

PERFECTO JABALDE, PLAINTIFF AND APPELLANT, VS. PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLEE.

G. R. No. L-18401. April 27, 1963

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/fc0aae2e6176/>

REYES, J.B.L., J.:

Appeal from a decision of the Court of First Instance of Cebu to the Court of Appeals, elevated by the latter to the Supreme Court as a case involving a constitutional question under Section 17 of the Judiciary Act of 1948. Plaintiff-appellant Perfecto Jabalde seeks recovery of P50,000.00 allegedly deposited by him with the defendant-appellee, Philippine National Bank, P5,000.00 in genuine Philippine currency, on 21 July 1941, and another P5,000.00 on 30, August 1943 in mixed genuine Philippine currency and Japanese military notes. The complaint recites the printed wording of plaintiff's passbook, and allegedly reproduces page one thereof, reciting it to be as follows:

"Philippine National Bank

Manila, Philippines

in account with

JUL. 21, 1941

P5,000.00

AUG. 30, 1943

5,000.00"

The defendant's answer was not under oath, and admits the making of the foregoing deposits, but denies the dates of deposit, alleging as the true dates July 21, 1944 and 30, August 1944, and avers that the entries in the passbook as to the deposit dates were "knowingly, unlawfully and maliciously" altered by the plaintiff; and that the deposits were all in Japanese military notes.

Both parties adduced evidence in support of their allegations, and after trial, the Court of First Instance of Cebu dismissed the case.

Appellant insists that the dates of deposit were, really 21 July 1941 and 30 August 1943, and were made in Philippine money and mixed Philippine money and Japanese military notes, respectively. The evidence preponderantly militates against the contention. That the date entries in the passbook, Exhibit "A", were tampered with is dear to the naked eye. The years of both entries are obscured with a blot of black ink. Photographic enlargements (Exhibits 3-A and 3-B), however, discernibly show that the year of the first entry is "1944", and not

"1941". While the year of the second entry is badly obliterated, for obvious reasons it could not be earlier than the first entry.

The testimony of the expert witness as to the last two numerals of the first date year, that it is "1944", is logical, and eliminates whatever doubt exists by means of enlarged photographs. He, explained how both the slant (diagonal) and the vertical lines in both figures are parallel to each other, and the angles created by the slant and horizontal lines are congruent; the bases of the two "4's" are on the same plane. Therefore, we agree that no other conclusion is possible than that the two last digits are both

Plaintiff's counsel avers that if there was any tampering, it should be attributed to the bank that issued the passbook. On this point, the trial court correctly observed that it would be puerile for any of the bank's officials to So this. Since the act would be against the bank's interest.

Defendant's witnesses have also shown, by their testimonies and business sheets of account during the war years (Exhibits 5, 6, and 7), that appellant Perfecto Jabalde did not have a pre-war, or "controlled", account with the defendant bank, although he did open a war-time or "free" account. The passbook states on its face that it is a "Free Account". The difference between the two kinds of accounts, as instituted by the bank, has been well explained. The business sheets of war-time accounts in the Cebu bank branch also show that Perfecto Jabalde, along with several clients, deposited money in Japanese military notes only and on the dates alleged by the bank. The conclusion drawn from this array of evidence is inevitably that the deposits were made on 21 July 1944 and on 30 August 1944, and all in military notes.

The first legal issue is whether the bank's failure to deny under oath the entries in the passbook as "copied" in the complaint constitutes an admission of the genuineness and due execution of the document. Ordinarily, such failure is an admission. However, this rule cannot apply in the present case because the plaintiff introduced evidence purporting to support his allegations of deposit on the dates he wanted the court to believe, and offered no objection during the trial to the testimonies of defendant's witnesses and documentary evidence showing different dates of deposit.[1] By these acts, the plaintiff waived the defendant's technical admission through failure to deny under oath the genuineness and due execution of the document (Cf. *Legarda Koh vs. Ongsiako*, 36 Phil. 185; *Yu Chuck vs. Kong Li Po*, 46 Phil. 608, both cited in

1 Moran 232; 233, 1957 ed.,):. It has, likewise, been ruled that—

"Where written instrument set forth in answer is not denied by affidavit, yet if evidence in respect to that matter, and tending to show that instrument is not genuine, or was not delivered, is introduced by plaintiff without objection on part of defendant, or motion to strike out, and is met by counter-evidence on the part of defendant, the latter ought not to be permitted to claim that genuineness and due execution of instrument are admitted." (Francisco, *Rules of Court*, Anno, and Commented, Vol. I, Part I, Rev. Ed. pp 734-786, citing the case of *Clark vs. Child* (56 Cal, 87)

The court of first instance held that the appellant's wartime deposits were not reimbursable under Executive Order No. 49, Series of 1945, issued by President Osmeña in the exercise of the authority conferred by the Emergency Powers Act (Comm. Act No. 671). The Executive Order provides that:

"All deposits made with banking institutions during enemy occupation, and all 'deposit liabilities incurred by banking the same period are declared null and void, except as provided in this section.

The appellant does not contest that under said Executive Order his wartime deposits are void; but he vigorously assails the validity and constitutionality, of the order as impairing the obligation of contracts and depriving him of property without due process of law.

This is no longer an open issue. It was passed upon and decided in *Hilado vs. de la Costa*, 83 Phil. 471, where in it was ruled:

"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 the 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."

The promulgation of Executive Order No. 49 was a valid exercise of the extraordinary powers invested by the legislature unto the President by Commonwealth Act No. 671. This Act, enacted pursuant to Article VI, Section 16 of the Constitution, after declaring the necessity for granting extraordinary powers to the President in Section 1 thereof, granted him in Section 2 the power—

"Uy promulgate such rules and regulations as he may deem necessary to carry out the national policy declared in section 1 hereof. Accordingly, he is, among other things, empowered (a) * * *; (i) to exercise such other powers as he may deem necessary to enable the Government to fulfill its responsibilities and to maintain and enforce its authority." (Italics supplied)

The argument that the rule of *Hilado vs. de la Costa*, supra, should not apply because the complaint herein was filed in 1956 when there was no more emergency is impertinent, since Executive Order No. 49 is clearly intended for permanent application and its operation was not limited to the period of emergency.

Assuming, arguendo, that the bank promised later to pay the plaintiff-depositor when it would be indemnified by either the United States or the Japanese government, said promise could not be considered a novation of the contract of deposit, because there was no contract to novate in the first place, for lack of one of the essential elements of a contract; object. The object of the supposed contract (in this case the deposited military notes), was declared null and void, and, therefore, non-existing.

For the foregoing reasons, the decision appealed from is hereby affirmed, with costs against the appellant. Let the case be referred to the City Fiscal, through the Department of Justice for investigation and prosecution as the facts may warrant.

Bengzon, C. J., Bautista, Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1]While he objected to the admission of the documentary evidenced at the close of the trial, his ground for objection is that they are self-serving; he does not, however, pursue and assign, as error, in his brief the admission of those allegedly self-serving evidence in his appeal.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.