

**SIY CONG BIENG & CO., INC., PLAINTIFF AND APPELLEE, VS.
HONGKONG & SHANGHAI BANKING CORPORATION,
DEFENDANT AND APPELLANT.**

G.R. No. 34655. March 05, 1932

Ponente: OSTRAND, J.

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OSTRAND, J.:

This action was brought in the Court of First Instance of Manila to recover the sum of P31,645, the value of 464 bales of hemp deposited in certain bonded warehouses as evidenced by the quedans (warehouse receipts) described in the complaint, said quedans having been delivered as pledge by one Otto Ranft to the herein defendant, the Hongkong and Shanghai Banking Corporation, for the guarantee of a preexisting debt of the former to the latter. The record shows that both parties, through their respective counsel, subscribed and submitted to the court below the following agreement of facts:

"STIPULATION OF FACTS

(Translated into English)

"Come now the parties, both the plaintiff and the defendant Hongkong & Shanghai Banking Corporation, through their respective counsel in the above entitled case, and respectfully submit to the court the following agreed statement of facts:

"1. That both the plaintiff and the defendant Hongkong & Shanghai Banking Corporation are corporations domiciled in the City of Manila and duly authorized to transact business in accordance with the laws of the Philippine Islands.

"2. That the plaintiff is a corporation engaged in business generally, and that the defendant Hongkong & Shanghai Banking Corporation is a foreign bank authorized to engage in the banking business in the Philippines.

"3. That on June 25, 1926, certain negotiable warehouse receipts described below were pledged by Otto Ranft to the defendant Hongkong & Shanghai Banking Corporation to secure the payment of his preexisting debts to the latter:

No. Warehouseman Depositor Bales

1707 Public Warehouse Co----- Siy Cong Bieng & Co., Inc.---

27

133 W. F. Stevenson Co.-----do-----

67

1722 Public Warehouse Co.-----do-----

60

1723 -----do-----do-----

4

1634 The Philippine Warehouse Company-- -----do-----

99

1918 Public Warehouse Co.-----O. Ranft -----

166

2 Siy Cong Bieng & Co., Inc.-----do-----

2

1702 The Philippine Warehouse Company-- Siy Cong Bieng & Co., Inc.--

39

And that the baled hemp covered by these warehouse receipts was worth P31,635; receipts numbers 1707,133,1722, 1723,1634, and 1702 being endorsed in blank by the plaintiff and Otto Ranft, and numbers 1918 and.2, by Otto Ranft alone.

"4. That in the night of June 25, 1926, said Otto Ranft died suddenly at his home in the City of Manila.

"5. That both parties submit this agreed statement of facts, but reserve their right to have in evidence upon other points not included herein, and upon which they cannot come to an agreement.

"Manila, August 7, 1929."

The evidence shows that on June 25, 1926, Ranft called at the office of the herein plaintiff to purchase hemp (abaca), and he was offered the bales of hemp as described in the quedans above mentioned. The parties agreed to the afore-said price, and on the same date the quedans, together with the covering invoice, were sent to Ranft by the plaintiff, without having been paid for the hemp, but the plaintiff's understanding was that the payment would be made against the same, quedans, and it appears that in previous transactions of the same kind between the bank and the plaintiff, quedans were paid one or two days after their delivery to them.

In the evening of the day upon which the quedans in question were delivered to the herein defendant, Ranft died, and when the plaintiff found that such was the case, it immediately demanded the return of the quedans, or the payment of the value, but was told that the quedans had been sent to the herein defendant as soon as they were received by Ranft.

Shortly thereafter the plaintiff filed a claim for the aforesaid sum of P31,645 in the intestate proceedings of the estate of the deceased Otto Ranft, which on an appeal from the decision of the committee on claims, was allowed by the Court of First Instance in case No. 31372 (City of Manila). In the meantime, demand had been made by the plaintiff on the defendant bank for the return of the quedans, or their value, which demand was refused by the

bank on the ground that it was a holder of the quedans in due course. Thereupon the plaintiff filed its first complaint against the defendant, wherein it alleged that it had "sold" the quedans in question to the deceased O. Ranft for cash, but that the said O. Ranft had not fulfilled the conditions of the sale. Later on, plaintiff filed an amended complaint, wherein they changed the word "sold" referred to in the first complaint to the words "attempted to sell".

Upon trial the judge of the court below rendered judgment in favor of the plaintiff principally on the ground that in the opinion of the court the defendant bank "could not have acted in good faith for the reason that according to the statement of its own witness, Thiele, the quedans were delivered to the bank in order to secure the debts of Ranft for the payment of their value and from which it might be deduced that the said bank knew that the value of the said quedans was not as yet paid when the same were endorsed to it, and its alleged belief that Ranft was the owner of the said quedans was not in accordance with the facts proved at the time"; and that, moreover, the circumstances were such that "the bank knew, or should have known, that Ranft had not yet acquired the ownership of the said quedans and that it therefore could not invoke the presumption that it was acting in good faith and without negligence on its part".

In our opinion the judgment of the court below is not tenable. It may be noted, first, that the quedans in question were negotiable in form; second, that they were pledged by Otto Ranft to the defendant bank to secure the payment of his preexisting debts to said bank (paragraph 3 of the Stipulation of Facts); third, that such of the quedans as were issued in the name of the plaintiff were duly endorsed in blank by the plaintiff and by Otto Ranft; and fourth, that the two remaining quedans which were issued directly in the name of Otto Ranft were also duly endorsed in blank by him.

When these quedans were thus negotiated, Otto Ranft was indebted to the Hongkong & Shanghai Banking Corporation in the sum of P622,753.22, which indebtedness was partly covered by quedans. He was also being pressed to deposit additional payments as a further security to the bank, and there is no doubt that the quedans here in question were received by the bank to secure the payment of Ranft's preexisting debts; it is so stated in paragraph 3 of the stipulation of facts agreed on by the parties and hereinbefore quoted.

It further appears that it has been the practice of the bank in its transactions with Ranft that the value of the quedans has been entered in the current accounts between Ranft and the bank, but there is no evidence to the effect that the bank was at any time bound to pay back to Ranft the amount of any of the quedans, and there is nothing in the record to show that the bank has promised to pay the value of the quedans neither to Ranft nor to the herein plaintiffs; on the contrary, as stated, in the stipulation "of facts, the "negotiable warehouse receipts—were pledged by Otto Ranft to the defendant Hongkong & Shanghai Banking Corporation to secure the payment of his preexisting debts to the latter", and taking into consideration that the quedans were negotiable in form and duly endorsed in blank by the plaintiff and by Otto Ranft, it follows that on the delivery of the quedans to the bank they were no longer the property of the indorser unless he liquidated his debt with the bank.

In his brief the plaintiff insists that the defendant, before the delivery of the quedans, should have ascertained whether Ranft had any authority to negotiate the quedans.

We are unable to find anything in the record which in any manner would have compelled the bank to investigate the indorser. The bank had a perfect right to act as it did, and its action is in accordance with sections 47, 38, and 40 of the Warehouse Receipts Act {Act No. 2137), which read as follows:

"SEC. 47. When negotiation not impaired by fraud, mistake, or duress.—The validity of the negotiation, of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to intrust

the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress."

"SEC. 38. Negotiation of negotiable receipts by indorsement.—A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. * * * Subsequent negotiation may be made in like manner."

"SEC. 40. Who may negotiate a receipt.—A negotiable receipt may be negotiated:

" (a) By the owner thereof, or

"(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery."

The question as to the rights the defendant bank acquired over the aforesaid quedans after indorsement and delivery to it by Ranft, we find in section 41 of the Warehouse Receipts Act (Act No. 2137) :

"SEC. 41. Rights of person to whom a receipt has been negotiated.—A person to whom a negotiable receipt has been duly negotiated acquires thereby:

"(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith, for value, and * * *."

In the case of the Commercial National Bank of New Orleans vs. Canal-Louisiana Bank & Trust Co. (239 U. S., 520), Chief Justice Hughes said in regard to negotiation of receipts:

"It will be observed that 'one who takes by trespass or a finder is not included within the description of those who may negotiate.' (Report of Commissioners on Uniform State Laws, January 1, 1910, p. 204.) Aside from this, the intention is plain to facilitate the use of warehouse receipts as documents of title. Under sec. 40, the person who may negotiate the receipt is either the 'owner thereof', or a 'person to whom the possession or custody of the receipt has been intrusted by the owner' if the receipt is in the form described. The warehouse receipt represents the goods, but the intrusting of the receipt, as stated, is more than the mere delivery of the goods; it is a representation that the one to whom the possession of the receipt has been so intrusted has the title to the goods. By sec. 47, the negotiation of the receipt to a purchaser for value without notice is not impaired by the fact that it is a breach of duty, or that the owner of the receipt was induced 'by fraud, mistake, or duress' to intrust the receipt to the person who negotiated it. And, under sec. 41, one to whom the negotiable receipt has been duly negotiated acquires such title to the goods as the person negotiating the receipt to him, or the depositor or person to whose order the goods were deliverable by the terms of the receipt, either had or 'had ability to convey to a purchaser in good faith for value.' The clear import of these provisions is that if the owner of the goods permits another to have the possession or custody of negotiable warehouse receipts running to the order of the latter, or to bearer, it is a representation of title upon which bona fide purchasers for value are entitled to rely, despite breaches of trust or violations of agreement on the part of the apparent owner."

In its second assignment of error, the defendant-appellant maintains that the plaintiff-appellee is estopped to deny that the bank had a valid title to the quedans for the reason that the plaintiff had voluntarily clothed Ranft with all the attributes of ownership and upon which the defendant bank relied. In our opinion, the appellant's view is correct. In the National Safe Deposit vs. Hibbs (229 U. S., 391), certain certificates of stock were pledged as

collateral by the defendant in error to the plaintiff bank, which certificates were converted by one of the trusted employees of the bank to his own use and sold by him. The stock certificates were unqualifiedly endorsed in blank by the defendant when delivered to the bank. The Supreme Court of the United States through Justice Day applied the familiar rule of equitable estoppel that where one of two innocent persons must suffer a loss he who by his conduct made the loss possible must bear it, using the following language:

"We think this ease correctly states the principle, and, applied to the case in hand, is decisive of it. Here one of two innocent persons must suffer and the question at last is, Where shall the loss fall? It is undeniable that the broker obtained the stock certificates, containing all the indicia of ownership and possible of ready transfer, from one who had possession with the bank's consent, and who brought the certificates to him, apparently clothed with the full ownership thereof by all the tests usually applied by business-men to gain knowledge upon the subject before making a purchase of such property. On the other hand, the bank, for a legitimate purpose, with confidence in one of its own employees, intrusted the certificates to him, with every evidence of title and transferability upon them. The bank's trusted agent, in gross breach of his duty, whether With technical criminality or not is unimportant, took such certificates, thus authenticated with evidence of title, to one who, in the ordinary course of business, sold them to parties who paid full value for them. In such case we think the principles which underlie equitable estoppel place the loss upon him whose misplaced confidence has made the wrong possible. * * *."

We regret that the plaintiff in this case has suffered the loss of the quedans, but as far as we can see, there is now no remedy available to the plaintiff. The bank is not responsible for the loss; the negotiable quedans were duly negotiated to the bank and as far as the record shows, there has been no fraud on the part of the defendant.

The appealed judgment is reversed and the-appellant is absolved from the plaintiff's complaint. Without costs. So ordered.

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

DISSENTING

ROMUALDEZ, J.

With due respect for the majority opinion, I dissent and vote for the confirmation of the appealed judgment.

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