

TAN LEONCO, PLAINTIFF AND APPELLEE, VS. GO INQUI, DEFENDANT AND APPELLANT.*G.R. No. 3383. September 13, 1907*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-3383/>

On the 23d day of July, 1904, the plaintiff and appellee commenced an action in the Court of First Instance of the Province of Sorsogon against the defendant, Go Inqui, as representative of the mercantile company "J. C.," for the purpose of recovering the sum of 800 pesos, with interest. This indebtedness is evidenced by a bill of exchange, executed and delivered by said company to the plaintiff upon the 3d day of March, 1901. The bill of exchange was drawn upon one Lim Uyco, of Manila.

The bill of exchange was duly presented to Lim Uyco, who refused payment because he had received instructions to that effect from the said company.

Upon the 15th day of August, 1906, the defendant filed an answer to the said complaint, admitting all of the facts of said complaint, and setting up a counterclaim, claiming that the plaintiff owed the defendant the sum of P2,369, with interest at 6 per cent. To this answer the plaintiff filed a reply, denying all of the facts set up in the counterclaim of the defendant, and setting up a counterclaim to that of the defendant, amounting to P5,500.

Upon the 26th day of October, 1904, the Hon. Grant Trent, judge of the Court of First Instance of said province, appointed arbitrators in accordance with the provisions of the Civil Code, for the purpose of settling, if possible, the differences between the plaintiff and defendant. On the 31st day of March, 1905, the said arbitrators made a report of the facts in said cause.

On the 5th day of June, 1905, upon petition to the said judge signed by the attorneys for the respective parties, the cause was set down .for' hearing without the intervention of the arbitrators, and was duly tried before the judge of the Court of First Instance of said province.

On the 6th day of November, 1905, the judge dictated a sentence in the cause against the defendant and in favor of the plaintiff for the sum of 800 pesos, Mexican currency, or its value in Conant, at the rate of P1.30, with interest at 6 per cent from the 3d day of March, 1901, and costs, including the fees of the arbitrators appointed at the request of the respective parties. The court also in its decision dismissed the counterclaim presented by the defendant.

The decision of the lower court contains the following finding of facts:

"In the year 1897 the plaintiff left the Philippines for China, and prior to his departure turned over to Tan Tonguan, for his management, the plantations of abacá (hemp) which the plaintiff then possessed in this province. While the plaintiff was in China, Tan Tonguan worked the abacá and obtained 800 pesos worth of fiber, which he caused to be stored, by direction of the defendants, in a warehouse in Buhang, and after storing said abacá he called on the defendants and obtained the draft or check in question, handing it to the plaintiff, who in the meantime had returned from China. The plaintiff then, desiring to leave again for China, presented the draft for payment in Manila, but, as the defendants had suspended the payment of the same, the plaintiff was unable to collect the amount thereof. When the said abacá was stored by Tan Tonguan in Buhang it became the property of the defendants (although it did not go through their hands), and on the face of the draft

they acknowledged having received the amount of said draft. Therefore, it is evident that the defendants can not allege now that they had not received the amount of the said draft.

"In the years 1896 and 1897 the plaintiff entered into an agreement with the then head of the firm of J. C, wherein it was agreed that the plaintiff could transfer the shop at San Isidro to the Chinaman Tan Tonguan, and the shop at Buhang to the Chinamen Lim Joco and Tim Bico; and by reason of such transfers it was agreed between them that the said Chinamen to whom the two shops had been transferred would become liable for the debts of the plaintiff directly in connection with the said two shops, one being for the sum of about 600 pesos and the other for about 400 pesos. As the transfer was made under these conditions, the plaintiff cannot now be held to be liable for the 2,390 odd pesos claimed by the defendants in their counterclaim; they must look for payment of this sum to the Chinamen in whose favor the two shops were transferred.

"When the draft in question was presented by the plaintiff in Manila for payment, having failed to collect the amount, he did not cause the protest to be drawn up in the manner provided by the Code of Commerce. Whether this draft or check is considered as a bill of exchange, it is my opinion that said draft or check should only be considered as a proof of indebtedness, and the plaintiff should therefore be relieved from the formalities of the protest for want of payment of the same, as provided for with regard to bills of exchange."

When the defendant received notice of the decision of the lower court he presented a motion for a new trial upon the ground that the facts found by the court were openly and manifestly contrary to the weight of the evidence presented during the trial, and presented a motion for a new trial. The motion for a new trial was denied by the lower court. The defendant then appealed to this court.

An examination of the proof adduced during the trial shows that there was much conflict in the testimony relating to the issues presented to the court; however, considering the fact that the judge of the lower court saw and heard the witnesses, we adopt his findings as the facts which constitute the preponderance of evidence adduced in the cause.

From this decision the defendant appealed to this court assigning several errors which are alleged to have been committed by the lower court, the first four of which relate to the consideration which the defendant received for the said bill of exchange or check.

The evidence shows that the plaintiff, through his agent, before the date on which the bill of exchange was executed and delivered, deposited in a warehouse in the pueblo of Buhang a quantity of abacá (hemp), the value of which was 800 pesos, and that the bill of exchange was executed in payment for the abacá. The evidence also shows that the warehouse in the said pueblo where the hemp was deposited belonged to the defendant and that it had been the custom of the plaintiff to make deposits in the warehouse of the defendant.

After the deposit of the hemp in the manner above stated, and before the same was removed from the warehouse by the defendant, the warehouse and its contents were destroyed by the insurrectos. The defendant alleges that he never received the hemp and therefore there was no consideration for the bill of exchange. The plaintiff claims that when the hemp was deposited in the warehouse it became the property of the defendant and that the defendant recognized this fact when he stated in the bill of exchange that it was given for "value received."

It is not disputed that the warehouse in which the hemp was deposited was the warehouse of the defendant. The hemp became the property of the defendant upon delivery thereof in the warehouse of the defendant (arts. 1462 and 1463, Civil Code), and was the property of the defendant at the time of its destruction by the insurrectos. There had been a complete delivery of the said abacá to the defendant, and the loss occurring thereafter, without any fault of the plaintiff, was the loss of the defendant. We hold that the delivery of the hemp as above stated was duly made to the defendant and constituted a valuable consideration for the said bill of exchange or check.

It was alleged that the said bill of exchange, after being presented to the drawee in Manila, was not protested and that there is some question of the right of the plaintiff to recover upon said bill of exchange without the same having been duly protested. The action was not brought upon the bill of exchange; the bill of exchange was used only as evidence of the indebtedness. We believe, however, that inasmuch as the defendant had himself ordered the drawee not to pay the said bill of exchange, that protest and notice of nonpayment under these conditions was unnecessary in order to render the drawer, or defendant in' this case, liable.

As to the assignment of error relating to the counterclaim presented by the defendant, we are of the opinion that the evidence did not support said contention on the part of the defendant.

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

Arellano, C. J., Torres and Willard, JJ., concur.

Tracey, J., concurs in the result.

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