

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS.
EUGENIO VERAGUTH ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 26833. April 01, 1927*

Ponente: VILLAMOR, J.

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Plaintiff Philippine National Bank seeks to recover from the defendants jointly and severally the sum of P41,432.55, plus interest on the sum of P34,241.77, at 8 per cent per annum from February 16, 1925, until fully paid. It is alleged, as grounds for this action, that on January 18, 1919, "La Union de Agricultores de Negros y Panay, Inc.," asked for and obtained from said plaintiff a credit of P40,000 in current account, payment of which was secured by the defendants by means of a bond Exhibit A; that on September 11, 1919, the same plaintiff granted the "La Union de Agricultores de Negros y Panay, Inc.," another credit of P30,000 in current account at 8 per cent per annum, in addition to the former credit of P40,000, payment of which was secured by band Exhibit B; that on June 30, 1922, when "La Union de Agricultores de Negros y Panay, Inc.," discontinued business relations with the plaintiff, the former had an overdraft of P34,241.77 in its current account which to this date has not been paid to the plaintiff, which overdraft, together with interest thereon, amounts to the P41,432.55 claimed in the complaint.

The defendants, in their respective answers, deny being indebted to the plaintiff in the sum claimed, and as special defenses allege that the obligation of P40,000 plus interest at 8 per cent per annum, secured by Exhibit A, has already been extinguished by the payments made by the "La Union de Agricultores de Negros y Panay, Inc.," and that, not having subscribed to the second bond for P30,000, Exhibit B, they cannot be held liable for said obligation.

At the hearing of the case, the parties submitted the following stipulation of facts:

- "1. That 'La Union de Agricultores de Negros y Panay, Inc.,' obtained a credit in current account from the plaintiff, as specified in annex A of the complaint. It is also admitted that annex A was duly signed by those whose signatures appear thereon.
- "2. It is likewise admitted that annex B of the complaint contains a true statement of the facts noted therein, and that it was signed by the persons whose signatures appear at the bottom thereof.
- "3. That the only amounts involved in the transactions had between said Union and the plaintiff are the sums appearing in the debit and credit of the document marked Exhibit C.
- "4. That the sums referred to in annexes A and B were obtained from the plaintiff by virtue of a resolution of the board of directors of the said Union.
- "5. The parties are agreed that some of the sureties named in annexes A and B whose names are mentioned below, executed promissory notes and solidary contracts in favor of the plaintiff on account of the sum which is the subject-matter of the complaint, as follows:

Ruperto Montinola.....

P6,341.72

Tito Silverio.....

6,341.72

Jose Gaston.....

2,959.46

Carlos L. Locsin.....

6,341.72

Albino Jison.....

2,959.47

Teodulo M. Infante.....

2,959.47

Esteban de la Rama.....

3,382.25

Total

31,285.81

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"6. That from February 7, 1919 to January 10, 1921, the plaintiff granted the sum of P128,425.96 in current account, payable in monthly installments to the said Union. That on June 30, 1922, the said Union was indebted to the plaintiff for the principal and interest, in the sum total of P140,214.43 as appears in the debit of Exhibit C. That from March 3, 1919 to September 11, 1924, as appears in the credit in Exhibit C, the said Union paid the plaintiff in partial payments and on account of said P140,214.43, the sum of P105,972.66, leaving a balance of P34,241.77 due from the Union.

"7. That a demand was made upon the herein defendants to pay the sum which is the subject of the complaint."

In view of this statement of facts, and of the oral evidence introduced at the trial, which evidence has not been forwarded to this court, the trial court absolved the defendants Ricardo Nolan, Eugenio Veraguth and Emilio Gaston from the complaint, without express finding as to costs.

Plaintiff appealed from said decision, and assigns several errors as committed by the trial court as grounds for his petition that the judgment appealed from be reversed.

The first and, indeed, the most important question presented by the appellant is whether or not bond Exhibit B is an alteration of bond Exhibit A.

It is admitted by both parties that the granting of a credit by plaintiff of P30,000 in current account to the "Union de Agricultores de Negros y Panay, Inc.," on September 13, 1919 is an increase of the credit of P40,000 previously granted and that the payment of said increase was secured jointly and severally by the bond Exhibit B, by Tito Silverio, Ruperto Montinola, Jose Gaston, Agustin Amenabar, Teodulo Infante, Carlos L. Locsin and Albino Jison who bound themselves to pay the Philippine National Bank, upon the date of maturity, the sum of P30,000 in addition to the credit of P40,000 with interest or such part of said amounts and interest as may be due from the "La Union de Agricultores de Negros y Panay, Inc.," on the date of maturity. This being so, and considering the facts established in paragraph 6 of the statement of facts, the extent of the liability assumed by the defendants as solidary sureties of the said debt of P40,000 must now be determined. Article 1827 of the Civil Code provides: "Guaranty shall not be presumed; it must be express and cannot be extended beyond its specified limits." It appearing from Exhibit A that the herein defendants guaranteed the payment of a credit in current account not to exceed P40,000 at 8 per cent per annum granted by plaintiff to "La Union de Agricultores de Negros y Panay, Inc.," and it further appearing from Exhibit B that defendants did not sign a bond for the additional credit of P30,000 obtained by the said "Union de Agricultores," their liability can in no way be extended to the payment of the said additional credit of P30,000.

Besides, the increase in the credit of P40,000 secured by the defendants by an additional P30,000 without their consent, constitutes a material change in the principal contract and, as we have held in the case of Asiatic Petroleum Co. vs. Hizon and David (45 Phil., 532) "A material alteration of the principal contract, effected by the creditor and principal debtor without the knowledge and consent of the surety, completely discharges the surety from all liability on the contract of suretyship." In the course of this decision the court said: "It is fundamental in the law of suretyship that any agreement between the creditor and the principal debtor which essentially varies the terms of the principal contract, without the consent of the surety, will release the surety from liability. (21 R. C. L., 1004.) This principle is equally valid under the civil as under the common law; and though not specifically expressed in the Civil Code, it may be deduced, so far as its application to the facts of this case is concerned, from the second paragraph of article 1822 in relation with article 1143 of the same Code. * * *"

On the other hand, it appears from Exhibit C that from March 3, 1919 until September 11, 1924, "La Union de Agricultores de Negros y Panay, Inc.," had made partial payments to the plaintiff amounting to P105,972.66, on the debt of P140,214.43, which was principal and interest from February 7, 1919 until June 30, 1922. The question now raised is whether or not the principal debtor, "La Union de Agricultores de Negros y Panay, Inc.," has already paid its debt of P40,000, payment of which was secured by the defendants, because if so, the obligation of the latter has been extinguished. (Art. 1847, Civil Code.) Considering the question on the supposition that the bonds Exhibits A and B are two independent contracts evidenced by two public documents, we believe article 1924, No. 3, is applicable to the case in the sense that said credits shall have preference among themselves in the order of priority of dates of the documents. Manresa, in his commentaries on said article 1924, among other things, says: "This number of the article under examination means credits appearing in a public instrument or final judgment without any special preference. * * *"

"These credits have preference among themselves in the order of priority of the dates of the documents and judgments in which they are stated or acknowledged. It is so provided in the last paragraph of the present article, which does no more than restate the settled rule laid down by the Supreme Court, based on the juridical principle prior tempore potius jure, according to which, all other legal conditions being equal, the oldest of scriptory credits (known also by "the name of chirographs) has preference as among themselves. (See also, among others, the decision of May 1, 1896.)" (Vol. XII, 2d. ed., pp. 714-715.)

The same rule is more expressly stated, and with special reference to the case now before us, in 21 R. C. L., p.

103;

"110. RUNNING ACCOUNTS.—In cases of running accounts with many debits and credits and no balances other than for the mere purpose of making rests, payments ought to be applied to extinguish the debts according to the priority of time; so that the credits are to be deemed payments pro tanto of the debts antecedently due. This is done because it is most just and equitable between the parties, and also because when no different intention has been expressed, such is presumed to be the intention of both parties, as being in accordance with the ordinary and usual course of dealing. And between banker and depositor the general rule of appropriation of payments is ordinarily applicable, and indeed it has been held that in the case of a banking account, there is no room for any other appropriation than that which arises from the order in which the receipts and payments take place and are carried into the account. Presumably it is the sum first paid in that is first drawn out, the first item on the debit side that is discharged by the first item on the credit side. The general rule is applicable only to open accounts, and does not apply where the account has been closed."

In view of Exhibit C and of the authorities cited, we are of opinion that the credit of P0,000 secured by the appellees and evidenced by a public instrument of prior date, has already been settled by the principal debtor, and therefore the solidary sureties have already been relieved of the obligation contracted by them in Exhibit A.

In virtue of the foregoing, the judgment appealed from must be, as it is hereby, affirmed with costs against the appellant. So ordered.

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

CONCURRING OPINION

OSTRAND, J.:

I concur in the result on the ground that the contract of surety, Exhibit A, expressly provided that the credit to be granted the "Union de Agricultores de Negros y Panay, Inc.," should not exceed the sum of P40,000.

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