 be adopted, taking into consideration House Bill No. 751 which deals on the same subject matter.*" (Underscoring ours. See CONGRESSIONAL RECORD OF THE HOUSE (Vol. 2, — Part 2, April 27 — August 18, 1967) May 18, 1967 Proceedings, pp. 100-101; See also CONGRESSIONAL RECORD OF THE SENATE (Sixth Congress, Second Special Session, Vol. 2, Nos. 67-72, May 1967) May 18 Proceedings, pp. 3653-3654.

[17] The text of House Bill No. 751 reads, as follows:

H.B. No. 751
An Act Prohibiting Issuance of
Checks Without Corresponding Deposit of Funds

Section 1. It shall be unlawful to issue any check without corresponding deposit of funds.

Sec. 2. Any person who violates the provision of this Act shall, upon conviction thereof, be punished with a fine of not more than two thousand pesos or by imprisonment of not more than two years, or both such fine and imprisonment at the discretion of the Court; Provided that, if it is a corporation or a partnership, the penalty shall be imposed upon the president or managing partner thereof, as the case may be, and the treasurer.

See CONGRESSIONAL RECORD OF THE HOUSE 1966, Vol. I — Part 2, April 25 — August 27, 1966, p. 163.

of said checks. This bad practice has been utilized by drawers of checks to defraud innocent payees or indorsees . . . It is true that a check may be dishonored without any fraudulent pretense or fraudulent act of the drawer. Hence the drawer is given three days to make good the said check by depositing the necessary funds to cover the amount thereof. Otherwise, a prima facie presumption will arise as to the existence of fraud, which is an element of the crime of estafa. The public interest, particularly the regularity of commercial payments thru checks, would justify the immediate approval of this bill."[18]

Thus, while Senate Bill No. 413 in general seeks to arrest the prevalent abuse of issuing checks without funds or with insufficient funds, House Bill No. 751 has singled out with particularity the problem of bouncing checks in payment of pre-existing obligations. However, because the recommendation of the Conference Committee on the disagreeing provisions of the two measures for the adoption of S. B. No. 413 was subject to the condition that H. B. No. 751 be taken into consideration,[19] we may assume that the singular intent of the latter became part of the "mens legislatoris" of the former, when the Senate and the House of Representatives voted separately for the approval of the Conference Committee Report. In fine, both measures are aimed to protect the integrity of the check as a negotiable instrument and to promote the stability of commercial transactions. Quite undoubtedly, these are the very same basic objectives sought to be achieved by Act No. 3313 of 1926,[20] our law on bouncing checks before the Revised Penal Code.

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[18] PADILLA, Ambrosio. REVISED PENAL CODE Vol. III (Manila: Padilla Publications, 1977) p. 367.

[19] See note 16 supra.

[20] Probably reacting to the absence in the Penal Code of the Philippines of any provision punishing the issuance of bouncing checks, the Seventh Philippine Legislature enacted Act 3313 amending Art. 535 of the Penal Code, the text of which reads:

Seventh Philippine Legislature
Second Session H. No. 506

(No. 3313)

An Act to Amend Article Five Hundred and Thirty-Five of the Penal Code

Be it enacted by the Senate and House of Representatives of the Philippines in legislature assembled and by the authority of the same:

Section 1. Article five hundred and thirty-five of the Penal Code is hereby amended by adding after paragraph nine thereof, another paragraph as follows:

"10. Any person who in his own name or as an officer or member of a corporation, entity or partnership shall issue a check or any other commercial document against a bank established or that may hereafter be established in these Islands *in payment of a debt*, or for any other valuable consideration knowing that he does not have at the time of its issuance sufficient provision of funds in the bank to cover its amount, or, having such funds, shall maliciously and feloniously sign his check differently from the signature registered at the bank as his authentic signature, in order that the bank shall refuse to pay the same; or shall issue a postdated check and at the date set for the payment of it, the drawer of the check does not have sufficient deposit in the bank to pay for the check. And any person who shall endorse in his own name or as an officer or member of a corporation, entity or partnership a check or any other commercial document payable upon

B. REPUBLIC ACT NO. 4885

As amended by R. A. No. 4885, estafa under Art. 315 section 2, paragraph (d) of the Revised Penal Code is now committed by "any person who shall defraud another . . . by means of . . . the following false pretense(s) or fraudulent act(s) executed prior to or simultaneously with the commission of fraud . . . by postdating a check or issuing *a* check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. *The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act.*"[21] (underscoring ours. Italized words are new provisions)

We ask therefore: Has R. A. 4885 achieved the primary objective of including within the coverage of the law fraudulent issuances in payment of pre-existing debts or obligations? The author of S. B. No. 413 says yes.[22] The Court of Appeals too says yes.[23] And the other defenses available under the old provision — can they still be invoked now? Professor Padilla answers in the negative.[24abcd]

A closer look at the law, however, yields contrary answers. Comparing the new provision with the old one, we find that the law as writ-

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demand or at some subsequent date knowing that the drawer of the instrument does not have sufficient funds in the bank against which it was drawn."

Sec. 2. This Act shall take effect on its approval.

APPROVED, December 3, 1927.

See PUBLIC LAWS AND RESOLUTIONS (Manila: Bureau of Printing, 1927).

[21] See 63 O.G. 9890-9891.

[22] Prior to the amendment, two defenses were available to the drawer, to wit: (1) that the issuance of the check is in payment of a pre-existing obligation, . . . The amendment . . . eliminates both defenses. See PADILLA, Ambrosio. REVISED PENAL CODE Book II, Vol. III (Manila: Padilla Publications, 1977). The defense of payment of a pre-existing obligation is no longer available under R.A. 4885. IBID., p. 376, Note 10.

[23] Even if We assume as true this allegation that he had issued the check in payment of a pre-existing obligation, he would nevertheless be guilty under par. 2(d) of Art. 315, as amended. See PEOPLE v. Ang, CA-GR No. 1533-R, Jan. 21, 1976.

[24] a. Under R.A. No. 4885 amending Paragraph 2 (d) of Art. 315 the issuance of a check by a drawer when he has no funds or has insufficient funds to cover the amount of his check is presumed to have been issued by means of false pretenses or fraudulent acts executed prior to or simultaneous with the commission of fraud. See PADILLA, supra, p. 367.

b. The act of issuing a check without funds or with insufficient funds is a fraudulent act and Rep. Act No. 4885 presumes it as prima facie evidence of deceit (deception). See PADILLA, p. 372, Note 6.

c. The defense of informing the payee that the issuer of the check may not have sufficient funds is no longer available under Rep. Act. No. 4885. See PADILLA, p. 377, Note II.

d. The law does not require that the issuer of a bouncing check should obtain money or other property from the payee. The check is in payment of an obligation. See PADILLA, p. 372, Note 5.

ten has failed to achieve its avowed objectives. Let us examine and determine to what extent the phraseology of the old law has been changed by the Padilla Amendment.

FIRST: The word "such" in the phrase "issuing such check in payment of an obligation" is replaced by the article "a" in relation to the check issued;

SECOND: The phrase "the offender knowing that at the time" in the old provision has been eliminated;

THIRD: The phrase "and without informing the payee of such circumstances" was likewise dropped; and finally

FOURTH: The sentence "the failure of the drawer of the check to deposit the amount necessary to cover check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act" was added.

What are the consequences of the eliminations and additions? They are simply as follows:

1. The replacement of the word "such" with the article "a" did not change the meaning of the provision but merely followed a doctrinal ruling of the Supreme Court.[25]

2. The elimination of the phrase "the offender knowing that at the time" (he had no funds in the bank or his funds deposited therein were not sufficient to cover the amount of the check) does not preclude the defense of good faith. For, as the explanatory note to S. B. No. 413 itself reads: It is true that a check may be dishonored without fraudulent pretense or faudulent act of the drawer. Hence the drawer is given three days to make good the said check by depositing the necessary funds . . . Otherwise, a prima facie presumption will arise as to the existence of fraud, which is an element of the crime of estafa.[26] Therefore the mere issuance of a check without funds is still not a crime per se.[27] The situation, however, is different, when the check is dishonored with false pretense or fraudulent act on the part of the drawer.[28]

3. The deletion of the phrase "and without informing the payee of such circumstances" does not change previous doctrinal rulings. In estafa by means of deceit, the complainant should not be aware of the fictitious nature of the pretense. There is thus no deceit to speak when the complainant knew or should have known that the accused had no funds in

[25] People v. Fernandez, supra, Note 4.
[26] PADILLA, supra, Note 18.
[27] AQUINO, Ramon. THE REVISED PENAL CODE, Book II, Vol. III (Manila: Central Book Supply Inc., 1977) p. 1611.
[28] REYES, Luis B. THE REVISED PENAL CODE, Book II (Manila: Rex Book Store, 1975) p. 703.

the bank or his funds deposited therein were not sufficient to cover the amount of the check.[29]

4. The addition of the sentence "The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act" is admittedly for the benefit of a drawer in good faith. It must be noted also that the evidence of deceit is merely prima facie and thus rebuttable by contrary evidence including among others good faith itself.

Evidently, the net effect of the Padilla Amendment is only one, namely — the introduction of a prima facie evidence of deceit constituting false pretense or fraudulent act — which is expressed in the last sentence of the provision.[30] And, therefore, the elements of the offense under the new law remain basically the same, to wit: 1) that the offender postdated or issued a check in payment of an obligation; 2) that the offender postdated or issued it, when he had no funds in the bank or his funds deposited therein were not sufficient to cover the amount of the check; 3) that the payee had no knowledge of such circumstances; 4) that the fraudulent pretense or fraudulent act was prior to or simultaneously with the commission of the fraud; and finally, 5) that the payee was actually defrauded.

Be it noted that element no. 3 is still necessary, because there will be no deceit, if the payee is aware of the state of the drawer's account. Also elements 4 and 5 must be present, because the introductory paragraph of Art. 315 (2) remains unaltered and still reads: "Any person who shall *defraud another* . . . by means of . . . the following false pretense(s) or fraudulent act(s) executed *prior to or simultaneously with the commission of the fraud*. . ." (italizing for emphasis) Consequently, the issuance of a rubber check to pay a pre-existing obligation or debt is still a good and valid defense.[31] And the other defenses previously available may still be invoked today with equal force and effect.[31a]

[29] Ibid.
[30] Essentially there is no substantial difference between the original provision of Article 315 and the amendment (referring to R.A. 4885). In either case, there should be false pretenses. Without false pretenses, the issuance of a postdated check without funds at the time the check is presented for payment is not estafa. The only difference is that the amendment establishes a prima facie evidence of deceit constituting false pretense or fraudulent act. . . . But the presumption is only prima facie and may be overcome by evidence to the contrary. See PEOPLE v. TEODORICO, (CA) 68 O.G. 9677; G.R. No. 11423-R June 29, 1972; 17 C.A.R. (2s) P. —.
[31] Notwithstanding the amendment of Art. 315, par. 2 (d) by R.A. No. 4885, it is still a good defense to a prosecution for estafa thereunder that a check is issued in payment of a pre-existing obligation. The crime . . . continues to be a form of swindling by means of deceit. The phrase "prior to or simultaneously with the commission of the fraud" indicates that . . . the

Finally, to the other queries posed in the prefatory statement of this paper, we answer thus: Our decisional law on the matter prior to R. A. No. 4885 has remained unaltered. The cases of People v. Lilius, People v. Quesada, People v. Fortuno, People v. Fernandez, People v. Villapando and People v. Canlas (CA) are still controlling. There is no substantial departure of the law as amended from the old proviso; and lastly, the only amendment brought about by the amendatory law is the making of a prima facie evidence of deceit.

C. AFTER R. A. NO. 4885

After the failure of R. A. No. 4885, the new answer to the old problem spoken of by Justice Alvendia could have been Presidential Decree No. 818[32] issued and made effective on October 22, 1975. The "ratio legis" of this issuance was to immediately curb the upsurge of estafa committed by means of bouncing checks so as to maintain the people's confidence in the use of negotiable instruments as a medium of commercial transaction and to prevent the resulting retardation of trade and commerce and the undermining of the banking system of the country — doubtlessly, objectives fundamentally akin to those of R. A. 4885 (H. B. 751 & S. B. 413) and Act No. 3313. The decree, however, seeks to accomplish said purposes by merely increasing the penalties for its commission. Indeed the efforts to attune the code to present-day situation have thus far followed a pattern of reform through penalty increases.[33] Still pre-existing debts or obligations are beyond the operation of the penal law with the other usual defenses readily available.

IV. CONCLUDING OBSERVATIONS

In light of the foregoing discussion, one wonders whether R. A. 4885 is simply a case of faulty statutory draftsmanship or a deliberate act aimed

fraudulent act of postdating or issuing a check . . . should be the efficient cause of defraudation and as such it should be either prior to or simultaneously with the act of fraud. The offender must be able to obtain money or other property from the offended party because of the issuance and delivery of a check, whether postdated or not, that is, the latter would not have parted with his money or other property were it not for the issuance of the check. See PEOPLE v. CUA (CA) 72 O.G. 3182; G.R. No. 16841-R March 2, 1976, citing People v. Teodorico, supra, note 29 and also People v. Herrera, CA-G.R. No. 12772-R January 18, 1973; 18 C.A.R. (2s) 123.

[31a] See discussion, supra.

[32] Presidential Decrees and Related Documents, Vol. 32 (Manila: A Cacho Hermanos, Inc.) p. 98.

[33] The institution of reform in our present Penal Code is long overdue. There is a need to . . . make it more responsive to . . . present day society. This need yearly becomes more acute . . . even as new situations or problems emerge which . . . are presently beyond the reach of the penal law. Yet, heretofore, response to this need has not done beyond occasional amendments merely affecting increases in penalty for certain crimes. See PROPOSED PENAL CODE OF THE PHILIPPINES. Official Draft (Quezon City: University of the Philippines Law Center, 1966) Foreword.

precisely to accomplish, as to pre-existing debts and obligations, the consequential void thus far pronounced by the courts.

It cannot be doubted that the drafter of the law intended from the very beginning the inclusion of prior obligations within its coverage.[34] But, whether or not the same intention was shared by the majority of the approving legislators is altogether a different story. It would seem that, if indeed the intention was to make the mere issuance of bouncing checks in payment of any obligation punishable under a penal statute, the Ilarde Proposal[35] would have been more appropriate and even doubly effective with respect to issuances prior to or simultaneously with the commission of fraud.[36] Moreover, the patent defect in the Padilla Amendment could have been easily noticed and corrected in the ordinary course of its passage. We can only surmise that the Committee on Revision of Laws, the Joint Conference Committee on the disagreeing provisions which recommend the adoption of S. B. No. 413 and the general membership of Congress noticed the defect but chose to remain silent and not to correct the same.

Upon the other hand, Act 3313, our law on bouncing checks prior to the Revised Penal Code, underwent a somewhat different process with the same result. Enacted in December 3, 1926 to amend Art. 535 of the old Penal Code and particularly prohibiting among others issuance of bouncing checks or any other commercial document in payment of a debt, this specific amendment was rendered ineffective[37] by its omission from Art. 315, paragraph 2 (d) of the Revised Penal Code and the express provision of its repeal in the Repealing Clause of the new code. In both instances, therefore, there is a frustration of intent and purpose. In the first case (R. A. 4885), the intent and purpose was frustrated by the very law that sought to implement it; in the other (Act 3313), the cause was an express repeal by another law.

It is our observation that at the core of the conflict is the more fundamental question of whether or not purely civil obligations should be

[34] Senator Padilla in the prefatory statement to S.B. No. 314 suggests it. See Note 18, supra. He affirms very strongly this intention in his commentaries on The Revised Penal Code. See Notes 22 & 24, supra.

[35] See Note 17, supra.

[36] As to issuances prior to or simultaneously with the commission of fraud, the offender can be prosecuted at the same time for two offenses: one under the Revised Penal Code and the other under the special law, without violating the constitutional injunction against double jeopardy. For, the test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. See BERNAS, Joaquin. CONSTITUTIONAL RIGHTS AND DUTIES: A Commentary on the 1973 Philippine Constitution (Manila: Rex Book Store, 1974) p. 332 citing People v. Cabrera, 43 Phil 82; U.S. v. Capuno, 7 Phil 24; Bulaong v. People, L-19344, July 27, 1966.

[37] The act of issuing a check in payment of a debt which was punished as estafa by Act 3313 . . . is no longer an indictable offense. See ALBERT, Mariano. THE REVISED PENAL CODE (Manila: University Publishing Co., 1946) p. 748.

afforded satisfaction through criminal processes. Should we allow our criminal courts and the prosecuting offices of the justice department to be conveniently utilized as mere collection agencies at the cost of public funds? Those who favored Act 3313 as well as those who supported the objectives of the Ilarde Proposal and the Padilla Amendment answer the question in the affirmative and in effect espouse the view that criminal processes should be open as alternative remedy to satisfy purely civil obligations such as pre-existing debts. To this group belong former Justice Alvendia[38] and Justice Pacifico de Castro.[39] Another school of thought advocates a total shut-off of criminal processes upon the theory that there are various remedies available, both judicial and extra-judicial, adding that the criminal courts and the government prosecuting offices should not be permitted to degenerate into collection agencies. The Diaz Committee which drafted the Revised Penal Code, the legislators who approved it, and those who voted affirmatively for the enactment of the supposed amendatory R. A. No. 4885 knowing well the implications of its defect in draftsmanship represent a middle ground, a compromise view which allows in a limited way the utilization of the criminal process for check issuances prior to or simutaneously with the commission of fraud. P. D. 818 suggests to us that the present dispensation too must be counted among those who favor the middle ground.

In a very real sense, therefore, our present law on bouncing checks is, in so far as it denies aid in the satisfaction of pre-existing debts and obligations, a return to 18th-century thinking. It has been said, however, that a good idea is a good idea, no matter of what vintage. This could have been in the mind of the Diaz Committee when it struck the midway by not totally adopting Act 3313. The legislators might have thought of this too, when they approved S. B. No. 413 instead of H. B. No. 751. Finally, the drafters of P. D. No. 818 could have taken this into consideration, when they did not correct the familiar defect of R. A. No. 4885, but retained the same middle ground. Indeed shall we say: "In medio virtus"?

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[38] See Note 13, supra.

[39] Court of Appeals Justice Pacifico de Castro advanced the opinion that the issuance of a bouncing check is prima facie an act of estafa. See BULLETIN TODAY, Sept. 23, 1977, p. 40

TRIAL IN ABSENTIA SANS ARRAIGNMENT UNCONSTITUTIONAL

VICENTE DE PAUL VERDADERO*

I. ARRAIGNMENT

A. Definition and Purpose

Bishop defines arraignment as consisting of reading the indictment to the accused and asking him in open court whether or not he is guilty of what it alleges against him.[1] Its purpose is to obtain from the defendant his answer, in other words, his plea to the indictment.[2]

B. Constitutional and Statutory Provisions

Provisions regarding arraignment can be found in our Rules of Court and the 1973 Constitution. Section 1 of Rule 116 provides for arraignment and the manner thereof. The pertinent provision is quoted hereunder:

> Section 1. Arraignment — How made. — The defendant must be arraigned before the court in which the complaint or information has been filed. x x x The arraignment must be made by the judge or clerk, and shall consist in reading the complaint or information to the defendant and delivering to him a copy thereof, including a list of witnesses, and asking him whether he pleads guilty or not guilty as charged . . .[3]

With the new provision on trial on absentia in the 1973 Constitution, arraignment became a mandatory Constitutional provision when it provides:

> Sec. 19. . . . However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified.[4]

From the aforecited provision, trial in absentia can only be had if three conditions concur: (1) accused has been arraigned, (2) notice of trial was served to him and properly reutrned, and (3) his failure to appear in court has no justifiable reasons.

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* Ll.B. '78.

[1] Bishop, New Criminal Procedure, T.H. Floyd & Co., Chicago, 1895.

[2] Ibid., citing Whitehead vs. Curry, 19 Grat. 646.

[3] Moran, II Rules of Court, 1969 ed.

[4] Art. IV, The New Constitution.