

WESTMINSTER BANK, LIMITED, PETITIONER, VS. LUIS P. TORRES, JUDGE OF FIRST INSTANCE OF MANILA, AND K. NASSOOR, INC., RESPONDENTS.*G. R. No. 38139. October 27, 1932*

Ponente: HULL, J.

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This is an original action for certiorari and mandamus. Petitioner is a joint stock company incorporated in England, respondent, Luis P. Torres, is a judge presiding in branch one of the Court of First Instance of Manila, and respondent K. Nassoor, Inc., is a domestic corporation with its principal office in Manila.

On the 11th day of February 1931, the petitioner herein instituted an action in the Court of First Instance of Manila against the respondent K. Nassoor, Inc., upon five bills of exchange, each of which was, drawn by N. Jureidini, Ltd., of Manchester, England, against K. Nassoor, Inc., of Manila, payable at a certain number of days after sight to the petitioner or order. Each of said bills of exchange was accepted unconditionally by respondent, K. Nassoor, Inc. Each of these bills of exchange covered a shipment of goods from Manchester, England, to Manila, and the documents covering the goods were turned over by petitioner's agent in Manila upon the acceptance by respondent K. Nassoor, Inc., who, thereupon, received the goods covered by the invoices and bills of exchange. Upon presentation of the bills of exchange at maturity, payment was refused, and after due protest the suit above-mentioned was instituted.

After considerable delay, the case was set for trial to be had on August 11, 1932. On that day the attorneys for the respondent, K. Nassoor, Inc., submitted to the consideration of the court, a motion which they had filed on August 8, 1932. In that motion it was claimed that the defendant had a valid set-off and counterclaim for damages against N. Jureidini, Ltd., that the plaintiff above is not the owner of the drafts sued on, but is merely a holder of said drafts for collection, "and that in order to avoid multiplicity of suits, N. Jureidini, Ltd., which went in liquidation in 1930, should be made a party in the suit either as plaintiff or as defendant.

On August 23, 1932, an order was entered by the judge of the Court of First Instance which reads as follows:

"Upon due consideration of the motion filed by Attorneys Gutierrez Eepide & Monzon, representing the defendant, and the memoranda submitted by Messrs. Gibbs & McDonough, for the plaintiff Westminster Bank, Limited, opposing said motion, and the reply memorandum in support thereof, and after an examination of the deposition of the witness for the plaintiff and the witnesses for the defendant taken in Manchester, England, by direction of this court, the undersigned has come to the conclusion that the firm of N. Jureidini, Ltd., should be made a party in these proceedings.

"In view thereof, the defendant's motion is granted, and the plaintiff is hereby ordered to include in these proceedings, as party plaintiff or party defendant, the said firm of N. Jureidini, Ltd., of Manchester, England."

There can be no question that the petitioner, as the payee named in, and as the holder of each of the five bills of exchange sued upon, is entitled under section 51 of the Negotiable Instruments Law to sue upon said instruments

in its own name. It is also clear under section 62 of the same law that the respondent K. Nassoor, Inc., by its unconditional acceptance of said instruments and by receiving the merchandise covered by said instruments, became obligated to the petitioner.

Petitioner asserts that it is a stranger to any private claims or disputes that may exist between N. Jureidini, Ltd., and K. Nassoor, Inc., that it took the bills of exchange in the ordinary course of business, and that it has the right to litigate its claims without encumbering and delaying the proceedings in order to take care of alleged rights between the acceptor and other parties.

It is claimed that it is legally impossible for the petitioner herein to comply with the orders of the judge of the Court of First Instance of Manila, above quoted, to make N. Jureidini, Ltd., a party plaintiff as the said N. Jureidini, Ltd., has not authorized the petitioner to do so, and there is no means known by which such consent could be forced. Petitioner claims to be the absolute owner of the said bills of exchange, and could not maintain said claim if N. Jureidini, Ltd., as a party plaintiff, was included.

It is also claimed that it is impossible for the petitioner to include N. Jureidini, Ltd., as party defendant as that company is a resident of Manchester, England. They have no branch office or agent in the Philippine Islands and it would be necessary to make an affidavit, that the action relates to personal property within the Philippine Islands, in which said N. Jureidini, Ltd., has or claims a lien or interest. According to the statements of the plaintiff they know of no such property within the Philippine Islands.

Respondent, K. Nassoor, Inc., says in one breath that N. Jureidini, Ltd., is the real owner of the bills of exchange, and in the next breath says that they have a cause of action and set-off against N. Jureidini, Ltd., for the sum of money, in excess, of the value of the bills of exchange. The contention of petitioner, as to the impossibility of complying with the orders of the respondent judge, has not been answered either in the briefs or in the oral arguments in this case, and standing alone is sufficient to show the illegality of the orders in question.

Had petitioner brought five suits against K. Nassoor, Inc., the rule against multiplicity of suits might have been invoked, but instead of so doing, it properly brought one suit based on five counts. It may be true that both the Manchester Bank, and K. Nassoor, Inc., may have, today or in the future, claims against N. Jureidini Company, Ltd., but it may also be true that in the claims of the bank against N. Jureidini, Ltd., K. Nassoor, Inc., will have no interest, and in the claims of K. Nassoor, Inc., against N. Jureidini, Ltd., the bank will have no interest. To make a hodgepodge of all such matters within the compass of one suit it is unknown to the law, either of England, or of this jurisdiction. The orders complained of are clearly improper (*Thomas vs. Council Bluffs Canning Co.*, 92 Fed., 422; *Prospect Park vs. Morey*, 140 N. Y. S., 580) and their issuance constitutes an abuse of judicial discretion for which certiorari is the appropriate remedy.

The orders of the respondent judge of August 23, 1932, are therefore vacated and declared null and void and the respondent judge is commanded to vacate said orders and to place the cause on the calendar for a trial on its merits without further delay. Costs against the respondent. So ordered.

Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Vickers, Imperial, and Butte, JJ., concur.

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