

[G. R. No. 18657. August 23, 1922]

**THE GREAT EASTERN LIFE INSURANCE CO., PLAINTIFF AND APPELLANT, VS.
HONGKONG & SHANGHAI BANKING CORPORATION AND PHILIPPINE NATIONAL
BANK, DEFENDANTS AND APPELLEES.**

D E C I S I O N

STATEMENT

The plaintiff is an insurance corporation, and the defendants are banking corporations, and each is duly licensed to do its respective business in the Philippine Islands.

May 3, 1920, the plaintiff drew its check for P2,000 on the Hongkong and Shanghai Banking Corporation with whom it had an account, payable to the order of Lazaro Melicor. E. M. Maasim fraudulently obtained possession of the check, forged Melicor's signature, as an endorser, and then personally endorsed and presented it to the Philippine National Bank where the amount of the check was placed to his credit. After having paid the check, and on the next day, the Philippine National Bank endorsed the check to the Hongkong and Shanghai Banking Corporation, which paid it, and charged the amount of the check to the account of the plaintiff. In the ordinary course of business, the Hongkong and Shanghai Banking Corporation rendered a bank statement to the plaintiff showing that the amount of the check was charged to its account, and no objection was then made to the statement. About four months after the check was charged to the account of the plaintiff, it developed that Lazaro Melicor, to whom the check was made payable, had never received it, and that his signature, as an endorser, was forged by Maasim, who presented and deposited it to his private account in the Philippine National Bank. With this knowledge, the plaintiff promptly made a demand upon the Hongkong and Shanghai Banking Corporation that it should be given credit for the amount of the forged check, which the bank refused to do, and the plaintiff commenced this action to recover the P2,000 which was paid on the forged check. On the petition of the Shanghai Bank, the Philippine National Bank was made defendant.

The Shanghai Bank denies any liability, but prays that, if a judgment should be rendered against it, in turn, it should have like judgment against the Philippine National Bank which denies all liability to either party.

Upon the issues being joined, a trial was had and judgment was rendered against the plaintiff and in favor of each of the defendants, from which the plaintiff appeals, claiming that the court erred in dismissing the case, notwithstanding its finding of fact, and in not rendering a judgment in its favor, as prayed for in its complaint.

Johns, J.:

There is no dispute about any of the findings of fact made by the trial court, and the plaintiff relies upon them for a reversal. Among other things, the trial court says:

“Who is responsible for the refund to the drawer of the amount of the check drawn and payable to order, when its value was collected by a third person by means of forgery of the signature of the payee? Is it the drawee or the last indorser, who ignored the forgery at the time of making the payment, or the forger?”

The lower court found that Melicor’s name was forged to the check. “So that the person to whose order the check was issued did not receive the money, which was collected by E. M. Maasim,” and then says:

“Now then, the National Bank should not be held responsible for the payment made to Maasim in good faith of the amount of the check, because the indorsement of Maasim is unquestionable and his signature perfectly genuine, and the bank was not obliged to identify the signature of the former indorser. Neither could the Hongkong and Shanghai Banking Corporation be held responsible in making payment in good faith to the National Bank, because the latter is a holder in due course of the check in question. In other words, the two defendant banks can not be held civilly responsible for the consequences of the falsification or forgery of the signature of Lazaro Melicor, the National Bank having had no notice of said forgery in making payment to Maasim, nor the Hongkong Bank in making payment to National Bank. Neither bank incurred in any responsibility arising from that crime, nor was either of the said banks by

subsequent acts, guilty of negligence or fault.”

This was fundamental error.

Plaintiff’s check was drawn on the Shanghai Bank payable to the order of Melicor. In other words, the plaintiff authorized and directed the Shanghai Bank to pay Melicor, or his order, P2,000. It did not authorize or direct the bank to pay the check to any other person than Melicor, or his order, and the testimony is undisputed that Melicor never did part with his title or endorse the check, and never received any of its proceeds. Neither is the plaintiff estopped or bound by the bank statement, which was made to it by the Shanghai Bank. This is not a case where the plaintiff’s own signature was forged to one of its checks. In such a case, the plaintiff would have known of the forgery, and it would have been its duty to have promptly notified the bank of any forged signature, and any failure on its part would have released the bank from any liability. That is not this case. Here, the forgery was that of Melicor, who was the payee of the check, and the legal presumption is that the bank would not honor the check without the genuine endorsement of Melicor. In other words, when the plaintiff received its bank statement, it had a right to assume that Melicor had personally endorsed the check, and that, otherwise, the bank would not have paid it.

Section 23 of Act No. 2031, known as the Negotiable Instruments Law, says:

“When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.”

That section is square in point.

The money was on deposit in the Shanghai Bank, and it had no legal right to pay it out to anyone except the plaintiff or its order. Here, the plaintiff ordered the Shanghai Bank to pay the P2,000 to Melicor, and the money was actually paid to Maasim and was never paid to Melicor, and he never personally endorsed the check, or authorized any one to endorse it for him, and the alleged endorsement was a forgery. Hence, upon the undisputed facts, it must follow that the Shanghai Bank has no defense to this action.

It is admitted that the Philippine National Bank cashed the check upon a forged signature, and placed the money to the credit of Maasim, who was the forger. That the Philippine National Bank then endorsed the check and forwarded it to the Shanghai Bank by whom it was paid. The Philippine National Bank had no license or authority to pay the money to Maasim or anyone else upon a forged signature. It was its legal duty to know that Melicor's endorsement was genuine before cashing the check. Its remedy is against Maasim to whom it paid the money.

The judgment of the lower court is reversed, and one will be entered here in favor of the plaintiff and against the Hongkong and Shanghai Banking Corporation for P2,000, with interest thereon from November 8, 1920, at the rate of 6 per cent per annum, and the costs of this action, and a corresponding judgment will be entered in favor of the Hongkong and Shanghai Banking Corporation against the Philippine National Bank for the same amount, together with the amount of its costs in this action. So ordered.

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