

**JUAN YSMAEL & CO., INC., PLAINTIFF AND APPELLANT, VS.
NAGEEB T. HASHIM AND AFIFE ABDO CHEYBAN GORAYEB,
DEFENDANTS. AFIFE ABDO CHEYBAN GORAYEB, APPELLANT.**

G.R. No. 26247. March 18, 1927

Ponente: OSTRAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-26247/>

OSTRAND, J.:

The complaint in the present case sets forth two causes of action. For its first cause of action the plaintiff alleges, in substance, that the defendant Nageeb T. Hashim on September 21, 1916, executed a chattel mortgage in favor of said plaintiff for the sum of P13,160.87, with interest at 8 per cent per annum, the mortgage falling due on September 21, 1917; that the said defendant having failed to make payment in accordance with the terms agreed upon, the chattel mortgage was foreclosed and the mortgage property sold by the sheriff on January 15, 1921; that the proceeds of the sale amounted to the sum of P2,100 only, thus leaving a balance of P11,060.87, which, with the corresponding interest at the rate of 8 per cent per annum from September 21, 1916, until January 9, 1925, now amounts to the sum of P19,134.32, for which amount judgment is prayed.

For the second cause of action, the plaintiff alleges that the defendant Nageeb T. Hashim has been indebted in the sum of P14,646.47 to the Hashim Commercial & Trading Company, Ltd., a limited copartnership, organized under the laws of the Philippine Islands and that, for good and valuable consideration, the said Hashim Commercial & Trading Company, Ltd., assigned the amount due it on said indebtedness to the plaintiff on October 3, 1921, together with its other bills receivable, fixtures, cash on hand in banks, and its entire stock of goods; that the plaintiff has in vain demanded payment from the defendants and now asks judgment against them for said sum of P14,060.47. The plaintiff also prayed for a writ of attachment of the property of the defendants, which prayer was granted.

The defendant Hashim in his answer admits all of the allegations of the complaint and consents to the rendition of the judgment in conformity therewith. The defendant Afife Abdo Cheyban Gorayeb in her answer admits that the plaintiff is a corporation duly organized and existing under the laws of the Philippine Islands and that the defendants are husband and wife, but deny all other allegations contained in the complaint and set up as a special defense that the action is the result of a conspiracy between Hashim and his relations, the stockholders in Juan Ysmael & Co., Inc., to defraud her of the alimony granted her in civil case No. 19115 of the Court of First Instance of Manila. She also alleges that she has suffered damages in the sum of P20,000 by reason of the preliminary attachment upon said real property belonging to her exclusively.

Upon trial the Court of First Instance rendered judgment in favor of the plaintiff for the full amount demanded under the first cause of action, but dismissed the second cause of action on the ground that the plaintiff had failed to show that the credit upon which said cause of action is based had been legally assigned to it. Both the plaintiff and the defendant Gorayeb appealed from this judgment.

The plaintiff-appellant assigns as error the finding of the trial court that the indebtedness of the defendant Nageeb

T. Hashim to the Hashim Commercial & Trading Co., Ltd., in the amount of P14,646.47, was assigned by the latter to the Asia Banking Corporation and not to the plaintiff Juan Ysmael & Co., Inc., and that the court likewise erred in dismissing the second cause of action alleged in the complaint. This contention is principally based on a resolution of the stockholders of the Hashim Commercial & Trading Co., Ltd., adopted on October 3, 1921, the last three paragraphs of which reads as follows:

"Whereas, Messrs. Juan Ysmael & Co., Inc., owners of 1678 shares of the stock of this company, have arranged for the suspension of the foreclosure proceedings began as mentioned above, and agree to assume the obligation of this company with the Asia Banking Corporation as stated in the deed dated March 8th, 1921, on condition that this company transfer to Juan Ysmael & Co., Inc., its entire stock of goods, cash on hand and in banks, bills receivable, fixtures, and to have access to the books whenever required by them;

"Now, therefore, be it resolved that Mr. A. T. Hashim, President and General Manager of this company, be and hereby is, authorized in an irrevocable manner to transfer in favor of Messrs. Juan Ysmael & Co., Inc., its entire stock of goods, cash on hand and in banks, bills receivable, fixtures and to have access to the books whenever required by them; and be it further

"Resolved that the said Mr. A. T. Hashim be and hereby is authorized in an irrevocable manner to execute, acknowledge, and deliver all such documents and instruments in writing as may be necessary to effectuate the foregoing purpose."

It does not appear that the assignment authorized by this resolution was ever made and on November 2, 1921, the same stockholders, together with Juan Ysmael & Co., Inc., also a stockholder, adopted another resolution which practically revoked the resolution of October 3, 1921 and which reads as follows:

"Whereas, on October 3rd, 1921, A. T. Hashim was authorized by the stockholders of Hashim Commercial & Trading Co., Ltd., to transfer the entire stock of the Company, cash on hand, bills receivable, and fixtures, to Juan Ysmael & Co., Inc., and

"Whereas, subsequently, it appeared advisable to A. T. Hashim that the transfer of said stocks of goods, etc., should be made to the Asia Banking Corporation, who would then make Juan Ysmael & Co., Inc., its agent, for the purpose of disposing the same, and

"Whereas, a transfer was made to the Asia Banking Corporation, in the form of an agreement entered into between the Asia Banking Corporation, Juan Ysmael & Co., Inc., and Hashim Commercial & Trading Co., Ltd., thru their proper representatives, on the 31st day of October, 1921.

"Now, therefore, be it resolved that the transfer made by A. T. Hashim, as aforesaid, to the Asia Banking Corporation, of all goods, wares and merchandise, as per said agreement, be and the same approved, and transfer ratified."

As will be seen the only assignment actually effected was that to the Asia Banking Corporation. The court below was, therefore, justified in dismissing the second cause of action and if so, the plaintiff's second assignment of error to the effect that the bond in the sum of P20,000 fixed by the court below for the discharge of the writ of attachment. was inadequate, is also without merit. We may say in passing that the authorities cited in support of the first assignment of error have reference to equitable assignments and are not in point. Upon the facts shown by the record, Juan Ysmael & Co., Inc. might, perhaps, have compelled the Hashim Commercial & Trading Co. to execute an assignment of the credit in controversy, but it does not follow that the same facts would constitute a valid assignment as against third parties and that the prospective assignee may maintain an action against the debtor for the collection of the credit without a formal assignment of such credit. The debtor has the right to demand that the person who sues him for the debt shall be the real party in interest and shall show a valid title to the chose in action; a mere equitable right to the assignment thereof is not sufficient. Both under article 51 of the

Code of Commerce and under paragraph 6 of article 1280 of the Civil Code, a formal assignment of a credit of over three hundred pesos must be in writing. The formalities for sales of choses in action are governed by paragraph 4 of section 335 of the Code of Civil Procedure.

The defendant-appellant makes the following assignments of error: .

"I. The trial court erred in rendering judgment upon the first cause of action in favor of the plaintiff and against the defendant and appellant, jointly and severally, with her husband A. T. Hashim for the sum of P19,134.32, with interest on P11,060.87 thereof at 8 per cent per annum from the 10th day of January, 1925.

"II. The trial court erred in prohibiting appellant from inquiring into the details of the account set forth in Exhibit 3.

"III. The trial court erred in refusing to receive the testimony of the defendant N. T. Hashim, that of A. T. Hashim, and that of K. N. Hemady in the former action No. 19569 (G. R. No. 21345).

"IV. The trial court erred in preventing defendant and appellant from presenting proofs in support of the allegations of her answer and special defenses."

There is some merit in all of these assignments, except the third. The court below undoubtedly erred in denying the defendant-appellant the opportunity to inquire into the sources of the entries found in the plaintiff's books of account in relation to the indebtedness of the defendants; the fact that such sources might have been examined in civil case No. 19569 of the Court of First Instance of Manila cannot be regarded as a bar to a reasonable inquiry into the character of the debt in the present case. The issues in the two cases are entirely different; the former case dealt with the validity of a chattel mortgage, while in the present case, we are dealing with the amount of the defendant's indebtedness to the plaintiff. For much the same reasons, the defendant-appellant should have been permitted to present evidence in support of her special defense of conspiracy.

The third assignment of error cannot be sustained. In offering in evidence the testimony given by Mr. Hemady and the Hashims in the earlier case, the defendant-appellant did not claim that said testimony contained admissions against interest by the parties to the action or their agents; if such had been the case, the testimony would have been admissible without the laying of a foundation and without the witnesses having testified in the case at bar. But the purpose of the offer of the testimony was evidently to impeach the testimony of the same witnesses in the present case and if so, a foundation should have been laid by calling the attention of the witnesses to the former statements so as to give them opportunity to explain before the statements were offered in evidence.

In discussing their first assignment of error, counsel for the defendant-appellant insist that, taking into consideration the facts of the case and the circumstances preceding the same, it is obvious that the case is "fraudulent and that even if the indebtedness claimed were over a true indebtedness, either the same had been paid or payment thereof waived." This contention is not entirely without foundation and though we cannot fully agree with counsel, we do think that, in view of the very apparent unreliability of some, of the oral evidence presented, the plaintiff's recovery on its first cause of action should be limited to the amount shown by its books of account.

On December 31, 1924, the plaintiff's ledger showed a balance of P12,238.02 against the defendant Hashim, and it does not appear that he has incurred any further indebtedness to the plaintiff since that date. The plaintiff explains that the amount claimed in excess of the sum shown by the ledger represents interest at the rate of 8 per cent per annum, but under the circumstances of the case; we cannot give much weight to this explanation. It clearly appears that the chattel mortgage debt, upon which the plaintiff's first cause of action is based, is included in the ledger account and it may properly be considered as merged therein. It also appears that the account was balanced at the end of the years 1920, 1921, 1922 and 1924, and considering the fact that the plaintiff corporation

is a well conducted business organization, it seems rather improbable that, in striking its book balances, it would have overlooked the important item of interest if any interest on the book account in question had been agreed upon.

The judgment appealed from is, therefore, modified by reducing the plaintiffs recovery to the sum of P12,238.02, with interest at the rate of 6 per cent per annum from January 13, 1925, the date of the filing of the complaint. In all other respects said judgment is affirmed without costs in this, instance. So ordered.

Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.