SEC. 12. *Separability Clause* — In the event any provision of this Act or the application of such provision to any person or circumstance is declared invalid, the remainder of this Act or the application of said provision to other persons or circumstances shall not be affected by such declaration.

SEC. 13. *Repealing Clause* — All provisions of law, decree, issuance in conflict with this Act are hereby repealed.

SEC. 14. *Effectivity* — This Act shall take effect upon approval.

THE OTHER SIDE OF THE NEW LAW ON BOUNCING CHECKS*

By FRANCIS ED. LIM, LI.B. '80

The original law on bouncing checks was embodied in Art. 315, paragraph 2, sub-paragraph (d), Revised Penal Code, which provided thus:

> xxx
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to, or simultaneously with, the commission of fraud:
>
> xxx xxx xxx
>
> (d) By postdating a check, or issuing a check in payment of an obligation, the offender knowing at the time he had no funds in the bank, or the funds deposited by him in the bank are not sufficient to cover the amount of the check, and without informing the payee of such circumstances.

On June 17, 1967, the above provision was amended by RA 4885. Art. 315, Section 2, paragraph (d) of the Revised Penal Code, as amended by RA 4885, now reads:

> xxx
>
> Section 2. By means of any of the following false pretenses or fraudulent acts executed prior to, or simultaneously with, the commission of fraud:
>
> xxx xxx xxx
>
> (d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank or his deposits 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

*Note: In the November, 1977 issue of the Ateneo Law Journal, Vol. XXII, No. 1, W. Andanar, LI.B. '78, wrote an article entitled "RA 4885: More Than A Case of Faulty Statutory Draftmanship?" Such article observed, that, *as worded*, RA 4885, does *not* penalize the issuance of a bouncing check in payment of a pre-existing obligation. The above article by F. Lim seeks to present the new law on bouncing checks from the other viewpoint. Lim proposes that RA 4885 maybe, and should be, perhaps, construed as providing for the punishment of the issuance of a bouncing check, even in payment of a pre-existing obligation.

> receipt of notice from the bank and/or payee or holder that said check has been dishonored for lack of funds shall be *prima facie* evidence of deceit constituting false pretense of fraudulent act.

The amendatory law, it must be observed, deleted the phrases "knowing at the time" and "without informing the payee" from the old law.[1] (emphasis supplied) The philosophy behind the deletion of the phrase *knowing at the time* is that the question of knowledge is an internal state of the mind; as such, it is very difficult to prove whether the drawer knew or did not know the lack or insufficiency of his funds.[2] The elimination of the phrase without *informing the payee* is predicated on the fact that there is no deceit when the complainant knew or should have known that the accused had no funds in the bank or that his deposits therein were insufficient to cover the amount of the check.[3]

RA 4885 is not explicit whether or not it eliminated the defense that the check was issued for a pre-existing obligation.[4] While there have been conflicting decisions[5] of the Court of Appeals on the issue, there is still no decision by the Supreme Court under the amendatory law. The question, therefore, may be stated thus: *Under the present law (RA 4885), what maybe the liability of a person who issues a bad check in payment of a pre-existing obligation?*

The Amendment and the Court of Appeals

In *People v. Salvador Teodorico*,[6] the Court of Appeals ruled that there is no "substantial difference" between the original provision and the amendment. The only difference being that the amendment establishes a *prima facie* evidence of deceit constituting false pretense or fraudulent act.

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[1] Procedure-wise, the amendment made it easy to prosecute misusers or abusers of checks because the statute makes the failure of the drawer-accused to deposit the necessary amount within three (3) days a *prima facie* evidence of deceit constituting false pretense. Moreover, the State need no longer prove knowledge on the part of the drawer of the lack or insufficiency of his funds, or his intent to defraud, which is a state of mind; therefore, difficult to prove. All that the prosecution need to prove is that the drawer-accused failed to deposit the necessary amount within three (3) days from receipt of notice of dishonor. Said failure is sufficient to establish deceit constituting false pretense characteristic of estafa, unless rebutted by the defense.

[2] Congressional Record of the Senate, Vol. 2, No. 37, pp. 932-933.

[3] Reyes, Luis B. The Revised Penal Code, Book II, Vol. III (Manila: Central Book Supply, 1977), p. 1611.

[4] Under the old law, it was established that a check issued for a pre-existing obligation was a good defense to a charge of estafa. (People v. Lilius, 59 Phil. 339; People v Quesada, 60 Phil. 515; People v Fortuna, 73 Phil. 403).

[5] Among the cases holding that RA 4885 did not eliminate the defense: People v. Teodorico, 68 OG 9677; People v. Teodorico, 17 CAR 843; People v. Herrera, 18 CAR 123; People v. Cua, 72 OG No. 12. March 22, 1976; People v. Garcia, 73 OG 624. Among the cases holding that the defense of a check issued for a pre-existing obligation has been eliminated by RA 4885 were: People v. Ang, 72 OG 10070; People v. Chua, CA-GR Nos. 15803-15805-CR.

[6] 68 OG 9677

In a later case,[7] Associate Justice Ruperto Martin exonerated the accused on the ground that the check was issued in payment of an already existing obligation and not of an obligation contracted only at the time the postdated check was issued.

People v. Herrera[8] adopted the doctrine laid down in the above cases. But the Court of Appeals changed its view in 1976. In *People v. Ang*,[9] a unanimous decision was rendered holding that "Republic Act 4885, amending paragraph 2(d) of Art. 315, Revised Penal Code, has eliminated the defense that the issuance of a check is in payment of a pre-existing obligation." The Court of Appeals quoted with approval the comments of Senator Padilla, author of RA 4885, on the amendatory law. Thus, the Court said:

> "xxx even if it is assumed as true the allegation that the accused had issued the check in payment of a pre-existing obligation, he would nevertheless be guilty of estafa, especially so when he had failed to deposit the amount necessary to cover his dishonored check, thereby giving rise to a *prima facie* evidence of deceit constituting false pretense or fraudulent act characteristic of estafa under paragraph 2."

Justice Santiago in *People v. Chua*[10] affirmed the judgment of conviction rendered against the accused involving postdated checks issued for purchases delivered prior to the issuance of the postdated checks.

Subsequent decisions by the Court seemed to abandon the *estafa rule* enunciated by the *Ang* and *Chua* cases. Thus, *People v. Cua*,[11] categorically ruled that "Notwithstanding the amendment of Art. 315, paragraph 2(d), Revised Penal Code by RA 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 basis for this ruling seemed to be that the phrase *in payment of an obligation* in the old law has been retained by the amendment. Such being the case, it must be accorded the same meaning as it was given under the original provision. Hence, the phrase *in payment of an obligation* in the amendatory law must refer to an obligation contracted at the time of postdating or issuing a check. Elucidating, Justice B. Reyes argued:

> If the intention of the amendment is to eliminate the defense that the issuance of the check is in payment of a pre-existing obligation, Congress would have indicated it in clear and unmistakable terms, considering that the word 'obligation' as used in sub-paragraph (d) of paragraph 2, Art. 315, according to jurisprudence, must be understood as one contracted at the time of postdating a check.

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[7] People v Teodorico, 17 CAR 843

[8] 18 CAR 123

[9] 72 OG 1007

[10] CA-GR Nos. 15803-15805-CR.

[11] 72 OG No. 12, March 22, 1976.

In *People v. Garcia*,[12] the same Sixth Division of the Court of Appeals which decided *People v. Cua*[13] rendered a split decision. Justice Pacifico de Castro who went along with Justice Reyes in the *Cua* case maintained that issuing or postdating a check for a prior obligation may warrant conviction under the law. Explaining his new position, he wrote:

> The deceit of which the issuance of a check in payment of an obligation, which is dishonored and is not made good within three (3) days from receipt of notice of dishonor is a mere *prima facie* evidence, clearly relates to the time the obligation was contracted, that is, when the goods were received by the appellant without the price being paid then, and remains unpaid up to the time of the issuance of the check. It does not refer to the time of the issuance of the check because by its being dishonored, evidence of deceit in reference to the issuance of such bouncing check is clearly not only *prima facie*. Hence, under the old provision, the act is not expressly considered merely *prima facie* evidence of deceit. With reference to an obligation already existing at the time of the issuance of the check, a presumption of deceit has to be created by the law, precisely to satisfy the element of the offense as provided in the opening statement of Section 2 of Art. 315 of the Revised Penal Code, to wit: 'By means of any of the following false pretense or fraudulent act executed prior to or simultaneously with the commission of the fraud."

In the same decision, Justice Reyes admitted that there is doubt in the interpretation of the law and the opinion of Justice Castro may have some basis. But maintaining his position in the *Cua case* he argued:

> The presumed deceit may relate (1) to the contracting of the obligation on the theory that the accused may have the intention to deceive the complainant from the beginning, that is, prior to or at the inception of the transaction, or (2) to the postdating or issuing a check. If the provision is interpreted as in the first, it would be unfavorable to the accused who postdated or issued a check in payment of a pre-existing obligation; if interpreted in the second, it would be favorable to him in view of the ruling of the Supreme Court and this Court, sustaining the defense that the check postdated or issued in payment of a pre-existing obligation. The ruling is founded on the basic principle that the fraudulent act of postdating or issuing a check must be the efficient cause which led the offended party to part with his money or property. So, if the check is postdated or issued in payment of a pre-existing obligation, there could be no deceit.[14]

The latest decision of the Court of Appeals on the issue is *People v. Villas*[15] penned by Justice Justiniano Aggrava. The law was the amendatory law, RA 4885, but again quoting Justice Reyes, it held that the check in payment of an obligation must have been contracted at the time of the issuance of the check.

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12 72 OG 624
13 Supra.
14 72 OG No. 12, March 22, 1976.
15 CA-GR. No. 15702-CR, July 27, 1977.

OBSERVATIONS

The sponsorship speech of Ex-Senator Ambrosio Padilla, author of RA 4885, positively indicates that the overriding intent behind the enactment of the amendatory law was to punish the issuance of bouncing checks in payment of pre-existing obligations.[16]

> The issuance of checks as negotiable instruments has been abused by persons who have no bank deposits or have insufficient funds to cover the amounts of said checks. This bad practice has been utilized by drawers of checks to defraud innocent payees or indorsees. It impairs the negotiability of checks .... The public interest, the regularity of commercial payments through checks, should justify the approval of this bill.

It is thus submitted that the issuance of bad checks for prior obligations on account of the absence of criminal liability as was the effect of *People v. Lilius*[17] is the very evil attacked by RA 4885 as such practice had "deleterious effect" on commercial transactions.[18] The amendment then could not have contemplated only bouncing checks issued prior to, or simultaneously with, the contracting of the obligation.

It is our submitted view that checks, whether issued for pre-existing obligations or simultaneously-contracted obligations, produce "deleterious effect" on commercial transactions. It is wrong, therefore, to exclude from the contemplation of the amendment, checks issued for prior obligations.

That checks issued for pre-existing obligations were within the contemplation of the law is borne out by the observation that said checks are the ones frequently used in commercial transactions. It is their issuance or postdating, therefore, that is referred to as the "... bad practice ... utilized by drawers of checks to defraud innocent payees or indorsees and which ... disturbs banking transactions, ... impairs the negotiability of checks and have ... deleterious effect on commercial transactions."

The amendment could not be interpreted as being limited to checks issued prior to, or simultaneously with, the contracting of the obliga-

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16 Statements by the author of the bill have been held proper for consideration as showing the conditions, or history of the period when the statute in question was enacted, or the mischief which was intended to be remedied and thus as throwing light on the proper interpretation of the law. (Jennison v Kirk, 25 L Ed. 240; Di Giorgio Fruit Corp. v NLRB, 191 F 2d 642).
17 59 Phil. 339.
18 In the construction of an ambiguous statute, it is proper to take into consideration the particular evils at which the legislation is aimed, or the mischief sought to be avoided, that is, the occasion and necessity for the law, or causes which induced its enactment as well as the remedy intended to be afforded, or the benefits intended to be derived, where these matters can be legitimately ascertained. Where possible, the statute should be given such a construction as, when practically applied, will tend to suppress the evil which the legislature intended to prohibit.

tion because the issuance thereof was already punished under the old law. Construing the amendatory law in this manner would be to declare it as a law without a purpose!

It is clear then that the amendment was passed with the avowed intent of punishing the issuance of bad checks in payment of pre-existing obligations. Given this legislative intent, it is urged that RA 4885 should be given a construction as would promote the legislative intent to the fullest degree.[19] After all, the legislative will is the all-important or controlling factor because, as frequently stated, the intention of the legislature is what constitutes the law.[20] As was ruled in *Macabenta v. Davao Stevedore Terminal*,[21] "... once the policy or purpose of the law has been ascertained, effect should be given to it by the judiciary." The construction adopted should not be such as to nullify, destroy, or defeat the intention of the legislature."[22] Otherwise expressed in the familiar rule of statutory construction — laws must be given application, not with the letter that killeth, but with the spirit that giveth life.

It is thus proposed that the no-estafa rule laid down in *People v. Lilius*[23] was overruled by RA 4885. Adopting the same doctrine under the amendatory law would be to defeat the very purpose of the law as the intended change would not be effected. Undoubtedly, this would constitute a very low regard for the wisdom of the legislature!

Even granting that the old *Lilius* doctrine was not overruled, we submit that it must not be adopted because of the debatable construction given to the phrase *fraudulent acts or false pretenses executed prior to, or simultaneously with, the commission of fraud,* which is the portion of the law which led the Supreme Court to conclude in *People* v. *Lilius*[25] that for estafa to exist, deceit must be the efficient cause of the defraudation as such should be prior to, or simultaneously with, the commission of fraud. Thus, it is stated that —

> In so far as the other checks were concerned as they were issued in payment of debt, even granting that the appellant issued them without sufficient funds to cover the amount thereof, furthermore, that he acted fraudulently in issuing them, such act does not constitute the offense of estafa. The appellant obtained nothing under said checks. His debt, for the payment of which said checks were issued, had been contracted prior to such issuance. Hence, the deceit, if there was any in the issuance of the questioned checks, did not precede the defraudation. The record does not show that the debt had been contracted through fraud.

[19] New York State Department of Social Services v Dublino, 37 L Ed. 2d 207.
[20] Ibid.
[21] 23 SCRA 553
[22] Supra, New York State v Dublino, 37 L Ed. 2d 207
[23] Supra, 59 Phil. 339.

It is thus maintained in the above-quoted case that the issuance of a check for a pre-existing obligation is not such deceit or false pretense in the contemplation of the law as the deceit or false pretense is not prior to, or simultaneously with, the contracting of the obligation (commission of fraud) as expressly required by the opening sentence of paragraph 2, Art. 315 of the Revised Penal Code. According to this view, there is thus no deceit (first element of estafa) nor is there defraudation for "to defraud is to deprive a person of some right, interest, or property by a deceitful devise"[24] which, according to the view under consideration, must be executed prior to, or simultaneously with, the commission of the fraud. In short, the payee was neither deceived, damaged, prejudiced, or defrauded. Consequently, there can be no estafa.

The possible defect in the *Lilius* doctrine is that it considered the phrase *commission of fraud* as referring to the contracting of the obligation without considering that it can also refer to the payment thereof. Our submitted view is that the phrase *commission of the fraud* should refer to the payment of the obligation. It is precisely for this reason that the law uses the phrase *in payment of an obligation* implying, as it were, that the commission of the fraud is in the payment of the obligation. It is the fraudulent payment, to our mind, that constitutes the commission of fraud because it is such fraudulent payment which causes the damage which materializes upon failure of the drawer-accused to deposit the necessary amount within three (3) days from notice of dishonor. This being the case, the false pretense or fraudulent act of issuing a check to pay a pre-existing obligation still precedes the commission of the fraud (defraudation or causing the damage). Hence, the requirement that the fraudulent act or false pretense must be executed prior to, or simultaneously with, the commission of fraud is still fulfilled even if a check is issued in payment of a pre-existing obligation.

We thus conclude this discussion by quoting Court of Appeals Justice Pacifico P. de Castro, in his memorandum on *People v. Lustre*[25] currently pending with the Supreme Court for resolution, wherein he convincingly stated:

> However, to our mind, the fraudulent act intended to cause payment of the obligation is no less a "commission of fraud" in which case, postdating or issuing a bouncing check would be *prior to or simultaneously*, with the commission of the fraudulent payment. And it is the fraudulent payment that would in fact cause the damage because if the check were a good one, no damage is caused. Therefore, it is clear that it is the issuance of the bouncing check that causes the damage. xxx We see no reason, therefore, for not considering the payment of the obligation already existing, *when made in a fraudulent manner*, as also *a "defraudation."*

[24] People v Quesada, 60 Phil. 515.
[25] G.R. No. L-39308