

EL BANCO ESPAÑOL-FILIPINO, PLAINTIFF AND APPELLEE, VS. FULGENCIO TAN-TONGCO AND GERONIMO JOSE, DEFENDANTS AND APPELLANTS.

G.R. No. 4163. August 04, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The matter involved in this controversy is a promissory note drawn as follows:

"Three months from this date I hereby promise to pay, in Manila, to the order of D. Geronimo Jose, the sum of three thousand six hundred pesos, Mexican currency, value received in cash for commercial transactions.

"Manila, 21st of July, 1902.

(Signed) "FULGENCIO TAN-TONGCO.

"Pay to the order of the Banco Español-Filipino for value received from the same in cash.

(Signed) "GERONIMO JOSE."

As the obligation was not paid at maturity a protest was entered, and on the 3d of February, 1904, the maker and the indorser, respectively, were sued for payment.

Judgment was entered against Tan-Tongco, but levy of execution by the sheriff of Manila proved ineffectual; this fact is admitted.

On the 13th of February, 1906, the indorser, Geronimo Jose, answered the complaint admitting all the facts stated therein, and as special defense set forth: "That previous to, and at the time of the issuance of the note attached to the complaint, the party whom he represented had had no mercantile relations with the maker of the note, nor does the note arise from a mercantile transaction, nor is it the result and outcome of any of such transactions, but of money delivered in cash." (B. E., 3.)

Subsequently, however, the attorneys for the plaintiff and the defendant, Geronimo Jose, agreed in behalf of their clients "that the special defense put forward by defendant Geronimo Jose be withdrawn and in lieu thereof said defendant accepts each and all of the facts stated in the complaint, as drawn; they further agree to submit the question of law to the court after the filing of written argument by both parties." (B. E., 4.)

The Court of First Instance of the city of Manila rendered judgment on the 25th of April, 1907, sentencing Geronimo Jose to pay to the plaintiff, the Banco Español-Filipino, the sum of P3,775.50, Philippine currency, the equivalent of \$3,600, Mexican currency, the amount of the obligation contained in the promissory note of July 21, 1902, together with the legal interest thereon at the rate of 6 per cent per annum from the 22d of October of said year, when the; obligation became due, until its full payment, and P6.95 for charges on the protest of said note, and costs.

The defendant excepted to the above judgment, and by means of a bill of exceptions appealed to this court claiming that the court below erred;

"I. In holding that the promissory note, which is the subject of this controversy, arose from mercantile transactions.

"II. In entering judgment against the defendant Geronimo Jose, and compelling him to pay the plaintiff, the Banco Español-Filipino, the sum of P3,775.50, Philippine currency."

In connection with the first error assigned, the appellant's brief reads:

"The promissory note, as it stands, is the only document by, and the only evidence from which the conclusion that it is the result of commercial operations must be drawn. In the whole wording of the note we do not find a clear expression that it originated from mercantile transactions, nor do we find an expression determining that a previous mercantile transaction existed between the interested parties; but on the contrary, we find that it contains the words 'value received in cash for commercial transactions.' The foregoing words 'value received in cash for commercial transactions,' leave no room for any doubt whatever, and the actual significance and literal meaning of each of them lead us to understand that the money was to be used strictly for commercial operations, an act which is subsequent to the execution of the promissory note, while the Code of Commerce requires exactly the contrary in order that a note may be considered as a commercial document; that is to say, that the commercial act shall precede the execution of the note. Therefore, the foregoing words in their true meaning neither establish the fact nor permit the presumption of a commercial transaction prior to the date of the note." (Brief, 4 and 5.)

The second assignment of error is based on the supposition that the note in question is not a commercial document; that the original contract between Tan-Tongco and Jose was either an ordinary loan or a mercantile promise to pay; and that in either case, whether an ordinary loan, or a mercantile promise to pay, it was not legally indorsable, but simply a transmission of ownership whereby the defendant, Geronimo Jose, incurred no liability for payment, he being only responsible for the authenticity of the document and the legitimacy of the credit, or at most, for the previous and public insolvency of the debtor. (Art. 1529, Civil Code, and art. 548, Code of Commerce.)

Hence, the conclusions of the appeal are:

That the promissory note in question, in the form in which it was drawn up, is not a commercial note.

That not being such, it can not legally be indorsed.

That, not being legally indorsable, the indorsement there on is simply an assignment of credit.

That an assignment of credit does not produce the obligation to pay, and that in consequence thereof, the indorser, Geronimo Jose, should be absolved of the complaint.

The form of the note in controversy was, and still is, that habitually used between merchants, and it may be stated, as a notoriously public fact, that printed promissory notes with the corresponding stamp affixed thereon and in the identical language of the one in question, were sold at the offices maintained by the Spanish Government for the sale of stamped articles.

In the judgment in cassation rendered by the supreme court of Spain on the 21st of April, 1888, the following case appears:

"In a private document dated Barcelona 8th of June, 1883, D. Jose Altimira declared that he owed and would pay on the 7th day of September next, to Messrs. E. Vilumara & Co., or to their order, the sum of 40,000

pesetas which he had received in cash."

The wording is identical with the note at bar: "Three months from date, I promise to pay to order, for a determined amount received in cash," that is to say, with a statement of the origin and value; it lacks the specific statement "of article 311 of the Code of Commerce "for commercial transactions," which is found on the one at bar.

"On the following day, the 9th of June, the said note was indorsed to the order of Messrs. Sado, Borrás, Nolla & Co., for value received from them, and on being presented at maturity, was protested for nonpayment on the 10th of September, the maker stating that he would pay it as soon as possible. At the second summons served on him for acknowledgment of the signature on the note, he denied the existence of the debt (whereby proceedings in dstraint were barred), and in consequence thereof Sado, Borrás, Nolla & Co. filed an ordinary complaint. When answering the complaint, Altimira denied being a merchant, and as special defense he offered the plea of *sine actione agis, non numerata pecunia, sine causa*, etc., claimed that the note was null and void, and insisted that it did not refer to any mercantile transaction, but at the trial he acknowledged his signature thereon. The Audiencia of Barcelona sentenced Altimira to pay the amount of the promissory note with legal interest from the date of the protest, together with the charges thereon, and costs.

"Altimira interposed an appeal in cassation, claiming violation of:

"1. Article 558 of the old Code of Commerce, which was in force at the date of the document, in that it provided that only such promissory notes as arise from commercial transactions shall produce the same effects and obligations as a bill of exchange; and, inasmuch as in the suit no mercantile operation had been mentioned or shown from which note in question might have originated, the same could not be considered as a mercantile document, nor could the provisions governing a bill of exchange or others of the Code of Commerce be made applicable thereto.

"2. Laws 1 and 2, title 14, partida 3, and the previous decisions of said supreme court which hold that the burden of proof is upon the plaintiff, and not upon the defendant who denies having received the amount."

The supreme court dismissed the appeal "since the judgment appealed from was not in violation of article 558 of the Code of Commerce of 1829, nor of laws 1 and 2, title 14, partida 3, cited in the first and second assignments of error, because the decision of the Sala sentencing D. Jose Altimira to pay the 40,000 pesetas with interest from the time when the protest was made, was in conformity with the said laws, inasmuch as the note signed by Altimira in favor of Sres. Vilumara & Co. and to their order, acknowledged, as it has been, by judicial and extra judicial acts, is a mercantile document both by reason of its wording and on account of the personal qualifications of the parties who executed it, and in this sense it proves to be a valid obligation, notwithstanding the plea of 'money not delivered as alleged by Altimira, which is not admitted by the commercial law, and against which there is also the evidence furnished by the plaintiff."

The promissory note of Altimira contained no indication that the amount therein admitted arose from commercial transactions, nor was such use or employment expressed by the words "for commercial transactions," and yet, it was held as a point of doctrine that, owing to its wording, it was a mercantile document.

In another judgment in cassation rendered on the 12th of December, 1889, the following case was dealt with: On the 7th of January, 1886, Jose Xiro y Jorda signed a promissory note to the order of Gaspar Casellas, payable on the 31st of the following March, for the sum of 7,000 pesetas in gold or silver currency, for value received from Casellas on said date to meet commercial operations of the signer, which note, after being indorsed by Casellas to the order of Francisco Hospital, was protested when it became due, for lack of payment.

A complaint being presented, the Court of First Instance entered a judgment which was affirmed by the Audiencia

of Barcelona, sentencing Jose Xiro y Jorda to pay the 7,000 pesetas together with interest thereon, charges, and costs.

Xiro y Jorda interposed an appeal in cassation setting forth: (1) The violation of the axiom that the Code of Commerce is not applicable in controversies between those who are not merchants or perform acts of commerce, and in applying its provisions to the case at bar, in spite of the fact that the contracting parties were not merchants, and that the note arose from no mercantile transaction whatever. (2) The improper application, for the same reason, of articles 531, 532, 503, 526, and 57 of the Code of Commerce, on which the judgment appealed from is based. (3) That in the doctrine set up by this supreme court in its decisions of November 7, 1870, July 8, 1872, and others, according to which, in order that promissory notes made out to order may produce the same effects and obligations as bills of exchange, it is necessary that they shall arise from mercantile operations, a fact which does not appear in the case at bar. (4) That for similar reasons article 532 of the Code of Commerce, which provides that notes made out to order shall produce the same obligations and effects as bills of exchange, provided that they arise from commercial operations, had been infringed (5). That article 311 of the Code of Commerce provides that, where a loan is to be reputed as a mercantile transaction, some one of the contracting parties must be a merchant, or that the things loaned must be devoted to acts of commerce, neither of which circumstances was present in the note in question, as neither was the petitioner a merchant, nor has it been proven that any mercantile operation whatever had been carried out with the amount loaned.

The supreme court dismissed the appeal and established the following doctrine:

"That it is not true that the Code of Commerce is not applicable to those who are not merchants, because, according to article 2, all acts of commerce shall be governed by its provisions, whether the parties executing them are merchants or not.

"That as the trial court, in the use of its exclusive powers, had held that the note in question was authentic, valid, and of a mercantile character, the first assignment of error, as well as the second, third, fourth, and fifth, wherein contrary affirmations are discussed, are incompetent and immaterial."

The appeal which is now before this court concerns the question of liability on the part of the indorser of a promissory note. The attorney for the defendant indorser of the note herein, denies the mercantile character of the note indorsed by the latter, and contends that said indorsement can have no other effect than that of a cession under the common law, and not such as is attached to it by the commercial law. And as a denial of the mercantile character of the note, he cites articles 532 of the Code of Commerce which reads:

"ART. 532. Drafts payable to order between merchants and the bills or promissory notes likewise payable to order, which arise from commercial transactions, shall produce the same obligations and effects as bills of exchange, except with regard to acceptance, which is a quality of the latter only."

We consider the following as powerful reasons for doubt: (1) That there is no evidence that either Tan-Tongco, the drawer, or Geronimo Jose, the indorser, were merchants; (2) that no evidence whatever was offered to prove that the note arose from commercial transactions; (3) the decisions of the supreme court of Spain of April 10 and November 24, 1894.

The majority however, base their decision on the following grounds:

With regard to the first point, that, in accordance with article 532 of the Code of Commerce, in order that drafts payable to order may produce the same obligations and effects as bills of exchange, it is necessary that they shall exist between merchants; but this is not so in the case of vales and promissory notes payable to order; it is sufficient if these latter arise from commercial transactions.

With respect to obligations and effects produced thereby, the law has sought to put drafts and promissory notes, payable to order, and each with its necessary requisite, on the same footing with bills of exchange: drafts to order, being "between merchants," and promissory notes to order those "that arise from commercial transactions." If the requisite of being "between merchants" had been required for both, the article would have read differently or have been couched in other terms, whereas it is quite clear in its language and exact in the idea that it seeks to convey, concerning the principles governing the matter.

According to the language of article 532, which states that "drafts payable to order between merchants, and bills or promissory notes, likewise payable to order, which arise from commercial transactions, shall produce the same obligations and effects as bills of exchange, except with regard to acceptance, which is a quality of the latter only," it would seem (1) that drafts payable to order between parties who are not merchants have not a mercantile character; (2) that a promissory note made payable to order, even though it were made by a person who is not a merchant, provided it arose from commercial transactions, has the character of a mercantile document.

On the second point, the majority holds that it is not necessary to show, either judicially or extra judicially, that the note herein arose from commercial transactions; it need not be shown judicially, because the defendant has not offered any denial in his answer to the complaint. On the contrary, the parties have submitted the document, as executed, to the courts for a decision as to whether, in accordance with the law, it is a mercantile document or not. It need not be shown extra judicially, because it would be absolutely contrary to the idea of mercantile transactions and to the nature of contracts and commercial legislation, that a bank, every time a promissory note was presented, drawn in terms similar to those of the one at bar, should require the drawer and the indorser to produce books and

other evidence to establish the fact, and to show that the note arose from commercial transactions as, for example, from the dissolution of a commercial copartnership, from a current account, from the balancing of accounts of a commission agent, from the liability resulting from a commercial deposit, etc., and to make sure of all these proofs against the contingency of a litigation.

Beyond the fact that the question set up is purely one of law, and as both parties agree to the facts contained in the document, the point to be decided is whether or not a promissory note payable to order for a certain sum received in cash for commercial transactions, as it is worded, is a mercantile document.

As to the third point, the decisions cited of the supreme court of Spain, its doctrine is as follows:

"It is not sufficient that a vale or promissory note, in order to be juridically valued as a commercial document, contain the conditions stated in article 571 of the Code of Commerce; it must, in addition, arise from commercial transactions as required by article 558 (of the code of 1829), and there is nothing whatever about the note in question to show that said essential requirement of the law had been fulfilled, because it is only stated therein that the borrower received the 5,000 pesetas for a business matter, and said isolated statement neither proves that the loan arose from a commercial transaction, as the law requires, nor can it possess legal value so long as the truth of the fact contained in said statement remains unproven, namely, that the borrower used the 5,000 pesetas for commercial purposes." (Decision of April 10, 1894.)

Again, in a decision of November 24, 1894, which, by the way, referred to one rendered by the late Audiencia Territorial de Manila, it is held:

"That those vales and promissory notes made payable to order; which, by the provisions of article 532 of the Code of Commerce are of the same validity and effect as bills of exchange, are not those the value of which is to be devoted to commercial transactions, but those which arise from transactions of this kind."

In addition to the above-cited decisions, there might also have been cited those of August 5, 1857, January 29, and

June 28, 1859, November 7, 1870, July 8, 1872, May 28 and July 4, 1884, but that of November 25, 1898, which is cited in the judgment appealed from, appears to be more positive. It reads as follows:

"The commercial character of promissory notes made payable to order is not determined by the mere fact that the persons therein interested as maker, indorser, or holder are merchants, but by the special circumstance that the said notes arose from commercial transactions, as expressly provided by article 558 of the code of 1829, applicable to the case under appeal, and in accordance with the doctrine established by this supreme court in its decision of January 29, 1859, and June 20, of the same year, the first of which was expressly and specially based on the consideration that the note in question contained no indication from which it might be understood that it arose from a commercial transaction, and because nothing of that nature resulted therefrom." (Decision of the 29th of January, 1859, cited above.)

The matter at issue was a promissory note made by Manuel Docavo on the 27th of March, 1855, and payable three months from date to the order of Boom, for 240,000 reales in cash, indorsed by Boom on the 29th of May following to the Bank of Cadiz, for value received, and finally indorsed by the bank on the 1st of July, 1867, to Andres Terry.

It was protested on the 28th of June, 1855, and Docavo made the statement that the firm did not pay the said promissory note on account of lack of funds. (Par. 3 of the judgment.)

An action was brought before the ordinary court of justice, but the Tribunal de Comercio claimed jurisdiction in the matter in view of the fact that it involved a commercial note signed and indorsed by merchants, in accordance with articles 434 and 558 of the Code of Commerce of 1829.

The jurisdiction having been decided in favor of the ordinary court, an appeal in cassation was taken, and among other reasons the following were alleged:

That, even though the origin of the note had not been a commercial transaction, inasmuch as it had been indorsed, it was a commercial sale so qualified by the provisions of section 1, title 3, book 2 of said Code of Commerce, and subject to the articles that deal with indorsements of bills of exchange, applicable to the indorsement on promissory notes, in accordance with the above-cited article 558. For said reasons the decision in the judgment was contrary to the said articles and to article 1199; and that it was also contrary to article 434, because the merchant Boom had indorsed the note, and, according to said article, an indorsement by a merchant on a bill which did not arise from a mercantile operation was considered a commercial transaction.

The supreme court held:

"1. That the note in question contained no indication whatever from which it might appear that it arose from a commercial transaction, 'because it is only stated therein that it is payable to order for 240,000 reales vellon received in cash, and payable at three months from the date thereof/

"2. That article 387 of the Code of Commerce provides that, in order that loans may be considered as commercial transactions, it is necessary that they be contracted with the understanding and upon the agreement that the things borrowed shall be devoted to commercial purposes, and not to liabilities foreign thereto, and that, in the absence of said condition, they shall be considered as ordinary loans and governed by the common laws."

From the whole of this doctrine it would seem that the promissory note in question did not contain the form of article 387, to wit: "for commercial transactions;" that with said statement the note would have appeared as a commercial loan; and that, being a commercial document, it would have then contained the necessary indication that it arose from commercial transactions. This is the important part of the decision: that a note arises from a commercial transaction if it is the outcome of a commercial loan, and the loan is a commercial one when the

things loaned are for commercial operations or transactions.

Another decision dated June 28, 1859, referred to a promissory note made out as follows:

"I hereby promise to pay on the 1st of October next to the order of Don Fernando Arevalo Miera, the sum of 50,000 reales vellon in silver or gold currency, for value of wheat which I purchased and received from him.-Valladolid, August 30, 1856.-Antolin Carrion.-I hereby guarantee the payment of this promissory note.-Valladolid, August 31, 1856. Jose Suarez Centi."

An analogous question of jurisdiction arose, and, as the higher tribunal found against the Tribunal de Comercio, an appeal in cassation was interposed alleging that articles 359, 558, 563, 570, 2d, 1178, 1199, and 1200 of the Code of Commerce had been violated.

But the supreme court held:

"1. That the sale of wheat or crops from the harvest of the seller or other farmers whom the latter may represent, and to whom he may bind himself to make payment by means of a promissory note, can not be considered as a commercial transaction.

"2. That promissory notes and guaranties must be viewed according to the nature of the obligations which they were intended to guarantee and secure at the time when they were drawn up, and must remain subject to the rules that determine the nature of the obligations themselves.

"3. That in order that vales and promissory notes payable to order shall produce the same obligations as bills of exchange, it is necessary, under article 558 of the Code of Commerce, that they arise from commercial transactions; and that, in order that the guaranties may be considered as pertaining to this class, article 412 requires not only that the principal contracting parties shall be merchants, but also that the security shall be for the fulfillment of a commercial transaction."

In the decisions of 1859 in the matter of jurisdiction, cited in the judgment in cassation rendered on the 25th of November, 1898, the doctrine laid down is in line with the provisions of articles 558 of the Code of Commerce of 1829, and 532 of that of 1855, now in force in the Philippines; none of the promissory notes in litigation, which were the subject of appeal in the judgments cited above, contained the phrase "for commercial transactions" which is, according to the decision of January 29, 1859, the indication that a promissory note arises from a commercial transaction, that is to say, from a commercial loan.

In the decision of November 24, 1894, rendered in the appeal in cassation interposed by Gamero in a suit with Cajigas, forwarded from the Audiencia Territorial de Manila, it was expressly stated that securities and promissory notes payable to order, to which article 532 grants the same validity and effects as bills of exchange, are not those the amount of which will be devoted to commercial transactions, but those which arise from transactions of this kind. In some of the renewals of the original promissory note executed by Narciso Paterno to the order of Gamero, and indorsed by the latter to the order of Cajigas, the words for commercial purposes, which the original one did not contain, were deliberately put in, but it was proven that the same was a simple note and had nothing whatever to do with a commercial transaction.

Thus far only does the doctrine repeatedly established by the supreme court of Spain extend, notwithstanding the fact that in its decision of January 29, 1859, it clearly indicates how the legal requirements of article 532 are considered as fulfilled so that a promissory note payable to order may produce the same effects and obligations as a bill of exchange, that is, when it contains a sufficient statement or indication from which it may appear that the same arose from a mercantile operation, such being the case when it contains the words for commercial transactions.

One of the effects of a bill of exchange is the indorsement whereby the ownership thereof is transferred to another (art. 461). And it establishes on the part of the indorser the obligation to answer for the value of the bill, if not paid at maturity (art. 467). According to the same article 532, an indorsement on a promissory note made payable to order arising from a commercial transaction entails the same obligation.

If the defendant herein indorsed a promissory note of a really commercial nature, payable to order, he is obliged to meet the value of the note in question where the same was not paid at maturity, as provided by the said article 467.

That the note is payable to order, is beyond all question. The matter under discussion is whether or not, under the law, it is a commercial note.

According to article 531 a promissory note payable to order must contain (1) the specific name of the promissory note; (2) the date of issue; (3) the amount; (4) the time of payment; (5) the person to whose order the payment is to be made; (6) the place where the payment is to be made; (7) the origin and kind of value it represents; (8) the signature of the person who contracts the obligation to pay the same. And the note at bar unquestionably contains all of said requisites.

The seventh of the above conditions is the same as appears in paragraph 5 of article 444 for bills of exchange:

"5. The form in which the consideration is acknowledged, either on account of the receipt of its value in cash, or merchandise, or other property, which shall be expressed with the words 'Value received,' or accepting it on those which may be pending, which shall be indicated by the words 'value on account' or 'value understood.'"

Contracts which serve as a necessary precedent for the issue of a bill of exchange can never be mistaken for the bill itself, the consequences and effects of which are entirely distinct from the contract or contracts which gave rise to the same. (Lorenzo Benito, *Lessons on Commercial Law*, 198.)

Neither can the contracts that serve as the necessary precedent for the issue of a promissory note payable to order be mistaken for the note itself, the consequences and effects of which are entirely different from the contract or contracts that originated it.

A promissory note signed by one person in favor of another, but not to his order, wherein it is simply stated: "I promise to pay X so much," is nothing but an ordinary note, not negotiable. A document of this kind is nothing more than mere written evidence of the contract it represents. But a promissory note payable to order is not merely proof, as is the other one, of the contract therein contained; it is negotiable, indorsable, transferable, without the knowledge or consent of the person who issued and signed it; it is a real instrument of exchange; it is something commutative which the drawer issues in exchange for the money or merchandise that he has received from the holder of the note, or as a result of accounts between them.

A promissory note payable to order is a writing whereby the drawer confesses that he is indebted and under the obligation to pay a certain amount to the order of another; it is generally the result of a loan, or of merchandise sold, or of outstanding balances of current accounts. (1 *Treatise on Commercial Law* by D. A. B., 558.)

The making of drafts, as well as of bills of exchange and promissory notes, is preceded by a contract in the execution of which they are instruments; and both in the making thereof as well as in the rights and duties arising therefrom, the contracting parties must abide by its provisions, independently of those which the law grants or imposes in favor of or against the holder of the same. (Perecaula, *Dictionary of Commercial Law*, 421.)

"The characteristic thing about this contract (of exchange) is the promise and the order of payment, and its chief advantage consists in the facilities afforded to the circulation of the bill of exchange by the form of the promissory

note, I will pay to order of D....., thus its transfer was provided for by indorsement, and above all the joint obligation which rested on all those who nominally took part in the subrogation of the draft, or in its circulation, gave to this document the greatest possible guarantee. Later on the necessities of trade caused the form pay to the order of..... to be substituted by pay to bearer, facilitating, in this manner its transmission or manual delivery." (Benito, Les. 80.)

In effect, article 544 of the code in force provides that all instruments payable to order may be drawn payable to bearer, and in the preamble of the code it is stated:

"That the plan, in accord with the policy of the new commercial codification, expressly declares-and it so appears in articles 532 and 544-that drafts payable to order between merchants, and vales or promissory notes payable to order arising from commercial transactions may be issued to bearer; wherefore the code of 1829, which provided the contrary, is repealed. By virtue of said authority, copartnerships and private individuals are authorized to issue all kinds of documents payable to bearer, with or without security, the latter enjoying greater prerogatives as far as the negotiation, transmission, and recovery of the same is concerned."

If the promissory note payable to order or bearer is different from the contract whereby it originated and if said contract is, as a rule, a commercial loan, the true doctrine with regard to the nature of the commercial loan is of the utmost importance. In order, says the learned professor Benito, that a loan be a commercial one, it must constitute per se a commercial transaction, or arise from a commercial transaction. A loan constitutes per se a commercial transaction when the party contracting it avails himself of said loan as one of the several means of commercial speculation, as is the case for example, with bankers and money lenders in general. And it is made by reason of a commercial transaction when the thing loaned is indispensable to the carrying out of a commercial transaction, as happens, for example, when a person who has no capital at a given moment, contracts a loan in order to avail himself of the decline in price of any product whatever, purchased at the time for the purpose of reselling it when the market value shall improve. In the former case the lender is usually a merchant (he is not one if the act was an isolated and incidental occurrence in his life), and the loan must necessarily bear interest. In the second case it is immaterial whether or not the lender is a merchant, or whether the loan is compensated or gratuitous. (P. 194.)

In the latter case, the second condition required by article 311 of the code is accomplished, to wit: "If the articles loaned are destined to commercial transactions."

And in the first, as in the second case, in order that it may be known that it arose from a commercial loan, the form of a promissory note payable to order or to the bearer, is no other than the usual one in business: for commercial transactions. A promissory note thus made out carries with it the indication that it arose from a commercial transaction wherein either the lender carries out a commercial transaction, or the borrower intends to enter into a business speculation, and gives in exchange a negotiable document.

If the defendant has admitted the fact stated in the promissory note, that the amount confessed to have been received was delivered in cash; if he has admitted the fact stated in the note that the maker bound himself to pay it; if said facts constitute essentially a contract of loan, and the fact that the amount delivered was received for commercial transactions was stated in the note, which fact was fully admitted by the defendant and which constitutes the specific character of a commercial loan, and in consequence, and as the result of all of said facts, the instrument of exchange consisting of a promissory note payable to order was executed, the inevitable conclusion is that said note payable to order was the effect, or outcome, of a commercial transaction known as a mercantile loan.

Therefore, the words "value received in cash for commercial transactions" in their true sense determine and

presuppose a commercial transaction prior to the date of the promissory note, namely, a mercantile loan.

Value received, according to paragraph 5 of article 444, means that the drawer of a draft or note has received the amount thereof in cash, and, in order that it may appear in writing that he received the same on loan, he sets forth that he binds himself to pay it within the period stipulated by him (up to this point the generic form in every promissory note); and in order to prove that he received it as a commercial loan, he complies with the requisite of the law acknowledging the receipt thereof for commercial transactions (the specific thing), and in order that his obligation may not bind him to the lender only, but to any other person who shall acquire the document through free and untrammelled negotiation thereof, he issues, not a plain promissory note, which would hold him as liable to a determined person exclusively, but a note payable to order, which he puts in circulation for the purpose of establishing his liability in favor of any other person subrogating his creditor, or with any lawful holder of the document (another commercial transaction); and for this purpose he issues a promissory note payable to order, an instrument of exchange representing another contract called of exchange, which is the effect of, and for said reason different from the contract of commercial loan, which is the cause thereof.

If after all of these facts stated in the note in question, and admitted by the defendant, the maker, Tan-Tongco, had not made it payable to order, but in favor of Geronimo Jose, there would not have existed two contracts, one of loan, and the other of exchange, and, under the law, the promissory note would be nothing more than a written evidence of a contract of loan, invalid save as between Tan-Tongco and Geronimo Jose; and in this case the latter could have only indorsed it erroneously, inefficiently, and illegally.

With all the facts stated in the promissory note and admitted by the defendant, and on the hypothesis that Tan-Tongco, in lieu of signing a note made payable to order had signed a plain promissory note in favor of Geronimo Jose, even though it contained the words "for commercial transactions," Geronimo Jose could not have indorsed it, the same not being a note payable to order, which, under the law, is the one that can be indorsed and

Consequently, neither could there exist in such a case two contracts, one of loan, and another of exchange, but one only of loan with written evidence, consisting of a private document called a promissory note.

But in such a case this sole contract would *prima facie* be a commercial loan (not subject to indorsement or negotiation) for the reason that it is stated that the article loaned was destined to commercial purposes; without prejudice to the right of the party appearing as bound therein to deny said presumed commercial character, by denying that either of the contracting parties was a merchant, the first condition required by article 311. Thus the creditor who is interested in maintaining the *prima facie* commercial character of the note, namely, Geronimo Jose, would be obliged to prove the commercial character of at least one of the contracting parties. But it must be Geronimo Jose himself, and no one else, otherwise we have the absurdity, on the part of the indorser and commercial negotiator of a note denying his own character as a merchant.

And although said note arose from a commercial loan, it could not be said to have arisen from a commercial transaction merely because it was so stated; there is no ground for such a statement when there is no operation from which it arose, nor which arose from it, inasmuch as merely one operation took place: a commercial loan without a contract of exchange represented by an instrument *ad hoc*, called a promissory note payable to order. And as already stated, this plain promissory note would be nothing more than the evidence of the existence of said sole contract.

But as a promissory note payable to order was issued for value received in cash for commercial transactions, a commercial loan exists, by reason of these last words, and because it is payable to order, there is a contract of exchange, which renders it subject to indorsement and negotiation.

Tan-Tongco having made out a promissory note payable to the order of Geronimo Jose for 3,600 pesos, Mexican currency, for value received in cash for commercial transactions, at the foot thereof and on the same date Geronimo Jose wrote: "Pay to the order of the Banco Español-Filipino, for value received in cash," and signed the indorsement.

Geronimo Jose admits that he received from the Banco Español-Filipino 3,600 pesos, Mexican, in cash, the same amount as delivered by him to Tan-Tongco in cash. And he now states that he is not obliged to pay it to the Banco Español-Filipino, even after acknowledging and admitting the insolvency of Tan-Tangco, which appears in the record of the case.

He believes that he is not bound to pay because the document of credit which has been transmitted is not a contract in the sense of a commercial promissory note; that said transmission has not the legal character of an indorsement; that in the matter of promissory notes an indorsement can only take place between those issued by merchants, payable to order, and arising from commercial transactions; that the contract from which the credit originated may be qualified as a civil loan, or commercial promise of payment, and in either case there can be no legal indorsement, but only a transmission of ownership, which produces no liability of payment on the part of the defendant Geronimo Jose, except in the cases defined by articles 1529 of the Civil Code, and 348 of the Code of Commerce. (Brief, 14.)

It is also claimed that the contract of promise to pay is not a commercial one by reason of its nature but depends on the contracting parties, because article 532 of the Code of Commerce requires that the same be issued by merchants, payable to order, and arise from commercial transactions, and that it is not the same as a bill of exchange, where the document itself, if made out in legal form, constitutes a commercial contract, even though the parties executing the same be not merchants. (Brief 13.)

But neither the law nor commercial practice confirm the assertion that in the matter of promissory notes only those made by merchants, payable to order, and arising from a commercial transaction are indorsable.

Article 212 of the Code of Commerce authorizes banks and agricultural associations to loan money in cash or merchandise, for a term not exceeding three years, on fruits, crops, cattle, or any other article or special security, and to guarantee by signature, promissory notes and effects recoverable within the maximum period of ninety days in order to assist the owner or agriculturist in discounting or negotiating the same. An owner or agriculturist is not a merchant; however, the bank or the agricultural association in whose favor he executed a promissory note secured by the products of his farming or cultivation may guarantee it with its indorsement in order to facilitate the discounting or negotiation of the same; and, in accordance with article 214, the indorsement of a promissory note entitles the holder to demand payment at maturity directly and promptly from any of the indorsers.

The foregoing precepts are in accord with said article 532, which requires nothing more than that promissory notes shall be payable to order and arise from commercial transactions, not that they be issued between merchants as required by said article in reference to drafts, where it states that "Drafts payable to order between merchants and the bills or promissory notes likewise payable to order, which arise from commercial transactions * * *," which first condition was imposed by the Spanish commercial law for the reason that the code of 1829 did not permit a merchant to draw a bill of exchange against himself from a place other than where he resided, nor a bill of exchange from one merchant against another within the same place, requiring the use of drafts for said purposes, the utility of which, now that the code has removed such obstacles, can not be explained, above.all when, according to article 544, a promissory note can be made out to bearer as well as to order.

In view of the foregoing reasons, we are unable to establish as a doctrine that promissory notes, in order that they

may be indorsed, and the indorsement be as valid as that on a bill of exchange, must be issued between merchants, and even less where they arise from a commercial loan, for which it is only required that some one of the contracting parties be a merchant, in conformity with article 311. The preamble of the code now in force very clearly states that copartnerships and private individuals are authorized to issue all kind of documents payable to bearer, with or without security. So that, if Tan-Tongco had issued the promissory note in question not to the order of Geronimo Jose, but to bearer, and if Geronimo Jose had appeared before a bank of discount and circulation as the bearer for the purpose of negotiating it or having it discounted, affixing and dating his indorsement thereon, no one would have doubted that the bank, upon discounting the said note "secured by two responsible signatures and at ninety days," was within the scope of article 178 of the Code of Commerce. Therefore, an indorsement made on a promissory note payable to order can not be considered any less binding, on the part of the person who now pretends to deny to his indorsement the validity of his liability for payment, than if the note had been drawn payable to the bearer. An indorsement is an essentially commercial act, especially when in connection with a title of credit payable to order, and, in accordance with article 2 of the Code of Commerce, commercial transactions, whether executed by merchants or not, shall be governed by the provisions contained in said code; this doctrine has been repeatedly applied in jurisprudence and among other decisions in that of the 12th of December, 1889, cited above.

In view of the foregoing, the judgment appealed from is hereby affirmed in all its parts with the costs of this instance against the appellant.

Torres, Mapa, Johnson, and Carson, JJ., concur.

DISSENTING
WILLARD, J.,

The document in question in this case is as follows:

"Three months from this date I hereby promise to pay, in Manila, to the order of D. Geronimo Jose the sum of three thousand six hundred pesos, Mexican currency, value received in cash for commercial transactions.

"Manila 21st of July, 1902.

(Signed) "FULGENCIO TAN-TONGCO.

"Pay to the order of the Banco Español-Filipino for value received from the same in cash.

"Manila 21st of July, 1902.

(Signed) "GERONIMO JOSE."

In order that the rights of the parties thereto be governed by the provisions of the Code of Commerce, it is necessary that this document fall within the terms of article 532 of that code, which is as follows:

"Drafts, payable to order between merchants and the bills or promissory notes likewise payable to order, which arise from commercial transactions, shall produce the same obligations and effects as bills of exchange, except with regard to acceptance, which is a quality of the latter only.

"The bills or promissory notes which are not payable to order shall be considered simple promises to pay subject to the common law or the commercial law according to their nature, excepting the provisions contained in the following title."

There was no proof that either Tan-Tongco or Geronimo Jose was a merchant and although it appears that the

money was to be used for commercial purposes, the transaction does not come within article 311 of the same code and can not be called a mercantile loan.

No evidence was offered to show that in fact the note proceeded from commercial operations. Under such circumstances the obligations of the indorser must be determined by reference to the provisions of the Civil Code, among others, article 1529.

That a document such as the one in this case is not a commercial document is settled by the authorities. In the judgment of the supreme court of Spain of the 10th of April, 1894, the following facts appeared:

"Considering that on January 1, 1878, in Murcia, D. Agustin Escribano signed a promissory note, payable to the order of his brother D. Jose Escribano, for the sum of 20,000 reales which he had received from D. Jose for commercial purposes with 6 per cent interest thereon, and which would become due and payable in said city on the last day of December of the year 1883."

The court held that this instrument was not a commercial document, saying:

"Whereas, in order that a 'vale' or promissory note may be of juridical value as a commercial document it does not suffice that it shall contain the conditions stated in article 571 of the Code of Commerce; it is necessary in addition that it shall arise from commercial transactions, as required by article 558, and the note in question contains no indication whatever that said essential requirement of the law had been fulfilled, because it has only been stated therein that the debtor received the 5,000 pesetas for commercial purposes, and said isolated statement does not disclose that the loan arose, as the law requires, from a commercial transaction, nor can it have any legal value until the truth of the fact contained in said statement is proven, to wit, that the debtor devoted the 5,000 pesetas to commercial purposes."

In the judgment of the supreme court of Spain of the 24th of November, 1894, in a case proceeding from the Audiencia of Manila, the following facts appeared:

"Considering that on the 12th of June, 1889, D. Narciso Paterno signed in Manila a promissory note that would fall due on the 12th of September of said year, payable to the order of V. Jose Gamero for the sum of 1,500 pesos value received in cash, and Gamero indorsed it on the date of its issue to the order of D. Julian de las Cajigas, as value received in cash to his satisfaction for commercial purposes; that said note was renewed at maturity by another wherein Paterno stated that he had received said amount for commercial purposes, a fact which Gamero also stated in the indorsement; that another note drawn up and indorsed in terms similar to the previous one became due on the 12th of December of said year, the latter becoming due in turn on the same terms on the 25th of February, 1890:

"Considering that on the 24th of May of the said year, the day before the maturity of said note of the 25th of February, Paterno signed another made out in the same identical manner as the former and the other two that preceded it, which Gamero indorsed to D. Dionisio de las Cajigas as value received from the latter in cash to his satisfaction, without stating that it was for commercial purposes; that when the period of time fixed in said note became due, the 25th day of August of the aforesaid year 1890, another one was made out which would fall due on the 25th of November, which did not state that the amount received was for commercial purposes, although that fact was mentioned in the indorsement made by Gamero in favor of D. Dionisio de las Cajigas."

The court held that the documents in that case were not commercial ones, saying:

"Whereas, bills and promissory notes payable to order, to which article 532 of the Code of Commerce grants the same value and effects as to bills of exchange, are not those the amount of which is to be devoted to commercial transactions, but those which arise from transactions of this class, in which sense the judgment appealed from is in accordance with its provision which is pointed out as violated, in the first cause of action, in considering as a mere loan under the common law, the loan contained in the obligations which serve as the

basis for this suit, for which reason the provisions of article 2 of said code, which are also referred to in the said cause of action can not apply."

The court below relied in its decision upon the case of the Banco Español-Filipino vs. Tan-Tongco (5 Phil. Rep., 208). It does not appear from the report of that case what the nature of the document was, but an examination of the record remaining in this court shows that it was similar to the one in question. In that case the court held that in order to charge an indorser upon a commercial paper it was not necessary that he be notified of the protest. That was the only question discussed and decided. It was assumed that the document in question was a mercantile one and no claim to the contrary was made. I think that the judgment in this case should be reversed.

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