

**THE BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE,
VS. ALFRED BERWIN & COMPANY, DEFENDANT. ANSELMO
DIAZ, APPELLANT.**

G.R. No. 29075. October 02, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The plaintiff bank invoking the provisions of sections 431, 436, 450, 476, 481, 482, and 486 of the Code of Civil Procedure, prayed the Court of First Instance of Iloilo to summon the herein appellant Anselmo Diaz in order to testify concerning the credit of the defendant firm Alfred Berwin & Co, against him, for the purpose of carrying into effect the execution of the judgment rendered in this case.

The court ordered Anselmo Diaz to appear, and he personally appeared in that court on September 30, 1927, and acknowledged that he was indebted to Alfred Berwin & Co., in the sum of P20,000, the balance of credit for a greater amount.

Said remaining debt is evidenced by two promissory notes issued by Anselmo Diaz in favor of the herein defendant Alfred Berwin & Co. It does not appear, however, from the record whether such promissory notes are still in the hands of Alfred Berwin & Co., or whether they have been negotiated by the latter, according to the appellant's belief as expressed in his testimony.

As it does not appear from the record that the promissory notes in question are still at the disposal of Alfred Berwin & Co., so that they may return them to the maker Anselmo Diaz upon the latter's making the payment thereof (sec. 74, Negotiable Instruments Law, Act No. 2031), said Diaz cannot be compelled to pay the sum of the said promissory notes to any person save the holder of such documents in due course, for said person is the one entitled to receive it. (Sec. 57, Act cited.)

In the present state of the proceedings it is not known whether the judgment debtor Alfred Berwin & Co., is still the holder in due course of such promissory notes or not, that is to say, that it is not known whether they still have their credit of P20,000 represented by such promissory notes, or whether the same has already been alienated, and as the latter possibility exists, that is, that Alfred Berwin & Co., is no longer entitled to the amount of the promissory notes on account of having negotiated them, it is not just to compel the maker Anselmo Diaz to satisfy the credit of Alfred Berwin & Co., or to the sheriff as a credit in favor of this firm if the latter is no longer entitled to such credit. To compel Diaz to pay Alfred Berwin & Co., or the sheriff as a credit in favor of this corporation, which is contrary to the law, under the circumstances of the case, would be to expose Anselmo Diaz to the situation in which, having paid the amount of the promissory notes without settling the same, a holder in due course may appear and within all reason demand its full payment.

Nor does the question change by the fact that Diaz was given notice, when the preliminary attachment was ordered, not to deliver the payment of his debt to Alfred Berwin & Co. The debt was secured by negotiable instruments, and notwithstanding such notice it was beyond Anselmo Diaz's power to prevent Alfred Berwin &

Co., from negotiating the promissory notes.

We hold the lower court's judgment premature inasmuch as it orders the appellant to pay to the plaintiff bank said sum of P20,000 which is the amount of the promissory notes in question, with nothing to show, in accordance with the law, who has actually the right to receive such amount.

Wherefore, the appealed order is revoked, and let this case be remanded to the lower court with directions to proceed to further investigation and inquiry in accordance with the foregoing, without express pronouncement as to costs. So ordered.

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

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