

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS.
PRODUCERS’ WAREHOUSE ASSOCIATION, DEFENDANT AND
APPELLEE.***G. R. No. 16510. January 09, 1922*

Ponente: JOHNS, J.

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The plaintiff is a corporation organized under the banking laws of the Philippine Islands with its principal office in the city of Manila. The defendant is a domestic corporation doing a general warehouse business and domiciled at Manila, and the Philippine Fiber and Produce Company, to which we will hereafter refer as the Produce Company, is another domestic corporation with its principal office also at Manila. In May, 1916, the defendant, as party of the first part, entered into a written contract with the Produce Company, as party of the second part, in and by which "the above-named party of the second part is hereby named, constituted, and appointed as the general manager of the business of the party of the first part, in all of the branches thereof, with the duties, powers, authority and compensation hereinafter provided." "The said party of the second part shall exercise a general and complete supervision over and management of the business of the party of the first part," and "shall direct, manage, promote and advance the said business, subject only to the control and instructions of the board of directors of the party of the first part." That said party of the second part, as general manager, shall have all powers and authorities necessary, proper or usual for the due transaction of the business of the party of the first part, including the power to sign the company's name, save and except such power or authority as shall have been expressly reserved to itself, by the board of directors of the party of the first part, provided "that such reservations by the board of directors shall not be employed to unreasonably hamper or interfere with the due management of said business and shall, at no time, reduce the powers and authorities of said general manager below the usual and ordinary standard in business of like kind." It is then agreed that the Produce Company shall have an annual salary of P7,500 for its services as general manager, and that the defendant will also pay the local agents of the Produce Company P300 per month for their services. The agreement also provides that it shall remain in force and effect ten years from date, with the right of the Produce Company to renew it for a further period of one to ten years at its option. In the months of November and December, 1918, and while the contract was in force and effect, the defendant duly issued to the Produce Company its negotiable quedans Nos. 1255, 1266, 1273, 1275, 1277, 1279, and 1283 for 15,699.34 piculs of copra in and by which, subject to the terms and conditions therein stated, it agreed to deliver that amount of copra to the Produce Company or its order.

Section 4 of the conditions printed on the back provides:

"This Association will deliver the packages, noted hereon, on surrender to the Association of this warrant endorsed by the party who shall be for the time registered in the books of the Association as the owner of the packages described hereon; and the production by the Association of this warrant shall at all times be conclusive proof that the packages hereon noted have been properly delivered by the Association and shall exempt the Association from all responsibility in connection with the said packages or goods."

Section 5 provides ;

"No transfer of interest and/or ownership will be recognized by the Association unless registered in the books of the Association, and/or all charges for storage and/or insurance due to the Association paid. Such storage and/or insurance shall constitute a lien against the packages herein noted until paid and said packages shall remain undelivered until such lien or liens is/are satisfied."

Each quedan gave the number of sacks, piculs, warehouse number, gross weight in kilos and its declared value, and recited thereon that the copra was insured for the full amount of its declared value, and across the face of the quedan were the words "Negotiable Warrant" in red ink. They were all on the printed form entitled "Producers' Warehouse Association." Each recited in red ink "This warrant is of no value unless signed by an officer of the Association." and were signed "Producers' Warehouse Association by George B. Wicks, Treasurer, and Producers' Warehouse Association by R. Torres, Warehouseman." Each receipt was also numbered, and stated the number of the warehouse and where situated, and recited that storage charges were at the rate of P0.04 per picul per month, and that the insurance rate was 1/8 per cent per month on the declared value.

The Produce Company arranged for an overdraft with the plaintiff of P1,000,000. To secure such overdraft, and as collateral from and after the dates of their issuance, the quedans in question were endorsed in blank by the Produce Company, and delivered to the plaintiff, which became and is now the owner and holder thereof. Without making a tender of any charges, on March 21, 1919, the plaintiff requested the delivery of the copra described in the respective quedans, and, for its failure to do so, commenced this action on April 23, 1919, to recover its value alleged to be P240,689, with interest from March 21, 1919, at the rate of 6 per cent per annum. July 10, 1919, an amended complaint was filed, and on August 9, 1919, a second amended complaint was filed, in which it is alleged that, in good faith, the plaintiff purchased these quedans, and that it is the owner, and recites all of the conditions printed on the back, and made a part of the quedans. It is also alleged that on July 30, 1919, the plaintiff requested the defendant to register the quedans in the name of the plaintiff and to deliver A the 14,587.19 piculs of copra, and, upon that date, that it had offered to satisfy any lien that defendant might have, to surrender the receipts with such indorsement that might require, and to receipt therefor, when the goods were delivered, if such signature is requested by the defendant. "That the defendant refused to comply with the demand of the plaintiff, stating that it could not deliver the goods mentioned in the receipts as said goods are riot in the house, said defendant still refusing to make such delivery." That on July 30, 1919, copra was of the value of P21 per picul. That by reason of such refusal, plaintiff has been damaged in the amount of P306,330.99. It is also alleged that in January, 1919, with the consent of the plaintiff, the Produce Company removed from the warehouse of the defendant 1,112.15 piculs of copra described in 1255, of the declared value of P18,350.

For amended answer, the defendant admits that the Produce Company deposited copra in defendant's warehouse, and that warehouse receipts were issued therefor to the Produce Company, "signed by one George B. Wicks and one R. Torres, but denies that either of the said George B. Wicks or the said R. Torres had any authority to issue such receipts in the name of the defendant," or that the receipts set out in plaintiff's complaint are complete and correct copies of those issued, and, as a further answer and defense, pleads that at the time alleged, the Produce Company was the manager of the defendant's warehouse; that all the copra deposited by the Produce Company "in the defendant's warehouse" was, by and with the consent and knowledge of plaintiff, sold and delivered to the Laguna Coconut Oil Company, and all the proceeds thereof deposited to the account of the said Philippine Fiber and Produce Company with plaintiff, before the filing of the said second amended complaint; that by and with the consent of plaintiff, said delivery was made by the Philippine Fiber and Produce Company, the manager of the defendant's warehouse, without the surrender of the receipts referred to in the complaint ; that said receipts were issued without defendant's authority, as hereinbefore set out; that said receipts were never transferred plaintiff on the books of defendant, as provided in the terms thereof; and that they were issued but the copra described therein

being deposited in the defendant's warehouse. Testimony was taken on such issues during which the plaintiff offered in evidence the described quedans as Exhibits C to I, inclusive, and the defendant admitted that the signature appearing on the lower left-hand corner of each exhibit is the signature of George B. Wicks, and that at the time he signed the quedans "he was the duly elected, qualified and appointed treasurer of defendant," that the signature on the lower right-hand corner of each quedan was signed by R. Torres; and that warehouseman of the defendant at the time, and employ of the Produce Company. After the taking of testimony, the lower court rendered judgment for the defendant, from which the plaintiff appeals, claiming in substance that the court erred in not giving plaintiff judgment for the full amount prayed for in its complaint.

On March 21, 1919, the plaintiff notified the defendant that the Produce Company had endorsed to plaintiff the above described quedans, and asked that it should be informed "as to when we can take possession of the goods represented by the above quedans." This was answered by a letter from the secretary and attorney for the defendant, known in the record as Exhibit B, and which the trial court refused to receive in evidence. But it does appear from the record that in response to that letter, the then secretary and attorney for the defendant went to the bank, and that the only matter which was then and there discussed between the parties was the amount which the defendant should pay the plaintiff for the copra that it could not deliver. That nothing was ever said about the lien or the surrender of the quedans, or that the receipts should be signed for the copra when delivered. It also appears that on the 30th of July, after the court sustained the demurrer to the complaint, the attorney for the bank went direct to the defendant and then offered to pay any lien or charges that it might have on the quedans, and offered it all the quedans indorsed in blank by the Produce Company, and "to place on them any indorsement that would make them negotiable," and to sign for the bank the receipts for the copra when delivered. That Mr. Wicks, who was then acting for the defendant, refused to take up the quedans, stating that the copra which they represented was not in the warehouse, and that "we cannot give you the copra because it is not there." The bank's attorney then had the quedans with him and exhibited them to Mr. Wicks. It further appears that on July 29, 1919, and in answer to its letter of the 28th, the Produce Company wrote the defendant as follows:

"We regret to state that we are unable to return to you the warrant referred to in your letter for the reason that, in December, 1918, we deposited these warrants with the Philippine National Bank as security for loans and said bank refuses to return same to us. As all the copra, less shrinkage and other losses, has been delivered by you, we hereby authorize you to cancel such warrants and hereby agree to hold you free and harmless for so doing."

The attorney further testified: "I have seen the over-draft agreement and, if I remember right, it was for a million pesos." The Produce Company "signed one of the printed forms of the bank for overdraft agreement." When plaintiff rested, the defendant moved for judgment against the plaintiff for want of sufficient evidence. The motion was denied and exception duly taken. The defendant then called J. McLaughlin, who, as a public accountant, audited the books of the Produce Company for the period of six months ending December 31, 1918. A copy of his report made from the books of the Produce Company was offered in evidence, from which it appears that on December 31, 1918, it owed the plaintiff P887,856.66. George E. Kauffman testified that he was president of both the defendant and the Produce Company and held that position in October, 1916, at the time the contract was made between the two companies. That it was voluntarily surrendered and cancelled in April, 1919, also that the contract was duly ratified by the director of both corporations, and after its ratification, the Produce Company assumed the active management of defendant's business, under the terms and provisions of the contract. He also testified that Mr. Lacson presented quedans for a certain amount of copra to Mr. Wicks, and asked for the delivery of the copra. Mr. Wicks told Mr. Lacson "the copra did not exist because the copra has been delivered—by the Philippine Fiber and Produce Company." Mr. Kauffman further testified that he owned 98 per cent of the capital stock of the Produce Company, and that Mr. Wicks had only one share.

"Q. What was the balance shown by your books?—A. I reserve the right, in answering these questions,—because I am not prepared to answer in amounts. They run into large amounts of money.

"A. I can say what caused the controversy, and that is that the bank showed an overdraft of some five hundred and some odd thousand pesos as to the Philippine Fiber & Produce Company, while my books show an overdraft of some hundred and thirty-nine thousand pesos,—caused by the fact that I have charged the Philippine National Bank with the entire expenditure for the purchase of hemp made for their account and risk during the year of 1918. I have so notified the bank, but they haven't seen fit to reply to my letter."

He further testified that Mr. Wicks was treasurer of the defendant at the time the quedans were issued, and that the printed forms used are like those held by the bank.

"Q. And they have been from the very beginning, haven't they?—A. Yes, sir."

Mr. Wicks testified that he was vice-president of the Produce Company from the October, 1916, until February, 1919, and that he was treasurer of that company "from July 1, 1917, up until this year." He further testified that R. Torres was actually in charge of the warehouse itself, and that the Produce Company was managing the warehouse. That it was selling copra between December 1, 1918, and February 1, 1919, and that the proceeds were deposited in the Philippine National Bank; that during that period the warehouse receipts were hypothecated with the plaintiff; that under the practice at the end of each week, the warehouse would notify him of the amount of copra delivered; and that "I would then withdraw from the Philippines National Bank the corresponding number of warrant for cancellation. Sometimes I would go personally and withdraw them; and at other times I would go personally and withdraw them; and at other times I would send the cashier down with a note to the Philippine National Bank, asking them to release these warrants for cancellation." The warehouse receipts were delivered to me regularly "until about the end of January or early in February." This procedure was a matter of convenience to both parties.

"Q. What reason did you give the Philippine National Bank for not delivering the copra to Mr. Lacson, or any other representative of the Bank?—A. The reason was that the copra was not in the warehouse; having been delivered to its owners.

"Q. While you were treasurer of the Producers' Warehouse Association, all the quedanes issues by the warehouse were signed by you as treasurer, were they not?—A. Yes, sir.

"Q. Even by Mr. Kauffman—now haven't they?—A. So far as I know, they have.

The record shows that Mr. Kauffman was absent from about March 15, 1918, until May, 1919.

"Q. And during that period you had full authority to act for the Philippine Fiber & Produce Company?—A. Yes.

"Q. Was that authority ever questioned by anyone; by Mr. Kauffman or anyone?—A. Not to my knowledge."

The testimony is conclusive that the quedans in question were duly executed by Wicks, as treasurer, and Torres, as warehouseman, for and on behalf of the defendant, and as its act and deed. That it appears from its own books that on December 31, 1918, the Produce Company was indebted to the plaintiff in the sum P887,856.66, and Mr. Kauffman, president of the defendant, testified that the Produce Company had an indebtedness; "they run into large amount of money." The testimony is also conclusive that after the quedans described in the complaint were issued to the Produce Company, they were endorsed in blank, and physical possession delivered to the plaintiff as collateral security for the overdraft of the Produce Company, and that each of them is in form negotiable.

That on March 21, 1919, plaintiff notified the defendant of such facts and requested the delivery of the copra. At that time no claim was made on account of conditions, liens or charges, and the plaintiff did not offer to pay the

charges or comply with the conditions, and the only question discussed was the amount of copra to which plaintiff was entitled. In July, 1919, and after the sustaining of the defendant's demurrer to the complaint, plaintiff, for the first time, made a formal tender of all such conditions, and then filed its second amended complaint in which tenders were alleged. In its answer, the defendant denies that Wicks and Torres had any authority to issue the quedans for, or in the name of, the defendant, and, as a further and separate defense, alleges that the Produce Company was the manager of the defendant's warehouse, and that all copra deposited in it by the Produce Company was, with the knowledge and consent of plaintiff, sold to the Laguna Cocomanut Oil Company, and the proceeds of the sale were duly deposited with the plaintiff to the account of the Produce Company, before the filing of the second amended complaint; that with the consent of the plaintiff, delivery was made by the Produce Company, as manager of the defendant's warehouse, without the surrender of the quedans described in the complaint; that such receipts were issued without authority and they were never transferred to the plaintiff on the books of the defendant corporation; and that they "were issued without the copra described therein being deposited in defendant's warehouse." The defendant, having alleged that the quedans were invalid and wrongfully issued, and that the copra therein described was not in defendant's warehouse, is now estopped to claim or assert that the plaintiff did not comply with any conditions precedent. In this kind of an action, a person has no legal right to deny the existence of the instruments on which it is based, and then claim that plaintiff has not complied with the provisions of the instruments. This question is squarely decided in *Wyatt vs. Henderson* (31 Ore., 48; 48 Pac, 790), where the court says:

"* * * The only possible object defendants could have had in seeking to show that storage was due on this grain was to insist upon the maintenance of a statutory lien thereon, under which they expected to hold the oats until their charges had been paid, and thus defeat the action for the recovery of possession; but, by denying the plaintiff's ownership, the lien given by statute was waived, and the title to and the quantity of the grain being the only issues for trial, the amount due for storage was immaterial * * *."

This case was again followed and approved in *Anderson vs. Portland Flouring-Mills Co.* (60 Pac, 839). The same rule is also laid down in *Cyc*, vol. 38, p. 135, where it is said:

"* * * Similarly a tender is waived where the tenderee makes any declaration which amounts to a repudiation of the contract, or takes any position which would render a tender, so long as the position taken by him is maintained, a vain and idle ceremony * * * "

Ruling Case Law, vol. 26, p. 624, says:

"Since the law does not require any one to do vain or useless things, a formal tender is never required where it appears that if it had been made, the money would not have been received, as where a creditor states that an actual tender will be useless because he will not accept it, or where one party to a contract states that he will not comply with its terms.

"* * * Where a contract calls for the performance by the parties of concomitant acts, neither party being obliged to perform unless the other is ready to perform the correlative act, a tender is not necessary by the one if the other is not willing to perform his part * * *." (Citing numerous authorities.)

Again, in the inception of this dispute nothing was ever said about any condition precedent, or about any claim on account of liens or charges, and it is very apparent that at that time the defendant did not contemplate any such a defense. When the point was first raised, the formal tender or offer was promptly made, and the defendant then, for the first time, denied the authenticity of the quedans, and claimed that they were wrongfully and illegally issued. If the copra evidenced by the quedans was in the bodegas, defendant's contention would be tenable, but upon the facts shown, the defendant has no legal right to make that defense.

Complaint is made that the quedans were not transferred On the books of the company in accord with their

provisions. Here again, it is shown that the plaintiff produced them and requested their transfer to the bank, which the defendant refused to make. It is not now in a position to urge that point as a defense.

The stubborn fact remains that, under the written contract between them, the Produce Company was the general manager of the defendant's warehouse business, and that it had authority to issue quedans in its name, and as its corporate act and deed. That the quedans in question are duly authenticated, and were duly issued by the defendant to, and in the name of, the Produce Company, and when issued were duly endorsed, and delivered to the plaintiff for value. For aught that appears in the record, the bank was acting in good faith, and the quedans were duly issued, endorsed and delivered to it as collateral in the ordinary course of business. Although there may have been fraud, there is no allegation or proof that the bank was a party to it, or had any knowledge of it, and this court has no right to assume that the bank was a party to a fraud. Giving to the quedans their legal force and effect, it must follow that at the time the demand was made, the bank was the owner and entitled to the possession of the copra therein described. The receipts call for 15,699.34 piculs of copra, but plaintiff admits that, with its consent, 1,112.15 piculs of copra, of the declared value of P18,350, were delivered to the Produce Company from and out of receipt No. 1255. This would leave 14,587.19 piculs of copra evidenced by the quedans.

As in the case of the Philippine Trust Company vs. Philippine National Bank,[1] recently decided, there is no direct evidence of the market value of the copra. But each quedan specified the amount of its declared value. That being specified in the quedans, in the absence of other proof, and upon the facts shown, the declared value will be deemed and treated as the market value. Deducting the 1,112.15 piculs, which were surrendered by the plaintiff out of quedan No. 1255, the declared value of the copra remaining was P240,689.

The decision of the lower court is reversed, and judgment will be entered here in favor of the plaintiff and against the defendant for P240,689, with interest thereon from March 21, 1919, at the rate of 6 per cent per annum, and costs in this and the lower court. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur. Judgment reversed.

[1]Page 413, ante.

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