44 Phil. 511

[G.R. No. 19397. February 16, 1923]

ASIA BANKING CORPORATION, PLAINTIFF AND APPELLANT, VS. TEN SEN GUAN Y SOBRINOS AND YU BIAO SONTUA, DEFENDANTS AND APPELLEES.

D E C I S I O N

STATEMENT

Plaintiff alleges that it is a foreign corporation duly licensed to do a banking business in the City of Manila. That the defendant is a duly registered partnership with its principal office in the City of Manila and is indebted to it in the sum of $10,475.51, with interest and exchange, for and on account of a New York draft for that amount drawn by "Snow's, Ltd." on Ten Sen Guan payable ninety days after sight That the draft was duly endorsed, and that the plaintiff is the owner and holder of it in due course of business. That demand therefor has been made and payment refused. Wherefore, plaintiff prays for judgment against the defendants for the amount of the draft, with interest thereon at the rate of 8 per cent per annum from May 12, 1920, to the date of payment, plus exchange at the rate of 14 per centum with costs. The complaint was filed August 4, 1921.

For answer, the defendants deny all of the material allegations of the complaint, except such as are hereinafter admitted, and, as a further and separate defense, specifically deny that they are indebted to the plaintiff in the amount alleged or in any other sum, or that the plaintiff is the holder of the draft in due course of business or for value. It is then alleged that on February 25, 1920, the defendants ordered from "Snow's, Ltd." ten cases of mercerized batiste of the value of $10,266.98 to be shipped from New York freight prepaid to Manila where they were to be delivered to the defendants. That the merchandise in question arrived in Manila about June 28, 1920, at which

time a draft for the amount alleged drawn by “Snow’s, Ltd.” against the defendants was presented to them through the plaintiff as agent of “Snow’s, Ltd.” for acceptance. That the delivery of the bill of lading and other documents relating to the merchandise was refused by the plaintiff until the draft was accepted by the defendants, and that delivery was contingent upon the acceptance of the draft. That the defendants, being assured by plaintiff, and believing that the merchandise described in the bill of lading was the “batiste” ordered, accepted the draft and received delivery of the bill of lading and made entry of the goods at the Customs House in Manila, and paid charges thereon amounting to P628.07; that when the cases supposed to contain the “batiste” were opened they were found to contain “burlap” of little value, which was not in any sense or manner the “batiste” ordered and guaranteed to be contained in the cases. That immediately the defendants declined to receive the goods and left them in the possession of the Customs authorities, and at once notified the plaintiff and returned to it the bill of lading, and demanded that their acceptance of the draft be cancelled. That plaintiff accepted the return of the bill of lading and documents, and agreed to cancel defendants’ acceptance of the draft, for the reason that it was without consideration. Wherefore, defendants pray for judgment, with costs.

The lower court found for the defendants for whom judgment was entered, and the plaintiff appeals, claiming that the court erred in failing to make any findings of fact, in dismissing the complaint, and in failing to render judgment for the plaintiff, and in the admission of parol evidence tending to vary the terms of the written acceptance of the bill of exchange, that the plaintiff had cancelled defendants’ acceptance, that defendants were released, and in the admission of certain exhibits, and the denial of plaintiff’s motion for a new trial.

JOHNS, J.:

The draft in question was endorsed by “Snow’s, Ltd.” and, with the invoice, bill of lading and other shipping documents, delivered to the plaintiff at its place of business in New York City from where and by which it was sent to its Manila branch and presented to the defendants for acceptance. At first the defendants refused to accept the draft, because the merchandise had not arrived and it had no opportunity to inspect it. It is then claimed, and, in legal

effect, the trial court found, that upon the representation of the local bank that the draft was drawn for the ten cases of mercerized batiste in question and that they would arrive, as ordered, June 28, 1920, the defendants accepted the draft, and the plaintiff now claims that they are legally bound upon the acceptance, and that parol testimony is not admissible to vary or contradict the force and effect of their legal liability as it appears upon the face of the draft. It is undisputed that the defendants placed the order with "Snow's, Ltd." for ten cases of mercerized batiste, and that the draft was drawn for the corresponding value of ten cases of mercerized batiste, including incidental expenses. That when the cases evidenced by the draft arrived and were examined, they were found to contain "burlap" only which had but little, if any, commercial value, of which the plaintiff was at once notified, and that the defendants refused to receive the goods. Plaintiff alleges that it is the holder of the draft for value and in due course of business. The testimony upon that point is not clear or convincing, and is entitled to but little weight. If it be a fact, as the plaintiff claims, that it was in good faith the purchaser of the draft, it would have been a very easy matter to establish that fact by competent evidence, showing the nature of the transaction in its New York office, when and how it acquired the draft and when and to whom it paid the money and how much it paid and by whom it was actually paid. In other words, to give an authentic account of the whole transaction. There is no such evidence in the record. Upon that point the plaintiff was content to call a local employee of the bank who testified as to the alleged meaning of certain entries made in the bank records. Standing alone that is not sufficient or competent to show that the bank in New York was the purchaser and holder for value. If it be a fact, as the evidence tends to show, that the plaintiff is not a *bona fide* holder of the draft, and that it was held for collection only, it follows that the defendants would have a right to make any defense to the draft which they would have a right to make against "Snow's, Ltd."

The trial court found and the evidence sustains the finding that the acceptance of the draft by the defendants was conditional, and that oral evidence was admissible to explain the terms and conditions of the acceptance. That would specially be true where the plaintiff held the draft for collection. It also found, in legal effect, that the plaintiff released and discharged the defendants from any liability upon the draft, and the evidence sustains that

finding. It will be noted that the original draft was dated May 12, 1920, payable ninety days after sight, and that it was accepted by the defendants on June 28, 1920, and that the complaint was filed on August 4, 1921, more than fourteen months after it was accepted and almost one year after it became due.

We are not impressed with plaintiff's case on the merits. The record indicates that in truth and in fact the plaintiff held the draft for collection; that relying upon the statements and representations of the plaintiff, the defendants conditionally accepted the draft; that immediately upon discovery of the fraud the defendants promptly notified the bank. Its then officials recognized the fraud and the conditional acceptance of the draft, and accepted the return of the papers and the "burlap," and agreed to release the defendants from all liability. There is no merit in plaintiff's claim that it is an innocent holder for value.

The judgment is affirmed, with costs. So ordered.

Araullo, C.J.,
Malcolm, Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,*
concur.

CONCURRING

STREET, J.:

The gross fraud which has come to light in this case, consisting of the sending of jute to the defendants upon a contract calling for mercerized batiste, must be imputed to the drawer of the draft in question, that is, to Snow's, Ltd., of New York City; for it must be assumed, in the absence of proof to the contrary, that the cases arriving in this port upon the documents of shipment transmitted through the bank are the same cases that were shipped from New York City by that firm. This being true, it was a fraud on the part of Snow's, Ltd., to negotiate the draft now in question to the New York branch of the Asia Banking Corporation, the plaintiff in this case.

This fraud having been set up in the defendants' answer and established by the proof, it became incumbent upon the plaintiff in this case to prove that it occupies the position of a *bona fide* purchaser of said draft for value and without notice. This requirement is not met by the presumption which the law raises in favor of the holder of a negotiable instrument, arising from the mere fact of the possession of the instrument and the form in which the document is indorsed. The plaintiff must go further and prove, as a fact, that it is such a purchaser. Proof upon this point is wanting in the record; and the judgment should therefore be affirmed, not precisely for the reasons given by the trial judge, but because the document had its inception in fraud and the plaintiff has failed to prove that it is an innocent purchaser for value and without notice. (Bills and Notes, 8 C. J., 894.)

The reason for this salutary rule given by the courts in innumerable decisions is that the guilty maker or holder of an instrument vitiated by fraud or illegality will naturally seek to put it in the hands of some other person in order to cut off the defense to which the instrument is subject, and a presumption arises against the *bona fides* of the transfer. The law therefore requires the holder of such paper to manifest the most complete candor and show exactly the circumstances under which the paper was acquired.

In section 59 of the Negotiable Instruments Law (Act No. 2031), it is declared that every holder of a negotiable instrument is deemed *prima facie* to be a holder in due course, but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. In section 55 of the same Law it is declared, among other things, that the title of a person who negotiates an instrument is defective when he negotiates it under such circumstances as amount to a fraud. These provisions are clearly applicable to the present case, and in my opinion they determine the issue against the plaintiff.

In Goetz *vs*. Bank of Kansas City (119 U. S., 551; 30 L. ed., 515), relied on by the appellant, the plaintiff bank had discounted at face value certain drafts which were accompanied by forged bills of lading. The bank was admittedly in the position of an innocent purchaser for value and without notice; and the Supreme Court of

the United States held that it could recover on the drafts against the acceptor, notwithstanding the defect in their origin. In the present case we know nothing about the circumstances under which the branch of the Asia Banking Corporation acquired the draft in question in New York City, for upon this point the indorsements tell nothing, and no independent proof relative thereto has been submitted.

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