

44 Phil. 777

[G.R. No. 19051. April 04, 1923]

ASIA BANKING CORPORATION, PLAINTIFF AND APPELLEE, VS. JUAN JAVIER, LIMITED COPARTNERSHIP, DEFENDANT AND APPELLANT.

D E C I S I O N

AVANCEÑA, J.:

On May 10, 1920, Salvador B. Chaves drew a check on the Philippine National Bank for P11,000 in favor of *La Insular*, a concern doing business in this city. This check was indorsed by the limited partners of *La Insular*, and then deposited by Salvador B. Chaves in his current account with the plaintiff, Asia Banking Corporation. The deposit was made on July 14, 1920.

On June 25, 1920, Salvador B. Chaves drew another check for P18,785.30 on the Philippine National Bank, in favor of the aforesaid *La Insular*. This check was also indorsed by the limited partners of *La Insular*, and was likewise deposited by Salvador B. Chaves in his current account with the plaintiff, Asia Banking Corporation, on July 6, 1920.

The amount represented by both checks was used by Salvador B. Chaves after they were deposited in the plaintiff bank, by drawing checks on the plaintiff. Subsequently these checks were presented by the plaintiff to the Philippine National Bank for payment, but the latter refused to pay on the ground that the drawer, Salvador B. Chaves, had no funds therein.

The plaintiff now brings this action against the defendant, as indorser, for the payment of the value of both checks.

The lower court sentenced the defendant to pay the plaintiff P11,000, upon the check of May 10, 1920, with interest thereon at 9 per cent per annum from July 10, 1920, and P18,778.34 on the check of June 25, 1920, with interest

thereon at 9 per cent per annum from August 5, 1920. From this judgment the defendant appealed.

One of the contentions of the appellant in support of this appeal is, that at all events its liability as indorser of the checks in question was extinguished. We may say in connection with this assignment of error that the liability of the defendant never arose.

Section 89 of the Negotiable Instruments Law (Act No. 2031) provides that, when a negotiable instrument is dishonored for non-acceptance or non-payment, notice thereof must be given to the drawer and each of the indorsers, and those who are not notified shall be discharged from liability, except where this act provides otherwise. According to this, the indorsers are not liable unless they are notified that the document was dishonored. Then, under the general principle of the law of procedure, it will be incumbent upon the plaintiff, who seeks to enforce the defendant's liability upon these checks as indorser, to establish said liability by proving that notice was given to the defendant within the time, and in the manner, required by the law that the checks in question had been dishonored. If these facts are not proven, the plaintiff has not sufficiently established the defendant's liability. There is no proof in the record tending to show that plaintiff gave any notice whatsoever to the defendant that the checks in question had been dishonored, and therefore it has not established its cause of action.

For the foregoing, the judgment appealed from is reversed and the defendant is absolved from the complaint without special pronouncement as to costs. So ordered.

Araullo, C.J., Street, Malcolm, and Ostrand, JJ., concur.

Mr. Justice Johns voted for reversal, but he was absent at the time of the promulgation of the decision and his signature therefore does not appear signed to the opinion of the court.

(Sgd.) MANUEL ARAULLO

*Chief
Justice*

Romualdez, J., did not take part.

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