

WARNER, BARNES & CO., PLAINTIFFS AND APPELLANTS, VS. E. Z & CO., DEFENDANTS AND APPELLEES.

G.R. No. 4007. March 18, 1908

Ponente: MAPA, J.

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MAPA, J.:

A review of the evidence in this case not having been applied for, we must therefore abide by the facts stated in the judgment which is the subject of this appeal.

The following facts have been established therein:

"1. On the 1st day of August, 1905, in the municipality of Legaspi, the defendant company issued three bills of exchange to the order of the Chinaman Uy-Oyan, drawn upon Messrs. Urrutia & Co. of Manila, which were of the following tenor:

" 'E. Diaz y Ca. No. ,1782. P1,000. Legaspi, August 1, 1905. Ten days after sight of this sole bill of exchange, please pay to the order of the Chinaman Uy-Oyan, the sum of one thousand pesos, Conant, value on account of hemp, which you will charge as advised. (Sgd.) E. Diaz y Ca. (Rubricated) Sres. G. Urrutia y Ca. Manila. Advised per steamer Cantabria, according to agreement.'

""E. Diaz y Ca. No. 1783. P500. Legaspi, August 1, 1905. Eight days after sight of this sole bill of exchange, please pay to the order of the Chinaman Uy-Oyan, the sum of five hundred pesos, Conant, value on account of hemp, which you will charge as advised. (Sgd.) E. Diaz y Ca. (Rubricated) Sres. G. Urrutia y Ca. Manila. Advised per steamer Cantabria, according to agreement.'

" 'E. Diaz y Ca. No. 1784. 500. Legaspi, August 1, 1905. Eight days after sight of this sole bill of exchange, please pay to the order of the Chinaman Uy-Oyan, the sum of five hundred pesos, Conant, value on account of hemp, which you will charge as advised. (Sgd.) E. Diaz y Ca. (Rubricated) Sres. G. Urrutia y Ca. Manila. Advised per steamer Cantabria, according to agreement.'

"2. The bills of exchange above referred to were taken up by the Chinaman Salvador Palanca from the defendant company, and delivered by him to the said Chinaman Uy-Oyan by means of a written agreement, by virtue of which the party last named engaged to pay in hemp the amount thereof, on or before the 9th day of the aforesaid month of August, and should said day arrive without such payment having been made, the said bills would not be paid; for this reason, on each of such bills, and after the words 'advised per steamer Cantabria,' the following was added: 'According to agreement.'

"3. On the 1st of August, 1905, cited above, the aforementioned Uy-Oyan, after subscribing his signature, Uy-Oyan, and his rubric, on the back of each of the above-mentioned bills of exchange, delivered them to' the Chinaman Mariano Almonte, who made use of them on the same date by Handing them to the agent of the plaintiff company in the municipality of Legaspi, in order to pay with their value what he owed the latter; by reason of such payment, how-ever, no special indorsement was made on each of the said bills in favor of the plaintiff, beyond the signature and rubric of Chinaman Uy-Oyan, as already stated.

"4. The plaintiff company, after having acquired in the manner just described the said three bills of exchange, without having any knowledge of the agreement above alluded to, forwarded the same on the 12th of August to the city of Manila for collection, and from said date credited the account of Chinaman Almonte with the value thereof, but on the 20th of said month canceled the entry so made in its books by means of a counter entry, and thus the Chinaman Almonte came again to owe the plaintiff company the same amount of P2,000, which the said bills of exchange amounted to, as long as they were not accepted or paid for any reason, as was stated in the said books. * * *

"5. The said bills of exchange were neither accepted nor paid to the plaintiff company who held and presented them for acceptance and payment, because the said Chinaman Uy-Oyan, who had taken them up, had not fulfilled the agreement mentioned above, under which the defendant company issued in his favor the aforesaid bills of exchange."

It has also been declared by the judgment that the said bills of exchange were duly protested, both for want of acceptance and of payment, and that the defendant company had been duly informed thereof.

The plaintiff company claims on its own behalf the amount of the said bills of exchange, alleging that the ownership of the same had been transferred to the company prior to maturity. The trial judge found in his decision that, for the reason that no date was affixed in the blank indorsement signed by the Chinaman Uy-Oyan, the person who took up the drafts, the plaintiff company had not acquired the ownership thereof, and that the assignment made in its favor should be considered simply as a commission for collection; in consequence thereof he also declared that the company was not entitled to claim the amount of the said drafts, and decided the case in favor of the defendant, dismissing the complaint.

The question at issue is, in the first place, whether a blank indorsement, not dated, transfers the ownership of the draft thus indorsed. The Code of Commerce is very clear and positive on this point. After setting forth that the ownership of drafts may be transferred by indorsement (art. 461), and that it must contain the requisites enumerated in article 462, among which is the date on which it is made, it provides by article 463 the following:

"If the statement of the date is omitted in the indorsement, the ownership of the draft shall not be transferred, and it shall be understood as simply a commission for collection."

According to this the indorsement in question did not transfer the ownership of the draft to the plaintiff company, because the date on which the same was made was not stated.

It is argued by the appellant that the provision last cited refers only to article 462, to which, as alleged, it is an exception, and in no way refers to article 405, which deals with indorsements signed in blank. In the opinion of the appellant, these indorsements signed in blank constitute a special class of indorsement to which the provisions of article 463, already quoted, do not apply. Should this be true, article 465 would be an exception to article 463, in the same manner as, according to the appellant, the latter article is an exception to article 462. It is, however, neither the one nor the other. Far from being an exception, article 463 is, on the contrary, the real complement of article 462, inasmuch as it establishes the legal effects of the omission of the date as required by the latter, and the provisions thereof, general and absolute as they are, embrace all classes of indorsements, and there exists no reason, and much less a legal provision, excepting therefrom the indorsements to which article 465 refers.

The literal wording of the latter is as follows :

"Indorsements signed in blank and those in which the value is not stated shall transfer the ownership of the draft and shall produce the same effect as if 'value received' were written therein."

In our opinion this article has no other effect than to require that, indorsements signed in blank be held to mean that the value has been received in cases where it is not specially expressed therein. If, as the appellant says, the

provisions of article 463 were not applicable to the indorsements mentioned in article 465, it would then result that not only the indorsement signed in blank but also those wherein the value is not stated (because said article deals with both the one and the other) would transfer the ownership of the drafts without the necessity of stating therein the date on which the indorsements were made. Thus, in order to avoid the necessity of complying with the latter requisite, it would suffice to omit to state the value, which would lead to the following peculiar result, namely, that an indorsement, wherein the value is not stated, transfers the ownership of the draft, even though no mention be made of the date; while another indorsement, in which the value is stated, will further necessitate the date being expressed in order that it may produce the effect of transferring the ownership of the draft. From this would be derived the inevitable conclusion that the fewer of the requisites prescribed by article 462 the indorsement contained the more effective it would be, which would be a real absurdity from any point of view.

For the reasons above set forth, we maintain herein the doctrine set up in the matter of the International Banking Corporation vs. Montague (6 Phil. Rep., 667), that if the date is omitted in the indorsement the ownership of the draft shall not be transferred, and it shall be understood as simply a commission for collection.

The appellant insists that the company acquired the ownership of the drafts, if not by means of the special contract of indorsement, at least by virtue of the assignment made thereto by Almonte. The appellant company says:

"The judgment itself declares that Almonte delivered them to the plaintiff in payment of a debt, so that it is unquestionable that such delivery was made with the intent, on the part of both, to transfer to the plaintiff the ownership of the credit which the drafts represented."

And the said transfer, or assignment, according to the appellant, needs no written form to insure its full validity and efficiency under section 335 of the Code of Civil Procedure. This aspect of the question need not be considered here. It is not claimed that Uy-Oyan, to whose order the drafts were issued, made an assignment of them to the plaintiff. Between the latter and Uy-Oyan there has existed no juridical relation of any kind. The pretended assignment of the drafts in favor of the plaintiff was made by Almonte in payment of a sum which he owed. In order that by such an act Almonte might have transferred to the plaintiff the ownership of the drafts, even granting that it produced all of the legal effects that the appellant attributes to it, it was still necessary that Almonte should have previously acquired the ownership of the aforementioned drafts, it being a settled rule that no one can transfer to another a right which he does not possess. Now, therefore, Almonte could not have acquired such ownership except by means of the indorsement signed in blank by Uy-Oyan, inasmuch as no other title or method of acquisition is alleged. And, it being shown to be insufficient to transfer the ownership of the drafts in favor of the indorsee, it must necessarily be concluded that the latter—that is,—Almonte could not in his turn have transferred the ownership to the plaintiff, whatever may have been the contract entered into between them.

The judgment appealed from is hereby affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Willard, and Tracey, JJ., concur.

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