

**GEORGE A. KAUFFMAN, PLAINTIFF AND APPELLEE, VS. THE  
PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLANT.***G. R. No. 16454. September 29, 1921*

Ponente: STREET, J.

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At the time of the transaction which gave rise to this litigation the plaintiff, George A. Kauffman, was the president of a domestic corporation engaged chiefly in the exportation of hemp from the Philippine Islands and known as the Philippine Fiber and Produce Company, of which company the plaintiff apparently held in his own right nearly the entire issue of capital stock. On February 5, 1918, the board of directors of said company, declared a dividend of P100,000 from its surplus earnings for the year 1917, of which the plaintiff was entitled to the sum of P98,000. This amount was accordingly placed to his credit on the books of the company, and so remained until in October of the same year when an unsuccessful effort was made to transmit the whole, or a greater part thereof, to the plaintiff in New York City.

In this connection it appears that on October 9, 1918, George B. Wicks, treasurer of the Philippine Fiber and Produce Company, presented himself in the exchange department of the Philippine National Bank in Manila and requested that a telegraphic transfer of \$45,000 should be made to the plaintiff in New York City, upon account of the Philippine Fiber and Produce Company. He was informed that the total cost of said transfer, including exchange and cost of message, would be P90,355.50. Accordingly, Wicks, as treasurer of the Philippine Fiber and Produce Company, thereupon drew and delivered a check for that amount on the Philippine National Bank; and the same was accepted by the officer selling the exchange in payment of the transfer in question. As evidence of this transaction a document was made out and delivered to Wicks, which is referred to by the bank's assistant cashier as its official receipt. This memorandum receipt is in the following language:

"October 9th, 1918.

**"CABLE TRANSFER BOUGHT FROM****"PHILIPPINE NATIONAL BANK,**

"Manila, P. I.

Stamp P18.

"Foreign Amount

Rate

\$45,000.

3/8%

**P90,337.50**

"Payable through Philippine National Bank, New York. To G. A. Kauffman, New York. Total P90,355.50, Account of Philippine Fiber and Produce Company. Sold to Messrs. Philippine Fiber and Produce Company, Manila.

(Sgd.) "Y. LERMA,

"Manager,' Foreign Department."

On the same day the Philippine National Bank dispatched to its New York agency a cablegram to the following effect:

"Pay George A. Kauffman, New York, account Philippine Fiber Produce Co., \$45,000. (Sgd.) PHILIPPINE NATIONAL BANK, Manila"

Upon receiving this telegraphic message, the bank's representative in New York sent a cable message in reply suggesting the advisability of withholding this money from Kauffman, in view of his reluctance to accept certain bills of the Philippine Fiber and Produce Company. The Philippine National Bank acquiesced in this and on October 11 dispatched to its New York agency another message to withhold the Kauffman payment as suggested.

Meanwhile Wicks, the treasurer of the Philippine Fiber and Produce Company, cabled to Kauffman in New York, advising him that \$45,000 had been placed to his credit in the New York agency of the Philippine National Bank; and in response to this advice Kauffman presented himself at the office of the Philippine National Bank in New York City on October 15, 1918, and demanded the money. By this time, however, the message from the Philippine National Bank of October 11, directing the withholding of payment had been received in New York, and payment was therefore refused.

In view of these facts, the plaintiff Kauffman instituted the present action in the Court of First Instance of the city of Manila to recover said sum, with interest and costs; and judgment having been there entered favorably to the plaintiff, the defendant appealed.

Among additional facts pertinent to the case we note the circumstance that at the time of the transaction abovementioned, the Philippine Fiber and Produce Company did not have on deposit in the Philippine National Bank money adequate to pay the check for P90,355.50, which was delivered in payment of the telegraphic order; but the company did have credit to that extent, or more, for overdraft in current account, and the check in question was charged as an overdraft against the Philippine Fiber and Produce Company and has remained on the books of the bank as an interest-bearing item in the account of said company.

It is furthermore noteworthy that no evidence has been introduced tending to show failure of consideration with respect to the amount paid for said telegraphic order. It is true that in the defendant's answer it is suggested that the failure of the bank to pay over the amount of this remittance to the plaintiff in New York City, pursuant to its agreement, was due to a desire to protect the bank in its relations with the Philippine Fiber and Produce Company, whose credit was secured at the bank by warehouse receipts on Philippine products; and it is alleged that after the exchange in question was sold the bank found that it did not have sufficient security to warrant payment of the remittance. In view, however, of the failure of the bank to substantiate these allegations, or to offer any other

proof showing failure of consideration, it must be assumed that the obligation of the bank was supported by adequate consideration.

In this court the defense is mainly, if not exclusively, based upon the proposition that, inasmuch as the plaintiff Kauffman was not a party to the contract with the bank for the transmission of this credit, no right of action can be vested in him for the breach thereof. "In this situation,"—we here quote the words of the appellant's brief,— "if there exists a cause of action against the defendant, it would not be in favor of the plaintiff who had taken no part at all in the transaction nor had entered into any contract with the plaintiff, but in favor of the Philippine Fiber and Produce Company, the party which contracted in its own name with the defendant."

The question thus placed before us is one purely of law; and at the very threshold of the discussion it can be stated that the provisions of the Negotiable Instruments Law (Act No. 2031) are not relevant to the case. The reason for this is that before the Negotiable Instruments Law can come into operation there must be a document in existence of the character described in section 1 of that Law; and no rights properly speaking arise in respect to said instrument until it is delivered. In the case before us there was an order, it is true, transmitted by the defendant bank to its New York branch, for the payment of a specified sum of money to George A. Kauffman. But this order was not made payable "to order" or "to bearer," as required in subsection (d) of that Act; and inasmuch as it never left the possession of the bank, or its representative in New York City, there was no delivery in the sense intended in section 16 of the same Law. In this connection it is unnecessary to point out that the official receipt delivered by the bank to the purchaser of the telegraphic order, and already set out above, cannot itself be viewed in the light of a negotiable instrument, although it affords complete proof of the obligation actually assumed by the bank.

Stated in bare simplicity the admitted facts show that the defendant bank for a valuable consideration paid by the Philippine Fiber and Produce Company agreed on October 9, 1918, to cause a sum of money to be paid to the plaintiff in New York City; and the question is whether the plaintiff can maintain an action against the bank for the nonperformance of said undertaking. In other words, is the lack of privity with the contract on the part of the plaintiff fatal to the maintenance of an action by him?

The only express provision of law that has been cited as bearing directly on this question is the second paragraph of article 1257 of the Civil Code; and unless the present action can be maintained under that provision, the plaintiff admittedly has no case. This provision states an exception to the more general rule expressed in the first paragraph of the same article to the effect that contracts are productive of effects only between the parties who execute them; and in harmony with this general rule are numerous decisions of this court (*Wolfson vs. Estate of Martinez*, 20 Phil., 340; *Ibanez de Aldecoa vs. Hongkong and Shanghai Banking Corporation*, 22 Phil., 572, 584; *Manila Railroad Co. vs. Compania Trasatlantica*, and *Atlantic, Gulf & Pacific Co.*, 38 Phil., 875, 894.)

The paragraph introducing the exception which we are now to consider is in these words:

"Should the contract contain any stipulation in favor of a third person, he may demand its fulfillment, provided he has given notice of his acceptance to the person bound before the stipulation has been revoked." (Art. 1257, par. 2, Civ. Code.)

In the case of *Uy Tarn and Uy Yet vs. Leonard* (30 Phil., 471), is found an elaborate dissertation upon the history and interpretation of the paragraph above quoted and so complete is the discussion contained in that opinion that it would be idle for us here to go over the same matter. Suffice it to say that Justice Trent, speaking for the court in that case, sums up its conclusions upon the conditions governing the right of the person for whose benefit a contract is made to maintain an action for the breach thereof in the following words:

"So, we believe the fairest test, in this jurisdiction at least, whereby to determine whether the interest of a third

person in a contract is a stipulation pour autrui, or merely an incidental interest, is to rely upon the intention of the parties as disclosed by their contract.

"If a third person claims an enforceable interest in the contract, that question must be settled by determining whether the contracting parties desired to tender him such an interest. Did they deliberately insert terms in their agreement with the avowed purpose of conferring a favor upon such third person? In resolving this question, of course, the ordinary rules of construction and interpretation of writings must be observed." (Uy Tarn and Uy Yet vs. Leonard, *supra*.)

Further on in the same opinion he adds: "In applying this test to a stipulation pour autrui, it matters not whether the stipulation is in the nature of a gift or whether there is an obligation owing from the promisee to the third person. That no such obligation exists may in some degree assist in determining whether the parties intended to benefit a third person, whether they stipulated for him." (Uy Tarn and Uy Yet vs. Leonard, *supra*.)

In the light of the conclusions thus stated, the right of the plaintiff to maintain the present action is clear enough; for it is undeniable that the bank's promise to cause a definite sum of money to be paid to the plaintiff in New York City is a stipulation in his favor within the meaning of the paragraph above quoted; and the circumstances under which that promise was given disclose an evident intention on the part of the contracting parties that the plaintiff should have that money upon demand in New York City. The recognition of this unqualified right in the plaintiff to receive the money implies in our opinion the right in him to maintain an action to recover it; and indeed if the provision in question were not applicable to the facts now before us, it would be difficult to conceive of a case arising under it.

It will be noted that under the paragraph cited a third person seeking to enforce compliance with a stipulation in his favor must signify his acceptance before it has been revoked. In this case the plaintiff clearly signified his acceptance to the bank by demanding payment; and although the Philippine National Bank had already directed its New York agency to withhold payment when this demand was made, the rights of the plaintiff cannot be considered to have been prejudiced by that fact. The word "revoked," as there used, must be understood to imply revocation by the mutual consent of the contracting parties, or at least by direction of the party purchasing the exchange.

In the course of the argument attention was directed to the case of *Legniti vs. Mechanics, etc. Bank* (130 N. E. Rep., 597), decided by the Court of Appeals of the State of New York on March 1, 1921, wherein it is held that, by selling a cable transfer of funds on a foreign country in ordinary course, a bank incurs a simple contractual obligation, and cannot be considered as holding the money which was paid for the transfer in the character of a specific trust. Thus, it was said, "Cable transfers, therefore, mean a method of transmitting money by cable wherein the seller engages that he has the balance at the point on which the payment is ordered and that on receipt of the cable directing the transfer his correspondent at such point will make payment to the beneficiary described in the cable. All these transactions are matters of purchase and sale create no trust relationship."

As we view it there is nothing in the decision referred to decisive of the question now before us, which is merely that of the right of the beneficiary to maintain an action against the bank selling the transfer.

Upon the considerations already stated, we are of the opinion that the right of action exists, and the judgment must be affirmed. It is so ordered, with costs against the appellant. Interest will be computed as prescribed in section 510 of the Code of Civil Procedure.

Johnson, Aravillo, Avancena, and Villamor, JJ., concur.

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