

PAULINO GULLAS, PLAINTIFF AND APPELLANT, VS. THE PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLANT.

G.R. No. 43191. November 13, 1935

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-43191/>

MALCOLM, J.:

Both parties to this case appealed from a judgment of the Court of First Instance of Cebu, which sentenced the defendant to return to the account of the plaintiff the sum of P509, with legal interest and costs, the plaintiff to secure damages in the amount of P10,000 more or less, and the defendant to be absolved totally from the amended complaint. As it is conceded that the plaintiff has already received the sum represented by the United States treasury warrant, which is in Question, the appeal will thus determine the amount, if any, which should be paid, to the plaintiff by the defendant.

The parties to the case are Paulino Gullas and the Philippine National Bank. The first named is a member of the Philippine Bar, resident in the City of Cebu. The second named is a banking corporation with a branch in the same city. Attorney Gullas has had a current account with the bank.

It appears from the record that on August 2, 1933, the Treasurer of the United States for the United States Veterans Bureau issued a warrant in the amount of \$361, payable to the order of Francisco Sabectoria Bacos. Paulino Gullas and Pedro Lopez signed as indorsers of this check. Thereupon it was cashed by the Philippine National Bank. Subsequently the treasury warrant was dishonored by the Insular Treasurer.

At that time the outstanding balance of Attorney Gullas on the books of the bank was P509. Against this balance he had issued certain checks which could not be paid when the money was sequestered by the bank. On August 20, 1933, Attorney Gullas left his residence for Manila.

The bank on learning of the dishonor of the treasury warrant sent notices by mail to Mr. Gullas which could not be delivered to him at that time because he was in Manila. In the bank's letter of August 21, 1933, addressed to Messrs. Paulino Gullas and Pedro Lopez, they were informed that the United States Treasury warrant No. 20175 in the name of Francisco Sabectoria Bacos for \$361 or P722, the payment for which had been received has been returned by our Manila office with the notation that the payment of his check has been stopped by the Insular Treasurer. "In view of this therefore we have applied the outstanding balances of your current accounts with us to the part payment of the foregoing check", namely, Mr. Paulino Gullas P509. On the return of Attorney Gullas to Cebu on August 31, 1933, notice of dishonor was received and the unpaid balance of the United States Treasury warrant was immediately paid by him.

As a consequence of these happenings, two occurrences transpired which inconvenienced Attorney Gullas. In the first place, as above indicated, checks including one for his insurance were not paid because of the lack of funds standing to his credit in the bank. In the second place, periodicals in the vicinity gave prominence to the news to the great mortification of Gullas.

A variety of incidental questions have been suggested on the record which it can be taken for granted as having been adversely disposed of in this opinion. The main issues are two, namely, (1) as to the right of the Philippine National Bank to apply a deposit to the debt of a depositor to the bank, and (2) as to the amount of damages, if any, which should be awarded Gullas,

The Civil Code contains provisions regarding compensation (set off) and deposit. (Articles 1195 et seq., 1758 et seq.) These portions of Philippine law provide that compensation shall take place when two persons are reciprocally creditor and debtor of each other (Civil Code, article 1195). In this connection, it has been held that the relation existing between a depositor and a bank is that of creditor and debtor. (*Fulton Iron Works Co. vs. China Banking Corporation* [1930], 55 Phil., 208; *San Carlos Milling Co. vs. Bank of the Philippine Islands and China Banking Corporation* [1933], 59 Phil., 59.)

The Negotiable Instruments Law contains provisions establishing the liability of a general indorser and giving the procedure for notice of dishonor. The general indorser of a negotiable instrument engages that if it be dishonored and the necessary proceedings of dishonor be duly taken, he will pay the amount thereof to the holder. (Negotiable Instruments Law, sec. 66.) In this connection, it has been held by a long line of authorities that notice of dishonor is necessary in order to charge an indorser and that the right of action against him does not accrue until the notice is given. (*Asia Banking Corporation vs. Javier* [1923], 44 Phil., 777; 5 Uniform Laws Annotated.)

As a general rule, a bank has a right of set off of the deposits in its hands for the payment of any indebtedness to it on the part of a depositor. In Louisiana, however, a civil law jurisdiction, the rule is denied, and it is held that a bank has no right, without an order from or special assent of the depositor to retain out of his deposit an amount sufficient to meet his indebtedness. The basis of the Louisiana doctrine is the theory of confidential contracts arising from irregular deposits, e. g. the deposit of money with a banker. With freedom of selection and after full consideration, we have decided to adopt the general rule in preference to the minority rule as more in harmony with modern banking practice. (1 *Morse on Banks and Banking*, 5th ed., sec. 324; *Garrison vs. Union Trust Company*, [1905], 111 A. S. R., 407; Louisiana Civil Code Annotated, arts. 2207 et seq.; *Gordon & Gomila vs. Muchler* [1882], 34 L. Ann., 604; 8 *Manresa, Comentarios al Código Civil Español*, 4th ed., 359 et seq.; 11 *Manresa*, pp. 694 et seq.)

Starting, therefore, from the premise that the Philippine National Bank had with respect to the deposit of Gullas a right of set off, we next consider if that remedy was enforced properly. The fact we believe is undeniable that prior to the mailing of notice of dishonor, and without waiting for any action by Gullas, the bank made use of the money standing in his account to make good for the treasury warrant. At this point recall that Gullas was merely an indorser and had issued checks in good faith.

As to a depositor who has funds sufficient to meet payment of a check drawn by him in favor of a third party, it has been held that he has a right of action against the bank for its refusal to pay such a check in the absence of notice to him that the bank has applied the funds so deposited in extinguishment of past due claims held against him. (*Callahan vs. Bank of Anderson* [1904], 2 Ann. Cas., 203.) The decision cited represents the minority doctrine, for on principle it would seem that notice is not necessary to a maker because the right is based on the doctrine that the relationship is that of creditor and debtor. However this may be, as to an indorser the situation is different, and notice should actually have been given him in order that he might protect his interests.

We accordingly are of the opinion that the action of the bank was prejudicial to Gullas. But to follow up that statement with others proving exact damages is not so easy. For instance, for alleged libelous articles the bank would not be primarily liable. The same remark could be made relative to the loss of business which Gullas claims but which could not be traced definitely to this occurrence. Also Gullas having eventually been reimbursed

lost little through the actual levy by the bank on his funds. On the other hand, it was not agreeable for one to draw checks in all good faith, then, leave for Manila, and on return find that those checks had not been cashed because of the action taken by the bank. That caused a disturbance in Gullas' finances, especially with reference to his insurance, which was injurious to him. All facts and circumstances considered, we are of the opinion that Gullas should be awarded nominal damages because of the premature action of the bank against which Gullas had no means of protection, and have finally determined that the amount should be P250.

Agreeable to the foregoing, the errors assigned by the parties will in the main be overruled, with the result that the judgment of the trial court will be modified by sentencing the defendant to pay the plaintiff the sum of and the-costs of both instances.

Villa-Real, Imperial, Butte, and Goddard, JJ., concur.

Judgment modified.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.