

SALVADOR LANDA, PLAINTIFF AND APPELLEE, VS. JUAN SANZ Y SANZ, DEFENDANT AND APPELLANT.

G.R. No. 2458. March 14, 1907

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PER CURIAM:

In the matter of the petition of the appellant Juan Sanz y Sanz, wherein he excepts to the decision of this court confirming that of the court below and asks for a rehearing herein, we find:

That the Court of First Instance of the city of Manila ordered that Juan Sanz draw and issue in favor of Salvador Landa, the administrator of the estate of Juan Bautista Ondaro, deceased, a duplicate of check No. 461731 drawn on and against the Chartered Bank of India, Australia and China, in Manila, Philippine Islands, for the sum of 1,500 pesos; that the appellant, in answer to the complaint filed against him in the Court of First Instance, expressly admitted the four facts contained in said complaint, to wit:

(I) That on the 26th day of October, 1899, the Court of First Instance of the district of Tondo, city of Manila, Philippine Islands, issued an order prohibiting, and ratifying the prohibition of the payment by the bank herein above mentioned, which bank was the drawee and payor of a check, with the number also herein above mentioned, issued or payable to bearer, who, in this instance, was Juan Bautista Ondaro, and drawn and signed by Juan Sanz, for the sum of 1,500 pesos; that the bank upon which the check was drawn was ordered by Juan Sanz to pay said sum to the bearer of the check.

(II) That more than five years had passed or expired on the 16th day of November, 1904 (the date of the complaint), from the date of the publication or notice of the loss of the check and from the date of the prohibitory order of the court.

(III) That during this interval or period of time no opposition to said order had been made; and (IV) which was merely explanatory of the personality of Salvador Landa in appearing for the succession or estate of Juan Bautista Ondaro, who was, at the time or on the date that the check was lost, the bearer to whom the payment of the said check should have been made. The plaintiff by reason and by virtue of these four facts asked for the remedy granted by the court in the judgment appealed from by the defendant.

The judgment of the court below is in accordance with the complaint and is handed down in conformity with and as prescribed in article 562 of the present Code of Commerce.

The defendant did not impugn or contradict the complaint alleging that the drawing or issuing of a duplicate check was not in conformity with, or that the application of, article 562 of the Code of Commerce was not proper. The object of his answer was to show: "That said check had settled the debt and was canceled, and therefore the defendant is not indebted to the estate referred to, nor should he be compelled or required to issue any check in favor of said estate."

The bank, which, according to the prayer of the complaint, should have been cited to appear in order to show cause, if there were any, why the court should not declare canceled and null the lost check and order the issuance

of a duplicate of the same to the plaintiff, did not appear or make any opposition thereto.

In said proceeding, in the Court of First Instance, district of Tondo, the bank was notified of the prohibitory order of said court, and yet it does not appear in any manner or by any act that it, the bank, paid any attention to the said prohibitory order.

The appellant in basing his petition herein for a rehearing of this cause, alleges as his first ground or point: "That article 547 of the Code of Commerce is not applicable to checks issued against local banks, and in consequence thereof all the proceedings had in this cause are null."

It is true that article 547 of the Code of Commerce is not applicable to checks drawn against a bank. A check is or can be a document payable to bearer; but it is not a document to bearer within the meaning and effect of section 2, Title XII of book 2 of the Code of Commerce.

But not for this reason should all the proceedings had in this matter be declared null.

If the defendant so understood, in these proceedings, or in the other proceedings had in the Court of First Instance of the district of Tondo, he should have asked for or alleged such nullity; but in none of the proceedings had in regard to this matter, in October, 1899, or in the present cause instituted in November, 1904, has he asked for or alleged such nullity by reason of the inadequate or improper application of the law. And that which was inadequate was the petition asking for a duplicate of the lost check, which petition was filed after the expiration of a period of five years, during which period the creditor Ondaro was compelled unduly to wait for the payment of a credit plainly active and in force and belonging to him, Ondaro; but under the present Code of Civil Procedure, in force when the complaint commencing this action was filed on November 16, 1904, the defendant, Sanz, far from opposing the nullity of the proceeding of 1899, accepted that nullity, and alleged, "that he could not be compelled to issue any check in his favor" (bill of exceptions, p. 5) merely by the plea of payment—that is to say, the extinction of the obligation covered by the lost check.

The Code of Commerce in explanation of its purposes, in this connection, says:

"Aside from this, the loss or mislaying of a check does not authorize the dispossessed party to compel the drawer to issue a second or subsequent copy as happens with respect to bills of exchange or drafts, but does not prevent the adoption of such measures as may be considered opportune, among which is that of giving due notice to the payee or drawee, and exacting from the drawer another new check in the same sum and amount as that of the lost check, which lost check will then become canceled and useless in case of its presentation by an unauthorized person."

And in addition article 542 prescribes:

"The provisions contained in this code relating to the joint liability of the maker and indorsers, and to protests, as well as to the exercise of the actions arising from bills of exchange, shall be applicable to these instruments."

It is, therefore, in all justice, that notwithstanding the excessive precautions taken in the proceedings in the court of the district of Tondo, the creditor should be given a new check, although not precisely an exact duplicate of the lost check, in order that such creditor can draw from the payor (the bank) the money that the bank should have reserved for the payment of the Juan Sanz check, in the sum of 1,500 pesos to the holder and owner of the same.

There is nothing in question in the present case but that of the restitution or remaking of a document of credit; there is not even the question of its force or effectiveness, which question will be considered when use is made of the reestablished or remade document of credit. There is a condition or lawful right created by the issuance or drawing of a check together with an order of a court prohibiting the payment of the same, to wit: That there

should be held and had in the Chartered Bank of India, Australia and China, of Manila, and reserved from and out of the funds of Juan Sanz, the sum of 1,500 pesos, which sum should be paid by the payor (said bank) at the time of the act of the presentation of the check drawn and issued by the drawer, Juan Sanz (art. 539). This is a settled right in law, and made enforcible by means of a final judicial order, which lawful right can not be altered without the revocation or annulment of such judicial order—an annulment or derogation that could have been and can now be obtained by means of an opportune or proper action questioning the grounds of the nullity of such proceedings or the inefficacy or cancellation of such document of credit, with the consent of the holder or owner of the same.

With the remaking or reestablishing of the document of credit, if it be made use of, and the presenting by the creditor of the same for payment in October, 1899, it could be alleged whether or not that amount of money is reserved and in the possession of the payor, the bank; in that event competent and proper actions could have been instituted by the person having the right thereto and in whose hands the document was in October, 1899, and this would be the proper and opportune time to show if the payor (the bank) had any objection to the prohibitory order of the court, which order until now has not been annuled or vacated.

Therefore, this is not the time to take into consideration the affidavit signed by the payor (the bank) in the matter of the nonexistence in its possession of any money belonging to Juan Sanz. It is only when action is taken covering the question as to the right of possession of such document that it will be opportune and proper to take into consideration this exception on the part of the payor, or of any other exceptions made on the part of the drawer of the document.

That which is to be decided here is the possession of a lost check, a possession which is reestablished by the issuance of another, not necessarily one bearing the same number (461731), which number, it appears, was that borne by the lost check, for the reason that the serial number of a check is of no value to a third party, as is the case with documents of credit of quotable or changeable value, but only between the person drawing the check and the party upon whom the same is drawn for payment. The point in issue is the possession of a check for the sum of 1,500 pesos which will render useless the lost check and replace the same, barring such exceptions as may exist at the present time.

He who appears, in this state of things, to be most interested in the vacating or annulment of the prohibitory order, is the person upon whom the check was drawn and upon whom this order has fallen; therefore such person can not give evidence in derogation of the obligation of the drawer of the check, the party most obligated by virtue of the order of the court. Neither is the drawer of a bill of exchange excused by reason of the nonexistence of funds as affirmed by the party upon whom the same is drawn.

The reasons given herein are the basis of the exception of the appellant to the definite or final judgment of this court. The appellant's motion for rehearing of the cause is, therefore, denied, together with the costs against said appellant. So ordered.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.

Willard, J., dissents.

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