

N. T. HASHIM & CO., PLAINTIFFS AND APPELLEES, VS. THE ESTATE OF JOHN KERNAN, DEFENDANT AND APPELLANT.

G.R. No. 4541. October 13, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

This is an appeal from a judgment in favor of the plaintiffs in the Court of First Instance of the city of Manila. John Kernan gave the following promissory note:

"2,490.00

"Manila, P. I., July 26, 1904.

"Ninety days after date, without grace, I promise to pay to the order of Messrs. N. T. Hashim & Co., the sum of two thousand four hundred and ninety dollars, Philippine Currency, for value received, with interest at eight per cent per annum, until paid, both principal and interest payable only in Philippine currency.

(Sgd.) "J. KERNAN."

which bore the following indorsements:

"(1) Pay to the order of A. T. Hashim, Manila, March 22, 1907.

"N. T. HASHIM & CO.,

"By N. T. HASHIM.

"(2) A. T. HASHIM."

The maker having died, this note was presented to the commissioners of his estate and disallowed by them, whereupon appeal was taken to the Court of First Instance, which allowed the claim. The first defense, of payment, failed on proof; but the second defense, that the plaintiff is not the real party in interest, raises a close question, rendered somewhat involved by the course of business between the plaintiff partnership and its individual members. A study of the testimony results in the following as the most probable facts:

The instrument was given to secure a loan of money advanced by A. T. Hashim out of his personal funds, he having an account with his firm, which took care of such individual transactions, carrying them as its own and making good from them in part moneys drawn by him for salary and profits.

The note in the first instance was turned over to the firm, in accordance with its tenor, and regarded as partnership property; but, when the senior Hashim was leaving for Europe, he indorsed it specially to the partner who remained, who in his turn, thereafter, when about starting for the United States, wrote his name thereon in blank, having drawn a large sum from the firm for his personal use during his absence.

Both the Hashims testify that the note was the property of the firm, and we think we are constrained to so regard it, notwithstanding some vagueness in their testimony. The appellant claims that, under articles 532, 462, and 463

of the Code of Commerce, the first indorsement being dated sufficed to transfer the paper to A. T. Hashim, who thereupon became the holder thereof and who still remains such holder, for the reason that his subsequent indorsement in blank, bearing no date, failed to retransfer the instrument, within the rule in *The International Banking Corporation vs. Montagne* (G Phil. Rep., 667), and *Warner, Barnes & Co. vs. Diaz* (10 Phil. Rep., 418),

This argument can not prevail, because the law applicable to the case is not the Code of Commerce but rather the Civil Code. In the first place, although both the maker and payee were merchants, the note yet lacked the particular element specified by article 532 of the Code of Commerce, inasmuch as it did not originate in a commercial operation, as the personal loan in the present instance was not satisfactorily shown to have been in furtherance of any commercial transaction or to have originated therefrom; nor did the note contain any recital to that effect. The requirement of this article, that a commercial note must originate "from a commercial operation," is distinct and independent, and can not therefore be implied solely from the incident that it has been given between merchants. This becomes quite plain on referring to article 311, prescribing as the requisites of a mercantile loan both that the parties be merchants and that the thing loaned be destined to the uses of commerce. This construction is strengthened by the consideration that in many other titles of the code, wherein these two conditions of mercantile character are required for other contracts, they are manifestly separate and independent one of another, (Arts. 244, 303, and 349.) Such also appears to have been the interpretation given similar articles in the French Code (*Fuzier-Herman, Tit Acte de Commerce, Nos. 1145 and 1146*).

Applying now the Civil Code, we find that the last paragraph of article 1280 calls for a written transfer of all assignments of over 1,500 pesetas in value. In *Azarraga vs. Rodriguez* (9 Phil. Rep., 637) the words "I hereby indorse in favor of Sr. D. Juan Azarraga the above stated amount," when accompanied by delivery and payment, were regarded as an effective written transfer, interpreting the word "indorse" as implying not only a writing but also a turning over. In the present case, the question whether a similar effect can be given to the words "pay to the order of," written on the back of the note, does not arise, for the reason that they are not shown to have accompanied any delivery of the note or any payment therefor, but on the contrary are proved to have been written thereon without consideration and without delivery.

In the second place, both indorsements were written long after the note was overdue, and therefore fall within the prohibition of article 466, made applicable to notes by article 532, which reads as follows:

"ART. 466. Drafts not issued to order can not be indorsed, nor those fallen due and those not duly protested ('ni las vencidas y perjudicadas')."

"The transfer of ownership shall be legal by the means recognized in the common law; but if, however, an indorsement is made, it shall have only the force of a simple cession."

This article also brings them within the provisions of the Civil Code hereinbefore cited. Article 347, regulating the transfer of mercantile credits which are not indorsable, if germane to the case, would not help the defendant, as it does not affect the application of the common law, as expressed in the Civil Code under article 466, to the method of transfer.

The principals of the American law of commercial paper are so different from those of the Civil Law that it would not be profitable to seek to apply them or to discuss them in the present case. Though marked by simplicity, flexibility, and uniformity, as formulated in the Negotiable Instruments Law adopted in most of the States, they do not prevail here.

The decision of the Court of First Instance is hereby affirmed, with costs of this instance. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.

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