

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

character when they are entrusted to a public officer for his official custody (People vs. De la Serna, 40, O.G. [Supp. 12] 159).

2. *IBID; IBID.*—Red Cross, Anti-Tuberculosis, and Boy Scouts funds delivered to an assistant cashier of a provincial treasurer for his custody acquire the attributes of public funds.

Dominador T. Tugade for appellant.

Solicitor General Juan R. Litwag and *Solicitor Felix V. Makasiar* for appellee.

DECISION

REYES, J.:

The accused Leon Aquino was charged in the Court of First Instance of Pangasinan with malversation of public funds for having on or about July 16, 1951, misappropriated public funds amounting to P20,944.27 entrusted to his care in his capacity as municipal treasurer and postmaster of Mabini, Pangasinan, and "ex-officio in-charge of the properties and funds of the National Rice and Corn Corporation (NARIC)." Pleading guilty to the charge, the accused was, in accordance with Article 217, paragraph 4, of the Revised Penal Code and the Indeterminate Sentence Law, sentenced as follows:

- "(a) In accordance with the Indeterminate Sentence Law and Art. 217, par. 4 of the Revised Penal Code, and taking into account his plea of guilty, to suffer a penalty of EIGHT YEARS and ONE DAY of 'Prision mayor' as a minimum and TWELVE YEARS and ONE DAY of 'Reclusion temporal' as a maximum;
- "(b) To suffer the penalty of perpetual special disqualification;
- "(c) To pay a fine of P10,472.13, without subsidiary imprisonment because of the principal penalty imposed;
- "(d) To indemnify the National Rice and Corn Corporation in the amount of P12,656.83;
- "(e) To indemnify the Government of the Republic of the Philippines in the amount of P2,910.44;
- "(f) To indemnify the Bureau of Posts and the Government of the Republic of the Philippines in the further amount of P5,377.00;
- "(g) To pay the costs of this case."

From this sentence the accused has appealed, and his attorney in this instance contends that the lower court should have applied paragraph 3 instead of paragraph 4 of the article mentioned. In support of this contention attention is invited to the fact disclosed in the information that P12,656.83 of the funds malversed belonged to the NARIC, and, on the theory that NARIC funds are not public funds because the NARIC is a corporation separate and distinct from the Government, counsel argues that with respect to that sum the accused cannot be held guilty of malversation of public funds. With that sum excluded, the amount of public funds malversed, so counsel contends, would only be P8,287.44 and would come under paragraph 3 of the article in question, which provides for a penalty lighter than that prescribed in paragraph 4.

The contention is without merit. Even supposing that funds belonging to the NARIC are not public funds, they become impressed with that character when they are entrusted to a public officer for his official custody (People vs. De la Serna, 40 O.G. [Supp. 12] 159). Thus this Court has held that Red Cross, Anti-Tuberculosis, and Boy Scouts funds delivered to an assistant cashier

of a provincial treasurer for his custody acquire the attributes of public funds (People vs. Velasquez, 72 Phil. 98).

We find the sentence appealed from in accordance with law. We, therefore, confirm it with costs against the appellant.

Paras, Pablo, Bengzon, Jugo, Bautista Angelo, Labrador, and Concepcion, J.J., concur.

Mr. Justice Padilla did not take part.

XVII

Carmen Festejo, Demandante-Apelante, contra Isaias Fernando, Director de Obras Publicas, Demandado-Apelado, R.G. No. L-5156, promulgada, Marzo 11, 1954, Diokno, M.

PUBLIC OFFICERS; WHEN PERSONALLY LIABLE; CASE AT BAR.—Plaintiff owned some parcels of land totalling about 9 hectares. The Director of the Bureau of Public Works "without authority obtained first from the Court of First Instance of Ilocos Sur, without first obtaining a right way, and without the consent and knowledge of the plaintiff, and against her express objection, unlawfully took possession of portions of the three parcels of land and caused an irrigation canal to be constructed on the portion of the three parcels of land x x x." Consequently, she asked the court "to return or cause to be returned the possession of the portions of land unlawfully occupied and appropriated, etc." The defendant, through the Solicitor General, presented a motion to dismiss on the ground that the court had no jurisdiction over the case in view of the fact that the action was against the Republic of the Philippines and said Republic had not consented to be sued. The inferior court dismissed the case. HELD: The action against the Director of the Bureau of Public Works is one which is directed against him personally for acts which he performed in his capacity as such official. The law does not excuse him from responsibility for acts which he performed or ordered to be performed beyond the scope of his power in the performance of his official functions.

Eloy B. Bella for appellant.

Solicitor General Pompeyo Dió; and *Solicitor Antonio A. Torres* for appellee.

DECISION

DIOKNO, M.:

Carmen Festejo, dueña de unos terrenos azucareros, de un total de unas 9 hectareas y media de superficie, demandó a "Isaias Fernando, Director, Bureau of Public Works", "que como tal Director de Obras Publicas tiene a su cargo los sistemas y proyectos de irrigación y es el funcionario responsable de la construcción de los sistemas de irrigación en el país," alegando que—

The defendant, as Director of the Bureau of Public Works, without authority obtained first from the Court of First Instance of Ilocos Sur, without obtaining first a right of way, and without the consent and knowledge of the plaintiff, and against her express objection, unlawfully took possession of portions of the three parcels of land described above, and caused an irrigation canal to be constructed on the portion of the three parcels of land on or about the month of Feb. 1951 the aggregate area being 24179 square meters to the damage and prejudice of the plaintiff." — *R. on A. p. 3.*

causando a ella variados daños y perjuicios. Pidió, en su consecuencia, sentencia condenando al demandado:

... to return or cause to be returned the possession of