

**H. R. ANDREAS, PLAINTIFF AND APPELLEE, VS. THE BANK OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLANT.***G.R. No. 23836. September 09, 1925*

Ponente: STATEMENT Plaintiff is a resident business man of the City of Manila. The defendant is a banking corporation, organized under the laws of the Philippine Islands, with its principal place of business in Manila. Plaintiff alleges that on May 31, 1920, the American Trading Company of Australia drew a bill of exchange at Sydney upon the plaintiff as drawee for the sum of 5,050:0:0 pounds, payable to the order of the bank of New South Wales thirty days after sight. That the draft was duly endorsed to the order of the defendant, and was accepted by the plaintiff on June 21, 1920. About July 13, 1920, the plaintiff on the demand of the defendant paid to it the full amount of the bill of exchange, and in addition thereto, and through an error, paid to defendant as interest thereon the sum of P1,136.96. That no part of such money paid by the plaintiff to the defendant has been returned or refunded by the defendant, and that demand therefor was duly made February 9, 1921, and at other times. Like allegations, as to such interest charges on other drafts, are made in three other causes of action, and plaintiff prays for judgment against the defendant for P8,260.33, with interest on P5,132.67 from February 9, 1921, at the rate of 6 per cent per annum, and on P3,127.66 from January 20, 1922, at such rate, and for costs. For answer the defendant makes a general and specific denial of all the material allegations of the complaint, and prays that the complaint be dismissed, with costs. The case was tried upon such issues, and the lower court rendered judgment for the plaintiff for the amount claimed, with legal interest from the date of the filing of the complaint, from which the defendant appeals and assigns the following errors: "First. The trial judge erred in not declaring that at least the defendant bank is entitled to interest from the date on which its account with the National Bank of Scotland, Limited, London, was debited to the time on which the remittance of the payment made by plaintiff through the defendant bank in Manila arrived in London. "Second. The trial judge erred in declaring that Mr. Ford's testimony relative to the fact that Australian banks are controlled by the rules of the Association of Australian Banks which prohibit banks in Australia from operating directly with banks in foreign countries is hearsay evidence and therefore should not be admitted. "Third. The trial judge erred in not dismissing the second, third and fourth causes of action in view of plaintiff's failure to prove the exact amount of the interest which is alleged to have been unduly charged by defendant. "Fourth. The trial judge erred in not declaring that plaintiff had agreed to pay the full charge of interest made by defendant bank and that same is a legal charge of interest. "Fifth. The trial judge erred in determining whether the charge of interest made by defendant bank is a proper charge of interest, when the real question for determination is whether plaintiff has agreed to pay this charge of interest, and whether said agreement is legal. "Sixth. The trial judge erred in declaring that Mr. Ford's testimony as to the similarity of the instant case with that of drafts drawn under a traveler's letter of credit is a hocus pocus argument. "Seventh. The trial judge erred in not permitting defendant's counsel to establish by competent evidence that it was the usage of the defendant bank to charge interest on all drafts drawn upon foreign credits opened by the said bank. "Eighth. The trial judge erred in not permitting defendant's counsel to establish the custom of the banks of the Philippine Islands relative to the issue involved in the case. "Ninth. The trial judge erred in declaring that the charge of interest made by defendant bank was paid by plaintiff through an error on his part." JOHNS, J.

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"Ninth. The trial judge erred in declaring that the charge of interest made by defendant bank was paid by

plaintiff through an error on his part."

**JOHNS, J.:**

There is no dispute about any material fact.

The plaintiff applied to the defendant for a foreign credit to enable him to purchase coal in Sydney, Australia, to be shipped to Manila. On May 15, 1920, in connection therewith and as a part thereof, he signed a written "request for foreign credit" addressed to the defendant, as follows:

"Please request your correspondent at Sydney, Australia, by cable, to negotiate the draft or drafts, at a term not exceeding 30 days after sight drawn or endorsed by American Trading Co., Sydney, Australia, on me/us, for any sum or sums not exceeding a total of five thousand & fifty pounds sterling (£5,050-0-0) and I/we hereby agree duly to accept the same on presentation, and pay the amount thereof at maturity, provided such draft or drafts shall be negotiated before May 31, 1920."

The request further provides that at the time of negotiating the draft, the drawer or endorser:

"Will hand over to your Bank, under hypothecation, as collateral security to you for the due acceptance and payment thereof, Bills of Lading for merchandise shipped and Policy of Marine Insurance."

It further provides:

"I/we further agree to pay your commission at the rate of 1/4 of one per cent for such part of this credit as shall be used, together with all expenses incurred."

It also recites that the plaintiff shall be:

"Liable as aforesaid on the negotiation of such Drafts with your Bank, whether the Bill or Bills of Lading handed to your Bank be or be not of sufficient value to cover any advances made by you on negotiating such Drafts."

Also, the plaintiff undertakes:

"To pay the said drafts at maturity, on performance of such condition, and I/we authorize you to make such arrangements as you think proper with the aforesaid Drawers and/or Endorsers touching the disposition of such Bills of Lading, or the proceeds thereof, or of any goods consigned thereby."

Also:

"And you are hereby authorized to charge my/our current-account at maturity for all drafts negotiated under this credit, a copy of the liquidation sheet being sent me/us together with the paid draft."

Like contracts were made as to the other three bills of exchange.

It appears that all of the different drafts which were drawn by the Australian bank on the plaintiff were promptly paid by him to the defendant, and in addition to the 1/4 of one percent commission specified in the contract, that the defendant charged the plaintiff interest at the rate of 9 per cent per annum on the amount of each of said drafts.

As to the first draft, the defendant collected interest for a period of one hundred seven days from the date of the draft to the approximate date of its remittance in London, at the rate of 9 per cent, amounting to P1,136.96. As to the second draft, like interest was collected for a period of one hundred fourteen days, amounting to P2,927.40. As to the third, like interest was collected for a period of one hundred fifty one days, amounting to P1,068.31, and as to the fourth, like interest was collected for a period of one hundred fifty-four days, amounting to P3,127.66, making the total amount for which plaintiff prays judgment.

It also appears that the drafts were drawn by the American Trading Company of Australia on the plaintiff, payable to the "Bank of New South Wales," and that in each draft interest on the price of the coal was calculated from the date of the draft to the approximate date on which the draft should arrive in London. According to the Australian custom, such interest was included in, and made a part of, the item called "exchange," and the amount of this exchange, including such interest, was added to the price of the coal, and was included in, and made a part of, the amount of the drafts which the plaintiff paid to the defendant.

There is no claim or pretense that the "Bank of New South Wales" required or exacted the payment of the 9 per cent interest which the defendant collected from the plaintiff, or that the "Bank of New South Wales" received any portion of the 9 per cent interest charges made by the defendant. It is admitted that such charge was made by the defendant bank without the authority or knowledge of the Australian bank. It is also admitted that when the plaintiff paid defendant the drafts in question, he not only paid the full amount of the drafts drawn by the Australian bank, but he also paid the 9 per cent interest charges which the defendant made.

It is very apparent that at the time the plaintiff paid the defendant such interest, he did not know or understand the nature of them or for whose benefit the charges were made, and that later he wrote the defendant as follows:

"I desire to take up with you the matter in re credits opened by you for me in Australia, on which I have been charged interest by you from drawing date until estimated date of arrival in London, and at the same time I have paid in Australia, charges billed as 'Exchange' but which are really charges for the money advanced by the banks there for the same object.

"I do not know what banking arrangements you have but I pay no interest charges at this end with any other bank on Australian letters of credit, they all informing me that letters of credit on Australia never carry same, it being estimated at the Australian end.

"As I have paid this 'exchange' or interest in Australia and here both, I am due refunds either from your bank or the Australian Bank as I cannot be expected to pay it twice."

It clearly appears from this letter and plaintiff's evidence that he knew and understood that he was to pay all of the charges, including interest, of the Australian bank, and that he did not know or understand that he was to pay any interest to the defendant.

Mr. Ford, Chief of the Foreign Department of the defendant, testified:

"Q. Now, then, you were not debited in favor of any one for P1,136.96, which you charged for the 9 per cent interest, were you?—A. No, sir, that was our interest on our credit of P5,050.

"Q. And that payment remained with the Bank of the Philippine Islands, did it not?—A. The whole payment remained with the Bank of the Philippine Islands.

"Q. But the Bank of the Philippine Islands did not have to account for this interest payment, either to the London bank, or to the Australian bank, did it?—A. No, sir."

And Mr. Mouatt, a clerk in the Bank of New South Wales, testified:

"Q. 6. If the said drafts, Exhibits B and C, were negotiated to the Bank of New South Wales, please state what sum was paid therefor to American Trading Company of Australia.—A. They were negotiated by us. The American Trading Company got P5,009:13:6.

"Q. 7. Please state how and why the rate of exchange on the said invoice, Exhibit A, was fixed at 37/6 per cent, explaining whether or not interest was included in this item of exchange.—A. The rate, of course, is fixed by the associated banks, and interest is included until the arrival of the proceeds in London.

"Q. 8. Please state whether or not the Bank of New South Wales authorized the collection from the drawee named in said draft, Exhibit B, of interest from date thereof at the rate of 9 per cent per annum or of any interest whatever for the time prior to the maturity of the said draft, Exhibit B.—A. No." (P. 6, Exhibit J, Record, p. 58.)

The record is conclusive that the interest charges made by the defendant are not included in the amount of the original draft drawn by the Australian bank, and it appears that such interest charges were placed by the defendant on the original draft with a rubber stamp after the draft came into its possession in Manila.

Upon the signing of the application for the foreign credit, the defendant opened up a credit in the Australian bank, as follows:

"Please open the following credit, charging drafts negotiated hereunder to the debit of our account," specifying the amount that it is thirty days' sight and in favor of the American Trading Company, Sydney, Australia, on H. R. Andreas, Manila, credit without recourse. Documents to be attached are full sets of bills of lading, insurance certificate, certified copies of invoice.

The defendant does not question any charges, including interest, which were made by the Australian bank. The only question involved here is whether or not the defendant has a legal right to charge interest on its own account to the plaintiff.

Upon the admitted facts, it is clear that the defendant would not have any legal right to charge interest on the money pending the arrival of the draft of the Australian bank in Manila, for the simple reason that all charges, including the interest charges of the Australian bank for such period, were merged in, and became a part of, the amount of the draft drawn by the Australian bank, and that the full amount of the draft was paid by the plaintiff to the defendant upon its presentation.

The real question involved here is whether the defendant bank is entitled to interest upon the money from the time the plaintiff paid the draft until such time as the defendant should remit the amount of the original draft to the London bank, and upon that point, Mr. Mouatt testified:

"Q. 7. Please state how and why the rate of exchange on the said invoice, Exhibit A, was fixed at 37/6 per cent, explaining whether or not interest was included in this item of exchange.—A. The rate, of course, is fixed by the associated banks, and interest is included until the arrival of the proceeds in London." (P. 6, Exhibit J, Record, p. 58). From which it clearly appears that the interest charges made by the Australian bank "included the arrival of the proceeds in London." Hence, when plaintiff paid the full amount of the draft of the Australian bank, he paid interest on the draft "until the arrival of the proceeds in London."

Defendant sought to prove that there was an established usage and custom of the banks in Manila in like cases of charging and collecting such interest from the time the draft is paid here, until the money is remitted by the local bank, in the ordinary course of business, to the London bank.

Timely objections were made to all of such testimony and sustained by the trial court, as follows:

"COURT. Objection sustained. There being no allegations in the complaint in regard to the conditions of the foreign credit established in favor of plaintiff, and the answer being only a general denial, the objection is sustained. It must be presumed that the conditions of the foreign credit are stated in the application which was approved by the bank."

That statement is true.

Ruling Case Law, volume 27, page 195, says:

"40. Necessity for pleading.—If a custom be general in character, and therefore presumed to be known by the parties, the rule is that such custom may be proved without being specially pleaded. This is particularly true when a general custom is offered in evidence to throw light upon a contract, the terms of which are obscure, and which is dependent upon evidence of such general custom to make it plain. If, on the other hand, the custom be local in character, the party who proposes to rely upon it should aver it in his pleadings, and a local custom or usage applying to a special or particular class of business may not be proven to explain even the ambiguous terms of a contract, unless the existence of such custom or usage is pleaded. \* \* \*"

That is good law.

In the instant case, the answer is a general and specific denial, and, notwithstanding the ruling of the court, the defendant did not offer to amend its answer.

The contract between the plaintiff and the defendant is in writing and recites:

"I/we further agree to pay your commission at the rate of 1/4 of one per cent for such part of this credit as shall be used, together with all expenses incurred."

All of such commissions were paid in full, and in addition to them the defendant collected interest on the amount of the drafts at the rate of 9 per cent per annum from their date until they were formally paid by the defendant bank to the London bank. In the absence of a contract, express or implied, upon what legal principle can the plaintiff be required to pay interest on the amount of the drafts after he paid the drafts in full and had them in his possession? Under such conditions, such interest charges could only be made upon a contract, express or implied, and there is no evidence in the record of any such a contract.

The word "interest" has a well defined legal meaning.

Words and Phrases, volume 4, page 3706, says:

"Interest is the compensation which is paid by the borrower of money to the lender for its use, and generally by a debtor to his creditor in recompense for his detention of the debt.

"Interest at common law is the legal damages or penalty for the unjust detention of money.

"Interest is the price agreed to be paid for the use of money.

" 'Interest' is the name applied to the compensation which the law gives to a creditor, who is entitled to recover the sum of money loaned to his debtor in default.

"Interest has been defined to be a compensation allowed to a creditor for delay of payment by the debtor, and is impliedly due whenever a liquidated sum is unjustly withheld."

The application which the plaintiff signed in the nature of a "request for foreign credit" was accepted by the defendant, and in legal effect it became the written contract between the parties, and it is in writing, and nothing whatever is said about the payment of interest to the defendant. If it had been the purpose and intent of the defendant to collect and receive the interest in question, it should have been specified and provided for in the contract, and if in the making of such interest charges the defendant relied upon an established usage and custom, it should have alleged that fact as a further and separate defense, and the existence of them would then become a question of fact.

It is contended that the plaintiff, having paid the interest charges to the defendant, has ratified the payment, and for such reason he is now estopped to recover the money. That would be true if he had paid such charges with a full knowledge of all the facts. Upon that point the plaintiff testified:

"COURT. As I understand it, what you objected to was the increased amount of the exchange which was greater than the rate upon which you had agreed, but that you did not know at that time that the increased exchange was interest, is that right?—A. That is the idea, yes, sir."

It is very apparent that at the time the plaintiff paid the interest charges to the defendant he did not know that they were made by the defendant bank for its sole use and benefit, and the record shows that when he first learned the actual facts, he made timely protest.

With all due respect to the able brief of the appellant, we are clearly of the opinion that there is no merit in the defense.

The judgment of the lower court is affirmed, with costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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