

[G.R. No. 19621. February 23, 1923]

UNION GUARANTEE COMPANY, LTD., PLAINTIFF AND APPELLANT, VS. JING KEE & CO., A COPARTNERSHIP, TENG KIM KUY, TENG KIM TONG AND THE BANK OF TAIWAN, LTD., DEFENDANTS AND APPELLEES.

D E C I S I O N

STATEMENT

Plaintiff is a domestic corporation with its principal office in the City of Manila. The defendant Jing Kee & Co. is a partnership organized in Japan doing business there as well as in the City of Manila. The Bank of Taiwan, Ltd., is a corporation organized under the banking laws of the Empire of Japan with its principal office at Kobe. Koon Kee & Co. is a duly organized and registered domestic partnership. Plaintiff alleges that the defendants Teng Kim Kiiy of Kobe, Japan, and Teng Kim Tong of Manila, P. I., are members of the partnership of Jing Kee & Co., and that they are also members of the firm of Koon Kee & Co. That December 18, 1919, the defendant Jing Kee & Co. drew a draft on Koon Kee & Co. of Manila for Y. 5,909.47, payable sixty days after sight. That the defendant bank endorsed the bill of exchange to the order of the Bank of the Philippine Islands. That it was presented for acceptance to, and was accepted by, Koon Kee & Co. January 6, 1920. That at its maturity the draft was presented for collection to the drawee, dishonored and duly protested. Thereafter it was reaccepted payable April 5, 1920, at which time it was again presented and dishonored. That the plaintiff was a surety on a bond for the production of the bill of lading at the Customs House, Manila, for the merchandise evidenced by the amount of the draft. That the Collector of Customs required the production of the bill of lading or the payment of the amount of the bond. That in order to obtain it and to be released from its obligation under its bond, the plaintiff was compelled to, and did, purchase the bill of

exchange from the Bank of the Philippine Islands on August 3, 1920, for which it paid P7,845.94, and then became and is now the owner and holder of the draft. That the defendants are indebted to the plaintiff in the amount of the draft with interest thereon from August 3, 1920, until it is paid. Like allegations are made as to another draft amounting to P9,380.33. Plaintiff prays judgment against the defendants for the amount of both drafts, with costs.

The defendants Teng Kim Kuy and Teng Kim Tong demurred to the complaint upon the ground that it did not state facts sufficient to constitute a cause of action.

After the overruling of the demurrer, they filed an answer in which it is alleged that when the defendant Jing Kee & Co. delivered the bills of exchange to the Bank of Taiwan, Ltd., it also delivered to the bank the bills of lading for the merchandise shipped by it to Koon Kee & Co. with express instructions to deliver the bills of lading to the consignee only when the bills of exchange were paid. That the Bank of Taiwan, Ltd., forwarded the bills of lading and the drafts to the Bank of the Philippine Islands with the same instructions, and that the plaintiff with intention of getting possession of the bills of lading paid the Bank of the Philippine Islands the amount of the drafts, and took possession of the bills of lading and the merchandise covered by them, and prays judgment for costs.

The Bank of the Philippine Islands was not made a party, and no service was made upon the Bank of Taiwan, Ltd.

In a well-considered opinion, the trial court rendered judgment for the defendants from which the plaintiff appeals, claiming that it committed error in presuming that it was the plaintiff who secured the merchandise evidenced by the drafts, in finding that, if the plaintiff did not receive the merchandise, it permitted a third person to do so and secured its value, and in finding that the drafts sued upon were without consideration, in rendering judgment dismissing plaintiff's complaint, and in overruling its motion for a new trial.

JOHNS, J.:

In legal effect, the answer of the defendants admits all of the material allegations of the complaint, including the fact that the defendants Teng Kim

Kuy and Teng Kim Tong are members of the Japan firm of Jing Kee & Co. and the Manila firm of Koon Kee & Co. Hence, we have this state of facts: The firm of Jing Kee & Co. drew the drafts for the bills of lading attached on the firm of Koon Kee & Co., and the Bank of Taiwan, Ltd., endorsed the drafts and delivered all of the papers to the Bank of the Philippine Islands. The drafts were duly presented to the firm of Koon Kee & Co. and duly accepted and later dishonored. In the ordinary course of business the plaintiff became a surety on a bond for the firm of Koon Kee & Co. for the production of the bills of lading at the customs house at Manila for the merchandise evidenced by the drafts. The Collector of Customs required the production of the bills of lading or the payment of the amount of the bond. To obtain it and to be released from its liability on the bond, the plaintiff was compelled to, and did, purchase the bills, of exchange from the Bank of the Philippine Islands, for which it paid their full value, and it then became and is now the owner and holder of the drafts. The complaint alleges and the answer admits that the plaintiff "was the surety on a bond for the production at the Manila Customs House of a bill of lading covering the merchandise for the purchase price of which said bill of exchange was drawn." Under this allegation, we have a right to assume that the bond in question was executed in the ordinary statutory form, and that it "was done to indemnify and hold the Collector of Customs harmless in the delivery of the merchandise to Koon Kee & Co. upon whom the drafts were drawn. The bond was executed at the instance and request of that firm and for its sole use and benefit, and the plaintiff became its surety on the bond in the usual and customary manner. The primary purpose of the bond was to insure the delivery of the merchandise to the firm of Koon Kee & Co. by the Collector of Customs. Otherwise, it would never have been executed. Hence, it must follow that in the ordinary course of business, the merchandise would be delivered to the firm of Koon Kee & Co. If it be a fact that it was not or that it was delivered to the plaintiff or some third person, it would be a complete defense to the action. But the duty to allege and prove that fact devolved upon the firm of Koon Kee & Co. Under the admissions made in the pleadings, all that this Court has before it is the fact, that the drafts were duly accepted by the firm of Koon Kee & Co. and dishonored, and that the plaintiff purchased and paid the full amount of the drafts. The acceptance of the drafts *ipso facto* placed a legal liability upon the firm of Koon Kee & Co. for their payment, which was not done, and for such reason they were purchased by the plaintiff.

When the plaintiff acquired the drafts it became the owner and holder of all of the legal liabilities of Koon Kee & Co. as acceptor. That is to say that Koon Kee & Co. then became liable to the plaintiff as acceptor of the drafts, and it devolved upon the defendants to both allege and prove any defense which they had to such liabilities. This was not done. The defendants have not shown how or in what manner the firm of Koon Kee & Co. was discharged or released from its liabilities on the drafts.

Article 127 of the Code of Commerce as to general co-partnership provides:

“All the members of the general copartnership, be they or be they not managing partners of the same, are liable personally and *in solidum* with all their property for the results of the transactions made in the name and for the account of the partnership, under the signature of the latter, and by a person authorized to make use thereof.”

In substance, the same provisions exist in article 148 as to a limited partnership.

The pleadings admit that the defendants Teng Kim Kuy and Teng Kim Tong are members of the firm of Koon Kee & Co., and the facts show the liability of Koon Kee & Co. to the plaintiff.

The judgment of the lower court is reversed, and one will be entered here in favor of the plaintiff and against the defendants Teng Kim Kuy and Teng Kim Tong jointly and severally for the sum of P17,226.27, with interest thereon from the 3d day of August, 1920, at the rate of 9 per cent per annum, together with costs. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Ostrand,
and *Romualdez, JJ.*, concur.

RESOLUTION UPON PETITION FOR A REHEARING

March 31, 1923.

JOHNS, J.:

The attorney for the defendants Teng Kim Kuy and Teng Kim Tong has filed a vigorous petition for a rehearing in which he contends that the holder of drafts accepted by a partnership one of whom is the managing partner cannot sue and recover from two partners who are not managers without making the partnership or the managing partner a defendant to the action.

There might be some merit in that question if it had been raised or presented in the trial court by an appropriate plea. But here, again, it appears that the question was not raised or presented in the lower court or even in this court until after its decision was rendered. There was no demurrer filed to the complaint or any suggestion that the corporation itself or its managing agents was not or should be made a party defendant. Counsel's principal difficulty seems to be that he construes the action as one against the drawer only and has failed to notice that the complaint also states a complete cause of action upon the acceptance.

The defendants' petition for a rehearing is denied.

The plaintiff also filed a petition for a rehearing in which it prays for a judgment against the firm of Jing Kee & Co. as the original drawer of the drafts. The record is conclusive that Jing Kee & Co. shipped the goods from Japan to the firm of Koon Kee & Co. in Manila, with the express understanding that they were not to be delivered until the drafts were paid, and the drafts were stamped D. P., which, in commercial usage, means "do not deliver bill of lading until draft is paid."

Upon such a state of facts, the drawer of the drafts is not liable to plaintiff, and its petition for a rehearing is denied. So ordered.

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

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