

GO FAY, PLAINTIFF AND APPELLEE, VS. THE BANK OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLANT.

G.R. No. 21384. April 04, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Claiming to have in his current account with the defendant bank a balance of P27,000 in his favor, the plaintiff prays for judgment against the defendant for such an amount, with legal interest thereon from October 14, 1922, with the costs.

The defendant bank admits the facts alleged in the first three paragraphs of the complaint, denies specifically all those set forth in the other paragraphs, and prays¹ for the dismissal of the action with the costs against the plaintiff. At the beginning of the trial, the parties entered into the following stipulation of facts:

"Come now the plaintiff, Go Fay, by his undersigned attorneys, and the defendant, the Bank of the Philippine Islands, by its undersigned attorneys, and agree and stipulate as follows:

"1. That the plaintiff is a resident of the City of Manila, Philippine Islands;

"2. That the defendant is a banking corporation organized and existing under the laws of the Philippine Islands, with its principal place of business in the City of Manila, Philippine Islands;

"3. That, at all times¹ mentioned in plaintiff's complaint, plaintiff had a current checking account in defendant bank, in Manila, Philippine Islands;

"4. That, at the time plaintiff opened his account in defendant bank, defendant agreed to accept and deposit to plaintiff's account any and all sums of money delivered to it by plaintiff and did further agree to honor and pay any and all checks, and other orders for money, drawn by plaintiff upon it, in a sum not to exceed, at any time, the just balance to the credit of plaintiff.

"5. That on the 31st day of December, 1919, plaintiff had a credit balance in his current account in defendant bank in the sum of P141,400.63;

"6. That between the 31st day of December, 1919, and the 31st day of August, 1922, plaintiff deposited in his current account in defendant bank sums aggregating P5,023,009.10;

"7. That the reported balance in plaintiff's current account with defendant bank, on the 31st day of August, 1922, according to the August, 1922, monthly statement submitted by defendant to plaintiff, showed a credit balance in favor of plaintiff in the sum of P16,004.60 only, subsequently checked out by plaintiff;

"8. That plaintiff asserts the true balance to his credit in his current account with defendant bank of said 31st day of August, 1922, was the sum of P43,004.60;

"9. That the difference between said sums mentioned in paragraphs 7 and 8 of this stipulation is P27,000, Philippine currency, represented by five checks paid by defendant and charged to plaintiff's account as follows:

Date

Number

Amount

August 4, 1922..... 800,702 Series A

P5,500.00

August 5, 1922..... 800,703 Series A

6,000.00

August 1, 1922..... 800,705 Series A

7,500.00

August 7, 1922..... 800,707 Series A

5,000.00

August 2, 1922..... 800,708 Series A

3,000.00

27,000.00

which plaintiff asserts are forged; but which defendant maintains are genuine checks of plaintiff;

"10. That on the 14th day of October, 1922, defendant, upon demand, refused to cash plaintiffs check in the sum of P27,000, the aggregate amount of the five checks abovementioned, and has since refused to credit plaintiff's current account, or to refund to plaintiff, the said sum of P27,000 or any part thereof.

"Manila, P. I., March 7, 1923.

"FISHER, DEWITT, PERKINS & BRADY

"By (Sgd.) F. C. FISHER

"Attorneys for plaintiff

"HARTIGAN & WELCH

"BY (SGD.) THOMAS CARY WELCH

"Attorneys for defendant"

The trial having terminated, the lower court rendered decision sentencing the defendant corporation to pay the plaintiff the sum claimed, with legal interest thereon from October 20, 1922, the date of the institution of this action, with the costs. The defendant bank appeals from this judgment, assigning errors to the action of the trial court:

"1. In adopting and making its, almost literally, a decision that was not written by it, but was previously prepared by the attorney for the plaintiff.

"2. In rendering judgment in favor of the plaintiff, not supported by the preponderance of evidence.

"3. In admitting evidence relative to the importance of the movement or activity of the account of the plaintiff with the bank, and also in admitting evidence on the strokes of the writing and signatures of the questioned checks, over the objection of the defendant

"4. In rendering a judgment contrary to the evidence and weight thereof, and

"5. In denying the motion for new trial filed by the defendant."

For the purposes of this opinion, it is not necessary to consider the first assignment of error. We find no sufficient justification for the reprobative remarks made by the attorney of the appellant bank in connection with this assignment of error.

The other errors have reference to the fundamental question whether or not the documents in question are authentic, as may be seen from the stipulation of facts above set out, and it is with that point that the greatest part of the abundant evidence presented by both parties deals.

The principal question, therefore, in this case is whether or not the signatures appearing at the bottom of the documents Exhibits C, J, K, L, M, and N, are authentic.

Exhibit C is an application to the defendant bank for a check book containing 300 checks in blank, which are numbered 800701 to 801000, both inclusive, series A.

Judging from their numbers, the checks in question are some of the blank checks furnished upon the application Exhibit C, and their numbers are, that of Exhibit J, 800702; that of Exhibit K, 800703; that of Exhibit L, 800705; that of Exhibit M, 800707; and that of Exhibit N, 800708.

The plaintiff contends that the signatures appearing on these documents are false, pointing out twelve circumstances as indicia of their falsehood, to wit, the alignment of the letters of the signature, the relative position of the first down stroke of the letter "F" and the upper end of the oval of the "o;" the end of the last down stroke of the "G;" the intersection of the first down stroke with the second down stroke of the letter "F," the relative position of the upper end of the "F" and the end of the upward stroke of the "a;" the relative distance between the upper angle of the "F" and the basic line, and between the upper end of the "G" and said line; the position of the end of the last stroke of "o;" the relative height of the "o" in the questioned signatures and the authentic ones; the relative inclination of the "o" in both sets of signatures; the length of the last down stroke of the "a;" the dot; and the width of the "G."

The authentic signatures of the plaintiff presented by both parties for the purpose of comparison amount to about 700, a large majority of which were placed by the plaintiff on checks drawn on the defendant bank from the year 1916 to 1922.

We have examined these signatures one by one, and in connection with the characteristics pointed out by the plaintiff, we will make the following remarks:

It must be borne in mind, first of all, that the plaintiff is a Chinaman who had not studied writing in the Roman characters, and that with the exception of his signature, he has no such knowledge and training as are sufficient to enable him to write any manuscript in the Roman characters in which he writes his signature; that his signature is composed of five letters and a dot disposed thus: A capital "G" and a small "o," making the syllable "Go;" then comes a dot, and after that a capital "F," which is followed by a small "a" and small "y," making the syllable "Fay." The last stroke of "y" makes a curve downward and then to the left below his name, thus constituting a rubric. The signature reveals a degree of steadiness in the strokes, and from them, it appears that in writing his signature, the plaintiff places the pen point four times in contact with the paper, first, on writing the first letter, which is the capital G; then he lifts the pen and writes the o; lifts up again the pen and marks the dot; lifts up again the pen and writes uninterruptedly the rest of his signature, beginning with the capital F, without lifting the pen any more from the paper until finishing his name and the rubric. It was undoubtedly due to this that the "G," the "o" and the dot, separately written, are not on the same level, nor in alignment with the rest of the signature. This is explained by Obsorn in his work, "Questioned Documents," page 121, where he says:

"Disconnections or pen-lifts between letters in words may be due to lack of movement control. With those who write clumsily or with difficulty the pen is raised frequently to get a new adjustment and make a fresh start, and words may be broken after almost any letter, depending somewhat upon where it is in the word. With most writers, however, disconnections are more closely related to design of letters than with movement, and the habits controlling this characteristic were acquired when writing was first learned."

- Alignment.—The general alignment of the plaintiff's signature tends to go up. In view of the personal circumstances of the plaintiff, in connection with handwriting in the Roman alphabet, this signature can be classified as an illiterate writing, such as that treated by Osborn in his aforesaid work, page 121, wherein he says:

"Illiterate writing, even on ruled paper, frequently shows a pronounced irregularity in alignment, some of it being above the line and some through the line, or the words may each go up from the line so that the end of each word is higher than the beginning, this characteristic being due to the fact that the arm is held so that the center of motion is so far to the right that as the hand moves along it is inevitably raised above the general line of writing. On unruled paper this position naturally has a tendency to make the writing go up-hill across the whole sheet or page."

With reference to the six signatures in question on the face of Exhibits C, J, K, L, M and N, the trial court says that said signatures exhibit a practically straight alignment.

If the alignment the trial court has in mind is the one beginning on the base of the initial "G," certainly that is not the case. In such a case all the signatures in question have a tendency to go up. And if that alignment is that commencing with the base of the "o," then it is not true that the alignment of all the signatures in question is practically straight. The signatures on Exhibits C, K, L, and N tend to go up. The line upon which the "o" and the "a" in the signature of Exhibit M are written is the one that appears to be horizontal; and such a line in the signature of Exhibit J tends to go down.

After an examination of the authentic signatures, we find that of the 700 approximately, there are 251 where the common basic line of the "o" and the "a" is practically horizontal, and in 22 of these 251 signatures, such a line has a downward tendency. This is the case with the signatures on exhibits found on pages 25, 33, 39, 43, 50, 51, 54, 57, 59, 61, 63, 65, 66, 67, 74, 79, 85, 87, 94, 98, 118, 122, 128, 142, 158, 170, 173, 175, 183-189, 191, 200, 204, 214, 220, 223, 272-276, 279-292, 295, 299, 300-302, 313, 316, 322-525, 331, 339, 343-352, 355-359, 362, 366-374, 376, 381, 384, 387, 390, 393, 394, 398, 403, 404, 413-418, 420, 424, 429-433, 437, 440, 442, 444, 453, 454, 453, 463, 468, 473, 480, 485, 487, 488, 490, 491, 495-520, 522, 523, 537, 540, 551, 557, 559, 564, 567, 568, 572, 576, 578-580, 585, 594, 601-603, 605 (with two signatures), 606, 609, 611, 612, 614, 619, 621, 623-625, 631, 632, 636,

644, 645, 648, 649, 652, 655, 660, 663, 667, 669, 67&-677, 679, 681, 683, 696, 699, 703, 704, 706, 707, 724, 730, 734-736, 740, 741, 747, 752-757, 759-765, 769, 775, 777, of the Bill of Exhibits. Of these authentic signatures, the 22 that have a downward tendency are those appearing on the exhibits found on folios 85, 301, 316, 323, 346, 348, 355, 359, 367, 373, 413, 419, 502, 504, 505, 540, 619, 648, 649, 753, 757, 759.

The line of alignment of the plaintiff's signature, which must be considered as characteristic, is not that on which the "o" and the "a" of said signature stand, for, as we have seen, such a line has no fixed and constant inclination. This is due, in our opinion, to the fact that the "o" is written with an independent stroke from those of the other letters of the signature.

The general alignment of the letters of the plaintiff's signature must be that formed by the bases of the initial letter "G" and the final "y," taking as the base of the "G" the lower end of its last encircling curve, and as the base of the "y," the lower end of its first down stroke. We take as the base of the "G" the one aforesaid, because the "G" used by the plaintiff in his signature is not one of the old type known as "Round Hand," or of that called "Italian Hand" used at the beginning of the 19th century and which is shown by Osborn in his aforesaid work, page 171, the base of alignment of which "G" with the other letters of the same line is the lower arc of the principal semicircle of the letter. The "G" used by the plaintiff in his signature is of a more modern type, like the one shown by said author on pages 172, 175-179 of his aforesaid work, and its base of alignment, as we have said, is the lower end of its last encircling curve.

As to the "y" which is a small letter, we all know that its base of alignment with the other letters of the same line is, as above indicated, the lower end of its first down stroke, and not that of its last stroke, which end, even in the printing types, with regard to small letter "y" like the one in this case, goes below the line of alignment.

And this common basic line of the "G" and the "y" tends to go up in all the signatures of the plaintiff presented here, not only in the questioned ones but also in the unquestioned.

The fact that in some signatures of the plaintiff among the authentic ones, this alignment of the "G" and the "y" tends to go down, need not be explained, for there is no such tendency in any of the signatures in question. Suffice it to say that the general alignment in a manuscript tends to go up or down with respect to the horizontal sides of the paper used in writing according to the position of the paper on the table with respect to the person writing. We find, therefore, no sign of forgery in the alignment of the signature in question.

- Relative position of the first down stroke of the "F" and the upper end of the oval of the "o."—The trial court observes that of the 100 checks examined by Doctor Banks, 98 exhibit signatures where the initial down stroke of the "F" reaches a point higher than the "o," whereas in the questioned signatures said stroke of the "F" ends at a point lower than the top of the "o."

We hold that the relative position of the two aforesaid points cannot be taken as a fixed and permanent characteristic of the signature of the plaintiff. Of the authentic signatures of the plaintiff presented as evidence in this case, we find that in 125 exhibits the initial down stroke of the "F" goes below the top of the "o," there being among them 20 cases in which such lowering of the initial down stroke of the "F" is pronounced. These 125 exhibits are those found on folios 57-59, 86, 88, 110, 127, 140, 147, 155, 171, 175, 183, 191, 194, 216, 273, 282, 295, 330, 331, 342, 348, 350, 351, 359, 360, 366-400, 404, 408, 409, 412-414, 440, 469, 474, 477, 480, 491, 496, 509, 515, 519, 527, 531, 533, 535, 538, 539, 540, 546, 553, 554, 556, 567, 570-574, 591, 597, 598, 601-603, 605, 606, 609, 611, 614, 652, 675, 697, 698, 701, 722-729, 738, 739, 761, 769, 771. Such lowering is very pronounced in the exhibits found on folios 127, 373, 376, 380, 381, 384, 404, 480, 491, 603, 614, and 729.

It must be noted that of the checks just mentioned, those numbered 697, 698, 701, 722, 723, 724, 725, 726, 727,

728, 729, 738, and 739 were drawn, the first three in July, 1922, the month in which Exhibit C in question appears to have been dated, and the last 10 in the month of August, 1922, in which the disputed checks, Exhibits J, K, L, M, and N, purport to have been dated. So that even supposing that the relative position of the aforementioned points is a characteristic of the plaintiff's signature, yet it is not fixed and permanent, and was not adopted at times, as on the dates of the drawing of the documents in question, and of the authentic ones just mentioned, where the lowering of the initial down stroke of the "G" is the same in both classes of documents, passing below the top of the "o."

Neither do we find this circumstance as a sure mark of forgery in the signatures in question.

- The end of the last down stroke of the "G."—The decision appealed from says that of the 100 signatures examined by Doctor Banks, 69 were found with the end of the last encircling curve somewhat bent to the right; that the witness Sinkus admits that such curving to the right side of the observer is one of the characteristics of the plaintiff's signature, and that of the signatures in question, only one exhibits such curving.

An examination of the signatures in question shows that the end of the said last stroke tends to go to the right. It is true that in the signature on the face of Exhibit M, such a stroke appears straight and cut, but this circumstance does not in itself reveal forgery, as of the authentic signatures presented as evidence, which are about 700, there are 100 where the stroke under discussion does not have such a tendency to go to the right, but it either goes down, or to the left.

From the examination we have made of these signatures, it appears that the plaintiff must at the beginning have been writing his signatures more slowly, without attempting to connect by one single continuous movement of the pen and without touching the paper the last stroke of the "G" and the first of the "o;" thus it is seen that in many of his signatures of the year 1916, the last stroke of the "G" does not only not curve to the right, but in some cases it rises again and ends in an upward direction. In the following years, he would acquire more speed and no longer needed such a stop, but by a continuous movement of the pen and without touching the paper, terminated the "G" and began the "o." In the year 1922, however, the tendency to go in the straight direction downward was more frequent. All of this is seen in the signatures in the exhibits found on folios 292, 361, 430, 431, and 432, which are of September, 1916; in the exhibits on folios 299, 313, 314, 315, 363, 434, 435, 436, of October of the same year; in the exhibits on folios 288, 289, 297, 315, 325, 364, and 466, of November of said year; in the exhibits on folios 753, 755, and 757, of April, 1919; in the exhibits on folios 648 and 649, of July, 1919; in the exhibit on folio 751, of November, 1919; in the exhibits on folios 412, 414, 487, and 603, of July, 1920; in the exhibits on folios 369, 379, 395, and 521, of August, 1920; in the exhibits on folios 528, 532, and 537, of September, 1920; in the exhibit on folio 609, of October, 1920; in the exhibit on folio 283, of November, 1920; in the exhibit on folio 552, of March, 1921; in the exhibit on folio 469, of April, 1921; in the exhibit on folio 48, of April, 1922; in the exhibits on folios 447, 674, and 690, of July, 1922, and in the exhibit on folio 214, of September, 1922.

The cases of a straight downward tendency are presented by the signatures found on the following folios, to wit, 292, of September, 1916; 301, of December of the same year; 758 and 759, of April, 1919; 347, 351, 366, 367, 495, and 498, of July, 1920; 370, 395, 397, 407, 511, and 619, of August, 1920; 275, 611, and 614, of December, 1920; 383, of January, 1921; 556, of March, 1921; 403, of April, 1921; 404 and 476, of May, 1921; 446, of June, 1921; 29, 31, 33, 36, 60, and 88, of April, 1922; 110, of May, 1922; 93, 121, 122, and 129, of June, 1922; 84, 294, 295, 488, and 691, of July, 1922; 80, 171, 311, 721, and 725, of August, 1922; and 214, of September, 1922.

These facts and remarks lead us to the conclusion that while it is true that the majority of the authentic signatures exhibit a tendency of the last down stroke of the "G" to go to the right, yet such a tendency was acquired by the plaintiff by the greater ease obtained in the course of the frequent use of his signature, and that at the beginning,

for lack of training, he first finished his "G" separately, without driving his last stroke in the direction of the first stroke of the "o", and then, for some reason or other, it is a fact that in the year 1922, in the same period in which the signatures in question were dated, said tendencies, the first and the next, assumed a medium degree, the last stroke of the "G" going, either a little to the right, as may be seen not only from Exhibits C, J, K, L, and N, but also from a great majority of his unquestioned signatures, or descending more steadily and straightly, as shown by Exhibit N, as well as by many of the uncontroverted signatures.

It is to be noted that the two unquestioned signatures appearing on Exhibit 15, folio 292, present the two tendencies found in the signatures in question, to wit, that of this stroke going to the right, and its tendency to descend in a straight way.

Therefore this circumstance mentioned in the decision appealed from as a characteristic of the plaintiffs signature under No. 3 cannot be considered as a fixed and permanent one.

- The intersection of the first down stroke of the letter "F" with the second down stroke of the same letter.—With respect to this point, the trial court observes the following:

"Doctor Banks testified that an examination of the one hundred unquestioned signatures on the checks composing Exhibit U shows that in eighty-three signatures the second down stroke of the F does not intersect the first down stroke of that letter, there being but seventeen exceptions to this rule in the hundred unquestioned checks composing Exhibit U.

"An examination of the nine questioned signatures shows that in six of them (Exhibit K, front; Exhibit J, front and back; Exhibit M, front; Exhibit N, front and back) the second down stroke of F intersects the first down stroke at a point to the right of the beginning of the first down stroke projects to the rights of the second down stroke, in some cases forming a noticeable acute angle (Exhibits M, J, and K), while in the remaining three questioned signatures the second down stroke is written partly over the first down stroke (Exhibits C, L, and M, front). The dissimilarity of the questioned and unquestioned signatures in this respect is clearly shown by a comparison of the enlargements, Exhibit P (unquestioned) and Exhibit O (questioned)."

The detail here pointed out cannot be considered as a permanent characteristic of the plaintiff's signature. Of the approximately 700 unquestioned signatures, there are 253 showing the intersection alluded to. These are those exhibits found on folios 27, 30, 36, 39, 43, 44, 46, 49, 62, 54, 58, 62, 66, 67, 69, 86, 91, 95, 99, 104, 109, 116, 118, 126, 167, 168, 170, 171, 176, 187, 193, 212, 214, 216, 218, 221, 223, 272-274, 279, 280, 283-285, 293, 294, 303, 305, 310, 321, 328-333, 335-337, 340, 347-355, 357, 360, 367, 370, 375-379, 381, 383-389, 391, 392, 394, 396, 399, 400, 402, 410, 412-414, 416, 423-428, 433, 441-443, 445, 446, 449, 451, 457, 460, 467, 468, 470, 471, 473, 477, 481, 483-485, 488-491, 493, 495, 496, 498, 499, 501-506, 508-510, 512, 518-522, 525, 528-541, 544, 548-556, 560, 561, 565, 566, 569, 573, 575, 576, 578, 582-585, 588-591, 602, 606, 608, 611, 615-617, 619, 621-626, 627, 629, 635, 645, 647, 654, 660, 665, 666, 670, 671, 672, 677, 679, 682, 684, 686, 687, 690, 691, 694, 697, 699, 705, 706, 708, 710, 714, 716, 719, 723, 725, 731, 745, 746, 752, 768, 770, 771, 774, 776, and 777. Of these 253 unquestioned signatures, 36 are of the month of July, 1922, the month in which Exhibit C in question was dated, and 28 are of August 28, 1922, in which month Exhibits J, K, L, M, and N in question were dated. It must be noted that among the unquestioned signatures there are many of July, 1922, and several of August, 1922, without the said intersection.

From an examination of the plaintiff's signatures we find that the "F" used by him at the beginning was the one known as commercial hand type mentioned by Osborn in his above cited work, and presented by him on page 178 of said work. Said "F" is made of two separate strokes, to wit, one upper undulated horizontal, and the other vertical and undulated also which starts about the center and below the horizontal stroke, descends to the base of alignment and curves upward to intersect its initial vertical stroke about the middle thereof and make the small

angle peculiar to this letter. Such was the primitive "F" of the plaintiff, as seen from his signatures of September 25, 1916, (Exhibit 15, folio 292); and was preserved in that form for sometime, as may be observed from his signatures of that year until about 1920, when he modified his "F" by writing it with a single movement of the pen upon the paper, connecting the two parts of which it was originally composed, and extending the lower part beyond the general alignment of the signature up to a point far below said alignment. Naturally, in the original form of two independent strokes, it was not easy, in view of its respective contour, for an intersection to exist between one end of the first stroke and the middle part of the second, as observed by the trial court in the questioned signatures, and found by us in many of the unquestioned, for the very fact that the first stroke was in a horizontal direction and the second in a vertical one. But in the course of time, his "F" having been transformed by the plaintiff, such intersection became easier, and did in fact take place many times, as above stated.

- Relative position of the upper end of the "F" and the end of the last upward stroke of the "a"—The trial judge observes that Doctor Banks testified that of 400 authentic checks examined by him, only in 4% per cent does a variation appear of the rule established as to the upper end of the letter "F" and the end of the last stroke of the "a," whereas of the questioned signatures six present such upper end of the "F" in almost a vertical position with respect to the end of the last stroke of the "a," as, says he, can be seen in Exhibits J (face and back), M, N (back), K (face and back).

What we observe is that the relative position of the aforesaid ends of the "F" and the "a" traces an imaginary line inclined to the right in Exhibits C, J (back), L, N (face and back); that in Exhibit J (face), as well as in Exhibits K (face) and M, the imaginary line is almost, not entirely, vertical, as it is somewhat also inclined to the right, and that it is only on the back of Exhibit K that such imaginary line presents a decided inclination to the left.

That is to say, that such imaginary line is markedly inclined to the right in five (5) of the questioned signatures, almost vertical in three (3), and inclined to the left in one (1). And in the unquestioned signatures presented as evidence, and ignoring many of the year 1916, for the reasons presently to be given, it is noticed that, while in a large majority thereof the aforesaid imaginary line is manifestly inclined to the right, yet there are 89 signatures where said line is not so greatly inclined to the right, 17 where said line is entirely or almost vertical, and 9 where said line is conspicuously inclined to the left.

The aforementioned 89 signatures are those appearing on the exhibits found on folios 24, 29, 30, 32, 33, 36, 38, 39, 46, 47, 59, 61, 68, 77, 93, 107, 112, 113, 116, 119, 121, 126, 130, 132-136, 140, 142, 145, 163, 176, 194, 195-199, 201, 205, 294, 307, 310, 318-320, 329, 332, 335, 338, 339, 360, 365, 369, 371, 376, 382, 386, 421, 423, 442, 465, 475, 485, 507, 518, 543, 546, 571, 596, 601, 604, 613, 618, 635, 656, 659, 675, 709, 717, 739, 750, 753. The 17 mentioned are the exhibits found on folios 326, 406, 425, 438, 441, 547, 712, 646, 754, 755, 757, 758, 759, 762, 764, 765, 766. And the 9 aforesaid are the exhibits on folios 278, 411, 422, 545, 559, 609, 760, 761, 763.

As above stated, in studying the detail under discussion, we did not take into account many of plaintiff's signatures of the year 1916 and some of the subsequent year or years, because the "F" used in them is, as above-mentioned, of the commercial hand type composed of two separate strokes, one horizontal and the other vertical, without any connection between them. In such signatures the upper point of the "F" may be either the right end of the horizontal stroke, or the vertical end, which two ends were united into an angle when the plaintiff modified his "F," which angle is one of the points of the imaginary line hereinbefore mentioned. In the old signatures where this angle did not exist, the upper end of the vertical of the "F" always formed with the final end of the "a" an imaginary line decidedly inclined to the left.

The greater or lesser inclination of the plaintiff's signature, or its noninclination, to the right side of such an

imaginary line depends upon various circumstances independent of his will or habits. Said inclination depend upon the prolongation of the vertical stroke of the "F" subsequently adopted, for the more it is prolonged, naturally the more said imaginary line is inclined to the right; and such a prolongation depends, in turn, upon the distance between the fingers holding the pen, and the latter's point at the moment of signing, and also upon the same point of the pen, whether or not it slides with ease upon the paper; also upon the surface of the paper, whether it permits or not the prolongation of the strokes of the pen to run with more or less ease; also, in fine, upon the nervous state of the plaintiff. The greater or lesser inclination of the aforesaid imaginary line likewise depends upon the inclination of the letters with respect to the base of alignment of the signature, which inclination is not constant in the unquestioned signatures of the plaintiff.

The plaintiff's signature being one the details of which are so unstable and changeable, the circumstance of a specified inclination of the imaginary line under discussion cannot constitute a fixed and permanent characteristic thereof.

What strikes our attention is that since the plaintiff adopted a new form for the "F" of his signature, such imaginary line is, in most cases, more or less inclined to the right, and it would be dangerous to take as a sign of forgery the fact that, in some instances, as in many of the questioned signatures, such a line appears entirely, or almost, vertical.

- Relative distance between the upper angle of the "F" and the basic line, and between the upper end of the "G" and said line.—Upon the remarks made by Doctor Banks, the trial court says that of the 100 signatures of Exhibit U, 84 show that the height of the "G" is either equal to, or greater than, that of the "F," while in the questioned signatures the "F" is lower than the "G."

That the "F" is lower than the "G," is shown by an examination of many of the plaintiff's signatures of some years prior to 1922, appearing on the exhibits presented in this case. As to the year 1922, which we will treat later in a more detailed discussion, it being the year in which the questioned signatures were written, we have that the "F" is lower than the "G" in 23 exhibits of the month of April, 1922 (folios 32-35, 38, 39, 41, 43, 44, 50, 51, 54, 56-59, 61, 63, 64, 66, 70, 72, 74, 75); in one of May, 1922 (folio 110) ; in 28, of June, 1922 (folios 79, 90, 91, 94, 103, 109, 112, 119, 122, 126, 130, 132, 133, 142, 145, 151, 156, 163, 165, 193, 195, 197, 201, 204, 205, 208, 210, 213); in 57, of July, 1922, in which month Exhibit C in question was dated (folios 85, 174, 293, 294, 296, 448, 452, 461, 463, 468, 473, 585, 588, 591, 594, 596-598, 601, 615, 629-632, 635, 636, 638-641, 650-652, 654, 655, 659, 662, 666, 669, 675-678, 683, 688, 689, 692, 693, 697, 698, 701, 702-704, 706, 707); in 34, of August, 1922, in which month Exhibits J, K, L, M, and N in question were dated (folios 127, 170, 173, 175, 191, 192, 310, 319, 321, 433, 439, 454-456, 615, 710, 711, 721, 722, 724, 726-728, 730, 732, 733, 735, 738, 739, 744, 746-749).

It is to be noted that even in the signatures of the month of September, 1922, the "F" is less than the "G" in height. This is seen from the seven signatures of the plaintiff in his statements to the police (folios 183-189) and in his endorsement on the check found on folio 214.

The instances, among the unquestioned signatures, of the "F" being lower than the "G" are so abundant that if there is in this any characteristic detail at all, that is rather the lesser height of the "F," which is precisely the one observed in the questioned signatures.

- Position of the final end of the "o."—This was also considered by the trial judge as a mark of forgery in the questioned signatures, because, according to Doctor Banks, in all of them the final stroke of the "o" descends to a point lower than its middle part up to the lower arc of its oval, whereas in 78 out of the 100 authentic signatures of which Exhibit U is composed, such a final stroke ends about the middle part.

After an examination of all the genuine signatures presented as evidence, we find that in many of them the oval of the "o" is closed, it being impossible to the naked eye to see up to where the last stroke of the letter went. Among the authentic signatures where the end of said last stroke is noticeable, there are 209 where such stroke goes down beyond the average height of the letter, like the unquestioned signatures found on folios 37, 49, 57, 61, 66, 97, 141, 187, 188, 199, 273, 280, 282, 283, 292, 294, 325, 328, 331, 335, 336, 338, 339, 345, 346, 348, 349, 352, 355, 359, 366-368, 372-374, 376, 377, 380-382, 384, 385, 387-395, 398, 400, 403, 404, 406, 408-410, 412-416, 420, 424, 427, 428, 433, 438, 442, 444, 446, 456, 458, 460, 465, 468, 469, 471-473, 475, 479, 480, 483, 487, 488-490, 492, 494-501, 503-506, 608-510, 512-519, 521-523, 526-528, 530-532, 534-540, 543, 546, 548, 549, 551, 553-555, 557, 559-561, 564, 568, 569, 572, 573, 588, 597, 600, 603, 604, 606, 609, 610, 611, 614, 617, 619-622, 625, 634, 636, 638, 639, 642, 645, 649, 651, 655, 660, 661, 667, 668, 672, 675, 680, 683, 693, 697, 707, 710, 712, 717, 719, 724, 735, 737, 739, 748, 749, 753, 754, 757-759, 761, 763, 765, 766, 768, 770, 771, 773, 774, 777. Of these signatures there are 30, of the month of July, 1922, in which Exhibit C in question was dated, and 13 signatures of the month of August, 1922, in which Exhibits J, K, L, M, and N purport to have been dated.

In view of these facts we do not feel justified in finding that the questioned signatures are false by the mere fact that the end of the last stroke of the "o" in said signatures extends further down than in some of the unquestioned signatures.

Furthermore this lowering of the last stroke of the "o" is not uniform in said questioned signatures. While said stroke descends very low in the signatures of Exhibits C and L (face) it does not go down so far in those of Exhibits J (face and back), K (back), M (face) and N (face and back), and lowers less in those of Exhibit K (face).

We do not think it is safe to consider the greater or lesser prolongation of the final stroke of the "o" as characteristic of plaintiff's signature, which prolongation does not exist in any degree in many of his authentic signatures wherein the oval of the "o" is closed, and said final stroke is shortened in some, and prolonged in other, signatures by the plaintiff on the same occasions. We mean the two signatures on the card Exhibit 15 (folio 292) one of which appears below the other, and in the first of which such stroke of the "o" is short, and in the second noticeably long. This is also the case with the signatures placed by the plaintiff at the bottom of each of the sheets of Exhibits 1, 2, 3, and 4, in the first of which (Exhibit 1) signed some minutes after 11 in the morning of September 6, 1922, the last stroke of the "o" in the first two signatures (folios 183, 184) is noticeably longer than in the last two (folios 185, 186). A few minutes after 12 of that day, the last stroke of the "o" of the signature of the plaintiff in Exhibit 3 (folio 188) is again longer. A few minutes after five in the evening of that day, such a stroke appears again shorter, as seen in Exhibit 4 (folio 189). And on the third day, that is, September 8, 1922, after 12 o'clock, the plaintiff made again said stroke longer in his signature at the bottom of Exhibit 2 (folio 187).

- and 9. The height and inclination of the "o"—The height and inclination of this letter taken independently from the others of plaintiff's signature are so different in the authentic as in the questioned signatures that they cannot be considered as characteristics of his signature, the difference in millimeters that the trial judge notes in the heights not being sufficient for the purpose, which difference is not between the heights of each individual signature, but between the average height of such a letter in the questioned signatures, and the average height of the same letter in some of the authentic signatures presented as evidence.

- Length of the last down stroke of the "a."—Citing the testimony of Doctor Banks, the trial judge observes that in the nine questioned signatures, the last down stroke of the "a" does not go below the middle part of the oval of said letter, whereas in 94 out of the 100 signatures of Exhibit U, such last down stroke of the "a" reaches a point lower than said middle part of the oval of said letter.

Exhibit U, from which Doctor Banks has taken his data, consists of certain checks of the plaintiff of the months of June and July, 1922, and some of the month of August of said year. But we have made an examination of all the unquestioned signatures of the plaintiff introduced as evidence, and with particular reference to the checks drawn between the months of March and September of the year 1922, we have found 125 authentic signatures where the last down stroke of the a is higher than the oval of the same letter. They are the signatures found on the following folios, to wit, 27, signatures of March; 28-31, 34, 36, 38, 40-43, 46, 48, 49, 51, 52, 57-64, 67, 68, 72, 73, 75, of April; 110, of May; 77, 78, 80-83, 85, 97, 103, 106, 107, 112-115, 119, 123, 125, 129-134, 137, 141-145, 147-149, 152, 157, 158, 194-196, 198-205, 211, 213, of June; 81-83, 85, 294, 307, 438, 447, 468, 596, 636-639, 641, 642, 645-647, 686, 688, 695, 705, of July; 127, 176, 216-218, 456, 580, 708, 712, 717, 719, 722; 730, 731, 735, 739, 745, 746, 747, 749, of August; and 184, 186-188, of September of said year, 1922.

It must be noted that, as seen from the signatures as a whole, found in the record, at the beginning when the plaintiff had no much training in the signing of his name, he tried to adopt as a general alignment of his signature a rather horizontal line without a marked tendency to ascend, as may be seen from the card Exhibit 15 (folio 292) dated in September, 1916, and containing two signatures of his, and also in many of the checks signed by him in said year, 1916. He then would sign more slowly, trying to place the base of each and everyone of the letters of his signature upon a general alignment, straight and horizontal; and for this reason he would try to have the last two descending strokes of his a standing upon said basic general line, although as the writing was strange to him, his natural tendency was to go up, and thus it is noted in some of his signatures of the year 1916 that the second down stroke of the a is shorter than the oval of that letter. As he was being trained in signing, his signature appeared with a more marked tendency to go up, with the result that, as the alignment was rising on the right side, the last vertical stroke of the a had naturally to be higher than the oval of the letter that preceded it, and that in view of the rising alignment, it appears shorter than the subsequent strokes.

Hence and in view of these circumstances the plaintiff in recent years has had two tendencies in writing the oval of the letter a of his signature, one which we may term mechanical and consists in making the last down stroke of his a higher than the oval of this letter, and the other in lowering said stroke below the oval of the same letter, as may be seen in many of his authentic signatures. The latter tendency may be accidental, depending upon his nervous state of the moment, and upon the conditions of the pen and the position of the hand; or it may be conscious and deliberate, the plaintiff trying to make the alignment of the two bases of the letter a more horizontal.

The fact of said stroke of the a being higher or lower as compared with the base of the oval of said letter, does not necessarily show the authenticity or forgery of the signatures in view of the aforesaid antecedents.

- The dot.—The trial judge says that a characteristic of the unquestioned signatures is that the dot coming after the o in the signature of the plaintiff is a short vertical stroke, instead of oblique, as in 99 out of the 100 signatures composing Exhibit U, examined by Doctor Banks.

Doctor Banks, in testifying on this point, said the following (folio 329, trans., st. n.):

"Q. Now, referring to the questioned checks as a group, it is true, is it not, that the writer, in making the period, has written it, to all intents and purposes, vertical wherever the nib tracks are visible as being something other than a mere dot?—A. In only two cases, namely, on Exhibits M and N, could the period be said to be practically vertical. In all other cases the nib tracks are so evident that their inclination to the left in most cases, and to the right in Exhibit N (endorsement), is quite evident."

As this dot has very different forms in the questioned signatures, sometimes appearing as a true dot without any prolongation, and, therefore, without any direction whatever, sometimes as a stroke having an inclination to the

right or left side, and sometimes as a curve line with a varying direction in each case, we believe that the fact of said dot being more or less inclined to the right or left side, or more or less vertical is accidental and not a characteristic of plaintiff's signature.

This conclusion is further strengthened by the fact that this dot has no fixed place in the signatures of the plaintiff. Sometimes it is above the o, sometimes at its side, and sometimes almost beneath said letter; and according to the place where it is found and the position of the hand, the paper and the pen, said dot may appear more or less vertical or oblique, when a prolongation thereof is perceptible.

- The width of the "G."—The trial judge cites the difference of 1.35 millimeters found by Doctor Banks between the average width of the "G" in the unquestioned signatures and said width in the questioned ones. Neither do we find this detail to be a sufficient sign of forgery in these latter signatures. Such width is not fixed, nor could it be, in the authentic signatures. Said difference is found not only among the questioned, but also among the authentic, signatures themselves.

These are the details found in the judgment appealed from as signs of the forgery of the signatures in question. The findings of the trial judge are based upon the result of the examination of Doctor Banks made not of all the authentic signatures introduced as evidence in this case, but only of 100 signatures, except as to detail No. 4 about which said witness had examined 200 signatures, and as to detail No. 5 about which he had examined 400. All the unquestioned signatures, presented here as evidence and which were examined by us, amount to 700 approximately.

For all of the foregoing, no application can be made here of the result obtained by the witness Gurney, based on the probability rule. Such a result was obtained not from an examination of all the authentic signatures introduced as evidence in this case, but only from a part, small in most cases, of the whole of said signatures.

As to the remark made by Doctor Beyer about the written matter on the questioned checks which is uniform in them and different from the contents of about 500 unquestioned checks examined by him, even supposing it to be the case, it does not show but that the person who filled the questioned checks is different from the person or persons who filled the unquestioned checks. But that does not make it impossible for the plaintiff to have signed in blank the questioned checks, as he repeatedly did on other occasions, and for a single person to have filled said checks, perhaps without the knowledge and consent of the plaintiff, after having been signed in blank by said plaintiff.

But the fact is that the writing in the questioned checks is not entirely different from the context of many unquestioned checks, at least so far as the word "pesos" is concerned. We find in this word that the contexture, form and inclination of the P, and the forms, connections and relative heights of the letters e, s, o, s, in the questioned checks are similar to those of the same word in the unquestioned checks. It is true that the context of these last checks appear to have been written more rapidly while those of the former show slow writing. Such a similarity in the word "pesos" of the questioned checks, can also be found in many of the unquestioned ones. With particular reference to the year 1922, we find such a noticeable similarity in the exhibits on the following folios, 34, 40-44, 49-51, 53-59, 62-67, 70-76, which are 29 checks of the month of April, 1922; 110, of May of the same year; 78, 79, 89, 90, 92-97, 103, 118, 126-128, 133, 134, 137, 188, 140, 143, 148, 152, 161, 163-165, 167-169, which are 31 checks of June, 1922; 81, 83-86, 101, 102, 293, 295, 296, 305, 437, 448, 452, 453, 457, 459-461, 463, 465, 473, 595-599, 629-634, 637, 638, 642-645, 650-656, 660, 661, 663, 664, 667-671, 677-679, 682, 689-692, 694-704, 706, 707, 711, which are 77 checks of July, 1922; and 26, 87, 88, 170-172, 175, 191, 219, 222, 223, 433, 454, 580-582, 584-594, 615, 626, 724, 728-730, 733-738, 740, 741, 744, 747, which are 45 checks of the month of August, 1922.

As we have seen and found, the record and the evidence do not contain sufficient proof of the forgery of plaintiffs signature as held by the trial court.

As to the authenticity of the signatures in question, there is manifest, in the first place, the general genuine aspect, and so much so that the employees of the defendant bank who received and granted the application for a check book, Exhibit C in question, and those who received and paid the checks J, K, L, M, N, in question, and who are, by reason of their occupation and long services in said bank as shown by the evidence, already sufficiently expert in identifying signatures and specially those of the plaintiff who had had for several years an active current account with said institution, accepted said signatures now in question as authentic. It was not proven nor was any attempt made to prove that said employees acted then otherwise than in good faith and with the necessary care, which presumptions were not overthrown and are therefore conclusive in their favor.

And not only this. The plaintiff himself at last recognized as his own some of the questioned signatures and entertained a doubt as to the others. According to the evidence, the reason why the plaintiff flatly denied the authenticity of the signatures in question is because the numbers of the checks bearing them do not correspond to those of his check book. This reason is not in itself a sufficient ground for repudiating his signatures. It is not impossible, nay it was shown by the evidence to be probable, that the checks in question were signed by the plaintiff in blank, as he used to do so according to the record.

This dangerous practice of signing checks in blank and letting another person fill the same is provided against by the defendant bank that furnishes check books Upon a petition like Exhibits C and Q, by warning the depositors through a clause inserted in the blank application, which says:

"I agree not to transfer in blank to another person any of the checks you furnish me without previous notice to you duly given in writing."

And in those cases in which it was proven that the plaintiff signed checks in blank and let another person fill the same, it does not appear that he ever notified the defendant bank of the fact in any manner whatsoever.

Not only the pictorial effect, but also some of the characteristic details show in our opinion the authenticity of the questioned signatures.

As to the pictorial effect of these signatures, we have already said that it is such that not only the employees of the defendant bank, but also the plaintiff (the latter at least as to some of them), recognized their authenticity.

As to the details we find that one of the true characteristics of plaintiff's signature as to its alignment is that such alignment in its general direction tends upwards. We say general, because neither the "o" nor the dot has any respective fixed place either as between themselves or with respect to the other letters, and the "a" and the "y" do not always stand upon the same common level. For all of the foregoing reasons, this alignment must be taken to be the basic common line of the lower end of the "G" and the first down stroke of the "y." Having this in mind, the general alignment we find in the questioned signatures is the same as that found in the authentic signatures of the same year as the questioned ones.

Another characteristic is the respective inclination of the "G" and the "F." Both letters are inclined to the right, but the "F" is less inclined than the "G" This characteristic is found not only in the questioned signatures, but also in all of the unquestioned ones of the same period of time.

Another characteristic of plaintiff's signature is that the same is written, as stated at the beginning, by placing the pen four times on the paper, the first on writing the "G;" the second on writing the 0; the third on marking the dot; and the fourth on writing the word "Fay" and the rubric. This characteristic is present in all the signatures now before us, whether questioned or unquestioned of the same period.

In two authentic signatures of the plaintiff the o is entirely absent (Exhibit J26, folios 750 and 751). But this circumstance does not affect the questioned checks nor the characteristic which is pointed out here of his signatures, for such an exceptional omission took place years before—in the year 1919.

The same steadiness, spontaneousness, unpremeditation, rapidity and variety of accidental details noted in the questioned signatures are shown in the signatures indisputably genuine.

"Usually there is about genuine writing that which proclaims it as genuine, and one of the things that may be recognized by any examiner is that careless abandon and indifference that shows that the writing was the result of a habit and not the conscious following of a copy. Freedom, carelessness, speed and illegibility are always earmarks of genuineness." (Osborn, "Questioned Documents," p. 203.)

We find merit in the remarks of Doctor Banks as to a certain peculiar stroke of the y, which said witness calls "tell-tale tick," and which was appended occasionally by the plaintiff to make the first down stroke of the "y" clearer, when due to the rapidity in signing, such a stroke appeared to be imperceptible, or did not appear at all. Here is what Doctor Banks says on this point:

"I might base my conclusion on a single document in this case, and on a single characteristic of that document, and by proving the authenticity of this document, I think it would establish the fact that the remaining documents come in the same class. The document to which I have reference is Exhibit C, dated July 26, 1922, and contains the signature of Go Fay. There is one thing in connection with this signature which stamps it just as surely Go Fay's signature as it is possible for anything so to stamp a document, and that is what I call a little tick on the letter y. There are approximately ten and one half million people in the Philippine Islands, leaving out, out of consideration, the remainder of the population of the world, and we will state that not one other person out of the ten and one half million, except Go Fay, would have put that compromising little tick on the letter y in Exhibit C." (Trans., pp. 149-150.)

This occasional additional stroke is found in Exhibit C in question, but not in the other questioned signatures, for the simple reason that in the latter there was no need of such an appendage inasmuch as said first down stroke of the y appears very conspicuously therein. The same is true with the signatures admitted as authentic. Of the signatures introduced as evidence, there are forty-seven unquestioned where such an occasional additional stroke is not seen. The signatures with this tick are of the years 1920, 1921 and 1922, found on the following folios, to wit, 390, 506, of July, 1920; 531, of September, 1920; 274, of October, 1920; 272, 577, 578, of November, 1920; 273, 275-578, of December, 1920; 382, of January, 1921; 770, of February, 1921; 557, 561, of April, 1921; 769, 776, of May, 1921; 421, 773-775, of June, 1921; 65, 74, 76, of April, 1922; 97, 114, 168, of June, 1922; 447-449, 451-453, 596, of July, 1922; and 454, 455, 589, 726, 740, of August, 1922.

This occasional additional stroke constitutes, in our opinion, another mark of authenticity of Exhibit C. And the authenticity of this exhibit tends to confirm that of the others in question. Because if this signature on Exhibit C is authentic, then it is true that the plaintiff petitioned the defendant bank to furnish him the check book therein applied for and from which all the questioned checks J, K, L, M, N, were taken. The authenticity, therefore, of Exhibit C corroborates, if corroboration is necessary, that of the five checks in question.

In the various signatures of Liborio Bustos in question in the criminal case against Bustos (45 Phil., 9), which were all held by this court as authentic, there was no such a clear pictorial uniform effect as that of all the questioned and unquestioned signatures as a whole, of the same period of time.

The circumstances and details of the plaintiffs signatures, as appears in the record, are such that should the questioned signatures in this case be rejected as forged, there would be the same or stronger reason for rejecting as forged some of the indisputably authentic signatures.

We hold, upon the record and the evidence presented, that the signatures appearing on Exhibits C, J, K, L, M, and N, are authentic signatures of the plaintiff.

The judgment appealed from is reversed and the complaint dismissed without express finding as to costs. So ordered.

Araullo, C. J., Johnson, Malcolm, Avancena, and Johns, JJ., concur.

CONCURRING

OSTARD, J.,

I concur in the result of the decision of the court.

I have some doubts as to the authenticity of the disputed signatures, but in view of the plaintiff's reprehensible and grossly careless practice of signing blank checks and intrusting them to a subordinate employee for filling in, thus violating the express instructions of the bank and making the present controversy possible, I feel justified in resolving my doubts in favor of the appellant.

DISSENTING

STREET, J.,

I am unable to concur in the opinion of the court declaring that the name of Go Fay signed to the five dispute checks was written by that individual. All of said signatures are in my judgment demonstrable forgeries, and the material for the formation of a judgment upon this point is abundant. The questioned signatures are nine in number, consisting, first, of the signature signed to the application for a check book (Exhibit C), dated July 26, 1922; secondly, the signatures upon the face of the questioned checks, dated respectively August 1, August 2, August 4, August 5, and August 7, 1922; and thirdly, the signatures, purporting to be of Go Fay, indorsed on the back of three of said checks. For purposes of comparison with this group many thousands of genuine signatures of Go Fay were examined by experts for the bank, and several hundreds of said genuine signatures have been exhibited as proof in this case. In the light of this superabundant mass of the genuine signatures of Go Fay, it cannot be said that the court is lacking in material upon which to base an opinion.

It will be noted that the plaintiff, Go Fay, is a prosperous merchant who for more than two years prior to this incident carried an account with the defendant bank; and in the course of this period had made deposits running up to more than P5,000,000. At the time these forgeries were committed Go Fay was not in any financial straits; and he was therefore not impelled, so far as we can see, by his pecuniary condition to attempt to defraud the bank of the P27,000 paid out upon the five disputed checks. It must be admitted to be a very unusual thing for a depositor of high commercial rating to attempt to defraud a bank by repudiating checks bearing his genuine signatures. Such an act runs counter to fundamental business instinct; and the attempt to commit a fraud of this character is certain to be frustrated, with consequent dishonor, if not imprisonment for the man who tries it.

The manner in which the author of the disputed checks conducted his operations against the bank is also significant. In this connection we note that on July 26, 1922, a check book containing three hundred blank checks was obtained from the defendant bank upon an application (Exhibit C), bearing the name of Go Fay, and written

by the same hand that signed the disputed checks. No check from this series of three hundred blank checks has ever been accounted for except the five which are now in question. The first to be presented to the bank bears date of August 1, 1922. This check was presented by one Nicolas Tan, who had the astuteness to ask the bank to place the money to his credit upon an account then first opened. The purpose of this was of course temporarily to allay suspicion and to prevent any immediate examination into the genuineness of the signature. The amount called for in said check is P5,500, and this amount was accordingly placed to the credit of Nicolas Tan. Part of this money was drawn out by Nicolas Tan in the course of the same month, and before the discovery of the fraud; but it is noteworthy that a balance of P2,500, to the credit of this account has never been called for, and nothing appears to be known as to the personality or whereabouts of the depositor. The other four disputed checks were presented between the second and seventh of August,—a period evidently chosen by the forger in order that the discovery of the fraud might be delayed at least until Go Fay's account should be balanced at the end of the month. The money called for in these four checks was paid out by the bank in cash to the bearer, whose identity has not been established.

The facts above recounted, and particularly the manner in which the first check was handled, show beyond a doubt that something is wrong; and when we proceed to a careful examination of the disputed checks, in comparison with the genuine checks of Go Fay, the conclusion cannot be avoided that the questioned signatures are all forged. In order to exhibit to the eye a part of the material upon which this conclusion is based, we incorporated in his opinion a series of plates (fig.1-4) as follows:

(see image Philippine Reports Vol. 46, p. 1000)

Figure 1, showing the face of check 800705, dated August 1, 1922, first of the disputed checks to be presented of the bank for payment (Exhibit L).

(see image Philippine Reports Vol. 46, p. 1000)

FIGURE 2, showing four of the questioned signatures (Exhibit O) and four genuine signatures of Go Fay (Exhibit P).

The disputed checks undoubtedly exhibit a striking general resemblance to the standard genuine signature of Go Fay; and it is not a cause of wonder that a bank teller should mistake them for genuine signatures of Go Fay, upon mere routine inspection of any one; nor is it surprising that Go Fay himself should have been unable on one occasion to pick out correctly all of the disputed signatures

(see image Philippine Reports Vol. 46, p. 1001)

FIGURE 3, showing two additional authentic signatures of Go Fay, namely, at top. No. 799899, from same period as the disputed checks; and at bottom, No. 621131

when mixed up with many of his own genuine signatures. The work of falsification was evidently done by a person perfectly familiar with the genuine signature of Go Fay and his method of holding the pen. The questioned signatures do not belong to the class of traced forgeries but to the class of simulated forgeries, in which the author copies from an original, or originals, before him, or from an ideal photograph in his mind. Such a process presupposes a sufficient amount of practice to enable the author of the forgery to write freely and without hesitation. In the examples

(see image Philippine Reports Vol. 46, p. 1002)

FIGURE 4, showing in parallel columns the small "a" of disputed group and same letter in group "P" of genuine signatures.

The first of the questioned signatures upon which we wish to comment is that shown in figure 1; and here we direct attention to the rubric, or flourish, with which Go Fay is accustomed to conclude the writing of his name. Upon inspection it will be seen that the writer of this disputed signature was unable to conclude the rubric with the same movement of the hand with which he started; and besides he went wrong in direction in making the first stroke to the left in said rubric, with the result that he found it necessary, after the pen had quitted the paper, to return to said line for the purpose of correcting its direction and concluding the final strokes of the rubric. Near the node of the rubric a black spot will be seen. It was here that he lightly placed his pen, and from thence, directing the movement in a downwardly direction to the left, he proceeded to finish the rubric. When this was concluded he found that the pen which he was using had not left enough ink on the paper to make the rubric fairly discernible. He therefore lightly retouched a large portion of the rubric as well as certain portions of the letter "y." All of these features are readily discernible under the microscope; and it may even be seen that the descending stroke of the "y" was retouched after the rubric had been retouched at the point of junction of the two. As a result of the necessity which confronted the author of this signature of changing the direction of the first stroke of the rubric, it resulted that there can be seen four, where there should have been three, horizontal lines in the rubric at the point immediately under the junction between the "F" and the "a."

Turning now to the genuine signatures of Go Fay, it will be seen that he never retouches the rubric; and in no genuine signature out of hundreds can one be found where four horizontal strokes are made in the rubric instead of three. Indeed the most casual examination of the genuine signatures will show that, after beginning the downward stroke of the "y," the pen of Go Fay never leaves the paper unless perhaps it may be said to have done so in the few cases where the pen point may have been caught in the fibre of the paper or where the pen for some reason or other failed to yield a proper flow of ink.

The circumstances mentioned are sufficient to show that the signature with which we are dealing is not genuine; and when the other disputed signatures are grouped around this one, they will all be seen to have certain features in common which are never found, or found but rarely in the genuine signatures of Go Fay. Of these we shall point out six features as the most conspicuous and decisive.

In the genuine signatures of Go Fay there is a broad and uniformly rounded curve at the bottom of the bowl of the "G," while in the questioned signatures the bottom of the bowl is not well rounded, being in fact almost angular in shape. Again, at the ending of the "G" of the genuine signature there appears a short descending line ending almost invariably in a curve to the right; while the similar line in the disputed signatures is different. The "o" of the disputed signatures is larger than the "o" of the genuine signatures, and the concluding stroke of the "o" descends more than half-way down to the base line, something that does not occur in the genuine signatures.

In beginning the "F," Go Fay is accustomed to place his pen at a point some distance to the right and above the "o," from which point the pen travels almost directly towards the "o," as if the hand holding the pen intended to drive straight to the heart of the "o." Before reaching the "o," however, the pen stops and turns upward in a flight which ends far out to the right. From this point the pen descends on the long straight stroke to form the stem of the "F." The upper part of the "F" thus stands out like a flag pole, overhanging the remainder of the signature, which in turn appears to fly as if extended at half-mast. If a plumb-line be dropped from the top end of the "F" to the base line, it will almost invariably be found to fall beyond the "y."

Compare these with the similar features of the disputed checks. Upon inspection it will be seen that the author of the disputed signatures does not direct the first stroke of the "F" back towards the "o" but starts downwards towards a point situated decidedly to the right of the "o;" and when the pen turns for its upward flight the "F" is not carried to anything like the same distance as in the genuine signatures. If a plumb-line is dropped to the base line from the top of the "F" in the questioned signatures, it will cut the base at a point located near the junction of

the "a" and the "y "

The overtowering aspect of the genuine "F" is seen very conspicuously in figure 3; and we have reproduced the signature at the bottom of the cut in said figure precisely because Doctor Banks, the principal expert testifying for the defendant, thought he had found in that old signature something which bore out his theory of the authenticity of the disputed signatures. The witness was trying to show that while the "G" in the disputed signatures is admittedly taller than the "F," nevertheless there were some genuine signatures in which the "G" was taller than the "F," and he cited the signature shown in figure 3 (bottom), as proof of this fact.

In this connection, after observing that it was a remarkable feature of the questioned signatures that the "G" was higher than the "F," a thing not generally true of the genuine signatures, the witness said: "So much was I impressed with this feature that, after having worked on this case for a number of days, I was almost non plussed as to that one peculiarity, and was afraid that I would not be able to sustain or maintain this particular point for lack of confirmatory documents, but I found in check No. 621131, under date of the 8th of July, 1920, just what I wanted—a bearer check in the amount of P26,000, signed by Go Fay, and paid by the bank without apparently any question on that same date, and having a 'G' which overreaches the letter 'F' to an extent even greater than that shown in this diagram, Exhibit 45."

The witness, I submit, has misinterpreted the import of this signature. Look at the "F." If a plumb-line be dropped to the base from the end of that "F," it would fall nearly an inch beyond the end of the whole signature. For the rest it is easy to see that the signature in figure 3 (at bottom), shows a mere distortion, apparently characteristic of the period in which it was written.

The next feature in which the disputed signatures distinctly differ from the genuine signatures is in the size of the "a" and in the character of the concluding stroke in said letter. As will readily be seen the "a" in the questioned signatures is much larger than the "a" in the genuine signatures; and in concluding the formation of the letter "a," Go Fay invariably brings the pen down on the last descending stroke of the "a" almost if not entirely to the base line. The differences referred to are strikingly exemplified in figure 4, making detailed comment unnecessary. From the thousands of genuine signatures of Go Fay used for selective purposes by Doctor Banks, a complete history of the peculiarities of Go Fay's writing can be made out, extending over a period of several years. One of the features of his writing thus revealed has relation to the formation of the bowl of the "y" which, when properly placed, is on the base line and has the shape of the letter "u." Go Fay appears at times to neglect this part of the "y»" with the result that his pen sometimes traces its way from the ending of the "a" to the extreme end of the top portion of the "y" with very little change of direction at any point. The "y" is thus left without a distinctive bowl'.

To cure this defect Go Fay has the habit of going back with his pen and placing an upright mark, or tick, on the connecting line between the "a" and the "y" in order to indicate where the bowl of the "y" should begin. This supplemental touch consists of a light downwards stroke, resulting usually in a jab rather than a carefully placed mark. This feature of Go Fay's signature is well illustrated in the signature found at the top of figure 3. The making of this tick, in cases where the "y" would apparently be incomplete without it, was a very common thing with Go Fay, so much so in fact that scores of genuine signatures have been found showing this feature.

Now, upon examination of the first of the disputed signatures in figure 2, it will be seen that the author of that signature placed a little mark in the shape of an arrowhead at the place where the bowl of the "y" should properly begin. This feature of this disputed signature seems to have been seized upon by Doctor Banks as a sort of tabula in naufragio, since he speaks of it at the very beginning of his testimony in the following enthusiastic terms:

"There is one thing in connection with this signature which stamps it just as surely Go Fay's signature as it is possible for anything so to stamp a document, and that is what I call a little 'tick' on the letter 'y' There are

approximately ten and one half million people in the Philippine Islands, leaving out, out of consideration, the remainder of the population of the world, and we will state that not one other person out of the ten and one half millions, except Go Fay, would have put that compromising little tick on the letter Y in Exhibit C."

The witness, I again submit, has misinterpreted the significance of the facts to which he directs attention. The author of this disputed check was evidently familiar with this trick of Go Fay and attempted to utilize it, as he did with some success, in the signature referred to (fig. 2, left, at top). It will be noted that the tick was placed upon this check with extreme care, such as is usually be displayed by a skillful forger, and it was not done in the careless manner that was habitual with Go Fay. We may add that Dr. Otley Beyer, the plaintiff's expert, directs attention to the fact that this same signature shows evident signs of retouching at the right end of the rubric and also in the shaded portion of the "y."

In the appealed decision a number of other features are pointed out as distinguishing the disputed from the genuine signatures, but enough has been said to show the principal grounds on which I base my individual opinion and comment will not be extended. The judgment should in my opinion be affirmed.

Judgment reversed and complaint dismissed.

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