

REYES, J.:

present case is not before us. But from the answer filed by the defendants in the Court of First Instance and plaintiff's reply thereto, it is evident that plaintiff's pretended right to the possession of the property in dispute ultimately rests upon his claim of ownership, a claim based upon a purported contract of sale with right of repurchase admittedly signed by defendants but claimed by them to be a mere simulation to cloak a mortgage obligation tainted with usury. If this contract was really a sale subject to repurchase and the repurchase has, as alleged by the plaintiff, not been made within the time stipulated, plaintiff would already be the owner of the property sold and, as such, entitled to its possession. On the other hand, if the contract was, as defendants claim, in reality a mere mortgage, then the defendants would still be the owner of the property and could not, therefore, be regarded as mere lessees. In the final analysis then, the case hinges on a question of ownership and is for that reason not cognizable by the justice of the peace court.

The case at bar is to be distinguished from that of Sevilla vs. Tolentino, 51 Phil. 333, cited by the learned trial judge in the order appealed from. In that case, defendant was deemed to have impliedly admitted being lessee of the property in dispute and could not for that reason be allowed to claim ownership thereof in the same action. Such is not the situation of the present defendants, who have in their answer denied the alleged lease.

As the justice of the peace court of Hagonoy had no jurisdiction to try the case on the merits, the order appealed from remanding the case to that court must be, as it is hereby, revoked; and, in accord with the precedent established in Cruz et al. vs. Garcia et al., 45 O.G. 227, and the decisions therein cited, the case is ordered returned to the Court of First Instance of Bulacan for that court to proceed with the trial in the exercise of its original jurisdiction. With costs against the appellee.

Paras, Bengzon, Montemayor, Bautista Angelo, Pablo, Padilla, Juogo, and Labrador, J.J., concur.

XV

The People of the Philippines, Plaintiff-Appellant, vs. Ricardo Catechero, Defendant-Appellee, G.R. No. L-6084, promulgated December 17, 1953, Reyes, J.

CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARMS; EXEMPTION FROM CRIMINAL LIABILITY.—The

information alleges that defendant had possession, custody and control of the prohibited articles without the required license. But because it does not allege that defendant made use of them except for self-defense or carried them on his person except for the purpose of surrendering them to the authorities, the lower court found it insufficient in view of our ruling in *People vs. Santos Lopez y Jacinto*, G.R. No. L-1062 (promulgated November 29, 1947), which was re-affirmed in *People vs. Ricardo Aquino y Abalos*, G.R. No. L-1429 (promulgated May 16, 1949). The ruling cited is applicable only to violations of the firearm law committed before the expiration of the period fixed in Proclamation No. 1, dated July 20, 1946, for surrendering unlicensed firearms and ammunition, when mere possession of those articles did not make the possessor criminally liable unless he was found making use of them except in self-defense or carrying them on his person except for the purpose of surrendering them.

First Assistant Solicitor General Ruperto Kapunan, Jr. and Solicitor Jose G. Bautista for appellant.

No appearance for appellee.

This is an appeal from an order of the Court of First Instance of Pangasinan, dismissing an information for illegal possession of firearm and ammunition. The dismissal was ordered on a motion to quash on the grounds that the information did not state facts sufficient to constitute an offense.

The information alleges that defendant had possession, custody and control of the prohibited articles without the required license. But because it does not allege that defendant made use of them except for self-defense or carried them on his person except for the purpose of surrendering them to the authorities, the lower court found it insufficient in view of our ruling in *People vs. Santos Lopez y Jacinto*, G.R. No. L-1062 (promulgated November 29, 1947), which was re-affirmed in *People vs. Ricardo Aquino y Abalos*, G.R. No. L-1429 (promulgated May 16, 1949).

The ruling cited is applicable only to violations of the firearm law committed before the expiration of the period fixed in Proclamation No. 1, dated July 20, 1946, for surrendering unlicensed firearms and ammunition, when mere possession of these articles did not make the possessor criminally liable unless he was found making use of them except in self-defense or carrying them on his person except for the purpose of surrendering them. This is what we held in case of *People vs. Morpus Felingson*, G.R. No. L-3460, promulgated December 29, 1950, from which the following may be quoted:

"We are of the opinion that the Santos Lopez case does not apply. Therein the possession of firearms and ammunition occurred on August 21, 1946; whereas Morpus' possession was alleged to be on September 15, 1949. *Distingue tempora et condiditibus jura*. Distinguish time and you will harmonize laws. Up to August 31, 1946—by reason of Section 2 of Republic Act No. 4 and the proclamation of the President — 'criminal liability for mere possession of firearms and ammunition' was in effect 'temporarily lifted' or suspended. Wherefore Santos Lopez' mere possession before August 31, 1946 was not punishable. That was our holding in the Santos-Lopez decision. However, on August 31, 1946 the suspension terminated; and thereafter the general rule making it unlawful to manufacture, sell, possess, etc., firearms and ammunition again prevailed. Consequently the herein appellee having been allegedly found in possession of firearms after August 31, 1946 (more specifically on September 15, 1949) he transgressed the law on the matter, unless he proved some valid defense or exculpation."

As the violation charged in the present case is alleged to have been committed on or about August 16, 1949, which was after the deadline (August 31, 1946) fixed for the surrender of unlicensed firearms and ammunition, the ruling applicable is that laid down in the case last cited.

Wherefore, the order appealed from is revoked and the case ordered remanded to the court below for further proceedings.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Juogo, Bautista Angelo, and Labrador, J.J., concur.

XVI

The People of the Philippines, Plaintiff-Appellee, vs. Leon Aquino, Defendant-Appellant, G.R. No. L-6063, April 26, 1954, Reyes, J.

1. **CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; FUNDS IMPRESSED WITH THE CHARACTER OF "PUBLIC FUNDS"**.—Even supposing that funds belonging to the NARIC are not public funds, they become impressed with that