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[G.R. No. 3120. December 29, 1906]

BRYAN, LANDON CO., PLAINTIFF AND APPELLANT, VS. THE AMERICAN BANK ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

The complaint, all of the allegations of which were admitted by the answer, states in substance that on the 19th day of April, 1905, the plaintiff purchased from the American Bank a document of which the following is a copy: "$4,000.

"AMERICAN BANK,

"Manila, P. I., *April 19,1905.*

"Pay to the order of K. 11. Landon Four Thousand Dollars.

"To First National Bank, San Francisco.

"IT. B. MULFORD, *Cashier.*

"No. 291."

That on the 19th day of April, 1905, the plaintiff paid
for this document $4,000, United States currency; that on the 18th'of May, 1905, the American Bank was closed by the order of the Government and the defendant Branagan, the Insular Treasurer, was appointed its receiver for the purpose of settling its affairs and paying its creditors; that on the 2tith of May, 1905, the above document or check was duly presented for payment to the First National Bank of San Francisco, which payment was refused and the check duly protested for nonpayment; that between the 19th day of April,

1905, and the 26th day of May, 1905, including that day, the San Francisco bank had in its possession funds belonging to the American Bank more than sufficient to pay the draft, and that after the 26th day of May said funds were transmitted to the defendant Branagan, as receiver aforesaid, and were at the time the action was commenced in his possession.

The theory of the plaintiff is that the purchase of this check on the 19th day of April, 1905, operated as an equitable assignment of so much money then in the hands of the San Francisco bank to the credit of the American Bank. The court below rejected this theory and held that the plaintiff stood as a general creditor of the bank and was not entitled to any preference in the distribution of its assets. Against a judgment entered to this effect the plaintiff has appealed.

The question presented by the appeal is whether a check like the one in question operated as an equitable assignment of so much money in the hands of the San Francisco bank, which equitable assignment could be enforced by the plaintiff against the American Bank and its receiver and other creditors.

The decisions of the Supreme Court of the United States are, of course, binding upon this court. That that court has passed upon this question adversely to the appellant is demonstrated by an examination of its decisions. In the case of Ladede Bank *vs*. Schuler (120 U. S., 511) the court said, at page 515:

> "Apart from this matter, it is not easy to see any valid reason win7 the assignment of an insolvent debtor, for the equal benefit of all his creditors, and all his property, does not confer on those creditors an equity equal to that of the holder of an unpaid check upon his banker. The holder of this check comes into the distribution of the funds in the hands of the assignee for his share of those funds with other creditors. The mere fact that he had received a. check, a few days before the making of the assignment, on the bank, which had not been presented until after the general assignment was made and the bank notified, does not seem, in and of itself, to give any such superiority or right. The assignment was complete and perfect, and vested in the assignee the right to all the property of the assignor immediately upon its execution and delivery, with due formalities, to the assignee, and the check of this assignee, like the check of Israel & Co., could have been paid by the bank with safety, if first presented. The check given by the same assignor a few days before was only an acknowledgment

> of a debt by that assignor, and became no valid claim upon the funds against which it was drawn until the holder of those funds was notified of its existence. This, we think, is the fair result of the authorities on that subject."

In the case of Florence Mining Co. *vs*. Brown (124 U. 8., 385) the court said, at page 301:

> "An order to pay a particular sum out of a special fund can not be treated as an equitable assignment *pro tanto* unless accompanied with such a relinquishment of control over the sum designated that the fund holder can safely pay it, and be compelled to do so, though forbidden by the drawer. A general deposit in a bank is so much money to the depositor's credit; it is a debt to him by the bank, payable on demand to his order, not property capable of identification and specific appropriation. A check upon the bank in the usual form, not accepted or certified by its cashier to be good, does not constitute a transfer of any money to the credit of the holder; it is simply an order which may be countermanded, and payment forbidden by the drawer at any time before it is actually cashed. It creates no lien on the money, which the holder can enforce against the bank. It does not of itself operate as an equitable assignment."

In the case of the Fourth Street Bank *vs*. Yardley (165 U. S., 034) the court said, at page 643:

> "It is also settled that a check, drawn in the ordinary form, does not, as between the maker and payee, constitute an equitable assignment pro tmito of an indebtedness owing by the bank upon which the check has been drawn, and that the mere giving and receipt of the check does not entitle the holder to priority over general creditors in a fund received from such bank by an assignee under a general assignment made by the debtor for the benefit of his creditors. (Florence Mining Company *vs*. Brown, 124 U. S., 385; Laclede Bank *vs*. Schuler, 120 U. S., 511.)"

In this last case it is true that the court found from all the circumstances that there had been an equitable assignment in favor of the Fourth Street Bank of the money in the hands of the New York Bank on which the check then in question was drawn, but this holding was

based expressly upon the unusual and extraordinary circumstances in that particular case and upon the fact that in addition to the execution and delivery of the check by the Keystone Bank, there was a contract made between the Keystone Bank and the Fourth Street Bank at the time of such delivery, the effect of which, as the court held, was to assign the funds in the hands of the New York Bank to the Fourth Street Bank. In the case at bar nothing of that kind appears. The only allegations are that the check was bought and paid for. There is no allegation that there was any other contract or agreement between the American Bank and the plaintiff other than that indicated by the check.

These decisions of the Supreme Court of the United States are not based, as seems to have been suggested in the argument, upon the provisions of the National Banking Act, but upon the general principles of commercial law applicable to such transactions.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and *Tracey, JJ.,* concur.

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