COMMENTS:

LIABILITY FOR ESTAFA FOR BREACH OF TRUST RECEIPT

I. INTRODUCTION

The Supreme Court in several cases,[1] has held that a breach of trust receipt does constitute estafa. Those declarations, however, have apparently been disregarded in at least three decisions to the contrary promulgated by a judge of the Court of First Instance of Manila.[2] With these conflicting decisions therefore, the element of luck becomes significant in criminal prosecutions for estafa for breach of trust receipt. An accused would be very fortunate if his case is tried by a judge who, choosing to lay aside the Supreme Court rulings, acquits him from criminal liability.

II. EXAMINATION OF A TRUST RECEIPT

While it is hard to pinpoint the time when trust receipts were first introduced into the country, "it seems certain however that trust receipts are today commonly employed by our banks, which finance the importing business."[3] Unfortunately, however, laments a writer,[4] there is "no piece of trust receipt legislation in our country." Nonetheless, trust receipts have continued to exist.[5]

The procedure which gives rise to a trust receipt more or less follows this pattern:

An importer who wishes to import something from abroad applies for a letter of credit with a local bank. In this letter of credit, there is an essential condition that the goods which are to be imported are to be considered owned by the Bank. The Bank then accepts the

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[1] People v. Chai Ho, 53 Phil. 874 (1928); Philippine National Bank v. Arrozal, G.R. No. 8831, March 28, 1958; People v. Samo, CA-G.R. No.20844-R and 20845-R, March 7, 1960; Samo v. People, G.R. No. 17603-04, May 31, 1962.

[2] People v. Domingo Tan, Criminal Case No. 54430-3, CFI Manila, Branch II, March 12, 1962; People v. Crisanto C. Aparato, Criminal Case No. 63892, CFI Manila, Branch XVIII, March 26, 1965; People v. Villarama, Criminal Case No. 84055, CFI Manila, Branch XVIII, Feb. 2, 1967.

[3] Ferrer, Philippine Trust Receipts: An examination of Philippine National Bank v. Viuda e Hijos de Jose; IV Ateneo L.J., Sept. #1 (1954), p. 2, citing U.S. Economic Survey Mission's Report (The Bell Report), 92-93 Philippine Book Co. (1950).

[4] *Id.* at p. 1.

[5] The reason perhaps is best stated by Lusk, Trust Receipts 12 Temp. L.Q. 189, 199 (1938), also cited in Ferrer, *supra*, at p. 2. Lusk says: "xxx, we find there is a business need for a short time device which is valid against the creditors of the borrower without being recorded. The trust receipt transaction has been devised to fill this need."

application, and opens the letter of credit in favor of the supplier abroad through one of its correspondent banks, with a statement of the conditions and the documents against which the supplier is to be paid. The importer also makes the necessary marginal deposit with the Bank (not a partial payment).

The goods are then shipped by the supplier with the bill of lading addressed to the Bank which is also the holder of the legal title, or it may be consigned to the shipper or supplier but indorsed in blank. The correspondent bank makes payment, after the documents are seen to be in order, and debits the account of the local Bank for the amount paid to the supplier. The documents are thereafter transmitted to the local Bank. It must be noted that title and ownership of the goods have always remained in the Bank.

After arrival of the goods, the importer pays the Bank the full value and the documents are given to him together with the goods. His relationship with the Bank as regards that particular transaction is thus terminated.

If the importer, however, is unable to pay at the moment, he requests the Bank to release the goods to him so that he may sell them and afterwards pay the Bank. It is at this point that the trust receipt comes into play. Under this device, possession is surrendered to the importer but title remains in the Bank. The trust receipt provides that the importer is to return the goods to the Bank upon demand or in lieu of the goods, to pay the proceeds therefor.[6]

The salient conditions which are contained in a trust receipt are *inter alia*:

> "(a) That the *Bank is the owner* of the merchandise covered by the documents therein described;
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> "(b) That the said goods are *entrusted to the possession of the maker of the trust receipt* with the *liberty to sell the same* for cash, and *to turn the proceeds thereof* in their entirety to the Bank to be applied against acceptances or obligations of the maker. . . . " (Italics supplied)

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[6] In contrast to this conventional tripartite transaction there is also another kind of trust receipt transaction, the bipartite security transaction, which American courts however, refuse to recognize as trust receipt transactions.

In this case, the distant seller forwards the bill of lading to the buyer-importer who then signs a trust receipt similar to that used conventionally and a constructive conveyance is made of the goods to the lender as collateral security for the latter's advances. These transactions have often been labelled as chattel mortgages since the lender gets the title or ownership of the goods not from the distant seller but from the buyer. (Ferrer, *op. cit. supra* footnote 3 at p. 4, citing Vold, Handbook of the Law on Sales [Hornbook Series, 1931] pp. 365-372).

The importance of the trust receipt transaction was shown by the Court of Appeals when it was said to be:

> "a security transaction designed to aid in financing importers and retail dealers in domestic goods who do not have efficient resources to finance the importation or purchase of merchandise, and who may be unable to acquire credit except through utilization as collateral of the merchandise imported or purchased." (53 Am. Jur. 961)[7]

Without the trust receipt transaction therefore, foreign importations will surely be monopolized by those who have available cash. Importers undoubtedly derive great advantage from this transaction. If it is to be maintained, the Banks which advance the money and credit should not be prejudiced. As the Supreme Court, examining the relationship created by the trust receipt transaction, said:[8]

> "By this arrangement, a banker advances money to an intending importer and thereby lends the aid of capital, of credit, or of business facilities and agencies abroad, to the enterprise of foreign commerce. Much of this trade could hardly be carried on by any other means, and therefore it is of the first importance that the fundamental factor in the transaction, *the banker's advance of money and credit, should receive the amplest protection.* Accordingly, in order to secure that the banker shall be repaid at the critical point — that is, when the imported goods finally reach the hands of the intended vendee — *the banker takes the full title to the goods at the very beginning;* he takes it as soon as the goods are brought and settled for by his payments or acceptances in the foreign country, and he continues to hold that title as his indispensable security until the goods are sold . . . and the vendee is called upon to pay for them . . . ." (In re Dunlap Carpet Co., 206 Fed. 726. See also Moors vs. Kidder 106 N.Y. 32; Farmers and Mechanics' Nat. Bank vs. Logan 74 N.Y. 568; Barry v. Bowinger, 46 Md. 58; Moors vs. Wyman, 146 Mass. 60; and New Haven Wire Co. cases, 5 LRA 300, italics supplied.)

The Court has also stated that "contracts contained in trust receipts . . . should be recognized and protected by the courts . . ."[9]

The problem, however, about the trust receipt is that its nature is hard to determine. Thus, the Supreme Court said that trust receipts:

> ". . . in a certain manner, *partake of the nature of a conditional sale,* . . . that is, the importer becomes absolute owner of the imported merchandise as soon as he has paid its price. The ownership of the merchandise continues to be vested in the owner thereof, or in the person who has advanced payment, until he has been paid in full, or if the merchandise has already been

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[7] People v. Samo, CA-G.R. No. 20844-R and 20845-R, March 7, 1960.
[8] People v. Yu Chai Ho, 53 Phil. 874 at 876-877; cited also in PNB v. Viuda e Hijos de Jose, 63 Phil. 814 at 820; also in People v. Samo, *supra.*
[9] PNB v. Viuda, *supra* at p. 820-821.

> sold, the proceeds of the sale should be turned over to him by the importer or by his representative or successor in interest."[10] (Italics suplied)

While the court has held the transaction to be a conditional sale, others[11] have held it to be only one of open credit, i.e., the letter of credit is a mere extension of credit and the trust receipt is only a security given to the bank.

And yet the transaction may only be a pledge. This is a possible conclusion because of the condition embodied in the Agreement to Accept and Pay, a document executed together with the trust receipt. The condition states:

> "That the said documents or merchandise covered thereby, and insurance shall be held as collateral security for due acceptance and payment of any drafts hereunder, with power to the *pledgee* to sell in case of non-acceptance or non-payment of the draft to them attached, without notice at public or private sale and after deducting all expenses including commissions connected therewith, the net proceeds to be applied toward payment of said draft. The receipt by you of other collateral, merchandise, or cash, now in your hands hereafter deposited, shall not alter your power to sell the merchandise *pledged* and the proceeds may be applied on any indebtedness by us to the Bank due or to become due." (Italics supplied)

This accompanying Agreement to Accept and Pay which refers to the Bank as a pledgee is, however, of no real help because the goods are transferred to the maker of the trust recipt, a transfer which is exactly the opposite of a pledge.[12]

The problem of determining the nature of the trust receipt transaction is made even more difficult because the law gives the parties sufficient leeway in making stipulations in contracts.[13] Resort there-

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[10] *Ibid.* This decision has however been criticized by Ferrer, *op., cit. supra* footnote 3 because according to him, the Court had equated "a trust receipt = a pledge = a conditional sale — a chattel mortgage", which relationships have peculiar formal characteristics that differentiate one from the other.

[11] This is also the opinion of the judge who rendered the controversial decisions (see footnote 2, *supra*).

[12] New Civil Code, Art. 2093 provides: "In addition to the requisites prescribed in Art. 2085, it is necessary, in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement." In the trust receipt transaction, the creditor (the Bank) is the one who places the "things pledged" in the possession of the "pledgor".

[13] New Civil Code, Art. 1306 provides: "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, goods, customs, public order or public policy."

fore must be made to their real intentions.[14] And such intention as correctly stated in the Court of First Instance decisions is only one of security. The Bank only wants to be sure that the buyer will not dispose of the goods without its knowledge. In fact, if Banks stipulate for the legal title, such a stipulation will be enforced as far as necessary to protect the Bank, but such title, however, is at all times a security title and no more.[15] And as it usually is in security relationships, trust and confidence of the lender in the borrower constitutes a major financing arrangement to materialize.[16] A breach of trust or abuse of confidence would thus hamper the continuance of such security relationships. Therefore, a need arises for the protection of this trust and confidence of the lender. Whether protection may be had through criminal action is the subject of the inquiry.

LIABILITY FOR ESTAFA

Article 315 par. 1 sub-par.(b) of the Revised Penal Code provides:

> "(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 commisison, or for administration, or under any obligation involving the duty to make the 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."

Viada[17] has identified the elements of this crime thus:

> "The fact of having received the thing constitutes the first elements . . .
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> "The second requisite consists in that the thing received be money, goods or any other personal property, in a word, anything which, owing to its value, may be an article of trade . . .
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> "The third element of this crime consists in that the above stated things have been received by virtue of deposit, on commission, or for administration, or under any other title producing the obligation to deliver or return them; that is to deliver or to return the same thing that was received (not an equivalent thereto in kind or quality) . . .
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> "Finally the fourth and last requirement essential to the crime defined in this number consists in the appropriation or misappropriation of the thing, by whoever received it under such a title and which obliges him to make restitution thereof or denying the fact that he received it."

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[14] New Rules of Court, Rule 130, Sec. 10 provides: "In the construction of an instrument, the intention of the parties is to be pursued . . ."

[15] Charavay v. York Silk Mfg. Co. 170 Fed. 819 at 824 (1909).

[16] Ferrer, *op. cit. supra* footnote 3 at p. 3.

[17] Cited in 2 FRANCISCO, REVISED PENAL CODE, 1101-1102 (1954 ed.).

Some commentators have distiguished among theft, estafa, and civil liability as dependent upon whether (1) the material or physical possession or (2) the juridical or legal possession with material possession or (3) ownership has been transferred. This is of some importance because misappropriation in the first case results only in theft, in the second case in estafa and in the third case only in civil liability.[18]

What are transferred by virtue of a trust receipt? First, material possession, for the maker takes the goods from the Bank. But to validly sell these goods he must also have juridical or legal possession together with the material possession. This is given to him when he executes the trust receipt. His possession, however, does not extend to that of an owner as it is well-settled that the Bank remains the owner. Nevertheless, the maker falls into the second case, i.e., he acquires juridical or legal possession with material possession. And therefore, if he should misappropriate, he is guilty of the crime of estafa.[19]

A. *Rulings of the Appellate Courts*

Misappropriation of goods and/or proceeds subject to trust receipts has been held by the Supreme Court to constitute estafa.

In the case of *People v. Yu Chai Ho*,[20] the accused, in representation of his firm, placed an order with Wm. H. Anderson and Co. for a quantity of soap, and Colgate Co. of New York, to which Anderson forwarded the order, complied with the request. The bill of lading and invoices were sent to the Cebu Branch of the International Banking Corporation. Since the firm of the accused couldn't pay however, the Banking Corporation retained the shipping documents and invoices. The goods later on were released to the accused by virtue of an execution of a trust receipt with payment guaranteed by Anderson and Co. in an accompanying instrument. The accused failed in his payment and so the guarantors were compelled to pay. In the suit filed against him, Yu Chai Ho alleged that he could not be held guilty of estafa since the Corporation was paid and therefore, no loss was suffered.

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[18] 2 PADILLA CRIMINAL LAW, 660-661 (1968 ed.).

[19] It must be remembered that the trust receipt transaction referred to is the tripartite transaction. As regards the bipartite trust receipt transaction (see footnote 6, *supra*), a breach of the trust receipt can hold the maker liable only for civil liability, but not for estafa. The maker himself is the owner. And should he fail in his obligations, the other party can only resort to civil remedies, particularly those which attach to chattel mortgages since this kind of a trust receipt is so often identified as such.

[20] 53 Phil. 874 (1928).

The Court laid aside this defense and held that it is not essential that the person damaged be the legal owner as long as somebody other than the accused is damaged. Furthermore, Yu Chai Ho was convicted of estafa for the violation of the terms of the trust receipt, i.e., failure to make payment to the Bank after selling the merchandise.

The case of *People v. Arrozal*[21] followed. Here the accused failed to pay his account with the Bank, thus violating the terms of the trust receipts executed by him. However, while the case of estafa was pending, he settled four of his five accounts so that the Bank requested the Fiscal to withdraw the case.[22] The fifth account gave rise to a civil action wherein the defendant presented a counter-claim for "malicious prosecution". After dismissing the counter-claim, the Court said in an *obiter dictum* that "there is no question that under the trust receipt signed by Arrozal, his failure . . . would be a good ground for prosecution."

To the same effect was the decision of the Court of Appeals in the case of *People v. Samo*[23] which on petition to review by certiorari was upheld by the Supreme Court.[24] The accused had been receiving credit from the Bank to help her in her importing business. In the importation in question, the Bank advanced or paid the balance due so that the goods could be released but with the execution of a trust receipt as a condition before the turnover. She obligated herself to hold them in trust for the Bank, and was authorized to sell the goods for the account of the Bank, but she had to give the Bank the proceeds of the sale if the goods were sold or to return them if not sold within a set time. Failing to account for the goods and/or proceeds, she was prosecuted for estafa, convicted by the Court of First Instance of Manila,[25] affirmed by the Court of Appeals and subsequently also by the Supreme Court.

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[21] G.R. No. 8831, March 28, 1958.

[22] People v. Nery, G.R. No. 19567, Feb. 5, 1964, a later case, has held, however, that after the institution of the action in court the offended party may no longer divest the prosecution of its power to exact the criminal liability. The Court also said in the Arrozal case: "If as the cases hold payment of the amount misappropriated does not extinguish criminal liability . . ." also in Samo v. People, *infra* footnote 24, ". . . . subsequent to the filing of the cases in the CFI, . . . partial payment in account does not alter the situation. Payment does not extinguish criminal liability for estafa."

[23] CA-GR No. 20844-R & 20845-R, March 7, 1960

[24] Samo v. People, G.R. No. 17603-04, May 31, 1962.

[25] The case was assigned to a fiscal and judge who held a view similar to that of the Supreme Court. The Bank was fortunate to get a conviction.

A problem, is raised, however, by the Court of Appeals ruling in the case of *People v. Papagayo*.[26] In that case, the Commercial Distributors Co., Inc. of which the accused was president and general manager, was able to win a bid to supply the Bureau of Printing with reams of paper. It applied from the Philippine National Bank for a letter of credit, and as a guarantee, executed a deed of assignment of its right to the contracts. An indemnity bond was also filed. Upon arrival of the goods, however, the corporation still had no funds to pay its debt to the Bank. This resulted in the execution of a trust receipt in favor of the Bank. Two more transactions were entered into by the corporation but they also resulted in the execution of trust receipts. Subsequently, the Bureau paid the corporation. The amount, however, was less than the contract price because of the shortage in weight of the materials. But even then, the corporation still failed to give to the PNB all the money that it received. A charge of estafa was made.

The accused, however, was acquitted for these reasons: (1) that there was no evidence of misappropriation or conversion by the accused[27] and (2) that the PNB did not intend to hold the corporation to the letter of the trust receipts because the Bank still allowed the corporation to collect the money even after it had already been appointed

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[26] CA-G.R. No. 9456-R, July 2, 1954; 51 OG 199, Jan. 1955.

[27] In People v. Tomas Cua, Crim. Cases Nos. 80600 & 80601, CFI Manila, Br. VII (not the same judge as the one who rendered the Tan decision), Nov. 16, 1966, where the accused like Papagayo, had been signing in his official capacity, the same reason was given for the granting of the motion to dismiss. This reason, however, does not seem right. In another CFI case, People v. Manuel Bartolome, CFI Manila, Branch VIII (another judge), Dec. 10, 1966, a president — general manager was held liable. The Court said:

> "That defendant as the President and General Manager of the Dart Motors Corporation can legally be held liable criminally liable therefor cannot be gainsaid.
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> 'Apparently the court below based the appealed ruling on the ground that the offense charged must be regarded as committed by the corporation and not by its officials or agents. This view is in direct confict with the great weight of authority. A corporation can act only through its officers and agents, and where the business itself involves a violation of the law, the contract rule is that all who participate in it are liable (Grail and Ostrander's case 103 Va., 855, and authorities there cited).
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> 'In case of State v. Burman (71 Wash. 199), the court went so far as to hold that the manager of a dairy corporation was criminally liable for the violation of a statute by the corporation though he was not present when the offense was committed. (People v. Tan Boon Kong, 54 Phil. 607, 609).'"

This being the case the officer or officers responsible for the misappropriation of the goods or proceeds thereof, or who participates in the unlawful act either directly or indirectly as aider, abetter or accessory, should be made criminally liable *even if such act be made in his/their official capacity* (3 Fletcher 877).

attorney-in-fact of the corporation to collect directly from the purchaser and it even accepted Papagayo's later payments.

Subsequent to this case came the cases of *People v. Samo* and *Samo v. People*,[28] where conviction for estafa was affirmed. These cases also provided opportunities for the Court to erase whatever doubt the Papagayo ruling might have created. The two courts could have clarified the status of the Papagayo ruling, i.e., whether it became the general rule or merely constituted an exception. Neither court did so. Instead, both distinguished the Papagayo ruling from the case they were deliberating on. And the confusion was only aggravated. The distinction further emphasized the existence of the Papagayo ruling and, in effect, led to the conclusion that the Samo duling is not the general principle but that the Papagayo ruling can co-exist with the ruling in the Samo case.

B. The case of *People v. Domingo Tan*[29] in the Court of First Instance: An analysis —

In 1958 the accused negotiated several letters of credit with the Bank of America to import cartons of milk. When they arrived, he executed corresponding trust receipts by which he was to hold the goods in trust for the said Bank but with the liberty to sell the same for the account of the Bank and to render the proceeds thereof to the Bank or to return the goods in case of failure to sell them. The accused having failed to live up to the agreement by doing neither of the alternatives, the Bank brought suit. Relying heavily on the Papagayo case and on the original Spanish text of the Revised Penal Code, the judge acquitted the accused.

From the Papagayo decision, the Court quoted twice from the syllabus. One was about the nature of the transaction.

> "31. *Failure of accused to live up to the terms of trust receipt, not estafa.* — The failure of the accused to live up to the terms of the transaction entered betwen him and the Philippine National Bank, as set forth in the three trust receipts, could not give rise to a criminal action. *Such transaction partakes more 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,*

[28] See footnotes 23 & 24, *supra*.

[29] Criminal Case No. 54430-3, CFI Manila, Branch II, March 12, 1962. The cases of People v. Aparato Crim. Case No. 63892, CFI Manila, Branch XVIII, March 26, 1965 and People v. Villarama, Crim. Case No. 84055, CFI Manila, Branch XVIII, Feb. 2, 1967 involved similar transactions and the same judge rendered decisions of acquittal based also on the reasons mentioned in the Tan decision.

there is no estafa in case of failure on the part of the latter to live up to the terms of the agreement (US v. Tan Tek, 15 Phil. 358). *Such failure only gives rise to a civil action.* (CA-People v. Papagayo, 51 O.G. 199, Jan., 1955, CA-July 2, 1954; 8 Velayo's Digest 154.)" (Italics supplied)

This however could not have been taken by the Court of Appeals to set a principle of law. For when it was faced with the doctrine laid down in the Yu Chai Ho case, the Court only chose to distinguish the cases. Of the Yu Chai Ho case, it said:

"The intention, therefore, to *defraud and abuse the confidence of the bank* in that case and to *convert or misappropriate the proceeds* of the sale of the imported articles covered by the trust receipt was evident."

On the other hand, it said of the Papagayo case:

"The intention therefore, of the Philippine National Bank to *consider the transaction as an ordinary bank operation* and not to hold the appellant strictly to the letter of the trust receipts is evident."

And continuing, it said:

"Hence, while *conviction was proper in that case* (the Yu Chai Ho case), it is *not in the case at bar* (the Papagayo case), where the intention of the parties at the time the transaction was entered into, as confirmed by their subsequent acts, was *apparently to hold the defaulting party only civilly liable.*" (Italics supplied).

Therefore, while it may be true that there is no estafa in some classes of bank operations where the bank relies on the commercial credit of the customer, it does not necessarily follow that breach of trust receipts can never constitute the crime of estafa. As can be deduced from the Papagayo decision, much depends on the intentions of the Bank. A conviction of estafa therefore may still be "proper".

The other quotation from the Papagayo decision was about the liability of the maker if he should fail to return the goods and/or the proceeds.

"The mere failure to return or deliver the value of the things received under such circumstances, or the mere delay in the fulfillment of the trust, or mere negligence on the part of the agent which enable another to benefit from the transaction to the prejudice of the owner, *only involves civil liability and does not constitute the crime of estafa, unless the commission agent has misappropriated or appropriated* to his own use and benefit the goods or the value thereof, or conspired or connived with the party who actually committed the misappropriation. (U.S. v. Bleibel, 34 Phil. 227; People v. Nepomuceno, 46, G. 6128)." (Italics supplied).

Attention should be focused on the phrase "unless the commission agent has misappropriated or appropriated . . ." This was what let

Papagayo free. But had misappropriation by Papagayo been proven, would the decision have been the same?

The Court of Appeals in the same case examined a breach of trust receipt in the light of the elements of estafa. This was the conclusion:

> "The presence in the instant case of the first three elements above referred to is clear."[30]

The only missing element then was misappropriation which was not proven. But had it been proven, all the elements would have been present, and necessarily decision would have been for a conviction.[31]

This was echoed in the Tan decision:

> The Court is of the considered opinion that even assuming for the sake of argument, that a transaction involving a trust receipt as in the case at bar, a merchant could *perhaps be held criminally liable only if conversion is established.*" (Italics supplied)

Thus, instead of providing a basis for the Tan decision, the quotations from the syllabus of the Papagayo decision only showed how inapplicable it was to the Tan case.[32]

The other reason for this decision, i.e., that a trust receipt could not be deemed included within the article on misappropriation was

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[30] In the preceding paragraph, this was what the Court of Appeals had said:

> "The Supreme Court and this Court has (sic) held in past decisions that there are four essential elements in the crime of estafa defined in the above quoted codal provision, namely: (a) that the accused should have received the thing and not taken it from the owner thereof; (b) that the thing received be personal property susceptible of appropriation; (c) that the thing be received for safekeeping or on commission, or for administration, or under any other obligation involving the duty to make delivery or return the same; and (d) that there be misappropriation or conversion by the accused of the thing received to the prejudice or injury of another (U.S. v. Sevilla, 43 Phil., 186; People v. Nepomuceno, 46 Off. Gaz., 6128)."

[31] This also seems to be the conclusion of the Supreme Court when faced with the Papagayo decision. In Samo v. People, where all the elements were present, conviction was upheld, and in disposing of the contention of the applicability of the Papagayo decision, the Court said:

> "Besides, the acquittal of the defendant in said case Papagayo case) was due to the absence of evidence 'that the appellant received personally the several treasury warrants . . . and personally applied such amounts, or part thereof to his personal benefit'. . . . The facts therein involved, therefore are not the same as the ones established in the cases before us."

[32] In Samo v. People, *supra,* the Supreme Court has made an implication as to the significance of the Papagayo decision. The Court said:

> "Lastly, the petitioner relies heavily upon the decision of the Court of Appeals in People v. Papagayo, CA-G.R. No. 9456-R. Said decision is not binding on us."

It is interesting to note that the Court did not even say whether the Papagayo decision could be of any persuasive effect.

that the Spanish "en deposito" has a fixed legal meaning which does not include the right to dispose, a right given in a trust receipt.

The original Spanish text provided:

> "(b) Apropriandese o distrayen de, en perjuicio de otro, efectos o cualquiera otra cosa mueble que habiere recibido en deposito, comision o administracion o por otro titulo que produzca obligacion de entregarla o devolverla, aunque dicha obligacion estuviese afianzada total o parcialmente, o negando haberla recibido."

The court conceded, however, that if the English text where to be followed, trust receipts would surely be included. However, since the Spanish text is controlling as far as the Revised Penal Code is concerned, the act done by the accused could not fall within the provision.

A thing, however, may be said to have been received by a person "in trust" when it was committed to him with a certain confidence regarding his care, use, or disposal of it.[33] The words "care, use, or disposal" can surely encompass the duties of the maker of the trust receipt as regards the goods. And while "deposit" may not be deemed to include the right to sell and dispose, the interpretation which includes the word "disposal" shows that this may be so done if the contract provided for it.

The court made no mention of the contract coming within the purview of the term "in commission". And yet a thing is said to have been received "on commission" when the person who received it has been given authority to act for or on behalf of the giver with respect to such thing.[34] In view of this, the goods may be construed to have been given "on commission", for the maker is given authority to act for or on behalf of the bank, that is, to sell the goods and/or account for them. It may be argued that the Bank is not in a position to buy and sell merchandise, that the act of owning the goods is *ultra vires* because of lack of authorization by its charter to engage in the buying and selling of merchandise and thus, it cannot give any person the authority to do what it is not allowed to do.[35] Against this argument it may be answered that the corporation is allowed to "enter into any obligation or contract essential to the proper administration of its corporate affairs or necessary for the proper transaction of business or accomplishment of the purpose for which the corporation was organized.[36] The General Banking Act also recognizes this power as it provides:

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[33] Francisco, *op. cit., supra footnote* 17 at p. 1109.

[34] *Ibid.*

[35] The principal must have the capacity to do the act before he can delegate it to an agent. 5 Tolentino, "Civil Code of the Philippines," (1959 ed.) 342, citing 4 Colin and Capitant 852.

[36] Rep. Act No. 1459, The Corporation Law, Sec. 13 (a) (1906).

> "Sec. 21. A commercial banking corporation, in addition to the general powers incident to corporations shall have all such powers as shall be necessary to carry on the business of commercial banking . . ."

Surely, the helping of businessmen and lending of money are included in its purposes and the transactions of the letter of credit and trust receipt are necessary sometimes to help and lend money to businessmen in the importing business.

The judge also rejected the contention that the defendant's obligation is covered by the phrase "o por otro titulo que produzca obligacion de entregarla o devolverla", reasoning that the law refers only to the delivery or return of the goods or property delivered to and received by the defendant and not to the proceeds of the sale of the goods delivered. This phrase "under any other obligation involving the duty to make delivery of or to return the same "refers to civil obligations such as commodatum, pledge, solutio indebiti and others."[38] But it "may also originate in relations like that of principal and agent."[39] If this is so, how can the agency be carried out if the proceeds of the sale of the goods cannot be delivered to the principal? Moreover, as regards the duty to deliver or return the same, the contract contains an alternative, i.e., either to return the goods or to account for the proceeds thereof.

As a trust receipt is peculiar in its nature, so too is a breach of it.

It may be like any breach of contract, in that it works to the disadvantage of one due to the failure of the other. And yet a breach of a trust receipt is something else. A look at the transaction again shows the foundation on which a trust receipt rests. It is the trust, the confidence which the Bank has in the maker that there would be a correct accounting for the goods. When the maker therefore, does the contrary and misappropriates the proceeds of the sale, the Bank is not merely prejudiced. More than that, the trust and confidence which the Bank had in the maker, are abused. This is what differentiates it from just any breach of contract. And this abuse of confidence also is a charcteristic of this kind of estafa. Here the law disregards even fraudulent intent and instead holds that abuse of confidence is sufficient.[40]

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[37] Rep. Act No. 337 (1948).

[38] Francisco, *op. cit. supra* footnote 17 at p .1105.

[39] 2 AQUINO, THE REVISED PENAL CODE 1467 (1961 ed.). Guzman v. Court of Apeals, 52 O.G. 5160 (Sept. 15, 1956) held that misappropriation by a sales agent of the proceeds of the sales of merchandise entrusted to him is estafa. Also in U.S. v. Reyes 36 Phil. 791 (1917), U.S. v. Lim 36 Phil. 682 (1917), People v. Leachon 56 Phil. 731 (1932).

[40] Francisco, *op. cit. supra* footnote 17 at p. 1102.

Herein also fits the breach of trust receipt. The abuse of confidence completes the commission of estafa.

III. PROBLEM OF STARE DECISIS

Article 8 of the New Civil Code provides: "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." This however does not mean that judicial decisions are conclusively binding because they may well have persuasive effect only.[41] These decisions can and should be disregarded when a necessity for so doing arises[42] as when an error has been committed or a previous rule is no longer applicable. Otherwise the law "would be sapped of its life blood if stare decisis were to become a god instead of a guide."[43]

In the words of the Court:[44]

> "The principle of stare decisis does not mean blind adherence to precedence. The doctrine or rule laid down, which has been followed for years, no matter how sound it may be, if found contrary to law, must be abandoned. . . . The duty of this Court is to forsake and abandon any doctrine or rule found to be in violation of the law in force."

The decision of a Court of First Instance refusing to follow the rulings of the Supreme Court on criminal liability for breach of trust receipt, raises the question: Does the Court of First Instance have the capacity to take the initiative of reversing a ruling of the Supreme Court, after considering it erroneous, even if the Supreme Court has not had the opportunity of re-examining and reversing it?

The Supreme Court has held that "only the decisions of this Supreme Court make jurisprudence or doctrines in this jurisdiction."[45] This has led one commentator to hold that "decisions of subordinate courts are only persuasive in nature and can have no mandatory effect."[46] Another author has held that the decisions of the Supreme Court are binding on all subordinate courts and that de-

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41 Gamboa, "An Introduction to Philippine Law", p. 14, 1955 ed.

42 Tan Chong v. Secretary of Labor and Lam Swee Sang v. Commonwealth, 79 Phil. 249 (1947) where the theory of "jus soli" was abandoned.

43 Pascual, "Legal Method", p. 43, 1956 ed., citing Fox v. Snow, 76 A. 2d 877, 883 (1950).

44 Tan Chong v. Sec. of Labor & Lam Swee Sang v. Commonwealth, *supra* at p. 257.

45 Miranda et al. v. Imperial, 77 Phil. 1066 at 1073 (1947).

46 1 Paras, "Civil Code of the Philippines Annotated", p. 26, 1959 ed.

cisions of an inferior court are not binding on coordinate and subordinate courts.[47]

It therefore appears that as to rulings which have been made by the Supreme Court, lower courts have no recourse but to apply them until the Supreme Court itself reverses these rulings. The only leeway given to these lower courts is to make rulings on issues which the Supreme Court has not yet touched. And until such a ruling is accepted by the Supreme Court to be a doctrine, it may only serve as a juridical guide.[48] Otherwise, if all the inferior courts make their own interpretation or decide that a change should be made, then disorder will result as each judge can always try to justify his stand. This is what the Supreme Court is trying to avoid by being the only tribunal which can make rulings which will bind others.

Bearing this discussion in mind, it is seen that a decision of a lower court contrary to rulings made by the Supreme Court on the same subject is not regular.

But then the effect of such a decision is of the highest importance in cases involving breach of trust receipt, both to the Bank and to the accused. This is so because, notwithstanding any rulings of the Supreme Court as regards the criminal liability for estafa for breach of trust receipt, when a Court of First Instance chooses to disregard such rulings and acquits the accused, the case is ended there. No appeal is allowed for that would be placing the accused in double jeopardy, in violation of both the Rules of Court[49] and the Constitution.[50] The only remedy then which would be left for the Bank is a civil action for breach of contract.[51] The result is a change in the relationship of the parties, from a feeling of confidence to that of cau-

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[47] Gamboa, *op. cit. supra* footnote 41 at p. 14

[48] Miranda et al. v. Imperial *supra* at p. 1073.

[49] New Rules of Court, Rule 117, Sec. 9 provides: "When a defendant shall have been convicted or acquitted or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the defendant has pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information."

[50] Philippine Constitution Art. III Sec. 1 (20) provides: "No person shall be twice put in jeopardy of punishment for the same offense. . . ."

[51] Philippine National Bank v. Catipon, 98 Phil. 286 (1956) where it was held that one acquitted of the crime of estafa can nevertheless be held civilly liable.

tion. Trust receipts will be transacted under a shadow of suspicion and its purpose and efficacy greatly impaired.[52]

IV. NEED FOR AN AMENDMENT

Undoubtedly, the provision on estafa is inadequate. Conflicts of opinion have come up as to its applicability to breach of trust receipts. And these conflicts have resulted not only in shaking the foundation of the doctrine of *stare decisis*. They have affected the business community, banks, in particular, which have lost thousands of pesos because of breaches of trust receipts and left with one remedy less. The security relationship has been greatly weakened. There should be, therefore, an immediate amendment of the law to make these transactions more stable.

Article 315 (1) (b) should be amended to read as follows:

> "(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 TRUST RECEIPT, or under any obligation involving the duty to make the delivery of or to return the same OR THE PROCEEDS THEREOF, even though such obligation be totally or partially guaranteed by a bond OR ANY OTHER SECURITY; or by denying having received such money, goods, or other property."

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[52] Even the Tan decision mentioned possible effects:
"The Court is well-aware of the possible adverse effects that its rulings may have on business practices." And "the Bank may have to restrict and merchants may find difficulty in obtaining credit . . ." The judge however, stated that the maxim "dura lex sed lex" this way: "Nevertheless, it is a principle that one cannot include what is not included nor make an act criminal when not so intended by the law."