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**[ G.R. Nos. 18751 & 18915. September 26, 1922 ]**

**THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS. BARTOLOME PICORNELL ET AL., DEFENDANTS. BARTOLOME PICORNELL, APPELLANT.**

**[No. 18915. September 26, 1922]THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS. BARTOLOME PICORNELL ET AL., DEFENDANTS. JOAQUIN PARDO DE TAVERA, APPELLANT.**

## **D E C I S I O N**

### **ROMUALDEZ, J.:**

In a decision rendered January 9, 1922, and amended by an order of February 18th next, the Court of First Instance of Manila sentenced the defendants to pay solidarily to the plaintiff bank the sum of P28,790.72 with interest at the rate of 9 per centum per annum from May 3, 1921, and costs; and the defendant Bartolome Picornell, to pay said plaintiff the sum of P10,739.11 with interest at 9 per centum per annum, all as aforesaid, deducting the sum of P6,708.82 from such amounts to be paid by the defendants.

This total sum which the defendants are required to pay represents the value of a bill of exchange drawn by Bartolome Picornell in favor of the National Bank, plaintiff, against the firm of Hyndman, Tavera & Ventura, now dissolved, its only successor being the defendant Joaquin Pardo de Tavera. The sum of P6,708.82, which the trial court ordered deducted from the value of the bill of exchange, is the proceeds received by the bank from the sale of a part of a certain quantity of tobacco shipped by Picornell at Cebu to the Hyndman, Tavera & Ventura company at Manila, the price of which, together with his commission, was received by him from the branch of the-plaintiff bank in Cebu, and in consideration whereof he drew the bill in favor of the central office of said bank in Manila and against the said Hyndman, Tavera & Ventura company, the consignee of the tobacco.

The P28,790.72, which the defendants are sentenced to pay solidarily to the plaintiff bank, constitutes the value of the tobacco at the date when the bill fell due, as appraised for the

purpose.

The reasoning of the trial court for fixing the respective responsibilities of the defendants is given in its decision and is as follows:

” \* \* \* The defendant Pardo de Tavera, successor to Hyndman, Tavera & Ventura, by his having accepted the bill and denied payment thereof, notwithstanding the existence of a consideration which is the real value of the tobacco, and the defendant Picornell by his having drawn such bill and received its value from the branch of the plaintiff bank in Cebu, became liable upon the same bill, the defendant Picornell to its full value, and the defendant Pardo de Tavera to the extent of the value of the tobacco.

From this judgment the defendants appealed.

Joaquin Pardo de Tavera alleged that the bill in question was without consideration and that judgment should not have been rendered against him. The appellant Picornell contended that it should have been taken into account that he merely acted as an agent of Hyndman, Tavera & Ventura in all these transactions; that the tobacco was not of inferior quality, as alleged by the said company; that the condition “D/P” attached to the transaction was not modified; that he had the right to complain because the bank consented to the said company taking possession of the tobacco before the payment of the bill; that the bank held the tobacco as a deposit; that the bank was not authorized to sell the tobacco, said sale not being allowed either by law or by the circumstances; that he should not have been ordered to pay the value of the bill without proof that he was notified of its dishonor, as required by section 89 of the Negotiable Instruments Law.

The appellee bank maintains that the appellants have no right to discuss issues of fact in this instance for not having complied with the requirements enumerated in paragraph (a) of Rule 16 of the Rules of the Courts of First Instance. The rule cited refers to special proceedings. Moreover, we believe that the necessary requirements in order that this court may pass upon questions of fact have been complied with by the appellants.

The following facts are proved: That Bartolome Picornell, following instruction of Hyndman, Tavera & Ventura, bought in Cebu 1,735 bales of tobacco; that Picornell obtained from the branch of the National Bank in Cebu the sum of P39,529.83, the value of the tobacco,

together with his commission of 1 *real per quintal* (according to stipulation Exhibit 4), having, in turn, drawn the following bill of exchange, Exhibit A:

CEBU,  
"No.28 For  
2-A. *febrero*, P39,529.83  
1920.

"At *treinta* (30) days sight please pay this first of exchange (*second* unpaid) to the order of *Philippine National Bank treinta y nueve mil quinientos veintinueve pesos con 83/100. Value received.*

"To Sres. HYNDMAN, TAVERA  
Y VENTURA,  
"Calle Soler 26 y 28.  
(Sgd.) "B. Picornell"

This instrument was delivered to the branch of the National Bank in Cebu, together with the invoice and bill of lading of the tobacco, which was shipped in the boat *Don Ildefonso*, on February 27, 1920, consigned to Hyndman, Tavera & Ventura at Manila. The invoice and bill of lading were delivered to the National Bank with the understanding that the bank should not deliver them to Hyndman, Tavera & Ventura except upon payment of the bill; which condition was expressed by the well-known formula "D/P" (documents for [against] payment).

The central office of the National Bank in Manila received the bill and the aforesaid documents annexed thereto; and on March 3, 1920, presented the bill to Hyndman, Tavera & Ventura, who accepted it, stating on the face thereof the following:

"Accepted, 3d March, 1920. Due, 2d April, 1920. Hyndman, Tavera & Ventura, by (Sgd.) J. Pardo de Tavera, member of the firm."

The tobacco having arrived at Manila, the firm of Tam-bunting, owner of the ship *Don Ildefonso*, that brought the shipment, requested Hyndman, Tavera & Ventura to send for the goods, which was done by the company without the knowledge of the National Bank which retained and always had in its possession the invoice and bill of lading of the tobacco, until it presented them as evidence at the trial.

Hyndman, Tavera & Ventura proceeded to the examination of the tobacco, which was deposited in their warehouses, and wrote and cabled to Bartolome Picornell, notifying him that of the tobacco received, there was a certain portion which was of no use and was damaged. To these communications, Picornell answered, sending the following letter:

“CEBU, March 13, 1920.  
“MESSRS. HYNDMAN,  
TAVERA & VENTURA,  
“Manila.  
“TABACO

“Dear Sirs: Your letters of the 3d and 9th, and your telegram of the 5th, inst. received, and the sample of tobacco sent through the captain of the boat *Don Ildefonso*.

“I wired to the seller asking him to come over and I hope he will do so at the first opportunity.

“It would be well that you should inform me of the exact number of bales deteriorated and useless, and if possible that said information should be furnished by the Bureau of Internal Revenue. Moreover, it would be well also that you should not sell any bale of said shipment until the matter is settled.

Yours very  
truly,

(Sgd.) “B.  
PICORNELL”

Through these communications, therefore, Picornell learned that Hyndman, Tavera &

Ventura had in their possession the tobacco aforementioned.

In view of the question raised by the said company as to the quality of the aforesaid tobacco, more correspondence was exchanged between the company and Picornell, who, upon the suggestion of the former, wrote on March 26, 1920, this letter:

“Messrs.  
PHILIPPINE  
NATIONAL BANK,  
“Cebu.

“Dear Sirs : I would be obliged to you if you would wire your central office at Manila to extend thirty days the time for payment of the bill for P39,529.83 against Messrs. Hyndman, Tavera & Ventura of Manila. “Awaiting your favor, I remain,

“Yours  
very  
truly,

(Sgd.) “B.  
PICORNELL”

The bank granted this’ request of the defendants; wherefore Hyndman, Tavera & Ventura reaccepted the bill in the following terms:

“Accepted for thirty days. Due May 2d, 1920. Hyndman, Tavera & Ventura, By (Sgd.) J. Pardo de Tavera, member of the firm.” May 2, 1920, arrived and the bill was not paid. On the 4th of the same month, Hyndman, Tavera & Ventura sent a letter to the plaintiff bank as follows:

“DEAR SIR: We very much regret to have to inform you that we absolutely refuse to pay draft No. 2 for thirty-nine thousand five hundred and twenty-nine pesos and eighty-three cents (P39,529.83), referring to 1,871,235 quintals of Leaf Tobacco Barili, owing to noncompliance of the contract by the drawer.

“We, therefore, beg to notify you that the said Leaf Tobacco is at the disposal of

your goodselves at our go-down No. 26-36 Calle Soler.”

The bank protested the bill, took possession of the tobacco, and had it appraised on the 12th of the same month, its value having been fixed at P28,790.72. That this valuation was just, reasonable and exact is not questioned by the parties.

The bank brought this action, and about September, 1921, sold the tobacco, obtaining from the sale P6,708.82.

This action is for the recovery of the value of the bill of exchange above-mentioned. The Hyndman, Tavera & Ventura company accepted it unconditionally, but did not pay it at its maturity; wherefore its responsibility, or that of its successor, J. Pardo de Tavera, to pay the same, is clear. (Sec. 62, Negotiable Instruments Law.)

The question whether or not the tobacco was worth the value of the bill, does not concern the plaintiff bank. Such partial want of consideration, if it was, does not exist with respect to the bank which paid to Picornell the full value of said bill of exchange. The bank was a holder in due course, and was such for value full and complete. The Hyndman, Tavera & Ventura company cannot escape liability in view of section 28 of the Negotiable Instruments Law.

“\* \* \* The drawee by acceptance becomes liable to the payee or his indorsee, and also to the drawer himself. But the drawer and acceptor are the immediate parties to the consideration, and if the acceptance be without consideration, the drawer cannot recover of the acceptor. The payee holds a different relation; he is a stranger to the transaction between the drawer and the acceptor, and is, therefore, in a legal sense a remote party. In a suit by him against the acceptor, the question as to the consideration between the drawer and the acceptor cannot be inquired into. The payee or holder gives value to the drawer, and if he is ignorant of the equities between the drawer and the acceptor, he is in the position of a bona fide indorsee. Hence, it is no defense to a suit against the acceptor of a draft which has been discounted, and upon which money has been advanced by the plaintiff, that the draft was accepted for the accommodation of the drawer. \* \* \*” (3 R. C. L., pp. 1143, 1144, par. 358.)

As to Bartolome Picornell, he warranted, as drawer of the bill, that it would be accepted

upon proper presentment and paid in due course, and as it was not paid, he became liable to the payment of its value to the holder thereof, which is the plaintiff bank. (Sec. 61, Negotiable Instruments Law.)

The fact that Picornell was a commission agent of Hyndman, Tavera & Ventura, in the purchase of the tobacco, does not necessarily make him an agent of the company in its obligations arising from the drawing of the bill by him. His acts in negotiating the bill constitute a different contract from that made by his having purchased the tobacco on behalf of Hyndman, Tavera & Ventura. Furthermore, he cannot exempt himself from responsibility by the fact of his having been a mere agent of this company, because nothing to this effect was indicated or added to his signature on signing the bill. (Sec. 20, Negotiable Instruments Law.)

The fact that the tobacco was or was not of inferior quality does not affect the responsibility of Picornell, because while it may have an effect upon the contract between him and the firm of Hyndman, Tavera & Ventura, yet it cannot have upon the responsibility of both to the bank, upon the bill drawn and accepted as above stated.

As to the instruction "D/P" appearing on the instrument, it was not violated by the bank, which, as above stated, kept possession of the invoice and the bill of lading of the tobacco. By virtue of this circumstance, the bank had the right to deal with that tobacco as a security in case of non-payment of the bill, and this was admitted by Hyndman, Tavera & Ventura when, upon their refusal to pay the bill, they placed the tobacco at the disposal of the bank.

Neither does the fact of Hyndman, Tavera & Ventura having been given possession of the tobacco before the payment of the bill affect the liability of the defendants to the bank thereon.

The title of the bank to the tobacco in question by reason of the condition "D/P" was that of a pledgee, and its possession after its delivery to it by Hyndman, Tavera & Ventura was of the same nature—a discount security, which it was authorized to accept and retain. (Act No. 2938.)

The appellants question the power of the bank to sell, as it did, the tobacco in question. Taking into account the circumstances of the case, we hold that the bank did not violate the law in making such sale without notice. We hold that it is one of those cases provided for by law (sec. 33, Act No. 2938), wherein a previous notice of the sale is not indispensable. Besides, as to the price obtained in the sale, no question is made that it was the best

obtainable.

Concerning the notice to Picornell of the dishonor of the bill, it appears from Exhibit C, which is the protest for the non-payment thereof, that a copy of such protest was sent by mail in good season addressed to Bartolome Picornell, the presumption, now conclusive, that the latter received it (secs. 105, 106, Negotiable Instruments Law), not having been rebutted, or at least, contradicted.

Upon the non-payment of the bill by the drawee-acceptor, the bank had the right of recourse, which it exercised, against the drawer. (Sec. 84, Negotiable Instruments Law.)

The drawee, the Hyndman, Tavera & Ventura company, or its successors, J. Pardo de Tavera, accepted the bill and is primarily liable for the value of the negotiable instrument, while the drawer, Bartolome Picornell, is secondarily liable. (3 R. C. L., pp. 1144, 1145.) However, no question has been raised about this aspect of the responsibility of the defendants.

We are of the opinion that the appellants are liable to the National Bank for the value of the bill of exchange Exhibit

A, deducting therefrom P6,708.82 the proceeds of the sale of the tobacco. But the bank, not having appealed from the judgment of the lower court, we cannot alter it in favor of said party, which, by its omission to appeal, has shown full conformity with the judgment rendered.

For the foregoing, the judgment appealed from is affirmed, with costs against the defendants. So ordered.

*Araullo, C. J., Street, Malcolm, Avancena, Villamor, Ostrand, and Johns, JJ., concur.*

*Judgment affirmed.*