

VICENTE HILADO, PLAINTIFF AND APPELLEE, VS. FELIX DE LA COSTA, IN HIS CAPACITY AS ACTING BANK COMMISSIONER, AND THE PHILIPPINE NATIONAL BANK, DEFENDANTS AND APPELLANTS.

G.R. No. L-150. April 30, 1949

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal by the defendants from the decision of the Court of First Instance of Manila.

Plaintiff is a depositor in current account of the defendant bank, and had a balance of P3,687.21 in his favor as of December 29, 1941. During the early part of the Japanese occupation he had been making withdrawals from said account from February 4, 1942, to February 13, 1943, leaving on this last date a balance of P578.37. No deposit was made by the plaintiff during the period from December 29, 1941, to February 13, 1943, and for that reason the withdrawals had to be taken or paid out of the said prewar balance.

On February 18, 1943 he deposited P500, and during the year 1944, he made the following deposits: P2,250 on January 7, P1,000 on February 2, P4,500 on April 13, P35,000 on April 19, and P50,000 on October 25, or a total of P93,250. From these deposits the plaintiff appellee had been making withdrawals, the last having been made on October 26, 1944, so that on December 26, 1944, he had a balance in his favor amounting to the sum of P14,444.64, which, if added to the previous balance of P578.37, make a total of P15,023.01 (Exhibit I).

Claiming that he is entitled to his entire balance of P15,023.01, and not only to that of P578.37 in Philippine currency, the plaintiff has instituted the present action in the Court of First Instance of Manila for declaratory relief in order to test the constitutionality of Executive Order No. 49, which, in its pertinent part, reads as follows:

"All deposits made with banking institutions during enemy occupation and all deposit liabilities incurred by banking institutions during the same period are declared null and void, except as provided in this section. All withdrawals made by a depositor, including liquidation payments, during the enemy occupation from balances outstanding as of the last date prior to enemy occupation shall stand as valid, and banking institutions shall be liable only for the lowest minimum balance remaining out of such balance to the credit of a depositor on the last date prior to enemy occupation and without interest beyond December 31, 1941. The term 'lowest minimum balance' shall be understood to mean the lowest level reached as of the close of any business day during the period of the enemy occupation by a deposit account or, if there be more than one deposit account, by the consolidation of all deposit accounts carried under the name of one depositor in the same bank." (Section 2, Ex. Order 49.)

The above-quoted provisions of Executive Order No. 49 contain three parts. The first is a declaration that all deposits made with banking institutions during enemy occupation and all deposit liabilities incurred by them during the same period are null and void, except as provided therein; the second provides that all withdrawals made by a depositor, including liquidation payments, during the enemy occupation from balances outstanding as of the last date prior to enemy occupation shall stand as valid, and banking institutions shall be liable only for the

lowest minimum balance remaining out of such balance to the credit of a depositor on the last date prior to said occupation; and the third or last is a definition of the term "lowest minimum balance" used therein.

In his complaint, the plaintiff impugns the constitutionality not only of the provision of the Executive Order No. 49 that declares valid the withdrawals made by a depositor, including liquidation payments during the enemy occupation from balances outstanding as of the last date prior thereto, and that banking institutions shall be liable only for the lowest minimum balance remaining out of such balance to the credit of a depositor on the last date prior to said occupation, but also that which declares null and void all deposits made with banking institutions during Japanese occupation and all deposit liabilities incurred by banking institutions during the same period except as therein provided. Consequently, the plaintiff prays that the court render judgment declaring the defendant bank indebted to plaintiff for the latter's entire credit balance as of December 26, 1944, in the amount of fifteen thousand and twenty-five (P15,025) pesos.

The lower court did not uphold the plaintiff's contention that the provision of Executive Order No. 49 that declares null and void all deposit liabilities incurred by banking institutions during the Japanese occupation is unconstitutional, and that, therefore, the defendant bank was, on December 29, 1948, and still is, indebted to the plaintiff in the sum of the latter's credit balance of fifteen thousand and twenty-five (P15,025) pesos as the plaintiff claimed. But the court declared that the defendant bank is indebted to the plaintiff in the sum of three thousand six hundred seventy-eight pesos and twenty-seven centavos (P3,678.27) which was the latter's credit balance as of December 29, 1941, on the ground that said Executive Order is null and void in so far as it validates the withdrawals during the enemy occupation from the prewar deposits, and invalidates all the deposits during the same period, except as therein provided.

The lower court held that "it can not be questioned, and it is admitted by the defendants, that the relation existing between a bank depositor and the bank is that of creditor and debtor * * *. If this is so It necessarily follows that the plaintiff became a creditor of the defendant bank for the amounts deposited by him and credited to him by the bank. In so far therefore as said Executive Order No. 49 would deprive the plaintiff of his credit or could reduce the same to the lowest minimum balance defined in said order, it would seem undeniable that said law would be depriving him of his property and impairing the obligation of contract between him and the defendant bank implied in said deposit."

This conclusion of the lower court is predicated on the following grounds:

"Whatever may be said of the Japanese Military notes, as money, that is, as representing actual gold or silver reserves, it cannot be denied that in the hands of their possessor, said military notes represented real value—the value of the property or service given in exchange for said notes; in the same manner that a promissory note or other evidence of indebtedness represents real value to the holder thereof. The Court therefore seriously doubts the reasonableness of assuming, as the Executive Order No. 49 in question evidently does, that all the deposits made during the enemy, occupation were entirely valueless. But, aside from this, it is likewise clear that, whatever can be said of the money deposited, must also hold true as to the money used by the bank in paying withdrawals during the same period, and the Court cannot see the necessity or the justice for discriminating in this connection by declaring the deposits void, but the withdrawals from pre-war deposits valid, and limiting the present liability of the banks to the so-called lowest minimum balance reached by the accounts during the enemy occupation. The Court cannot somehow bring itself to reconcile with the manifest injustice and unfairness of so allowing the banks to repudiate their deposit liabilities incurred on account of their operation during the enemy occupation, and at the same time to retain and enjoy the benefits derived therefrom. Elementary justice and equity demand, in the opinion of the Court, that those deposits and withdrawals be considered either both equally void, or both equally valid.

"Furthermore, the Court finds that the lowest minimum balance provision in question is also unjust and unfair

in its operation upon the depositors. The auditor of the defendant Bank, who took the witness-stand, admitted that, under the said provision, the validity of deposits made by prewar depositors during the enemy occupation depend entirely upon whether said deposits were made before or after the withdrawals. The Court understood his explanation to be that if two persons had deposits of P2,000 each, before the occupation, and during the occupation, one withdrew P1,000 first, and deposited the same amount afterwards; while the other deposited P1,000 first, and withdrew the same amount later on, today the first depositor will have only P1,000, while the second will still have P2,000. And yet the unerring fact stands that both had taken from and given to the Bank the same amount of money during the same period. The Court believes that any legal provision that can countenance and produce such obvious inequality and unjust result must indeed be fundamentally unsound. It is not good law. It does not certainly fulfil the requirement that 'a statute to be within this (police) power must be reasonable in its operation upon the persons whom it affects.' "

As correctly explained on the witness stand by the auditor of the defendant bank, Mr. Santiago, the term "lowest minimum balance" means that if a prewar depositor who had P5,000 to his credit deposit, deposits during the occupation P1,000 and afterwards withdraws 1,000 pesos, his lowest minimum balance would be P5,000, because his withdrawal must be taken from the deposit of P1,000 previously made during the enemy occupation. But if the prewar depositor withdraws P1,000 before making any deposit during the occupation, the lowest minimum balance would be P4,000 even if he makes a deposit of P1,000 after his withdrawal (Posadas, t. s. n. pp. 26, 27).

We are of the considered opinion, and therefore hold, that the provisions of Executive Order No. 49, do not deprive the plaintiff of his property without due process of law or impair the obligation of contract entered into between him and defendant bank; because they are but the logical corollary and application to bank deposits in Japanese war notes of Executive Order No. 25 in so far as it declares that said notes are not legal tender in territories of the Philippines liberated from Japanese occupation, the validity of which is not, and cannot seriously be, questioned.

According to universal banking practice the daily balance in a current account is ascertained by deducting the amount of the check drawn from the amount of money the drawer or depositor had deposited in the bank for that purpose, and if there is no balance in the depositor's deposit or the amount thereof is insufficient to pay his check, the latter is returned to him or not honored. The payment by a bank of the amount of a depositor's check is not a loan to the latter by the former which may be satisfied by a subsequent deposit, but a payment by the bank as debtor to the depositor as creditor, for it cannot be disputed that the relationship between a depositor and a bank is that of creditor and debtor. Such payment is valid and extinguishes so much of the obligation of the bank as is represented by the check paid or honored by the bank out of the latter's deposit, because according to the ruling in the cases of *Haw Pia vs. China Banking Corporation* (80 Phil., 602), and *Philippine Trust Co. vs. Araneta* (83 Phil., 132), a payment made by a debtor during the enemy occupation of a prewar debt or obligation with Japanese war notes and accepted by the creditor, is valid and extinguishes the former's obligation. But a deposit subsequently made by a depositor in a bank can not be considered as a payment of a debt due from the depositor to the bank, but an additional credit opened by said deposit in favor of the depositor and against the bank, and the liability of the latter for the payment of said credit upon demand after liberation has to be determined in accordance with the domestic law or rule of international law applicable to the case; because, as we shall see later on, the character of the war notes as legal tender or currency impressed by the Japanese military authorities during the enemy occupation did not and could not transcend beyond the enemy occupation or after the territory of the Philippines has been liberated from the enemy occupant. In other words, while the Japanese military occupant had authority to make the war notes legal tender or acceptable as such during the enemy occupation, it had no power to make it so or the obligation created therewith payable with the same amount of Philippine currency or legal tender after the liberation.

The lower court did not err in not declaring unconstitutional the Executive Order No. 49, in so far as it declares null and void all deposit liabilities incurred by banking institutions during the enemy occupation, except as provided in the same Order in connection with the lowest minimum balance, and consequently in not declaring that the defendant bank was indebted to the plaintiff as of December 26, 1944, in the sum of P15,023.01; but the court a quo erred and did not act logically in the sum of P3,678.27, instead of P578.37, since all of the deposits made by the plaintiff during the enemy occupation or from February 18, 1943, to October 25, 1944, were of the same nature and effect.

We have already held in the case of *Haw Pia vs. China Banking Corporation*, (80 Phil., 602) that the Japanese military occupant had the right to issue war notes as currency and order that they may be used in making payment of all kinds, due to military necessity. But such an order, being of political character, fell through as of course upon the cessation of the Japanese military occupation; because it is a well-established rule in international law that "the law made by the occupant within his admitted power, whether morally justifiable or not, will, bind any member of the occupied population as against any other member of it, and will bind as between them all and their national government, so far as it produces an effect during the occupation. When the occupation comes to an end and the authority of the national government is restored, either by the progress of operations during the war or by the conclusion of a peace, no redress can be had for what has been actually carried out but nothing further can follow from the occupant's legislation. * * *" (Westlake, *International Law*, seventh edition, p. 518; *Peralta vs. Director of Prisons*, 75 Phil., 285). Therefore, as the Japanese Military Proclamation of January 3, 1942, which declared the military war notes legal tender of the same value as the Philippine peso and acceptable as currency in payments of all kinds of obligations, ceased to be in force and effect, said war notes also ceased ipso facto to be legal tender in the territories of the Philippines liberated from Japanese occupation. And the Proclamation issued by General Douglas MacArthur on October 23, 1944, that declares null and void all laws, regulations and processes of the government established in the Philippines during the Japanese occupation, among them the said Japanese Military Proclamation of January 3, 1942, as well as Executive Order No. 25 issued by the President of the Commonwealth on November 18, 1944, which declares that the Japanese war notes are not legal tender in all territories of the Philippines liberated from Japanese occupation, are but a declaration of the aforesaid well-known rule of international law.

In view of the loss in value of the Japanese war notes after liberation, the question for this Court to determine is whether it is the plaintiff or the defendant bank that should suffer said loss, and the answer to that question depends upon the nature of the contract out of which arose the relation of creditor and debtor between them, because said relationship may arise out of a contract of loan, deposit, purchase and sale, and some other contract.

There is a conflict of opinion of the authorities in the United States as to whether a bank deposit is a loan (*Leach vs. Beazley*, 207 N. W., 376), or a transaction peculiar to the banking business (*Girard Bank vs. Bank of Penn. Twp.*, 39 Pa., 92; 80 Am. Dec., 507); but in this jurisdiction a bank deposit in current account is a transaction peculiar to the banking business, that is, a commercial deposit in accordance with article 310 of our Code of Commerce, which is still in force and provides that deposits made with the banks shall be governed in the first place by the by-law thereof, in the second place by the provision of this Code of Commerce, and finally by the rules of the said law which are applicable to all deposits. It is evident that it is a commercial deposit according to article 303 of the same Code, because the defendant bank or depositary is obviously a merchant within the meaning of article I of the Code of Commerce; the thing or money deposited is object of commerce, and the deposit of money in a bank is of itself a commercial transaction, for "it is an important part of the business of banking to receive deposits." (*National Bank vs. Millard*, U. S., 19 Law ed. p. 899.) Commercial transactions, whether or not performed by merchants and whether specified in the Code of Commerce or not, shall be governed by the provision contained in said Code, and in the absence of applicable provisions, by the commercial usages

generally observed in each place (art. 2, Code of Commerce); and current account deposits are essentially mercantile contracts governed by the provisions of the Code of Commerce (*Tan Tiong Tick vs. American Apothecaries*, 65 Phil., 414.)

Although the current account of the plaintiff in the defendant bank was carried during the enemy occupation in terms of Philippine pesos, it is an undeniable fact that the deposits made by him during the years 1943 and 1944 were made in Japanese war notes, which were given the denomination of Philippine pesos by the Japanese Military Government, for according to the defendant's answer No. 5 to plaintiff's request for admission, the genuine Philippine currency had then disappeared from circulation (Record on Appeal, p. 27) and of this fact the Court may take Judicial notice. The Japanese war notes, considered in themselves and in the light of subsequent events, had no real value but they were made current as Philippine pesos by order of the said government, and it is hardly less than absurd to say that they may be regarded as identical in kind and value with the genuine pesos of Philippine currency, which constitute the money of the Commonwealth Government now Republic of the Philippines.

It may safely be laid down as a rule that when a deposit is made with a bank or a person of notes made legal tender or currency by the military occupant of an enemy territory, and the occupation does not ripen into a conquest by the occupant because the territory is liberated and reoccupied by its legitimate government, the deposit must be considered as with specification of currency, that is, as a deposit of money made legal tender or currency by the occupant, without necessity of stating it expressly, unless there is evidence to the contrary, because it is the only kind of money or legal currency in circulation after the genuine money of the territory has disappeared from circulation, as in the present case. It should not be understood to be a general deposit without specification of currency, that is, a deposit of lawful money of the legitimate government, and it will have the same effect as if it were made with money that was legal tender or currency of a foreign country having no monetary treaty or agreement with the legitimate government; and therefore if such currency becomes valueless, the depositor shall have to suffer the loss, because the currency so deposited is exactly of the same condition and validity as that kept in the pockets or safe of the depositor.

Therefore, while it does not expressly appear that plaintiff's deposit in Japanese war notes were made with a specification of the currency deposited, the minimum requirements of justice demand that said deposits should be considered as made with an implied specification of currency, and hence article 307 of the Code of Commerce, which provides that "when the deposits consist in cash with specification of the currency constituting the same, * * * the increase or reduction in value suffered by the same shall be for the account of the depositor," is applicable to the present case.

Even if we consider *arguendo* the deposits under consideration as a loan from the plaintiff to the defendant bank, the deposit liability of the latter to the former after liberation for the credit balance of P15,023.01 as of December 26, 1944, would be less than P200 in Philippine currency, and therefore could not make up the difference between the lowest minimum balance of P578.37 and the sum of P3,678.27 in which, according to the lower court, the defendant bank is indebted to the plaintiff. Contracts stipulating for payments presumably in Japanese war notes may be enforced in our courts after the liberation to the extent of the just obligation of the contracting parties, and, as said notes have become, worthless, in order that justice may be done and the party entitled to be paid can recover their actual value in Philippine currency, what the debtor or defendant bank should return or pay is the value of the Japanese Military notes in relation to the peso in Philippine currency obtaining on the date when and at the place where the obligation was incurred, unless the parties had agreed otherwise. In the absence of evidence of the value of the Japanese war notes in terms of Philippine currency, and for the purpose of this decision, we may adopt the Ballantine scale of values for the Commonwealth (now Republic) peso in terms of the peso in

Japanese war notes during the occupation, which gives the ratio of 90 to 120 pesos in Japanese war notes to one peso in Commonwealth currency on December 24, 1944, the date of the last liquidation of the plaintiff's credit balance in the defendant bank, because from the last deposit of P50,000 made on October 26, 1944, withdrawals were made by the plaintiff until December 26, 1944, when a credit balance of P15,023.01 was left in his favor.

This finds support in the decision of the Supreme Court of the United States in the leading case of *Thorington vs. Smith*, 8 Wall. (U. S.) 1; 19 Law ed., 361, in which the question involved was whether a contract for the payment of \$10,000 in confederate notes, made during the civil war between the parties residing within the Confederate States, could be enforced in the Courts of the United States after the war, and the Supreme Court held that parol evidence could be received to determine the actual value of the confederate notes at the time and place of the contract, in lawful money of the United States; and this rule was followed without exception by the same Supreme Court in the subsequent cases of *Wilmington and W. R. N. Co. vs. King*, 91 U.S., 3, 23 Law. ed., 186; *Bissel vs. Heyward*, 96 U.S., 580; 24 Law. ed., 678, and *Effinger vs. Kenney*, 115 U.S., 556; 29 Law ed., 495; and others, in all of which the same of a similar question was involved.

The defendant bank could not enrich itself or obtain any benefit from the plaintiff's deposits with the said bank during the enemy occupation by the application or operation of Executive Order No. 49. Although, according to banking practice, current account deposits of legal currency made by depositors with a bank are, in normal times, used by the latter for paying its obligations and investing them in loans to its clients, in the present case, taking into consideration the progressive loss of value of said war notes and the considerable inflation of the value of properties which could be sold by the owner to obtain money in Japanese war notes necessary to satisfy his prime necessities, relatively few persons obtained loans or withdrew or collected their pre-war credits from banks, and large amounts of said money were deposited with them. And this is shown by the verified answers of the defendant bank to the interrogatories served by the plaintiff upon said defendant, which are transcribed on pages 21-24 of the Record on Appeal. In said interrogatories and answers it appears that the total balance of all deposits in the defendant bank as of the last date prior to Japanese occupation was approximately P78,638,238.57, and the total amount of withdrawals made during the occupation from said outstanding balances amounted only to P21,025,949.60; while the total balance outstanding on February 2, 1945, on deposits made during Japanese occupation was P146,465,290.99 more or less, and the total amount paid to the defendant bank during said occupation on loans and other credits outstanding in favor of the bank as of the last date prior to Japanese occupation was approximately P37,677,635.50. And the total amount of Japanese war notes held by the defendant bank on February 2, 1945, was P27,910,593.85, plus the total sum of P138,966,211.34, invested in bonds of the puppet Republic of the Philippines, in deposits with the Japanese reserve bank (Southern Development Bank), and in loans and credits granted to Japanese firms and individuals, and other investments considered valueless by the defendant bank.

Wherefore, the judgment of the lower court is reversed and the plaintiff's action dismissed, without pronouncement as to costs. So ordered.

Moran, C.J., Paras, Pablo, Perfecto, Briones, Montemayor, and Reyes, JJ., concur.

Bengzon, and Tuason, JJ., concur in the result.

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