

**ENRIQUE P. MONTINOLA, PLAINTIFF AND APPELLANT, VS. THE
PHILIPPINE NATIONAL BANK ET AL., DEFENDANTS AND APPELLEES.***G. R. No. L-2861. February 26, 1951*

Ponente: MONTEMAYOR, J.

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In August, 1947, Enrique P. Montinola filed a complaint in the Court of First Instance of Manila against the Philippine National Bank and the Provincial Treasurer of Misamis Oriental to collect the sum of P100,000, the amount of Check No. 1382 issued on May 2, 1942 by the Provincial Treasurer of Misamis Oriental to Mariano V. Ramos and supposedly indorsed to Montinola. After hearing, the court rendered a decision dismissing the complaint with costs against plaintiff-appellant. Montinola has appealed from that decision directly to this Court inasmuch as the amount in controversy exceeds P50,000.

There is no dispute as to the following facts. In April and May, 1942, Ubaldo D. Laya was the Provincial Treasurer of Misamis Oriental. As such Provincial Treasurer he was ex officio agent of the Philippine National Bank branch in that province. Mariano V. Ramos worked under him as assistant agent in the bank branch aforementioned. In April of that year 1942, the currency being used in Mindanao, particularly Misamis Oriental and Lanao which had not yet been occupied by the Japanese invading forces, was the emergency currency which had been issued since January, 1942 by the Mindanao Emergency Currency Board by authority of the late President Quezon.

About April 26, 1942, thru the recommendation of Provincial Treasurer Laya, his assistant agent M. V. Ramos was inducted into the United States Armed Forces in the Far East (USAFFE) as disbursing officer of an army division. As such disbursing officer, M. V. Ramos on April 30, 1942, went to the neighboring Province of Lanao to procure a cash advance in the amount of P800,000 for the use of the USAFFE in Cagayan de Misamis. Pedro Encarnacion, Provincial Treasurer of Lanao did not have that amount in cash. So, he gave Ramos P300,000 in emergency notes and a check for P500,000. On May 2, 1942 Ramos went to the office of Provincial Treasurer Laya at Misamis Oriental to encash the check for P500,000 which he had received from the Provincial Treasurer of Lanao. Laya did not have enough cash to cover the check so he gave Ramos P400,000 in emergency notes and a check No. 1382 for P100,000 drawn on the Philippine National Bank. According to Laya he had previously deposited P500,000 emergency notes in the Philippine National Bank branch in Cebu and he expected to have the check issued by him cashed in Cebu against said deposit.

Ramos had no opportunity to cash the check because in the evening of the same day the check was issued to him, the Japanese forces entered the capital of Misamis Oriental, and on June 10, 1942, the USAFFE forces to which he was attached surrendered. Ramos was made a prisoner of war until February 12, 1943, after which, he was released and he resumed his status as a civilian.

About the last days of December, 1944 or the first days of January, 1945, M. V. Ramos allegedly indorsed this check No. 1382 to Enrique P. Montinola. The circumstances and conditions under which the negotiation or

transfer was made are in controversy.

According to Montinola's version, sometime in June, 1944, Ramos, needing money with which to buy foodstuffs and medicine, offered to sell him the check; to be sure that it was genuine and negotiable, Montinola, accompanied by his agents and by Ramos himself, went to see President Carmona of the Philippine National Bank in Manila about said check; that after examining it President Carmona told him that it was negotiable but that he should not let the Japanese catch him with it because possession of the same would indicate that he was still waiting for the return of the Americans to the Philippines; that he and Ramos finally agreed to the sale of the check for P850,000 Japanese military notes, payable in installments; that of this amount, P450,000 was paid to Ramos in Japanese military notes in five installments, and the balance of P400,000 was paid in kind, namely, four bottles of sulphathiazole, each bottle containing 1,000 tablets, and each tablet valued at P100; that upon payment of the full price, M. V. Ramos duly indorsed the check to him. This indorsement which now appears on the back of the document is described in detail by the trial court as follows:

"The endorsement now appearing at the back of the check (see Exhibit A-1) may be described as follows: The words, 'pay to the order of—in rubber stamp and in violet color are placed about one inch from the top. This is followed by the words 'Enrique P. Montinola' in typewriting which is approximately H of an inch below the stamped words 'pay to the order of. Below 'Enrique P. Montinola', in typewriting are the words and figures also in typewriting, '517 Isabel Street' and about 1/8 of an inch therefrom, the edges of the check appear to have been burned, but there are words stamped apparently in rubber stamp which, according to Montinola, are a facsimile of the signature of Ramos. There is a signature which apparently reads 'M. V. Ramos' also in green ink but made in handwriting."

To the above description we may add that the name of M. V. Ramos is handprinted in green ink, under the signature. According to Montinola, he asked Ramos to handprint it because Ramos' signature was not clear.

Ramos in his turn told the court that the agreement between himself and Montinola regarding the transfer of the check was that he was selling only P30,000 of the check and for this reason, at the back of the document he wrote in longhand the following:

"Pay to the order of Enrique P. Montinola P30,000 only. The balance to be deposited in the Philippine National Bank to the credit of M. V. Ramos."

Ramos further said that in exchange for this assignment of P30,000 Montinola would pay him P90,000 in Japanese military notes but that Montinola gave him only two checks of P20,000 and P25,000, leaving a balance unpaid of P45,000. In this he was corroborated by Atty. Simeon Ramos Jr. who told the court that the agreement between Ramos and Montinola was that the latter, for the sale to him of P30,000 of the check, was to pay Ramos P90,000 in Japanese military notes; that when the first check for P20,000 was issued by Montinola, he (Simeon) prepared a document evidencing said payment of P20,000; that when the second check for P25,000 was issued by Montinola, he (Simeon) prepared another document with two copies, one for Montinola and the other for Ramos, both signed by Montinola and M. V. Ramos, evidencing said payment, with the understanding that the balance of P45,000 would be paid in a few days.

The indorsement or writing described by M. V. Ramos which had been written by him at the back of the check, Exhibit A, does not now appear at the back of said check. What appears thereon is the indorsement testified to by Montinola and described by the trial court as reproduced above. Before going into a discussion of the merits of the version given by Ramos and Montinola as to the indorsement or writing at the back of the check, it is well to give a further description of it as we shall do later.

When Montinola filed his complaint in 1947 he stated therein that the check had been lost, and so in lieu thereof

he filed a supposed photostatic copy. However, at the trial, he presented the check itself and had its face marked Exhibit A and the back thereof Exhibit A-1. But the check is badly mutilated, blotted, torn and partly burned, and its condition can best be appreciated by seeing it. Roughly, it may be stated that looking at the face of the check (Exhibit A) we see that the left third portion of the paper has been cut off perpendicularly and severed from the remaining 2/3 portion; a triangular portion of the upper right hand corner of said remaining 2/3 portion has been similarly cut off and severed, and to keep and attach this triangular portion and the rectangular 1/3 portion to the rest of the document, the entire check is pasted on both sides with cellophane; the edges of the severed portions as well as of the remaining major portion, where cut bear traces of burning and searing; there is a big blot with indelible ink about the right middle portion, which seems to have penetrated to the back of the check (Exhibit A-1), which back bears a larger smear right under the blot, but not as black and sharp as the blot itself; finally, all this tearing, burning, blotting and smearing and pasting of the check renders it difficult if not impossible to read some of the words and figures on the check.

In explanation of the mutilation of the check Montinola told the court that several months after indorsing and delivering the check to him, Ramos demanded the return of the check to him, threatening Montinola with bodily harm, even death by himself or his guerrilla forces if he did not return said check, and that in order to justify the nondelivery of the document and to discourage Ramos from getting it back, he (Montinola) had to resort to the mutilation of the document.

As to what was really written at the back of the check which Montinola claims to be a full indorsement of the check, we agree with the trial court that the original writing of Ramos on the back of the check was to the effect that he was assigning only P30,000 of the value of the document and that he was instructing the bank to deposit to his credit the balance. This writing was in some mysterious way obliterated, and in its place was placed the present indorsement appearing thereon. Said present indorsement occupies a good portion of the back of the check. It has already been described in detail. As to how said present indorsement came to be written, the circumstances surrounding its preparation, the supposed participation of M. V. Ramos in it and the writing originally appearing on the reverse side of the check, Exhibit A-1, we quote with approval what the trial court presided over by Judge Conrado V. Sanchez, in its well-prepared decision, says on these points:

"The alleged indorsement: 'Pay to the order of Enrique P. Montinola the amount of P30,000 only. The balance to be deposited to the credit of M. V. Ramos', signed by M. V. Ramos—according to the latter—does not now appear at the back of the check. A different indorsement, as aforesaid, now appears:

"Had Montinola really paid in full the sum of P850,000 in Japanese Military Notes as consideration for the check? The following observations are in point:

"(a) According to plaintiff's witness Gregorio A. Cortado, the oval line in violet, enclosing 'P.' of the words 'Enrique P. Montinola' and the line in the form of cane handle crossing the word 'street' in the words and figures '517 Isabel Street' in the endorsement Exhibit A-1, are 'unusual' to him, and that as far as he could remember this writing did not appear on the instrument and he had no knowledge as to how it happened to be there. Obviously Cortado had no recollection as to how such marks ever were stamped at the back of the check.

"(b) Again Cortado, speaking of the endorsement as it now appears at the back of the check (Exh. A-1) stated that Ramos typewrote these words outside of the premises of Montinola, that is, in a nearby house. Montinola, on the other hand, testified that Ramos typewrote the words 'Enrique P. Montinola, 517 Isabel Street', in his own house. Speaking of the rubber stamp used at the back of the check and which produced the words 'pay to the order of', Cortado stated that when he (Cortado), Atadero, Montinola and Ramos returned in group to the house of Montinola, the rubber stamp was already in the house of Montinola, and it was on the table of the upper floor of the house, together with the stamp pad used to stamp the same. Montinola, on the other hand,

testified that Ramos carried in his pocket the said rubber stamp as well as the ink pad, and stamped it in his house.

"The unusually big space occupied by the indorsement on the back of the check and the discrepancies in the versions of Montinola and his witness Cortado just noted, create doubts as to whether or not really Ramos made the indorsement as it now appears at the back of Exhibit A. One thing difficult to understand is why Ramos should go into the laborious task of placing the rubber stamp 'Pay to the order of and afterwards move to the typewriter and write the words 'Enrique P. Montinola' and '517 Isabel Street', and finally sign his name too far below the main indorsement.

"(c) Another circumstance which bears heavily upon the claim of plaintiff Montinola that he acquired the full value of the check and paid the full consideration therefor is the present condition of said check. It is now so unclean and discolored; it is pasted in cellophane, blotted with ink on both sides torn into three parts, and with portions thereof burned—all done by plaintiff, the alleged owner thereof.

"The acts done by the very plaintiff on a document so important and valuable to him, and which according to him involves his life savings, approximate intentional cancellation. The only reason advanced by plaintiff as to why he tore the check, burned the torn edges and blotted out the registration at the back, is found in the following: That Ramos came to his house, armed with a revolver, threatened his life and demanded from him the return of the check; that when he informed Ramos that he did not have it in the house, but in some deposit outside thereof and that Ramos promised to return the next day; that the same night he tore the check into three parts, burned the sides with a paraffin candle to show traces of burning; and that upon the return of Ramos the next day he showed the two parts of the check, the triangle on the right upper part and the torn piece on the left part, and upon seeing the condition thereof Ramos did not bother to get the check back. He also said that he placed the blots in indelible ink to prevent Ramos—if he would be forced to surrender the middle part of the check—from seeing that it was registered in the General Auditing Office.

"Conceding at the moment these facts to be true, the question is: Why should Montinola be afraid of Ramos? Montinola claims that Ramos went there about April, 1945, that is, during liberation. If he believed he was standing by his rights, he could have very well sought police protection or transferred to some place where Ramos could not bother him. And then, if really Ramos did not have anything more to do with this check for the reason that Montinola had obtained in full the amount thereof, there could not be any reason why Ramos should have threatened Montinola as stated by the latter. Under the circumstances, the most logical conclusion is that Ramos wanted the check at all costs because Montinola did not acquire the check to such an extent that it borders on intentional cancellation thereof (see Sections 119-123 Negotiable Instruments Law) there is room to believe that Montinola did not have so much investments in that check as to have adopted an 'what do I care?' attitude.

"And there is the circumstance of the alleged loss of the check. At the time of the filing of the complaint the check was allegedly lost, so much so that a photostatic copy thereof was merely attached to the complaint (see paragraph 7 of the complaint). Yet, during the trial the original check Exhibit A was produced in court.

"But a comparison between the photostatic copy and the original check reveals discrepancies between the two. The condition of the check as it was produced is such that it was partially burned, partially blotted, badly mutilated, discolored and pasted with cellophane. What is worse is that Montinola's excuse as to how it was lost, that it was mixed up with household effects is not plausible, considering the fact that it involves his life savings, and that before the alleged loss, he took extreme pains and precautions to save the check from the possible ravages of the war, had it photographed, registered said check with the General Auditing Office and he knew that Ramos, since liberation, was hot after the possession of that check.

"(d) It seems that Montinola was not so sure as to what he had testified to in reference to the consideration he paid for the check. In court he testified that he paid P450,000 in cash from June to December 1944, and P400,000 worth of sulphathiazole in January 1945 to complete the alleged consideration of P850,000. When

Montinola testified this way in court, obviously he overlooked a letter he wrote to the provincial treasurer of Cagayan, Oriental Misamis, dated May 1, 1947, Exhibit 3 of the record. In that letter Exhibit 3, Montinola told Provincial Treasurer Elizalde of Misamis Oriental that 'Ramos endorsed it (referring to check) to me for goods in kind, medicine, etc., received by him for the use of the guerrillas.' In said letter Exhibit 3, Montinola did not mention the cash that he paid for the check.

"From the foregoing the court concludes that plaintiff Montinola came into the possession of the check in question about the end of December 1944 by reason of the fact that M. V. Ramos sold to him P30,000 of the face value thereof in consideration of the sum of P90,000 Japanese money, of which only one-half or P45,000 (in Japanese money) was actually paid by said plaintiff to Ramos." (R. on A., pp. 31—33; Brief of Appellee, pp. 14—20.)

At the beginning of this decision, we stated that as Provincial Treasurer of Misamis Oriental, Ubaldo D. Laya was ex officio agent of the Philippine National Bank branch in that province. On the face of the check (Exh. A) we now find the words in parenthesis "Agent, Phil. National Bank" under the signature of Laya, purportedly showing that he issued the check as agent of the Philippine National Bank. If this is true, then the bank is not only drawee but also a drawer of the check, and Montinola evidently is trying to hold the Philippine National Bank liable in that capacity of drawer, because as drawee alone, inasmuch as the bank has not yet accepted or certified the check, it may yet avoid payment.

Laya, testifying in court, stated that he issued the check only as Provincial Treasurer, and that the words in parenthesis "Agent, Phil. National Bank" now appearing under his signature did not appear on the check when he issued the same. In this he was corroborated by the payee M. V. Ramos who equally assured the court that when he received the check and then delivered it to Montinola, those words did not appear under the signature of Ubaldo D. Laya. We again quote with approval the pertinent portion of the trial court's decision:

"The question is reduced to whether or not the words, 'Agent, Phil. National Bank' were added after Laya had issued the check. In a straightforward manner and without vacillation Laya positively testified that the check Exhibit A was issued by him in his capacity as Provincial Treasurer of Misamis Oriental and that the words 'Agent, Phil. National Bank' which now appear on the check Exhibit A were not typewritten below his signature when he signed the said check and delivered the same to Ramos. Laya assured the court that there could not be any mistake as to this. For, according to Laya, when he issued checks in his capacity as agent of the Misamis Oriental agency of the Philippine National Bank the said check must be countersigned by the cashier of the said agency—not by the provincial auditor. He also testified that the said check was issued by him in his capacity as provincial treasurer of Misamis Oriental and that is why the same was countersigned by Provincial Auditor Plores. The Provincial Auditor at that time had no connection in any capacity with the Misamis Oriental agency of the Philippine National Bank. Plaintiff Montinola on the other hand testified that when he received the check Exhibit A it already bore the words 'Agent, Phil. National Bank' below the signature of Laya and the printed words 'Provincial Treasurer'.

"After considering the testimony of the one and the other, the court finds that the preponderance of the evidence supports Laya's testimony. In the first place, his testimony was corroborated by the payee M. V. Ramos. But what renders more probable the testimony of Laya and Ramos is the fact that the money for which the check was issued was expressly for the use of the USAFFE of which Ramos was then disbursing officer, so much so that upon the delivery of the P400,000 in emergency notes and the P100,000 check to Ramos, Laya credited his depository accounts as provincial treasurer with the corresponding credit entry. In the normal course of events the check could not have been issued by the bank, and this is borne by the fact that the signature of Laya was countersigned by the provincial auditor, not the bank cashier. And then, too there is the circumstance that this check was issued by the provincial treasurer of Lanao to Ramos who requisitioned the said funds in his capacity as disbursing officer of the USAFFE. The check, Exhibit A is not what we may term in business parlance, 'certified check' or 'cashier's check.'

"Besides, at the time the check was issued, Laya already knew that Cebu and Manila were already occupied. He could not have therefore issued the check—as a bank employee—payable at the central office of the Philippine National Bank.

"Upon the foregoing circumstances the court concludes that the words 'Agent, Phil. National Bank' below the signature of Ubaldo D. Laya and the printed words 'Provincial Treasurer' were added in the check after the same was issued by the Provincial Treasurer of Misamis Oriental."

From all the foregoing, we may safely conclude as we do that the words "Agent, Phil. National Bank" now appearing on the face of the check (Exh. A) were added or placed in the instrument after it was issued by Provincial Treasurer Laya to M. V. Ramos. There is no reason known to us why Provincial Treasurer Laya should issue the check (Exh. A) as agent of the Philippine National Bank. Said check for P100,000 was issued to complete the payment of the other check for P500,000 issued by the Provincial Treasurer of Lanao to Ramos, as part of the advance funds for the USAFFE in Cagayan de Misamis. The balance of P400,000 in cash was paid to Ramos by Laya from the funds, not of the bank but of the Provincial Treasury. Said USAFFE were being financed not by the Bank but by the Government and, presumably, one of the reasons for the issuance of the emergency notes in Mindanao was for this purpose. As already stated, according to Provincial Treasurer Laya, upon receiving a relatively considerable amount of these emergency notes for his office, he deposited P500,000 of said currency in the Philippine National Bank branch in Cebu, and that in issuing the check (Exh. A), he expected to have it cashed at said Cebu bank branch against his deposit of P500,000.

The logical conclusion, therefore, is that the check was issued by Laya only as Provincial Treasurer and as an official of the Government which was under obligation to provide the USAFFE with advance funds, and not by the Philippine National Bank which had no such obligation. The very Annex C, made part of plaintiff's complaint, and later introduced in evidence for him as Exhibit E states that Laya issued the check "in his capacity as Provincial Treasurer of Misamis Oriental", obviously, not as agent of the Bank.

Now, did M. V. Ramos add or place those words below the signature of Laya before transferring the check to Montinola? Let us bear in mind that Ramos before his induction into the USAFFE had been working as assistant of Treasurer Laya as ex-officio agent of the Misamis Oriental branch of the Philippine National Bank. Naturally, Ramos must have known the procedure followed there as to the issuance of checks, namely, that when a check is issued by the Provincial Treasurer as such, it is countersigned by the Provincial Auditor as was done on the check (Exhibit A), but that if the Provincial Treasurer issues a check as agent of the Philippine National Bank, the check is countersigned not by the Provincial Auditor who has nothing to do with the bank, but by the bank cashier, which was not done in this case. It is not likely, therefore, that Ramos had made the insertion of the words "Agent, Phil. National Bank" after he received the check, because he should have realized that following the practice already described, the check having been issued by Laya as Provincial Treasurer, and not as agent of the bank, and since the check bears the countersignature not of the Bank cashier but of the Provincial Auditor, the addition of the words "Agent, Phil. National Bank" could not change the status and responsibility of the bank. It is therefore more logical to believe and to find that the addition of those words was made after the check had been transferred by Ramos to Montinola. Moreover, there are other facts and circumstances involved in the case which support this view. Referring to the mimeographed record on appeal filed by the plaintiff-appellant, we find that in transcribing and copying the check, particularly the face of it (Exhibit A) in the complaint, the words "Agent, Phil. National Bank" now appearing on the face of the check under the signature of the Provincial Treasurer, is missing. Unless the plaintiff in making this copy or transcription in the complaint committed a serious omission which is decisive as far as the bank is concerned, the inference is, that at the time the complaint was filed, said phrase did not appear on the face of the check. That probably was the reason why the bank in its motion to dismiss dated September 2, 1947, contended that if the check in question had been issued by the provincial

treasurer in his capacity as agent of the Philippine National Bank, said treasurer would have placed below his signature the words "Agent of the Philippine National Bank". The plaintiff because of the alleged loss of the check, allegedly attached to the complaint a photostatic copy of said check and marked it as Annex A. But in transcribing and copying said Annex A in his complaint, the phrase "Agent, Phil. National Bank" does not appear under the signature of the provincial treasurer. We tried to verify this discrepancy by going over the original records of the Court of First Instance so as to compare the copy of Annex A in the complaint, with the original Annex A, the photostatic copy, but said original Annex A appears to be missing from the record. How it disappeared is not explained. Of course, now we have in the list of exhibits a photostatic copy marked Annex A and Exhibit B, but according to the manifestation of counsel for the plaintiff dated October 15, 1948, said photostatic copy now marked Annex A and Exhibit B was submitted on October 15, 1948, in compliance with the verbal order of the trial court. It is therefore evident that the Annex A now available is not the same original Annex A attached to the complaint in 1947.

There is one other circumstance, important and worth noting. If Annex A also marked Exhibit B is the photostatic copy of the original check No. 1382 particularly the face thereof (Exhibit A), then said photostatic copy should be a faithful and accurate reproduction of the check, particularly of the phrase "Agent, Phil. National Bank" now appearing under the signature of the Provincial Treasurer on the face of the original check (Exhibit A). But a minute examination of and comparison between Annex A, the photostatic copy also marked Exhibit B and the face of the check, Exhibit A, especially with the aid of a hand lens, show notable differences and discrepancies. For instance, on Exhibit A, the letter A of the word "Agent" is toward the right of the tail of the beginning letter of the signature of Ubaldo D. Laya; this same letter "A" however in Exhibit B is directly under said tail.

The letter "N" of the word "National" on Exhibit A is underneath the space between "Provincial" and "Treasurer" ; but the same letter "N" is directly under the letter "I" of the word "Provincial" in Exhibit B.

The first letter "a" of the word "National" is under "T" of the word "Treasurer" in Exhibit A; but the same letter "a" in Exhibit "B" is just below the space between the words "Provincial" and "Treasurer".

The letter "k" of the word "Bank" in Exhibit A is after the green perpendicular border line near the lower right-hand corner of the edge of the check (Exh. A); this same letter "k" however, on Exhibit B is on the very border line itself or even before said border line.

The closing parenthesis ")" on Exhibit A is a little far from the perpendicular green border line and appears to be double instead of one single line; this same ")" on Exhibit B appears in a single line and is relatively nearer to the border line.

There are other notable discrepancies between the check Annex A and the photostatic copy, Exhibit B, as regards the relative position of the phrase "Agent, Phil. National Bank", with the title Provincial Treasurer, giving ground to the doubt that Exhibit B is a photostatic copy of the check (Exhibit A).

We then have the following facts. Exhibit A was issued by Laya in his capacity as Provincial Treasurer of Misamis Oriental as drawer on the Philippine National Bank as drawee. Ramos sold P30,000 of the check to Enrique P. Montinola for P90,000 Japanese military notes, of which only P45,000 was paid by Montinola. The writing made by Ramos at the back of the check was an instruction to the bank to pay P30,000 to Montinola and to deposit the balance to his (Ramos) credit. This writing was obliterated and in its place we now have the supposed indorsement appearing on the back of the check (Exh. A-1).

At the time of the transfer of this check (Exh. A) to Montinola about the last days of December, 1944, or the first days of January, 1945, the check which, being a negotiable instrument, was payable on demand, was long overdue

by about 2 1/2 years. It may therefore be considered, even then, a stale check. Of course, Montinola claims that about June, 1944 when Ramos supposedly approached him for the purpose of negotiating the check, he (Montinola) consulted President Carmona of the Philippine National Bank who assured him that the check was good and negotiable. However, President Carmona on the witness stand flatly denied Montinola's claim and assured the court that the first time that he saw Montinola was after the Philippine National Bank, of which he was President, reopened, after liberation, around August or September, 1945, and that when shown the check he told Montinola that it was stale. M. V. Ramos also told the court that it is not true that he ever went with Montinola to see President Carmona about the check in 1944.

On the basis of the facts above related there are several reasons why the complaint of Montinola cannot prosper. The insertion of the words "Agent, Phil. National Bank" which converts the bank from a mere drawee to a drawer and therefore changes its liability, constitutes a material alteration of the instrument without the consent of the parties liable thereon, and so discharges the instrument. (Section 124 of the Negotiable Instruments Law). The check was not legally negotiated within the meaning of the Negotiable Instruments Law. Section 32 of the same law provides that "the indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, * * * (as in this case) does not operate as a negotiation of the instrument." Montinola may therefore not be regarded as an indorsee. At most he may be regarded as a mere assignee of the P30,000 sold to him by Ramos, in which case, as such assignee, he is subject to all defenses available to the drawer Provincial Treasurer of Misamis Oriental and against Ramos. Neither can Montinola be considered as a holder in due course because section 52 of said law defines a holder in due course as a holder who has taken the instrument under certain conditions, one of which is that he became the holder before it was overdue. When Montinola received the check, it was long overdue. And, Montinola is not even a holder because section 191 of the same law defines holder as the payee or indorsee of a bill or note and Montinola is not a payee. Neither is he an indorsee for as already stated, at most he can be considered only as assignee. Neither could it be said that he took it in good faith. As already stated, he has not paid the full amount of P90,000 for which Ramos sold him P30,000 of the value of the check. In the second place, as was stated by the trial court in its decision, Montinola speculated on the check and took a chance on its being paid after the war. Montinola must have known that at the time the check was issued in May, 1942, the money circulating in Mindanao and the Visayas was only the emergency notes and that the check was intended to be payable in that currency. Also, he should have known that a check for such a large amount of P100,000 could not have been issued to Ramos in his private capacity but rather in his capacity as disbursing officer of the USAFFE, and that at the time that Ramos sold a part of the check to him, Ramos was no longer connected with the USAFFE but already a civilian who needed the money only for himself and his family.

As already stated, as a mere assignee Montinola is subject to all the defenses available against assignor Ramos. And, Ramos had he retained the check may not now collect its value because it had been issued to him as disbursing officer. As observed by the trial court, the check was issued to M. V. Ramos not as a person but M. V. Ramos as the disbursing officer of the USAFFE. Therefore, he had no right to indorse it personally to plaintiff. It was negotiated in breach of trust, hence he transferred nothing to the plaintiff.

In view of all the foregoing, finding no reversible error, in the decision appealed from, the same is hereby affirmed, with costs.

In the prayer for relief contained at the end of the brief for the Philippine National Bank dated September 27, 1949, we find this prayer:

"It is also respectfully prayed that this Honorable Court refer the check, Exhibit A, to the City Fiscal's Office for appropriate criminal action against the plaintiff-appellant if the facts so warrant."

Subsequently, in a petition signed by plaintiff-appellant Enrique P. Montinola dated February 27, 1950, he asked this Court to allow him to withdraw the original check (Exh. A) for him to keep, expressing his willingness to submit it to the Court whenever needed for examination and verification. The bank on March 2, 1950 opposed the said petition on the ground that inasmuch as the appellant's cause of action in this case is based on the said check, it is absolutely necessary for the court to examine the original in order to see the actual alterations supposedly made thereon, and that should this Court grant the prayer contained in the bank's brief that the check be later referred to the city fiscal for appropriate action, said check may no longer be available if the appellant is allowed to withdraw said document. In view of said opposition this Court by resolution of March 6, 1950, denied said petition for withdrawal.

Acting upon the petition contained in the bank's brief already mentioned, once the decision becomes final, let the Clerk of Court transmit to the city fiscal the check (Exh. A) together with all pertinent papers and documents in this case, for any action he may deem proper in the premises.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Reyes and Bautista Angelo, JJ., concur.

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