FIRST DIVISION

[G.R. No. L-29432. August 6, 1975.]

JAI-ALAI CORPORATION OF THE PHILIPPINES, petitioner, vs. BANK OF THE PHILIPPINE ISLAND, respondent.

Bausa, Ampil & Suarez for petitioner.

Aviado & Aranda for respondent.

SYNOPSIS

Petitioner deposited in its current account with respondent bank several checks with a total face value of P8,030.58, all acquired from Antonio J. Ramirez, a regular bettor at the jai-alai games and a sale agent of the Inter-Island Gas Service, Inc., the payee of the checks. The deposits were all temporarily credited to petitioner's account in accordance with the clause printed on the bank's deposit slip. Subsequently, Ramirez resigned and after the checks had been submitted to inter-bank clearing, the Inter-Island Gas discovered that all the indorsement made on the cheeks purportedly by its cashiers, as well as the rubber stamp impression thereon reading "Inter-Island Gas Service, Inc.", were forgeries. It informed petitioner, the respondent, the drawers and the drawee banks of the said checks and forgeries and filed a criminal complaint against its former employee. In view of these circumstances, the respondent Bank debited the petitioner's current account and forwarded to the latter the checks containing the forged indorsements, which petitioner refused to accept. Later, petitioner drew against its current account a check for P135,000.00. This check was dishonored by respondent as its records showed that petitioner's balance after netting out the value of the checks with the forged indorsement, was insufficient to cover the value of the check drawn. A complaint was filed by petitioner with the Court of First Instance of Manila. The same was dismissed by the said court after due trial, as well as by the Court of Appeals, on appeal. Hence, this petition for review.

The Supreme Court ruled that respondent acted within legal bounds when it debited petitioner's account; that the payments made by the drawee banks to the respondent on account of the

checks with forged indorsements were ineffective; that on account thereof, no creditor-debtor relationship was created between the parties; that petitioner was grossly recreant in accepting the checks in question from Ramirez without making any inquiry as to authority to exchange checks belonging to the payee-corporation; and that petitioner, in indorsing the said checks when it deposited them with respondent, guaranteed the genuineness of all prior indorsement thereon so that the respondent, which relied upon its warranty, cannot be held liable for the resulting loss.

Judgment affirmed

SYLLABUS

1. NEGOTIABLE INSTRUMENT; CHECKS; FORGED INDORSEMENTS EFFECT. — A forged signature in a negotiable instrument makes it wholly inoperative and no right to discharge it or enforce its payment can be acquired through or under the forged signature except against a party who cannot invoke the forgery.

2. ID.; ID.; ID.; NO RELATION OF CREDITOR-DEBTOR BETWEEN THE PARTIES CREATED EVEN IF DEPOSITARY OR COLLECTING BANK HAD ALREADY COLLECTED THE PROCEEDS OF THE CHECKS WHEN IT DEBITED PETITIONER'S ACCOUNT; REASON. — Where the indorsement made on the checks were forged prior to their delivery to depositor, the payments made by the drawee-banks to the collecting bank on account of the said checks were ineffective. Such being the case, the relationship of creditor and debtor between the depositor and the depository had not been validly effected, the checks not having properly and legitimately converted into cash.

3. ID.; ID.; ID.; COLLECTING BANKS HAS DUTY TO REIMBURSE TO DRAWEE-BANKS THE VALUE OF CHECKS CONTAINING FORGED INDORSEMENT; RULING IN THE CASE OF GREAT EASTERN LIFE INSURANCE CO. vs. HONGKONG & SHANGHAI BANK. — In Great Eastern Life Ins. Co. vs. Hongkong & Shanghai Bank, 43 Phil. 678 (1992), the Court ruled that it is the obligation of the collecting bank to

reimburse the drawee-bank the value of the checks subsequently found to contain the forged indorsement of the payee. The reason is that the bank with which the check was deposited has no right to pay the sum stated therein to the forger "or to anyone else upon a forged signature." "It was its duty to know," said the Court, "that (the payee's) endorsement was genuine before cashing the check. " The depositor must in turn shoulder the loss of the amounts which the respondent, as its collecting agent, had no reimburse to the drawee-banks.

4. ID.; ID.; ACCEPTANCE OF CHECKS INDORSED BY AN AGENT; RULING IN THE CASE OF INSULAR DRUG CO. vs. NATIONAL. — In Insular Drug Co. vs. National, 58 Phil. 685 (1933), the Court made the pronouncement that ". . .The right of an agent to indorse commercial paper is a very responsible power and will not be lightly inferred. A salesman with authority to collect money belonging to his principal does not have the implied authority to indorse checks received in payment. Any person taking checks made payable to a corporation which can act by agents, does so at his peril, and must abide by the consequences if the agent who endorses the same is without authority."

5. ID.; ID.; LIABILITY OF AN INDORSER; NO LOSS TO BE SUFFERED BY A BANK WHO RELIED ON INDORSER'S WARRANTY. — Under Section 67 of the Negotiable Instruments Law, "Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liability of an indorser," and under Section 66 of the same statute a general indorser warrants that the instrument "is genuine and in all respects what it purports to be." Where the depositor indorsed the checks with forged indorsement when it deposited them with the collecting bank, the former as an endorser guaranteed the genuineness of all prior indorsement thereon. The collecting bank which relied upon this warranty cannot be held liable for the resulting loss.

6. ID.; ID.; FORGED CHECKS; TRANSFER OF FUNDS FROM DRAWEE TO COLLECTING BANK; APPLICATION OF ART. 2154 OF THE CIVIL CODE. — The transfer by the

drawee-banks of funds to the collecting bank on account of forged checks would be ineffectual when made under the mistaken and valid assumption that the indorsement of the payee thereon were genuine. Under Article 2154 of the New Civil Code "If something is received when there is no right to demand it and it was unduly delivered through mistake, the obligation to return it arises, " By virtue thereof, there can be no valid payment of money by drawee-banks to the collecting bank on account of forged checks.

D E C I S I O N

CASTRO, J p:

This is a petition by the Jai-Alai Corporation of the Philippines (hereinafter referred to as the petitioner) for review of the decision of the Court of Appeals in C.A.-G.R. 34042-R dated June 25, 1968 in favor of the Bank of the Philippine Islands (hereinafter referred to as the respondent).

From April 2, 1959 to May 18, 1959, ten checks with a total face value of P8,030.58 were deposited by the petitioner in its current account with the respondent bank. The particulars of these checks are as follows:

1. Drawn by the Delta Engineering Service upon the Pacific Banking Corporation and payable to the Inter-Island Gas Service Inc. or order:

Date Deposited	Check Number	Amount	Exhibit Number
4/2/59	B-352680	P500.00	18
4/20/59	A-156907	372.32	19
4/24/59	A-156924	397.82	20
5/4/59	B-364764	250.00	23
5/6/59	B-364775	250.00	24

2. Drawn by the Enrique Cortiz & Co. upon the Pacific Banking Corporation and payable to the Inter-Island Gas Service, Inc. or bearer:

4/13/59	B-335063	P 2108.70	21
4/27/59	B-335072	P2210.94	22

3. Drawn by the Luzon Tinsmith & Company upon the China Banking Corporation and payable to the Inter-Island Gas Service, Inc. or bearer:

5/18/59 VN430188 P940.80 25

4. Drawn by the Roxas Manufacturing, Inc. upon the Philippine National Bank and payable to the Inter-Island Gas Service, Inc. order:

5/14/59 1860160 P 500.00 26

5/18/59 1860660 P 500.00 27

All the foregoing checks, which were acquired by the petitioner from one Antonio J. Ramirez, a sales agent of the Inter-Island Gas and a regular bettor at jai-alai games, were, upon deposit, temporarily credited to the petitioner's account in accordance with the clause printed on the deposit slips issued by the respondent and which reads:

"Any credit allowed the depositor on the books of the Bank for checks or drafts hereby received for deposit, is provisional only, until such time as the proceeds thereof, in current funds or solvent credits, shall have been actually received by the Bank and the latter reserves to itself the right to charge back the item to the account of its depositor, at any time before that event, regardless of whether or not the item itself can be returned."

About the latter part of July 1959, after Ramirez had resigned from the Inter-Island Gas and after the checks had been submitted to inter-bank clearing, the Inter-Island Gas discovered that all the indorsements made on the checks purportedly by its cashiers, Santiago Amplayo and Vicenta Mucor (who were merely authorized to deposit checks issued payable to the said company) as well as the rubber stamp impression thereon reading "Inter-Island Gas Service, Inc.," were forgeries. In due time, the Inter-Island Gas advised the petitioner, the respondent, the drawers and the drawee-banks of the said checks about the forgeries, and filed a criminal complaint against Ramirez with the Office of the City Fiscal of Manila. 1

The respondent's cashier, Ramon Sarthou, upon receipt of the latter of Inter-Island Gas dated August 31, 1959, called up the petitioner's cashier, Manuel Garcia, and advised the latter that in view of the circumstances he would debit the value of the checks against the petitioner's account as soon as they were returned by the respective drawee-banks.

Meanwhile, the drawers of the checks, having been notified of the forgeries, demanded reimbursement to their respective accounts from the drawee-banks, which in turn demanded from the respondent, as collecting bank, the return of the amounts they had paid on account thereof. When the drawee-banks returned the checks to the respondent, the latter paid their value which the former in turn paid to the Inter-Island Gas. The respondent, for its part, debited the petitioner's current account and forwarded to the latter the checks containing the forged indorsements, which the petitioner, however, refused to accept.

On October 8, 1959 the petitioner drew against its current account with the respondent a check for P135,000 payable to the order of the Mariano Olondriz y Cia. in payment of certain shares of stock. The check was, however, dishonored by the respondent as its records showed that as of October 8, 1959 the current account of the petitioner, after netting out the value of the checks P8,030.58) with the forged indorsements, had a balance of only P128,257.65.

The petitioner then filed a complaint against the respondent with the Court of First Instance of Manila, which was however dismissed by the trial court after due trial, and as well by the Court of Appeals, on appeal.

Hence, the present recourse.

The issues posed by the petitioner in the instant petition may be briefly stated as follows:

(a) Whether the respondent had the right to debit the petitioner's current account in the amount corresponding to the total value of the checks in question after more than three months had elapsed from the date their value was credited to the petitioner's account:(b) Whether the respondent is estopped from claiming that

the amount of P8,030.58, representing the total value of the checks with the forged indorsements, had not been properly credited to the petitioner's account, since the same had already been paid by the drawee-banks and received in due course by the respondent; and(c) On the assumption that the respondent had improperly debited the petitioner's current account, whether the latter is entitled to damages.

These three issues interlock and will be resolved jointly.

In our opinion, the respondent acted within legal bounds when it debited the petitioner's account. When the petitioner deposited the checks with the respondent, the nature of the relationship created at that stage was one of agency, that is, the bank was to collect from the drawees of the checks the corresponding proceeds. It is true that the respondent had already collected the proceeds of the checks when it debited the petitioner's account, so that following the rule in Gullas vs. Philippine National Bank 2 it might be argued that the relationship between the parties had become that of creditor and debtor as to preclude the respondent from using the petitioner's funds to make payments not authorized by the latter. It is our view nonetheless that no creditor-debtor relationship was created between the parties.

Section 23 of the Negotiable Instruments Law (Act 2031) states that 3 —

"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."

Since under the foregoing provision, a forged signature in a negotiable instrument is wholly inoperative and no right to discharge it or enforce its payment can be acquired through or under the forged signature except against a party who cannot invoke the forgery, it stands to reason, upon the facts of record,

that the respondent, as a collecting bank which indorsed the checks to the drawee-banks for clearing, should be liable to the latter for reimbursement, for, as found by the court a quo and by the appellate court, the indorsements on the checks had been forged prior to their delivery to the petitioner. In legal contemplation, therefore, the payments made by the drawee-banks to the respondent on account of the said checks were ineffective; and, such being the case, the relationship of creditor and debtor between the petitioner and the respondent had not been validly effected, the checks not having been properly and legitimately converted into cash. 4

In Great Eastern Life Ins. Co. vs. Hongkong & Shanghai Bank, 5 the Court ruled that it is the obligation of the collecting bank to reimburse the drawee-bank the value of the checks subsequently found to contain the forged indorsement of the payee. The reason is that the bank with which the check was deposited has no right to pay the sum stated therein to the forger "or anyone else upon a forged signature." "It was its duty to know," said the Court, "that [the payee's] endorsement was genuine before cashing the check." The petitioner must in turn shoulder the loss of the amounts which the respondent; as its collecting agent, had to reimburse to the drawee-banks.

We do not consider material for the purposes of the case at bar that more than three months had elapsed since the proceeds of the checks in question were collected by the respondent. The record shows that the respondent had acted promptly after being informed that the indorsements on the checks were forged. Moreover, having received the checks merely for collection and deposit, the respondent cannot he expected to know or ascertain the genuineness of all prior indorsements on the said checks. Indeed, having itself indorsed them to the respondent in accordance with the rules and practices of commercial banks, of which the Court takes due cognizance, the petitioner is deemed to have given the warranty prescribed in Section 66 of the Negotiable Instruments

Law that every single one of those checks "is genuine and in all respects what it purports to be.".
The petitioner was, moreover, grossly recreant in accepting the checks in question from Ramirez. It could not have escaped the attention of the petitioner that the payee of all the checks was a corporation — the Inter-Island Gas Service, Inc. Yet, the petitioner cashed these checks to a mere individual who was admittedly a habitue at its jai-alai games without making any inquiry as to his authority to exchange checks belonging to the payee-corporation. In Insular Drug Co. vs. National 6 the Court made the pronouncement that.
". . . The right of an agent to indorse commercial paper is a very responsible power and will not be lightly inferred. A salesman with authority to collect money belonging to his principal does not have the implied authority to indorse checks received in payment. Any person taking checks made payable to a corporation, which can act only by agents, does so at his peril, and must abide by the consequences if the agent who indorses the same is without authority." (underscoring supplied)
It must be noted further that three of the checks in question are crossed checks, namely, exhs. 21, 25 and 27, which may only be deposited, but not encashed; yet, the petitioner negligently accepted them for cash. That two of the crossed checks, namely, exhs. 21 and 25, are bearer instruments would not, in our view, exculpate the petitioner from liability with respect to them. The fact that they are bearer checks and at the same time crossed checks should have aroused the petitioner's suspicion as to the title of Ramirez over them and his authority to cash them (apparently to purchase jai-alai tickets from the petitioner), it appearing on their face that a corporate entity — the Inter Island Gas Service, Inc. — was the payee thereof and Ramirez delivered the said checks to the petitioner ostensibly on the strength of the payee's cashiers' indorsements.
At all events, under Section 67 of the Negotiable Instruments Law, "Where a person places his indorsement on an instrument

negotiable by delivery he incurs all the liability of an indorser," and under Section 66 of the same statute a general indorser warrants that the instrument "is genuine and in all respects what it purports to be." Considering that the petitioner indorsed the said checks when it deposited them with the respondent, the petitioner as an indorser guaranteed the genuineness of all prior indorsements thereon. The respondent which relied upon the petitioner's warranty should not be held liable for the resulting loss. This conclusion applied similarly to exh. 22 which is an uncrossed bearer instrument, for under Section 65 of the Negotiable Instrument Law. "Every person negotiating an instrument by delivery . . . warrants (a) That the instrument is genuine and in all respects what it purports to be." Under that same section this warranty "extends in favor of no holder other than the immediate transferee," which, in the case at bar, would be the respondent. The provision in the deposit slip issued by the respondent which stipulates that it "reserves to itself the right to charge back the item to the account of its depositor," at any time before "current funds or solvent credits shall have been actually received by the Bank," would not materially affect the conclusion we have reached. That stipulation prescribes that there must be an actual receipt by the bank of current funds or solvent credits; but as we have earlier indicated the transfer by the drawee-banks of funds to the respondent on account of the checks in question was ineffectual because made under the mistaken and valid assumption that the indorsements of the payee thereon were genuine. Under article 2154 of the New Civil Code "If something is received when there is no right to demand it and it was unduly delivered through mistake, the obligation to return it arises." There was, therefore, in contemplation of law, no valid payment of money made by the drawee-banks to the respondent on account of the questioned checks.

ACCORDINGLY, the judgment of the Court of Appeals is affirmed, at petitioner's cost.

Makasiar, Esguerra, Muñoz Palma and Martin, JJ., concur.

Teehankee, J., is on leave.

Footnotes

1. The City Fiscal dropped the charges on the ground that the Inter-Island Gas which was later reimbursed by the drawee-banks, was no longer qualified to be regarded as an offended party which could properly file a complaint against Ramirez because it had not suffered any damage at all.
2. 62 Phil. 519 (1935).
3. A bank check is a negotiable instrument and is governed by the Negotiable Instruments Law (Ang Tiong vs. Ting, 22 SCRA 713).
4. The collecting hank may certainly set up as defense the so-called "24-hour clearing house rule" of the Central Bank. This rule is not, however, invoked here. See Hongkong & Shanghai Banking Corp. vs. People's Bank & Trust Co., 35 SCRA 141.
5. 43 Phil. 678 (1922).
6. 58 Phil. 685 (1933).

FIRST DIVISION

[G.R. No. L-40796. July 31, 1975.]

REPUBLIC BANK, plaintiff-appellee, vs. MAURICIA T. EBRADA, defendant-appellant.

Sabino de Leon, Jr. for plaintiff-appellee.

Julio Baldonado for defendant-appellant.

SYNOPSIS

A check with a face value of P1,246.08 was issued to one Martin Lorenzo who turned out to have been dead almost eleven years before it was issued. It was encashed by Mauricia Ebrada at the Republic Bank's main office at the Escolta. Informing the Bank that the payee's (Lorenzo) indorsement on the reverse side of the check was a forgery, the Bureau of Treasury requested the Bank to refund the amount. The Bank sued Mauricia Ebrada before the city court when she refused to return the money. The court ruled for the Bank, so the case was elevated to the Court of First Instance which

likewise rendered an adverse decision against Mauricia Ebrada. An appeal was filed.

The Supreme Court upheld the lower court. Although Mauricia Ebrada was not the author of the forgery, as the last indorser of the check, she warranted good title to it. The negotiation from Martin Lorenzo, the original payee, to Ramon Lorenzo is of no effect but the negotiation from Ramon Lorenzo to Adelaida Dominguez and from her to Mauricia Ebrada who did not know of the forgery is valid and enforceable. The bank can recover from her the money paid on the forged check.

Judgment affirmed.

SYLLABUS

1. NEGOTIABLE INSTRUMENT; CHECK; FORGED INDORSEMENT; EFFECT. — Where the signature on a negotiable instrument is forged, the negotiation of the check is without force of effect. But the existence of the forged signature therein will not render void all the other negotiations of the check with respect to the other parties whose signatures are genuine. It is only the negotiation predicated on the forged indorsement that should be declared inoperative.

2. ID.; ID.; ID.; DRAWEE BANK SUFFERED THE LOSS BUT RECOVERY FROM THE ONE WHO ENCASHED THE CHECK AVAILABLE. — Where after the drawee bank has paid the amount of the check to the holder thereof, it was discovered that the signature of the payee was forged, the bank can still recover from the one who encashed the check. In the case of Great Eastern Life Insurance Company vs. Hongkong and Shanghai Banking Corporation, 43 Phil. 678, it was held "where a check is drawn payable to the order of one person and is presented to a bank by another and purports upon its face to have been duly indorsed by the payee of the check, it is the duty of the bank to know that the check was duly indorsed by the original payee, and where the Bank pays the amount of the check to a third person, who has forged the signature of the payee, the loss falls upon the

bank who cashed the check, and its only remedy is against the person to whom it paid the money."

3. ID.; ID.; ID.; DRAWEE BANK NOT DUTY BOUND TO ASCERTAIN GENUINESS OF SIGNATURES OF PAYEE OR INDORSERS. — It is not supposed to be the duty of a drawee bank to ascertain whether the signatures of the payee or indorsers are genuine or not. This is because the indorser is supposed to warrant to the drawee that the signatures of the payee and previous indorsers are genuine, warranty not extending only to holders in due course.

4. ID.; ID.; ID.; PURCHASER OF CHECK OR DRAFT BOUND TO ASCERTAIN GENUINENESS OF INSTRUMENT. — One who purchases a check or draft is bound to satisfy himself that the paper is genuine and that by indorsing it or presenting it for payment or putting it into circulation before presentation he impliedly asserts that he has performed his duty, and the drawee who has paid the forged check, without actual negligence on his part, may recover the money paid from such negligent purchaser. In such cases the recovery is permitted because although the drawee was in a way negligent in failing to detect the forgery, yet if the encasher of the check had performed his duty, the forgery would in all probability, have been detected and the fraud defeated.

5. ID.; ID.; ID.; LIABILITY OF ACCOMMODATION PARTY. — Although the one to whom the Bank paid the check was not proven to be the author of the supposed forgery, as last indorser of the check, she has warranted that she has good title to it even if in fact she did not have it because the payee of the check was already dead eleven years before the check was issued. The fact that immediately after receiving the cash proceeds of the check in question from the drawee bank she immediately turned over said amount to another party, who in turn handed the amount to somebody else on the same date would not exempt her from liability because by doing so, she acted as an accommodation party in the check for which she is also liable under Section 29 of the Negotiable Instrument Law.

D E C I S I O N

MARTIN, J p:

Appeal on a question of law of the decision of the Court of First Instance of Manila, Branch XXIII in Civil Case No. 69288, entitled "Republic Bank vs. Mauricia T. Ebrada."

On or about February 27, 1963 defendant Mauricia T. Ebrada, encashed Back Pay Check No. 508060 dated January 15, 1963 for P1,246.08 at the main office of the plaintiff Republic Bank at Escolta, Manila. The check was issued by the Bureau of Treasury. 1 Plaintiff Bank was later advised by the said bureau that the alleged indorsement on the reverse side of the aforesaid check by the payee, "Martin Lorenzo" was a forgery 2 since the latter had allegedly died as of July 14, 1952. 3 Plaintiff Bank was then requested by the Bureau of Treasury to refund the amount of P1,246.08. 4 To recover what it had refunded to the Bureau of Treasury, plaintiff Bank made verbal and formal demands upon defendant Ebrada to account for the sum of P1,246.08, but said defendant refused to do so. So plaintiff Bank sued defendant Ebrada before the City Court of Manila.

On July 11, 1966, defendant Ebrada filed her answer denying the material allegations of the complaint and as affirmative defenses alleged that she was a holder in due course of the check in question, or at the very least, has acquired her rights from a holder in due course and therefore entitled to the proceeds thereof. She also alleged that the plaintiff Bank has no cause of action against her; that it is in estoppel, or so negligent as not to be entitled to recover anything from her. 5

About the same day, July 11, 1966 defendant Ebrada filed a Third-Party complaint against Adelaida Dominguez who, in turn, filed on September 14, 1966 a Fourth-Party complaint against Justina Tinio.

On March 21, 1967, the City Court of Manila rendered judgment for the plaintiff Bank against defendant Ebrada; for Third-Party plaintiff against Third-Party defendant, Adelaida Dominguez, and

for Fourth-Party plaintiff against Fourth-Party defendant, Justina Tinio.

From the judgment of the City Court, defendant Ebrada took an appeal to the Court of First Instance of Manila where the parties submitted a partial stipulation of facts as follows:

"COME NOW the undersigned counsel for the plaintiff, defendant, Third-Party defendant and Fourth-Party plaintiff and unto this Honorable Court most respectfully submit the following:

PARTIAL STIPULATION OF FACTS

1. That they admit their respective capacities to sue and be sued;

2. That on January 15, 1963 the Treasury of the Philippines issued its Check No. BP-508060, payable to the order of one MARTIN LORENZO, in the sum of P1,246.08, and drawn on the Republic Bank, plaintiff herein, which check will be marked as Exhibit "A" for the plaintiff;

3. That the back side of aforementioned check hears the following signatures, in this order:

1) MARTIN LORENZO:
2) RAMON R. LORENZO;
3) DELIA DOMINGUEZ; and
4) MAURICIA T. EBRADA;

4. That the aforementioned check was delivered to the defendant MAURICIA T. EBRADA by the Third-Party defendant and Fourth-Party plaintiff ADELAIDA DOMINGUEZ, for the purpose of encashment;

5. That the signature of defendant MAURICIA T. EBRADA was affixed on said check on February 27, 1963 when she encashed it with the plaintiff Bank;

6. That immediately after defendant MAURICIA T. EBRADA received the cash proceeds of said check in the sum of P1,246.08 from the plaintiff Bank, she immediately turned over the said amount to the third-party defendant and fourth-party plaintiff ADELAIDA DOMINGUEZ, who in turn handed the said amount to the fourth-party defendant JUSTINA TINIO on the same date,

as evidenced by the receipt signed by her which will be marked as Exhibit "1-Dominguez"; and

7. That the parties hereto reserve the right to present evidence on any other fact not covered by the foregoing stipulations.

Manila, Philippines, June 6, 1969."

Based on the foregoing stipulation of facts and the documentary evidence presented, the trial court rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, the Court renders judgment ordering the defendant Mauricia T. Ebrada to pay the plaintiff the amount of ONE THOUSAND TWO FORTY-SIX 08/100 (P1,246.08), with interest as the legal rate from the filing of the complaint on June 16, 1966, until fully paid, plus the costs in both instances against Mauricia T. Ebrada.

The right of Mauricia T. Ebrada to file whatever claim she may have against Adelaida Dominguez in connection with this case is hereby reserved. The right of the estate of Dominguez to file the fourth-party complaint against Justina Tinio is also reserved.

SO ORDERED."

In her appeal, defendant-appellant presses that the lower court erred:

"IN ORDERING THE APPELLANT TO PAY THE APPELLEE THE FACE VALUE OF THE SUBJECT CHECK AFTER FINDING THAT THE DRAWER ISSUED THE SUBJECT CHECK TO A PERSON ALREADY DECEASED FOR 11-1/2 YEARS AND THAT THE APPELLANT DID NOT BENEFIT FROM ENCASHING SAID CHECK."

From the stipulation of facts it is admitted that the check in question was delivered to defendant-appellant by Adelaida Dominguez for the purpose of encashment and that her signature was affixed on said check when she cashed it with the plaintiff Bank. Likewise it is admitted that defendant-appellant was the last indorser of the said check. As such indorser, she was supposed to

have warranted that she has good title to said check; for under Section 5 of the Negotiable Instruments Law: 6

"Every person negotiating an instrument by delivery or by qualified indorsement, warrants:

(a) That the instrument is genuine and in all respects what it purports to be.

(b) That she has good title to it."

xxx xxx xxx

and under Section 65 of the same Act:

"Every indorser who indorses without qualification warrants to all subsequent holders in due course:

(a) The matters and things mentioned in subdivisions (a), (b), and (c) of the next preceding sections;

(b) That the instrument is at the time of his indorsement valid and subsisting."

It turned out, however, that the signature of the original payee of the check, Martin Lorenzo was a forgery because he was already dead 7 almost 11 years before the check in question was issued by the Bureau of Treasury. Under Section 23 of the Negotiable Instruments Law (Act 2031):

"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 instruments, or to give a discharge 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."

It is clear from the provision that where the signature on a negotiable instrument if forged, the negotiation of the check is without force or effect. But does this mean that the existence of one forged signature therein will render void all the other negotiations of the check with respect to the other parties whose signature are genuine?

In the case of Beam vs. Farrel, 135 Iowa 670, 113 N.W. 590, where a check has several indorsements on it, it was held that it is

only the negotiation based on the forged or unauthorized signature which is inoperative. Applying this principle to the case before Us, it can be safely concluded that it is only the negotiation predicated on the forged indorsement that should be declared inoperative. This means that the negotiation of the check in question from Martin Lorenzo, the original payee, to Ramon R. Lorenzo, the second indorser, should be declared of no effect, but the negotiation of the aforesaid check from Ramon R. Lorenzo to Adelaida Dominguez, the third indorser, and from Adelaida Dominguez to the defendant-appellant who did not know of the forgery, should be considered valid and enforceable, barring any claim of forgery.

What happens then, if, after the drawee bank has paid the amount of the check to the holder thereof, it was discovered that the signature of the payee was forged? Can the drawee bank recover from the one who encashed the check?

In the case of State v. Broadway Mut. Bank, 282 S.W. 196, 197, it was held that the drawee of a check can recover from the holder the money paid to him on a forged instrument. It is not supposed to be its duty to ascertain whether the signatures of the payee or indorsers are genuine or not. This is because the indorser is supposed to warrant to the drawee that the signatures of the payee and previous indorsers are genuine, warranty not extending only to holders in due course. One who purchases a check or draft is bound to satisfy himself that the paper is genuine and that by indorsing it or presenting it for payment or putting it into circulation before presentation he impliedly asserts that he has performed his duty and the drawee who has paid the forged check, without actual negligence on his part, may recover the money paid from such negligent purchasers. In such cases the recovery is permitted because although the drawee was in a way negligent in failing to detect the forgery, yet if the encasher of the check had performed his duty, the forgery would in all probability, have been detected and the fraud defeated. The reason for allowing the drawee bank to recover from the encasher is:

"Every one with even the least experience in business knows that no business man would accept a check in exchange for money or goods unless he is satisfied that the check is genuine. He accepts it only because he has proof that it is genuine, or because he has sufficient confidence in the honesty and financial responsibility of the person who vouches for it. If he is deceived he has suffered a loss of his cash or goods through his own mistake. His own credulity or recklessness, or misplaced confidence was the sole cause of the loss. Why should he be permitted to shift the loss due to his own fault in assuming the risk, upon the drawee, simply because of the accidental circumstance that the drawee afterwards failed to detect the forgery when the check was presented?" 8 Similarly, in the case before Us, the defendant-appellant, upon receiving the check in question from Adelaida Dominguez, was duty-bound to ascertain whether the check in question was genuine before presenting it to plaintiff Bank for payment. Her failure to do so makes her liable for the loss and the plaintiff Bank may recover from her the money she received for the check. As reasoned out above, had she performed the duty of ascertaining the genuineness of the check, in all probability the forgery would have been detected and the fraud defeated.

In our jurisdiction We have a case of similar import. 9 The Great Eastern Life Insurance Company drew its check for P2000.00 on the Hongkong and Shanghai Banking Corporation payable to the order of Lazaro Melicor. A certain E. M. Maasin fraudulently obtained the check and forged the signature of Melicor, as an indorser, and then personally indorsed and presented the check to the Philippine National Bank where the amount of the check was placed to his (Maasin's) credit. On the next day, the Philippine National Bank indorsed the check to the Hongkong and Shanghai Banking Corporation which paid it and charged the amount of the check to the insurance company. The Court held that the Hongkong and Shanghai Banking Corporation was liable to the insurance company for the amount of the check and that the

Philippine National Bank was in turn liable to the Hongkong and Shanghai Banking Corporation. Said the Court:

"Where a check is drawn payable to the order of one person and is presented to a bank by another and purports upon its face to have been duly indorsed by the payee of the check, it is the duty of the bank to know that the check was duly indorsed by the original payee, and where the Bank pays the amount of the check to a third person, who has forged the signature of the payee, the loss falls upon the bank who cashed the check, and its only remedy is against the person to whom it paid the money."

With the foregoing doctrine We are to concede that the plaintiff Bank should suffer the loss when it paid the amount of the check in question to defendant-appellant, but it has the remedy to recover from the latter the amount it paid to her. Although the defendant-appellant to whom the plaintiff Bank paid the check was not proven to be the author of the supposed forgery, yet as last indorser of the check, she has warranted that she has good title to it 10 even if in fact she did not have it because the payee of the check was already dead 11 years before the check was issued. The fact that immediately after receiving the cash proceeds of the check in question in the amount of P1,246.08 from the plaintiff Bank, defendant-appellant immediately turned over said amount to Adelaida Dominguez (Third-Party defendant and the Fourth-Party plaintiff) who in turn handed the amount to Justina Tinio on the same date would not exempt her from liability because by doing so, she acted as an accommodation party in the check for which she is also liable under Section 29 of the Negotiable Instruments Law (Act 231), thus:

"An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party."

IN VIEW OF THE FOREGOING, the judgment appealed from is hereby affirmed in toto with costs against defendant-appellant.
SO ORDERED.
Makalintal, C.J., Castro, Makasiar and Esguerra, JJ., concur.
Footnotes

1. ROA, p. 2.
2. ROA, p. 2.
3. ROA, p. 2.
4. Exhibit "F-1".
5. ROA, p. 5.
6. Act No. 2031.
7. He died July 14, 1952 as shown by the Certificate of Death issued by the Local Civil Registrar of the Municipality of Lubao, Pampanga (Exhibit B).
8. Gloucester Bank v. Salem Bank, 17 Mass. 33; Bank of U.S. Bank of Georgia, 10 Wheat 333, 6 L. Ed. 334; National Bank of America v. Bangs, 196 Mass. 441, 8 Am. Rep. 349; First National Bank of Danvers v. First National Bank of Salem, 151 Mass. 280, 24 N.E. 44, 21 Am. St. Rep. 450; First National Bank v. Ricker, 71 Ill. 439, 22 Am. Rep. 104; Rouvant v. Bank, 63 Tex. 610; Bank v. Bank 30 Il. 96 Am Dec. 554; People's Bank v. Franklyn Bank, 88 Tenn. 299, 12 S.W. 716, 6 L.R.A. 724, 17 Am St. Rep. 884; Ellis & Morton v. Trust Co., 4 Ohio St. 628, 64 Am. Dec. 610; Bank v. Bank, 58 Ohio St. 207, 50 N.E. 723; Bank v. Bank, 22 Neb. 769, 36 N.W. 289, 3 Am. St. Rep. 294; Canadian Bank v. Bingham, 20 Wash. 484, 71 Pac. 43, 60 L.R.A. 955.
9. Great Eastern Life Insurance Company vs. Hongkong and Shanghai Banking Corporation, 43 Phil. 678.
10. Sec. 65, par. (b). Negotiable Instruments Law (Act 2031). Every person negotiating an instrument by delivery or by a qualified instrument warrants:

(a) . . .
(b) That he has a good title to it."

SECOND DIVISION

[G.R. No. L-62943. July 14, 1986.]

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, petitioner, vs. COURT OF APPEALS (Now INTERMEDIATE APPELLATE COURT) and THE PHILIPPINE NATIONAL BANK, respondents.

Juan J. Diaz and Cesar T. Basa for respondent PNB.

San Juan, Africa, Gonzales & San Agustin Law Offices for respondent PCIB.

D E C I S I O N

GUTIERREZ, JR., J p:

This petition for review asks us to set aside the October 29, 1982 decision of the respondent Court of Appeals, now Intermediate Appellate Court which reversed the decision of the Court of First Instance of Manila, Branch XL, and dismissed the plaintiff's complaint, the third party complaint, as well as the defendant's counterclaim.

The background facts which led to the filing of the instant petition are summarized in the decision of the respondent Court of Appeals:

"Metropolitan Waterworks and Sewerage System (hereinafter referred to as MWSS) is a government owned and controlled corporation created under Republic Act No. 6234 as the successor-in-interest of the defunct NWSA. The Philippine National Bank (PNB for short), on the other hand, is the depository bank of MWSS and its predecessor-in-interest NWSA. Among the several accounts of NWSA with PNB is NWSA Account No. 6, otherwise known as Account No. 381-777 and which is presently allocated No. 010-500281. The authorized signature for said Account No. 6 were those of MWSS treasurer Jose Sanchez, its auditor Pedro Aguilar, and its acting General Manager Victor L. Recio. Their respective specimen signatures were submitted by the MWSS to and on file with the PNB. By special arrangement with the PNB, the MWSS used personalized checks in drawing from this account.

These checks were printed for MWSS by its printer, F. Mesina Enterprises, located at 1775 Rizal Extension, Caloocan City.

"During the months of March, April and May 1969, twenty-three (23) checks were prepared, processed, issued and released by NWSA, all of which were paid and cleared by PNB and debited by PNB against NWSA Account No. 6, to wit:

	"Check No.	Date	Payee	Amount	Date Paid By PNB
1.	59546	8-21-69	Deogracias Estrella	P3,187.79	4-2-69
2.	59548	3-31-69	Natividad Rosario	2,848.86	4-23-69
3.	59547	3-31-69	Pangilinan Enterprises	195.00	Unreleased
4.	59549	3-31-69	Natividad Rosario	3,239.88	4-23-69
5.	59552	4-1-69	Villarama & Sons	987.59	5-6-69
6.	59554	4-1-69	Gascom Engineering	6,057.60	4-16-69
7.	59558	4-2-69	The Evening News	112.00	Unreleased
8.	59544	3-27-69	Progressive Const.	18,391.20	4-18-69
9.	59564	4-2-69	Ind. Insp. Int. Inc.	594.06	4-18-69
10.	59568	4-7-69	Roberto Marsan	800.00	4-22-69
11.	59570	4-7-69	Paz Andres	200.00	4-22-69
12.	59574	4-8-69	Florentino Santos	100,000.00	4-11-69
13.	59578	4-8-69	Mla. Daily Bulletin	95.00	Unreleased
14.	59580	4-8-69	Phil. Herald	100.00	5-9-69
15.	59582	4-8-69	Galauran & Pilar	7,729.09	5-6-69

16.	59581	4-8-69	Manila Chronicle	110.00	5-12-69
17.	59588	4-8-69	Treago Tunnel	21,583.00	4-11-69
18.	59587	4-8-69	Delfin Santiago	120,000.00	4-11-69
19.	59589	4-10-69	Deogracias Estrella	1,257.49	4-16-69
20.	59594	4-14-69	Philam Accident Inc.	33.03	4-29-69
21.	59577	4-8-69	Esla	9,429.78	4-29-69
22.	59601	4-16-69	Justino Torres	20,000.00	4-18-69
23.	59595	4-14-69	Neris Phil. Inc.	4,274.00	5-20-69

P320,636.26"

"During the same months of March, April and May 1969, twenty-three (23) checks bearing the same numbers as the aforementioned NWSA checks were likewise paid and cleared by PNB and debited against NWSA Account No. 6, to wit:

	"Check No.	Date Issued	Payee	Amount By PNB	Date Paid
1.	59546	3-6-69	Raul Dizon	P 84,401.00	3-16-69
2.	59548	3-11-69	Raul Dizon	104,790.00	4-1-69
3.	59547	3-14-69	Arturo Sison	56,903.00	4-1169
4.	59549	3-20-69	Arturo Sison	48,903.00	4-15-69
5.	59552	3-24-69	Arturo Sison	63,845.00	4-16-69
6.	59544	3-26-69	Arturo Sison	98,450.00	4-17-69
7.	59558	3-28-69	Arturo Sison	114,840.00	4-21-69
8.	59544	3-16-69	Antonio Mendoza	38,490.00	4-22-69
9.	59564	3-31-69	Arturo Sison	180,900.00	4-23-69

10.	59568	4-2-69	Arturo Sison	134,940.00	4-25-69
11.	59570	4-1-69	Arturo Sison	64,550.00	4-28-69
12.	59574	4-2-69	Arturo Sison	148,610.00	4-29-69
13.	59578	4-10-69	Antonio Mendoza	93,950.00	4-29-69
14.	59580	4-8-69	Arturo Sison	160,000.00	5-2-69
15.	59582	4-10-69	Arturo Sison	155,400.00	5-5-69
16.	59581	4-8-69	Antonio Mendoza	176,580.00	5-6-69
17.	59588	4-16-69	Arturo Sison	176,000.00	5-8-69
18.	59587	4-16-69	Arturo Sison	300,000.00	5-12-69
19.	59589	4-18-69	Arturo Sison	122,000.00	5-14-69
20.	59594	4-18-69	Arturo Sison	280,000.00	5-15-69
21.	59577	4-14-69	Antonio Mendoza	260,000.00	5-16-69
22.	59601	4-18-69	Arturo Sison	400,000.00	5-19-69
23.	59595	4-28-69	Arturo Sison	190,800.00	5-21-69

P3,457,903.00

"The foregoing checks were deposited by the payees Raul Dizon, Arturo Sison and Antonio Mendoza in their respective current accounts with the Philippine Commercial and Industrial Bank (PCIB) and Philippine Bank of Commerce (PBC) in the months of March, April and May 1969. Thru the Central Bank Clearing, these checks were presented for payment by PBC and PCIB to the

defendant PNB, and paid, also in the months of March, April and May 1969. At the time of their presentation to PNB these checks bear the standard indorsement which reads 'all prior indorsement and/or lack of endorsement guaranteed.'

"Subsequent investigation however, conducted by the NBI showed that Raul Dizon, Arturo Sison and Antonio Mendoza were all fictitious persons. The respective balances in their current account with the PBC and/or PCIB stood as follows: Raul Dizon P3,455.00 as of April 30, 1969; Antonio Mendoza P18,182.00 as of May 23, 1969; and Arturo Sison P1,398.92 as of June 30, 1969.

"On June 11, 1969, NWSA addressed a letter to PNB requesting the immediate restoration to its Account No. 6, of the total sum of P3,457,903.00 corresponding to the total amount of these twenty-three (23) checks claimed by NWSA to be forged and/or spurious checks.

"In view of the refusal of PNB to credit back to Account No. 6 the said total sum of P3,457,903.00 MWSS filed the instant complaint on November 10, 1972 before the Court of First Instance of Manila and docketed thereat as Civil Case No. 88950.

"In its answer, PNB contended among others, that the checks in question were regular on its face in all respects, including the genuineness of the signatures of authorized NWSA signing officers and there was nothing on its face that could have aroused any suspicion as to its genuineness and due execution and; that NWSA was guilty of negligence which was the proximate cause of the loss.

"PNB also filed a third party complaint against the negotiating banks PBC and PCIB on the ground that they failed to ascertain the identity of the payees and their title to the checks which were deposited in the respective new accounts of the payees with them."

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On February 6, 1976, the Court of First Instance of Manila rendered judgment in favor of the MWSS. The dispositive portion of the decision reads:

"WHEREFORE, on the COMPLAINT by a clear preponderance of evidence and in accordance with Section 23 of the Negotiable Instruments Law, the Court hereby renders judgment in favor of the plaintiff Metropolitan Waterworks and Sewerage System (MWSS) by ordering the defendant Philippine National Bank (PNB) to restore the total sum of THREE MILLION FOUR HUNDRED FIFTY SEVEN THOUSAND NINE HUNDRED THREE PESOS (P3,457,903.00) to plaintiff's Account No. 6, otherwise known as Account No. 010-50030-3, with legal interest thereon computed from the date of the filing of the complaint and until as restored in the said Account No. 6.

"On the THIRD PARTY COMPLAINT, the Court, for lack of evidence, hereby renders judgment in favor of the third party defendants Philippine Bank of Commerce (PBC) and Philippine Commercial and Industrial Bank (PCIB) by dismissing the Third Party Complaint.

"The counterclaims of the third party defendants are likewise dismissed for lack of evidence.

"No pronouncement as to costs."

As earlier stated, the respondent court reversed the decision of the Court of First Instance of Manila and rendered judgment in favor of the respondent Philippine National Bank.

A motion for reconsideration filed by the petitioner MWSS was denied by the respondent court in a resolution dated January 3, 1983.

The petitioner now raises the following assignments of errors for the grant of this petition:

I. IN NOT HOLDING THAT AS THE SIGNATURES ON THE CHECKS WERE FORGED, THE DRAWEE BANK WAS LIABLE FOR THE LOSS UNDER SECTION 23 OF THE NEGOTIABLE INSTRUMENTS LAW.

II. IN FAILING TO CONSIDER THE PROXIMATE NEGLIGENCE OF PNB IN ACCEPTING THE SPURIOUS CHECKS DESPITE THE OBVIOUS IRREGULARITY OF TWO

SETS OF CHECKS BEARING IDENTICAL NUMBER BEING ENCASHED WITHIN DAYS OF EACH OTHER.

III IN NOT HOLDING THAT THE SIGNATURES OF THE DRAWEE MWSS BEING CLEARLY FORGED, AND THE CHECKS SPURIOUS, SAME ARE INOPERATIVE AS AGAINST THE ALLEGED DRAWEE.

The appellate court applied Section 24 of the Negotiable Instruments Law which provides:

"Every negotiable instrument is deemed prima facie to have been issued for valuable consideration and every person whose signature appears thereon to have become a party thereto for value."

The petitioner submits that the above provision does not apply to the facts of the instant case because the questioned checks were not those of the MWSS and neither were they drawn by its authorized signatories. The petitioner states that granting that Section 24 of the Negotiable Instruments Law is applicable, the same creates only a prima facie presumption which was overcome by the following documents, to wit: (1) the NBI Report of November 2, 1970; (2) the NBI Report of November 21, 1974; (3) the NBI Chemistry Report No. C-74-891; (4) the Memorandum of Mr. Juan Diño, 3rd Assistant Auditor of the respondent drawee bank addressed to the Chief Auditor of the petitioner; (5) the admission of the respondent bank's counsel in open court that the National Bureau of Investigation found the signature on the twenty-three (23) checks in question to be forgeries; and (6) the admission of the respondent bank's witness, Mr. Faustino Mesina, Jr. that the checks in question were not printed by his printing press. The petitioner contends that since the signatures of the checks were forgeries, the respondent drawee bank must bear the loss under the rulings of this Court.

"A bank is bound to know the signatures of its customers; and if it pays a forged check it must be considered as making the payment out of its own funds, and cannot ordinarily charge the amount so paid to the account of the depositor whose name was forged."

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"The signatures to the checks being forged, under Section 23 of the Negotiable Instruments Law they are not a charge against plaintiff nor are the checks of any value to the defendant.

"It must therefore be held that the proximate cause of loss was due to the negligence of the Bank of the Philippine Islands in honoring and cashing the two forged checks." (San Carlos Milling Co. v. Bank of the P.I., 59 Phil. 59)

"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 Malicor's endorsement was genuine before cashing the check. Its remedy is against Maasim to whom it paid the money." (Great Eastern Life Ins. Co. v. Hongkong & Shanghai Bank, 43 Phil. 678)

We have carefully reviewed the documents cited by the petitioner. There is no express and categorical finding in these documents that the twenty-three (23) questioned checks were indeed signed by persons other than the authorized MWSS signatories. On the contrary, the findings of the National Bureau of Investigation in its Report dated November 2, 1970 show that the MWSS fraud was an "inside job" and that the petitioner's delay in the reconciliation of bank statements and the laxity and loose records control in the printing of its personalized checks facilitated the fraud. Likewise, the questioned Documents Report No. 159-1074 dated November 21, 1974 of the National Bureau of Investigation does not declare or prove that the signatures appearing on the questioned checks are forgeries. The report merely mentions the alleged differences in the typeface, checkwriting, and printing characteristics appearing in the standard or submitted models and the questioned typewritings. The NBI Chemistry Report No. C-74-891 merely describes the inks and pens used in writing the alleged forged signatures.

It is clear that these three (3) NBI Reports relied upon by the petitioner are inadequate to sustain its allegations of forgery. These reports did not touch on the inherent qualities of the signatures which are indispensable in the determination of the existence of forgery. There must be conclusive findings that there is a variance in the inherent characteristics of the signatures and that they were written by two or more different persons.

Forgery cannot be presumed (Siasat, et al. v. Intermediate Appellate Court, et al, 139 SCRA 238). It must be established by clear, positive, and convincing evidence. This was not done in the present case.

The cases of San Carlos Milling Co. Ltd. v. Bank of the Philippine Islands, et al. (59 Phil. 59) and Great Eastern Life Ins., Co. v. Hongkong and Shanghai Bank (43 Phil. 678) relied upon by the petitioner are inapplicable in this case because the forgeries in those cases were either clearly established or admitted while in the instant case, the allegations of forgery were not clearly established during trial.

Considering the absence of sufficient security in the printing of the checks coupled with the very close similarities between the genuine signatures and the alleged forgeries, the twenty-three (23) checks in question could have been presented to the petitioner's signatories without their knowing that they were bogus checks. Indeed, the cashier of the petitioner whose signatures were allegedly forged was unable to tell the difference between the allegedly forged signature and his own genuine signature. On the other hand, the MWSS officials admitted that these checks could easily be passed on as genuine.

The memorandum of Mr. A. T. Tolentino, Assistant Chief Accountant of the drawee Philippine National Bank to Mr. E. Villatuya, Executive Vice-President of the petitioner dated June 9, 1969 cites an instance where even the concerned NWSA officials could not tell the differences between the genuine checks and the alleged forged checks.

"At about 12:00 o'clock on June 6, 1969, VP Maramag requested me to see him in his office at the Cashier's Dept. where Messrs. Jose M. Sanchez, treasurer of NAWASA and Romeo Oliva of the same office were present. Upon my arrival I observed the NAWASA officials questioning the issue of the NAWASA checks appearing in their own list, xerox copy attached.

"For verification purposes, therefore, the checks were taken from our file. To everybody there present namely VIP Maramag, the two abovementioned NAWASA officials, AVP, Buhain, Asst. Cashier Castelo, Asst. Cashier Tejada and Messrs. A. Lopez and L. Lechuga, both C/A bookkeepers, no one was able to point out any difference on the signatures of the NAWASA officials appearing on the checks compared to their official signatures on file. In fact 3 checks, one of those under question, were presented to the NAWASA treasurer for verification but he could not point out which was his genuine signature. After intent comparison, he pointed on the questioned check as bearing his correct signature."

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Moreover, the petitioner is barred from setting up the defense of forgery under Section 23 of the Negotiable Instruments Law which provides that:

"SEC. 23. FORGED SIGNATURE; EFFECT OF . — When the signature is forged or made without 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."

because it was guilty of negligence not only before the questioned checks were negotiated but even after the same had already been negotiated. (See Republic v. Equitable Banking Corporation, 10 SCRA 8)

The records show that at the time the twenty-three (23) checks were prepared, negotiated, and encashed, the petitioner was using

its own personalized checks, instead of the official PNB Commercial blank checks. In the exercise of this special privilege, however, the petitioner failed to provide the needed security measures. That there was gross negligence in the printing of its personalized checks is shown by the following uncontroverted facts, to wit:

(1) The petitioner failed to give its printer, Mesina Enterprises, specific instructions relative to the safekeeping and disposition of excess forms, check vouchers, and safety papers;

(2) The petitioner failed to retrieve from its printer all spoiled check forms;

(3) The petitioner failed to provide any control regarding the paper used in the printing of said checks;

(4) The petitioner failed to furnish the respondent drawee bank with samples of typewriting, check writing, and print used by its printer in the printing of its checks and of the inks and pens used in signing the same; and

(5) The petitioner failed to send a representative to the printing office during the printing of said checks.

This gross negligence of the petitioner is very evident from the sworn statement dated June 19, 1969 of Faustino Mesina, Jr., the owner of the printing press which printed the petitioner's personalized checks:

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"7. Q: Do you have any business transaction with the National Waterworks and Sewerage Authority (NAWASA)?

A: Yes, sir. I have a contract with the NAWASA in printing NAWASA Forms such as NAWASA Check Vouchers and Office Forms.

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"15. Q: Were you given any instruction by the NAWASA in connection with the printing of these check vouchers?

A: There is none, sir. No instruction whatsoever was given to me.

"16. Q: Were you not advised as to what kind of paper would be used in the check vouchers?
A: Only as per sample, sir.
xxx xxx xxx
"20. Q: Where did you buy this Hammermill Safety check paper?
A: From Tan Chiong, a paper dealer with store located at Juan Luna, Binondo, Manila. (In front of the Metropolitan Bank).
xxx xxx xxx
"24. Q: Were all these check vouchers printed by you submitted to NAWASA?
A: Not all, sir, Because we have to make reservations or allowances for spoilage.
"25. Q: Out of these vouchers printed by you, how many were spoiled and how many were the excess printed check vouchers?
A: Approximately four hundred (400) sheets, sir. I cannot determine the proportion of the excess and spoiled because the final act of perforating these check vouchers has not yet been done and spoilage can only be determined after this final act of printing.
"26. Q: What did you do with these excess check vouchers?
A: I keep it under lock and key in my filing cabinet.
xxx xxx xxx
"28. Q: Were you not instructed by the NAWASA authorities to burn these excess check vouchers?
A: No, sir. I was not instructed.
"29. Q: What do you intend to do with these excess printed check vouchers?
A: I intend to use them for future orders from the NAWASA.
xxx xxx xxx
"32. Q: In the process of printing the check vouchers ordered by the NAWASA, how many sheets were actually spoiled?
A: I cannot approximate, sir. But there are spoilage in the process of printing and perforating.
"33. Q: What did you do with these spoilages?

A: Spoiled printed materials are usually thrown out, in the garbage can.

"34. Q: Was there any representative of the NAWASA to supervise the printing or watch the printing of these check vouchers?

A: None, sir.

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"39. Q: During the period of printing after the days work, what measures do you undertake to safeguard the mold and other paraphernalia used in the printing of these particular orders of NAWASA?

A: Inasmuch as I have an employee who sleeps in the printing shop and at the same time do the guarding, we just leave the mold attached to the machine and the other finished or unfinished work check vouchers are left in the rack so that the work could be continued the following day."

The National Bureau of Investigation Report dated November 2, 1970 is even more explicit. Thus —

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"60. We observed also that there is some laxity and loose control in the printing of NAWASA checks. We gathered from MESINA ENTERPRISES, the printing firm that undertook the printing of the check vouchers of NAWASA that NAWASA had no representative at the printing press during the process of the printing and no particular security measure instructions adopted to safeguard the interest of the government in connection with printing of this accountable form."

Another factor which facilitated the fraudulent encashment of the twenty-three (23) checks in question was the failure of the petitioner to reconcile the bank statements with its own records. It is accepted banking procedure for the depository bank to furnish its depositors bank statements and debt and credit memos through the mail. The records show that the petitioner requested the respondent drawee bank to discontinue the practice of mailing the bank statements, but instead to deliver the same to a certain Mr.

Emiliano Zaporteza. For reasons known only to Mr. Zaporteza however, he was unreasonably delayed in taking prompt deliveries of the said bank statements and credit and debit memos. As a consequence, Mr. Zaporteza failed to reconcile the bank statements with the petitioner's records. If Mr. Zaporteza had not been remiss in his duty of taking the bank statements and reconciling them with the petitioner's records, the fraudulent encashments of the first checks should have been discovered, and further frauds prevented. This negligence was, therefore, the proximate cause of the failure to discover the fraud. Thus,

"When a person opens a checking account with a bank, he is given blank checks which he may fill out and use whenever he wishes. Each time he issues a check, he should also fill out the check stub to which the check is usually attached. This stub, if properly kept, will contain the number of the check, the date of its issue, the name of the payee and the amount thereof. The drawer would therefore have a complete record of the checks he issues. It is the custom of banks to send to its depositors a monthly statement of the status of their accounts, together with all the cancelled checks which have been cashed by their respective holders. If the depositor has filled out his check stubs properly, a comparison between them and the cancelled checks will reveal any forged check not taken from his checkbook. It is the duty of a depositor to carefully examine the bank's statement, his cancelled checks, his check stubs and other pertinent records within a reasonable time, and to report any errors without unreasonable delay. If his negligence should cause the bank to honor a forged check or prevent it from recovering the amount it may have already paid on such check, he cannot later complain should the bank refuse to recredit his account with the amount of such check. (First Nat. Bank of Richmond v. Richmond Electric Co., 106 Va. 347, 56 SE 152, 7 LRA, NS 744 [1907]. See also Leather Manufacturers' Bank v. Morgan, 117 US 96, 6 S. Ct. 657 [1886]; Deer Island Fish and Oyster Co. v. First Nat. Bank of Biloxi, 166 Miss. 162, 146 So. 116 [1933]). Campos and Campos,

Notes and Selected Cases on Negotiable Instruments Law, 1971, pp. 267-268).

This failure of the petitioner to reconcile the bank statements with its cancelled checks was noted by the National Bureau of Investigation in its report dated November 2, 1970:

"58. One factor which facilitate this fraud was the delay in the reconciliation of bank (PNB) statements with the NAWASA bank accounts. . . . Had the NAWASA representative come to the PNB early for the statements and had the bank been advised promptly of the reported bogus check, the negotiation of practically all of the remaining checks on May, 1969, totalling P2,224,736.00 could have been prevented."

The records likewise show that the petitioner failed to provide appropriate security measures over its own records thereby laying confidential records open to unauthorized persons. The petitioner's own Fact Finding Committee, in its report submitted to their General Manager underscored this laxity of records control. It observed that the "office of Mr. Ongtengco (Cashier No. VI of the Treasury Department at the NAWASA) is quite open to any person known to him or his staff members and that the check writer is merely on top of his table."

When confronted with this report at the Anti-Fraud Action Section of the National Bureau of Investigation, Mr. Ongtengco could only state that:

"A. Generally my order is not to allow anybody to enter my office. Only authorized persons are allowed to enter my office. There are some cases, however, where some persons enter my office because they are following up their checks. Maybe, these persons may have been authorized by Mr. Pantig. Most of the people entering my office are changing checks as allowed by the Resolution of the Board of Directors of the NAWASA and the Treasurer. The check writer was never placed on my table. There is a place for the checkwriter which is also under lock and key.

"Q. Is Mr. Pantig authorized to allow unauthorized persons to enter your office?

"A. No, sir.
"Q. Why are you tolerating Mr. Pantig admitting unauthorized persons in your office?
"A. I do not want to embarrass Mr. Pantig. Most of the people following up checks are employees of the NAWASA.
"Q. Was the authority given by the Board of Directors and the approval by the Treasurer for employees, and other persons to encash their checks carry with it their authority to enter your office?
"A. No, sir.
xxx xxx xxx
"Q. From the answers that you have given to us we observed that actually there is laxity and poor control on your part with regards to the preparations of check payments inasmuch as you allow unauthorized persons to follow up their vouchers inside your office which may leakout confidential informations or your books of account. After being apprised of all the shortcomings in your office, as head of the Cashiers' Office of the Treasury Department what remedial measures do you intend to undertake?
"A. Time and again the Treasurer has been calling our attention not to allow interested persons to hand carry their voucher checks and we are trying our best and if I can do it to follow the instructions to the letter, I will do it but unfortunately the persons who are allowed to enter my office are my co-employees and persons who have connections with our higher ups and I can not possibly antagonize them. Rest assured that even though that everybody will get hurt, I will do my best not to allow unauthorized persons to enter my office.
xxx xxx xxx
"Q. Is it not possible inasmuch as your office is in charge of the posting of check payments in your books that leakage of payments to the banks came from your office?
"A. I am not aware of it but it only takes us a couple of minutes to process the checks. And there are cases wherein every information about the checks may be obtained from the

Accounting Department, Auditing Department, or the Office of the General Manager."

Relying on the foregoing statement of Mr. Ongtengco, the National Bureau of Investigation concluded in its Report dated November 2, 1970 that the fraudulent encashment of the twenty-three (23) checks in question was an "inside job". Thus —

"We have all the reasons to believe that this fraudulent act was an inside job or one pulled with inside connivance at NAWASA. As pointed earlier in this report, the serial numbers of these checks in question conform with the numbers in current use of NAWASA, aside from the fact that these fraudulent checks were found to be of the same kind and design as that of NAWASA's own checks. While knowledge as to such facts may be obtained through the possession of a NAWASA check of current issue, an outsider without information from the inside can not possibly pinpoint which of NAWASA's various accounts has sufficient balance to cover all these fraudulent checks. None of these checks, it should be noted, was dishonored for insufficiency of funds."

Even if the twenty three (23) checks in question are considered forgeries, considering the petitioner's gross negligence, it is barred from setting up the defense of forgery under Section 23 of the Negotiable Instruments Law.

Nonetheless, the petitioner claims that it was the negligence of the respondent Philippine National Bank that was the proximate cause of the loss. The petitioner relies on our ruling in Philippine National Bank v. Court of Appeals (25. SCRA 693) that.

"Thus, by not returning the check to the PCIB, by thereby indicating that the PNB had found nothing wrong with the check and would honor the same, and by actually paying its amount to the PCIB, the PNB induced the latter, not only to believe that the check was genuine and good in every respect, but, also, to pay its amount to Augusto Lim. In other words, the PNB was the primary or proximate cause of the loss, and, hence, may not recover from the PCIB."

The argument has no merit. The records show that the respondent drawee bank, had taken the necessary measures in the detection of forged checks and the prevention of their fraudulent encashment. In fact, long before the encashment of the twenty-three (23) checks in question, the respondent Bank had issued constant reminders to all Current Account Bookkeepers informing them of the activities of forgery syndicates. The Memorandum of the Assistant Vice-President and Chief Accountant of the Philippine National Bank dated February 17, 1966 reads in part:

"SUBJECT: ACTIVITIES OF FORGERY SYNDICATE.

"From reliable information we have gathered that personalized checks of current account depositors are now the target of the forgery syndicate. To protect the interest of the bank, you are hereby enjoined to be more careful in examining said checks especially those coming from the clearing, mails and window transactions. As a reminder please be guided with the following:

"1. Signatures of drawers should be properly scrutinized and compared with those we have on file.

"2. `The serial numbers of the checks should be compared with the serial numbers registered with the Cashier's Dept.

"3. The texture of the paper used and the printing of the checks should be compared with the sample we have on file with the Cashier's Dept.

"4. Checks bearing several indorsements should be given a special attention.

"5. Alteration in amount both in figures and words should be carefully examined even if signed by the drawer.

"6. Checks issued in substantial amounts particularly by depositors who do not usually issue checks in big amounts should be brought to the attention of the drawer by telephone or any fastest means of communication for purposes of confirmation.

and your attention is also invited to keep abreast of previous circulars and memo instructions issued to bookkeepers."

We cannot fault the respondent drawee Bank for not having detected the fraudulent encashment of the checks because the

printing of the petitioner's personalized checks was not done under the supervision and control of the Bank. There is no evidence on record indicating that because of this private printing, the petitioner furnished the respondent Bank with samples of checks, pens, and inks or took other precautionary measures with the PNB to safeguard its interests.

Under the circumstances, therefore, the petitioner was in a better position to detect and prevent the fraudulent encashment of its checks.

WHEREFORE, the petition for review on certiorari is hereby DISMISSED for lack of merit. The decision of the respondent Court of Appeals dated October 29, 1982 is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Feria (Chairman), Fernan, Alampay and Cruz, JJ., concur.

Paras, **J., took no part.

Footnotes

** Justice Paras took no part. Justice Cruz was designated to sit in the Second Division.

FIRST DIVISION

[G.R. No. 74917. January 20, 1988.]

BANCO DE ORO SAVINGS AND MORTGAGE BANK, petitioner, vs. EQUITABLE BANKING CORPORATION, PHILIPPINE CLEARING HOUSE CORPORATION, AND REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH XCII (92) respondents.

SYLLABUS

1. COMMERCIAL LAW; BANKING; PHILIPPINE CLEARING HOUSE CORPORATION (PCHC); AUTHORITY TO CLEAR CHECKS AND/OR CHECKING ITEMS; TRANSACTIONS ON NON-NEGOTIABLE CHECKS WITHIN THE AMBIT OF ITS JURISDICTION. — As provided in the articles of incorporation of PCHC its operation extend to "clearing checks and other clearing items." No doubt transactions on non-

negotiable checks are within the ambit of its jurisdiction. In a previous case, this Court had occasion to rule: "Ubilex non distinguit nec nos distinguere debemos." There should be no distinction in the application of a statute where none is indicated for courts are not authorized to distinguish where the law makes no distinction. They should instead administer the law not as they think it ought to be but as they find it and without regard to consequences. The participation of the two banks, petitioner and private respondent, in the clearing operations of PCHC is a manifestation of their submission to its jurisdiction. Viewing the provisions the conclusion is clear that the PCHC Rules and Regulations should not be interpreted to be applicable only to checks which are negotiable instruments but also to non-negotiable instruments, and that the PCHC has jurisdiction over this case even as the checks subject of this litigation are admittedly non-negotiable.

2. STATUTORY CONSTRUCTION; APPLICATION OF A STATUTE; NO DISTINCTION WHERE NONE IS INDICATED. — The term, check as used in the said Articles of Incorporation of PCHC can only connote checks in general use in commercial and business activities. It cannot be conceived to be limited to negotiable checks only. Checks are used between banks and bankers and their customers, and are designed to facilitate banking operations. It is of the essence to be payable on demand, because the contract between the banker and the customer is that the money is needed on demand.

3. COMMERCIAL LAW; BANKING: STAMPING GUARANTEE OF PRIOR ENDORSEMENT AT THE BACK OF A CHECK EQUIVALENT TO ASSUMPTION OF WARRANTY OF AN ENDORSER. — The petitioner having stamped its guarantee of "all prior endorsements and/or lack of endorsements" (Exh. A-2 to F-2) is now estopped from claiming that the checks under consideration are not negotiable instruments. The checks were accepted for deposit by the petitioner stamping thereon its guarantee, in order that it can clear the said checks with the

respondent bank. By such deliberate and positive attitude of the petitioner it has for all legal intents and purposes treated the said checks as negotiable instruments and accordingly assumed the warranty of the endorser when it stamped its guarantee of prior endorsements at the back of the checks. It led the said respondent to believe that it was acting as endorser of the checks and on the strength of this guarantee said respondent cleared the checks in question and credited the account of the petitioner. Petitioner is now barred from taking an opposite posture by claiming that the disputed checks are not negotiable instrument.

4. ID.; ID.; ID.; BASES OF THE DOCTRINE OF ESTOPPEL. — The Court enunciated in Philippine National Bank vs. Court of Appeals, a point relevant to the issue when it stated — "the doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice and its purpose is to forbid one to speak against his own act, representations or commitments to the injury of one to whom they were directed and who reasonably relied thereon."

5. ID.; ID.; ID.; FORGERY IN ENDORSEMENT; LOSS SUFFERED BY THE COLLECTING BANK OR LAST ENDORSER. — Apropos the matter of forgery in endorsements, this Court has succinctly emphasized that the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements. This is laid down in the case of PNB vs. National City Bank. In another case, this court held that if the drawee-bank discovers that the signature of the payee was forged after it has paid the amount of the check to the holder thereof, it can recover the amount paid from the collecting bank.

6. ID.; ID.; CHECKS: DUTY OF DILIGENCE NOT OWNED BY THE DRAWER TO THE COLLECTING BANK. — It has been enunciated in an American case particularly in American

Exchange National Bank vs. Yorkville Bank that: "the drawer owes no duty of diligence to the collecting bank (one who had accepted an altered check and had paid over the proceeds to the depositor) except of seasonably discovering the alteration by a comparison of its returned checks and check stubs or other equivalent record, and to inform the drawee thereof." Thus We hold that while the drawer generally owes no duty of diligence to the collecting bank, the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it for the purpose of determining their genuineness and regularity. The collecting bank being primarily engaged in banking holds itself out to the public as the expert and the law holds it to a high standard of conduct.

D E C I S I O N

GANCAYCO, J p:

This is a petition for review on certiorari of a decision of the Regional Trial Court of Quezon City promulgated on March 24, 1986 in Civil Case No. Q-46517 entitled Banco de Oro Savings and Mortgage Bank versus Equitable Banking Corporation and the Philippine Clearing House Corporation after a review of the Decision of the Board of Directors of the Philippine Clearing House Corporation (PCHC) in the case of Equitable Banking Corporation (EBC) vs. Banco de Oro Savings and Mortgage (BCO), ARBICOM Case No. 84-033.

The undisputed facts are as follows:

"It appears that sometime in March, April, May and August 1983, plaintiff through its Visa Card Department, drew six crossed Manager's check (Exhibits 'A' to 'F', and herein referred to as Checks) having an aggregate amount of Forty Five Thousand Nine Hundred and Eighty Two & 23/100 (P45,982.23) Pesos and payable to certain member establishments of Visa Card. Subsequently, the Checks were deposited with the defendant to the credit of its depositor, a certain Aida Trencio.

Following normal procedures, and after stamping at the back of the Checks the usual endorsements: 'All prior and/or lack of

endorsement guaranteed' the defendant sent the checks for clearing through the Philippine Clearing House Corporation (PCHC). Accordingly, plaintiff paid the Checks; its clearing account was debited for the value of the Checks and defendant's clearing account was credited for the same amount.

Thereafter, plaintiff discovered that the endorsements appearing at the back of the Checks and purporting to be that of the payees were forged and/or unauthorized or otherwise belong to persons other than the payees.

Pursuant to the PCHC Clearing Rules and Regulations, plaintiff presented the Checks directly to the defendant for the purpose of claiming reimbursement from the latter. However, defendant refused to accept such direct presentation and to reimburse the plaintiff for the value of the Checks; hence, this case.

In its Complaint, plaintiff prays for judgment to require the defendant to pay the plaintiff the sum of P45,982.23 with interest at the rate of 12% per annum from the date of the complaint plus attorney's fees in the amount of P10,000.00 as well as the cost of the suit.

In accordance with Section 38 of the Clearing House Rules and Regulations, the dispute was presented for Arbitration; and Atty. Ceasar Querubin was designated as the Arbitrator.

After an exhaustive investigation and hearing the Arbiter rendered a decision in favor of the plaintiff and against the defendant ordering the PCHC to debit the clearing account of the defendant, and to credit the clearing account of the plaintiff of the amount of P45,982.23 with interest at the rate of 12% per annum from date of the complaint and Attorney's fee in the amount of P5,000.00. No pronouncement as to cost was made." 1

In a motion for reconsideration filed by the petitioner, the Board of Directors of the PCHC affirmed the decision of the said Arbiter in this wise:

"'In view of all the foregoing the decision of the Arbiter is confirmed"; and the Philippine Clearing House Corporation is hereby ordered to debit the clearing account of the defendant and

credit the clearing account of plaintiff the amount of Forthy Five Thousand Nine Hundred Eighty Two & 23/100 (P45,982.23) Pesos with interest at the rate of 12% per annum from date of the complaint, and the Attorney's fee in the amount of Five Thousand (P5,000.00) Pesos.'"

Thus, a petition for review was filed with the Regional Trial Court of Quezon City, Branch XCII, wherein in due course a decision was rendered affirming in toto the decision of the PCHC.

Hence this petition.

The petition is focused on the following issues:

1. Did the PCHC have any jurisdiction to give due course to and adjudicate Arbicom Case No. 84-033?
2. Were the subject checks non-negotiable and if not, does it fall under the ambit of the power of the PCHC?
3. Is the Negotiable Instrument Law, Act No. 2031 applicable in deciding controversies of this nature by the PCHC?
4. What law should govern in resolving controversies of this nature?
5. Was the petitioner bank negligent and thus responsible for any undue payment?

Petitioner maintains that the PCHC is not clothed with jurisdiction because the Clearing House Rules and Regulations of PCHC cover and apply only to checks that are genuinely negotiable. Emphasis is laid on the primary purpose of the PCHC in the Articles of Incorporation, which states:

"To provide, maintain and render an effective, convenient, efficient, economical and relevant exchange and facilitate service limited to check processing and sorting by way of assisting member banks, entities in clearing checks and other clearing items as defined in existing and in future Central Bank of the Philippines circulars, memoranda, circular letters, rules and regulations and policies in pursuance to the provisions of Section 107 of R.A. 265. . ."

and Section 107 of R.A. 265 which provides:

xxx xxx xxx

The deposit reserves maintained by the banks in the Central Bank, in accordance with the provisions of Section 1000 shall serve as a basis for the clearing of checks, and the settlement of interbank balances . . ."

Petitioner argues that by law and common sense, the term check should be interpreted as one that fits the articles of incorporation of the PCHC, the Central Bank and the Clearing House Rules stating that it is a negotiable instrument citing the definition of a "check" as basically a "bill of exchange" under Section 185 of the NIL and that it should be payable to "order" or to "bearer" under Section 126 of same law. Petitioner alleges that with the cancellation of the printed word "or bearer" from the face of the check, it becomes non-negotiable so the PCHC has no jurisdiction over the case.

The Regional Trial Court took exception to this stand and conclusion put forth by the herein petitioner as it held:

"Petitioner's theory cannot be maintained. As will be noted, the PCHC makes no distinction as to the character or nature of the checks subject of its jurisdiction. The pertinent provisions quoted in petitioner's memorandum simply refer to check(s). Where the law does not distinguish, we shall not distinguish.

In the case of Reyes vs. Chuanico (CA-G.R. No. 20813-R, Feb. 5, 1962) the Appellate Court categorically stated that there are four kinds of checks in this jurisdiction; the regular check; the cashier's check; the traveller's check; and the crossed check. The Court, further elucidated, that while the Negotiable Instruments Law does not contain any provision on crossed checks, it is common practice in commercial and banking operations to issue checks of this character, obviously in accordance with Article 541 of the Code of Commerce. Attention is likewise called to Section 185 of the Negotiable Instruments Law:

'Sec. 185. Check defined. — A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.'

and the provisions of Section 61 (supra) that the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder. Consequently, it appears that the use of the term 'check' in the Articles of Incorporation of PCHC is to be perceived as not limited to negotiable checks only, but to checks as is generally known in use in commercial or business transactions.
Anent Petitioner's liability on said instruments, this court is in full accord with the ruling of the PCHC Board of Directors that:
'In presenting the Checks for clearing and for payment, the defendant made an express guarantee on the validity of 'all prior endorsements'. Thus, stamped at the back of the checks are the defendant's clear warranty; ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENTS GUARANTEED. Without such warranty, plaintiff would not have paid on the checks.
No amount of legal jargon can reverse the clear meaning of defendant's warranty. As the warranty has proven to be false and inaccurate, the defendant is liable for any damage arising out of the falsity of its representation.
The principle of estoppel, effectively prevents the defendant from denying liability for any damage sustained by the plaintiff which, relying upon an action or declaration of the defendant, paid on the Checks. The same principle of estoppel effectively prevents the defendant from denying the existence of the Checks.' (Pp. 10-11 Decision; pp. 43-44, Rollo)"
We agree.
As provided in the aforecited articles of incorporation of PCHC its operation extend to "clearing checks and other clearing items." No doubt transactions on non-negotiable checks are within the ambit of its jurisdiction.
In a previous case this Court had occasion to rule: "Ubilex non distinguit nec nos distinguere debemos. 2 It was enunciated in Loc Cham v. Ocampo, 77 Phil. 636 (1946):
"The rule, founded on ,logic is a corollary of the principle that general words and phrases in a statute should ordinarily be

accorded their natural and general significance. In other words, there should be no distinction in the application of a statute where none is indicated."

There should be no distinction in the application of a statute where none is indicated for courts are not authorized to distinguish where the law makes no distinction. They should instead administer the law not as they think it ought to be but us they find it and without regard to consequences. 3

The term, check as used in the said Articles of Incorporation of PCHC can only connote checks in general use in commercial, and business activities. It cannot be conceived to be limited to negotiable checks only. cdreo

Checks are used between banks and bankers and their customers, and are designed to facilitate banking operations. It is of the essence to be payable on demand, because the contract between the banker and the customer is that the money is needed on demand. 4

The participation of the two banks, petitioner and private respondent, in the clearing operations of PCHC is a manifestation of their submission to its jurisdiction. Sec. 3 and 36.6 of the PCHC-CHRR clearing rules and regulations provide:

"SEC. 3. AGREEMENT TO THESE RULES. — It is the general agreement and understanding that any participant in the Philippine Clearing House Corporation, MICR clearing operations by the mere fact of their participation, thereby manifests its agreement to these Rules and Regulations and its subsequent amendments."

Sec. 36.6. (ARBITRATION) — The fact that a bank participates in the clearing operations of the PCHC shall be deemed its written and subscribed consent to the binding effect of this arbitration agreement as if it had done so in accordance with section 4 of (the) Republic Act No. 876, otherwise known as the Arbitration Law."

Further Section 2 of the Arbitration Law mandates:

"Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission and which may be the subject of an action, or the parties of any contract may in such contract agree to

settle by arbitration a controversy thereafter arising between them. Such submission or contract shall be valid and irrevocable, save upon grounds as exist at law for the revocation of any contract.
"Such submission or contract may include question arising out of valuations, appraisals or other controversies which may be collateral, incidental, precedent or subsequent to any issue between the parties . . ."
Sec. 21 of the same rules, says:
"Items which have been the subject of material alteration or items bearing forged endorsement when such endorsement is necessary for negotiation shall be returned by direct presentation or demand to the Presenting Bank and not through the regular clearing house facilities within the period prescribed by law for the filing of a legal action by the returning bank/branch, institution or entity sending the same." (Emphasis supplied)
Viewing these provisions the conclusion is clear that the PCHC Rules and Regulations should not be interpreted to be applicable only to checks which are negotiable instruments but also to non-negotiable instruments, and that the PCHC has jurisdiction over this case even as the checks subject of this litigation are admittedly non-negotiable.
Moreover, petitioner is estopped from raising the defense of non-negotiability of the checks in question. It stamped its guarantee on the back of the checks and subsequently presented these checks for clearing and it was on the basis of these endorsements by the petitioner that the proceeds were credited in its clearing account. The petitioner by its own acts and representation can not now deny liability because it assumed the liabilities of an endorser by stamping its guarantee at the back of the checks.
The petitioner having stamped its guarantee of "all prior endorsements and/or lack of endorsements" (Exh. A-2 to F-2) is now estopped from claiming that the checks under consideration are not negotiable instruments. The checks were accepted for deposit by the petitioner stamping thereon its guarantee, in order that it can clear the said checks with the respondent bank. By such

deliberate and positive attitude of the petitioner it has for all legal intents and purposes treated the said checks as negotiable instruments and accordingly assumed the warranty of the endorser when it stamped its guarantee of prior endorsements at the back of the checks. It led the said respondent to believe that it was acting as endorser of the checks and on the strength of this guarantee said respondent cleared the checks in question and credited the account of the petitioner. Petitioner is now barred from taking an opposite posture by claiming that the disputed checks are not negotiable instrument.

This Court enunciated in Philippine National Bank vs. Court of Appeals, 5 a point relevant to the issue when it stated - "the doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice and its purpose is to forbid one to speak against his own act, representations or commitments to the injury of one to whom they were directed and who reasonably relied thereon."

A commercial bank cannot escape the liability of an endorser of a check and which may turn out to be a forged endorsement. Whenever any bank treats the signature at the back of the checks as endorsements and thus logically guarantees the same as such there can be no doubt said bank has considered the checks as negotiable. cdrep

Apropos the matter of forgery in endorsements, this Court has succinctly emphasized that the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements. This is laid down in the case of PNB vs. National City Bank. 6 In another case, this court held that if the drawee-bank discovers that the signature of the payee was forged after it has paid the amount of the check to the holder thereof, it can recover the amount paid from the collecting bank. 7

A truism stated by this Court is that — "The doctrine of estoppel precludes a party from repudiating an obligation voluntarily assumed after having accepted benefits therefrom. To countenance such repudiation would be contrary to equity and put premium on fraud or misrepresentation." 8

We made clear in Our decision in Philippine National Bank vs. The National City Bank of NY & Motor Service Co. that:

"Where a check is accepted or certified by the bank on which it is drawn, the bank is estopped to deny the genuineness of the drawer's signature and his capacity to issue the instrument.

If a drawee bank pays a forged check which "was previously accepted or certified by the said bank, it can not recover from a holder who did not participate in the forgery and did not have actual notice thereof.

The payment of a check does not include or imply its acceptance in the sense that this word is used in Section 62 of the Negotiable Instruments Act." 9

The point that comes uppermost is whether the drawee bank was negligent in failing to discover the alteration or the forgery.

Very akin to the case at bar is one which involves a suit filed by the drawer of checks against the collecting bank and this came about in Farmers State Bank 10 where it was held:

"A cause of action against the (collecting bank) in favor of the appellee (the drawer) accrued as a result of the bank breaching its implied warranty of the genuineness of the indorsements of the name of the payee by bringing about the presentation of the checks (to the drawee bank) and collecting the amounts thereof, the right to enforce that cause of action was not destroyed by the circumstance that another cause of action for the recovery of the amounts paid on the checks would have accrued in favor of the appellee against another or to others than the bank if when the checks were paid they have been indorsed by the payee." (United States vs. National Exchange Bank, 214 US, 302, 29 S CT-665, 53 L. Ed 1006,16 Am. Cas. 1184; Onondaga County Savings Bank vs. United States (E.C.A.) 64 F 703)".

Section 66 of the Negotiable Instruments ordains that:
"Every indorser who indorses without qualification, warrants to all subsequent holders in due course" (a) that the instrument is genuine and in all respects what it purports to be; (b) that he has good title to it; (c) that all prior parties have capacity to contract; and (d) that the instrument is at the time of his indorsement valid and subsisting. 11
It has been enunciated in an American case particularly in American Exchange National Bank vs. Yorkville Bank 12 that:
"the drawer owes no duty of diligence to the collecting bank (one who had accepted an altered check and had paid over the proceeds to the depositor) except of seasonably discovering the alteration by a comparison of its returned checks and check stubs or other equivalent record, and to inform the drawee thereof."
In this case it was further held that:
"The real and underlying reasons why negligence of the drawer constitutes no defense to the collecting bank are that there is no privity between the drawer and the collecting bank (Corn Exchange Bank vs. Nassau Bank, 204 N.Y.S. 80) and the drawer owes to that bank no duty of vigilance (New York Produce Exchange Bank vs. Twelfth Ward Bank, 204 N.Y.S. 54) and no act of the collecting bank is induced by any act or representation or admission of the drawer (Seaboard National Bank vs. Bank of America (supra) and it follows that negligence on the part of the drawer cannot create any liability from it to the collecting bank, and the drawer thus is neither a necessary nor a proper party to an action by the drawee bank against such bank. It is quite true that depositors in banks are under the obligation of examining their passbooks and returned vouchers as a protection against the payment by the depository bank against forged checks, and negligence in the performance of that obligation may relieve that bank of liability for the repayment of amounts paid out on forged checks, which but for such negligence it would be bound to repay. A leading case on that subject is Morgan vs. United States

Mortgage and Trust Col. 208 N.Y. 218, 101 N.E. 871 Amn. Cas. 1914D, 462, L.R.A. 1915D, 74."

Thus We hold that while the drawer generally owes no duty of diligence to the collecting bank, the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it for the purpose of determining their genuineness and regularity. The collecting bank being primarily engaged in banking holds itself out to the public as the expert and the law holds it to a high standard of conduct. LLpr

And although the subject checks are non-negotiable the responsibility of petitioner as indorser thereof remains.

To countenance a repudiation by the petitioner of its obligation would be contrary to equity and would deal a negative blow to the whole banking system of this country.

The court reproduces with approval the following disquisition of the PCHC in its decision —

"II. Payments To Persons Other
Than The Payees Are Not Valid
And Give Rise To An Obligation
To Return Amounts Received.

Nothing is more clear than that neither the defendant's depositor nor the defendant is entitled to receive payment payable for the Checks. As the checks are not payable to defendant's depositor, payments to persons other than payees named therein, their successor-in-interest or any person authorized to receive payment are not valid. Article 1240, New Civil Code of the Philippines unequivocably provides that:

'Art. 1240. Payment shall be made to the person in whose favor the obligation has been constituted, or his successor-in-interest, or any person authorized to receive it.'

Considering that neither the defendant's depositor nor the defendant is entitled to receive payments for the Checks, payments to any of them give rise to an obligation to return the amounts received. Section 2154 of the New Civil Code mandates that: —

'Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

It is contended that plaintiff should be held responsible for issuing the Checks notwithstanding that the underlying transactions were fictitious. This contention has no basis in our jurisprudence.

The nullity of the underlying transactions does not diminish, but in fact strengthens, plaintiff's right to recover from the defendant. Such nullity clearly emphasizes the obligation of the payees to return the proceeds of the Checks. If a failure of consideration is sufficient to warrant a finding that a payee is not entitled to payment or must return payment already made, with more reason the defendant, who is neither the payee nor the person authorized by the payee, should be compelled to surrender the proceeds of the Checks received by it. Defendant does not have any title to the Checks; neither can it claim any derivative title to them.

"III. Having Violated Its Warranty
On Validity Of All Endorsements,
Collecting Bank Cannot Deny
Liability To Those Who Relied
On Its Warranty.

In presenting the Checks for clearing and for payment, the defendant made an express guarantee on the validity of 'all prior endorsements'. Thus, stamped at the bank of the checks are the defendant's clear warranty: ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENTS GUARANTEED. Without such warranty, plaintiff would not have paid on the checks.

No amount of legal jargon can reverse the clear meaning of defendant's warranty. As the warranty has proven to be false and inaccurate, the defendant is liable for any damage arising out of the falsity of its representation.

The principle of estoppel effectively prevents the defendant from denying liability for any damages sustained by the plaintiff which, relying upon an action or declaration of the defendant, paid on the

Checks. The same principle of estoppel effectively prevents the defendant from denying the existence of the Checks.
Whether the Checks have been issued for valuable considerations or not is of no serious moment to this case. These Checks have been made the subject of contracts of endorsement wherein the defendant made expressed warranties to induce payment by the drawer of the Checks; and the defendant cannot now refuse liability for breach of warranty as a consequence of such forged endorsements. The defendant has falsely warranted in favor of plaintiff the validity of all endorsements and the genuineness of the checks in all respects what they purport to be. llcd
The damage that will result if judgment is not rendered for the plaintiff is irreparable. The collecting bank has privity with the depositor who is the principal culprit in this case. The defendant knows the depositor; her address and her history, Depositor is defendant's client. It has taken a risk on its depositor when it allowed her to collect on the crossed-checks.
Having accepted the crossed checks from persons other than the payees, the defendant is guilty of negligence; the risk of wrongful payment has to be assumed by the defendant.
On the matter of the award of the interest and attorney's fees, the Board of Directors finds no reason to reverse the decision of the Arbiter. The defendant's failure to reimburse the plaintiff has constrained the plaintiff to hire the services of counsel in order to protect its interest notwithstanding that plaintiff's claim is plainly valid, just and demandable. In addition, defendant's clear obligation is to reimburse plaintiff upon direct presentation of the checks; and it is undenied that up to this time the defendant has failed to make such reimbursement."
WHEREFORE, the petition is DISMISSED for lack of merit without pronouncement as to costs. The decision of the respondent court of 24 March 1986 and its order of 3 June 1986 are hereby declared to be immediately executory.
SO ORDERED.
Teehankee, C.J., Narvasa, Cruz and Paras, JJ., concur.

Footnotes

1. Decision, pp. 2-3, pp. 35-36, Rollo. These are the findings of facts in the said decision of the Philippine Clearing House Corporation (PCHC), board of directors in Arbitration Case No. 84-033, which are final and conclusive upon all parties in said arbitration dispute appealable only on question of law. (Section 13 PCHC-ARR, rules of procedure).
2. Phil. Veiriah Assurance Co. Inc. vs. The Honorable Intermediate Appellate Court, Sycwin Coating and Wires Inc. and Aminador Cacpal, Chief Deputy Sheriff of Manila D.R. 72005.
3. Loc Cham vs. Ocampo, supra.
4. Harker v. Anderson, 21 Wend. (N.Y.), 2 Sto. 502, Fed. Case No. 1,985; Merchants National Bank v. Bank, 10 Wall (U.S.) 647,19 L. Ed. 1008; Wood River Bank v. Bank, 36 Neb. 744 N.W. 239.
5. 94 SCRA 357.
6. 63 Phil. 711.
7. Republic Bank vs. Ebrada, 65 SCRA 680.
8. 10 Saura Import & Export Co., 24 SCRA 974.
9. Supra.
10. Markel vs. United States, 62 F ed. 178.
11. Ang Tiong vs. Ting, L-16767, Feb. 28, 1968, 22 SCRA 713.
12. 204 N.Y.S. 621 101 N.E. 871 Amn. Cas. 1914D, 462, L.R.A. 191D, 74.

SECOND DIVISION

[G.R. No. 92244. February 9, 1993.]

NATIVIDAD GEMPESAW, petitioner, vs. THE HONORABLE COURT OF APPEALS and PHILIPPINE BANK OF COMMUNICATIONS, respondents.

L.B. Camins for petitioner.

Angara, Abello, Concepcion, Regala & Cruz for private respondent.

SYLLABUS

1. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; CHECKS; DRAWER DUTY BOUND TO SET UP AN ACCOUNTING SYSTEM AND TO REPORT FORGED INDORSEMENT TO DRAWEE. — While there is no duty resting on the depositor to look for forged indorsements on his cancelled checks in contrast to a duty imposed upon him to look for forgeries of his own name, a depositor is under a duty to set up an accounting system and a business procedure as are reasonably calculated to prevent or render difficult the forgery of indorsements, particularly by the depositor's own employees. And if the drawer (depositor) learns that a check drawn by him has been paid under a forged indorsement, the drawer in under duty promptly to report such fact to the drawee bank. (Britton, Bills and Notes, Sec. 143, pp. 663-664)

2. ID.; ID.; ID.; ID.; DRAWER LOSES RIGHT AGAINST DRAWEE FOR FAILURE TO DISCOVER FORGERY OR REPORT PROMPTLY SAID FORGERY. — For his negligence or failure either to discover or to report promptly the fact of such forgery to the drawee, the drawer loses his right against the drawee who has debited his account under the forged indorsement. (City of New York vs. Bronx County Trust Co., 261 N.Y. 64, 184 N.E. 495 (1933); Detroit Piston Ring Co. vs. Wayne County & Home Savings Bank, 252 Mich. 163, 233 N.W. 185 [1930]; C.E. Erickson Co. vs. Iowa Nat. Bank, 211 Iowa 495, 230 N.W. 342 [1930] In other words, he is precluded from using forgery as a basis for his claim for recrediting of his account.

3. ID.; ID.; ISSUANCE OF INSTRUMENT, CONSTRUED. — Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument to the payee for the purpose of giving effect thereto. (NIL, Sec. 16) The first delivery of the instrument, complete in form, to the payee who takes it as a holder, is called issuance of the instrument. Without the initial delivery of the instrument from the drawer of the check to the payee, there can be no valid and binding contract and no liability on the instrument.

4. ID.; ID.; CHECKS; DRAWEE BANK WHO PAID A CHECK ON A FORGED INDORSEMENT GENERALLY CANNOT CHARGE THE DRAWER'S ACCOUNT; EXCEPTION. — As a rule, a drawee bank who has paid a check on which an indorsement has been forged cannot charge the drawer's account for the amount of said check. An exception to this rule is where the drawer is guilty of such negligence which causes the bank to honor such a check or checks.

5. ID.; ID.; ID.; FORGED INDORSEMENT; DRAWER CAN NOT DEMAND FROM DRAWEE BANK TO RECREDIT HER ACCOUNT WHERE HER NEGLIGENCE WAS THE PROXIMATE CAUSE OF HER LOSS; CASE AT BAR. — The petitioner failed to examine her records with reasonable diligence whether before she signed the checks or after receiving her bank statements. Had the petitioner examined her records more carefully, particularly the invoice receipts, cancelled checks, check book stubs, and had she compared the sums written as amounts payable in the eighty-two (82) checks with the pertinent sales invoices, she would have easily discovered that in some checks, the amounts did not tally with those appearing in the sales invoices. Had she noticed these discrepancies, she should not have signed those checks, and should have conducted an inquiry as to the reason for the irregular entries. Likewise, had petitioner been more vigilant in going over her current account by taking careful note of the daily reports made by respondent drawee Bank on her issued checks, or at least made random scrutiny of her cancelled checks returned by respondent drawee Bank at the close of each month, she could have easily discovered the fraud being perpetrated by Alicia Galang, and could have reported the matter to the respondent drawee Bank. The respondent drawee Bank then could have taken immediate steps to prevent further commission of such fraud. Thus, petitioner's negligence was the proximate cause of her loss. And since it was her negligence which caused the respondent drawee Bank to honor the forged checks or prevented it from recovering the amount it had already paid on the checks,

petitioner cannot now complain should the bank refuse to recredit her account with the amount of such checks. Under Section 23 of the NIL, she is now precluded from using the forgery to prevent the bank's debiting of her account.

6. ID.; ID.; ID.; RESTRICTIVE INDORSEMENT; PROHIBITION TO TRANSFER OR NEGOTIATE MUST BE WRITTEN IN EXPRESS WORDS. — Under the NIL, the only kind of indorsement which stops the further negotiation of an instrument is a restrictive indorsement which prohibits the further negotiation thereof. In this kind of restrictive indorsement, the prohibition to transfer or negotiate must be written in express words at the back of the instrument, so that any subsequent party may be forewarned that it ceases to be negotiable. However, the restrictive indorsee acquires the right to receive payment and bring any action thereon as any indorser, but he can no longer transfer his rights as such indorsee where the form of the indorsement does not authorize him to do so.

7. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DRAWEE BANK WHICH CONTRIBUTED TO THE LOSS INCURRED BY THE DRAWER BY ITS OWN VIOLATION OF INTERNAL RULES ADJUDGED LIABLE TO SHARE THE LOSS; CASE AT BAR. — There is no question that there is a contractual relation between petitioner as depositor (obligee) and the respondent drawee bank as the obligor. In the performance of its obligation, the drawee bank is bound by its internal banking rules and regulations which form part of any contract it enters into with any of its depositors. When it violated its internal rules that second endorsements are not to be accepted without the approval of its branch managers and it did accept the same upon the mere approval of Boon, a chief accountant, it contravened the tenor of its obligation at the very least, if it were not actually guilty of fraud or negligence. Furthermore, the fact that the respondent drawee Bank did not discover the irregularity with respect to the acceptance of checks with second indorsement for deposit even without the approval of the branch manager despite periodic

inspection conducted by a team of auditors from the main office constitutes negligence on the part of the bank in carrying out its obligations to its depositors. We hold that banking business is so impressed with public interests where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be a high degree of diligence, if not the utmost diligence. Surely, respondent drawee Bank cannot claim it exercised such a degree of diligence that is required of it. There is no way We can allow it now to escape liability for such negligence. Its liability as obligor is not merely vicarious but primary wherein the defense of exercise of due diligence in the selection and supervision of its employees is of no moment. Premises considered, respondent drawee Bank is adjudged liable to share the loss with the petitioner on a fifty-fifty ratio in accordance with Article 1172.

D E C I S I O N

CAMPOS, JR., J p:

From the adverse decision * of the Court of Appeals (CA-G.R. CV No. 16447), petitioner, Natividad Gempesaw, appealed to this Court in a Petition for Review, on the issue of the right of the drawer to recover from the drawee bank who pays a check with a forged indorsement of the payee, debiting the same against the drawer's account.

The records show that on January 23, 1985, petitioner filed a Complaint against the private respondent Philippine Bank of Communications (respondent drawee Bank) for recovery of the money value of eighty-two (82) checks charged against the petitioner's account with respondent drawee Bank on the ground that the payees' indorsements were forgeries. The Regional Trial Court, Branch CXXVIII of Caloocan City, which tried the case, rendered a decision on November 17, 1987 dismissing the complaint as well as the respondent drawee Bank's counterclaim. On appeal, the Court of Appeals in a decision rendered on February 22, 1990, affirmed the decision of the RTC on two grounds, namely (1) that the plaintiff's (petitioner herein) gross

negligence in issuing the checks was the proximate cause of the loss and (2) assuming that the bank was also negligent, the loss must nevertheless be borne by the party whose negligence was the proximate cause of the loss. On March 5, 1990, the petitioner filed this petition under Rule 45 of the Rules of Court setting forth the following as the alleged errors of the respondent Court. 1 :

"I

THE RESPONDENT COURT OF APPEALS ERRED IN RULING THAT THE NEGLIGENCE OF THE DRAWER IS THE PROXIMATE CAUSE OF THE RESULTING INJURY TO THE DRAWEE BANK, AND THE DRAWER IS PRECLUDED FROM SETTING UP THE FORGERY OR WANT OF AUTHORITY. Cdpr

II

THE RESPONDENT COURT OF APPEALS ALSO ERRED IN NOT FINDING AND RULING THAT IT IS THE GROSS AND INEXCUSABLE NEGLIGENCE AND FRAUDULENT ACTS OF THE OFFICIALS AND EMPLOYEES OF THE RESPONDENT BANK IN FORGING THE SIGNATURE OF THE PAYEES AND THE WRONG AND/OR ILLEGAL PAYMENTS MADE TO PERSONS, OTHER THAN TO THE INTENDED PAYEES SPECIFIED IN THE CHECKS, IS THE DIRECT AND PROXIMATE CAUSE OF THE DAMAGE TO PETITIONER WHOSE SAVING (SIC) ACCOUNT WAS DEBITED.

III

THE RESPONDENT COURT OF APPEALS ALSO ERRED IN NOT ORDERING THE RESPONDENT BANK TO RESTORE OR RE-CREDIT THE CHECKING ACCOUNT OF PETITIONER IN THE CALOOCAN CITY BRANCH BY THE VALUE OF THE EIGHTY TWO (82) CHECKS WHICH IS IN THE AMOUNT OF P1,208,606.89 WITH LEGAL INTEREST."

From the records, the relevant facts are as follows:

Petitioner Natividad O. Gempesaw (petitioner) owns and operates four grocery stores located at Rizal Avenue Extension and at

Second Avenue, both in Caloocan City. Among these groceries are D.G. Shopper's Mart and D.G. Whole Sale Mart. Petitioner maintains a checking account numbered 13-00038-1 with the Caloocan City Branch of the respondent drawee Bank. To facilitate payment of debts to her suppliers, petitioner draws checks against her checking account with the respondent bank as drawee. Her customary practice of issuing checks in payment of her suppliers was as follows: The checks were prepared and filled up as to all material particulars by her trusted bookkeeper, Alicia Galang, an employee for more than eight (8) years. After the bookkeeper prepared the checks, the completed checks were submitted to the petitioner for her signature, together with the corresponding invoice receipts which indicate the correct obligations due and payable to her suppliers. Petitioner signed each and every check without bothering to verify the accuracy of the checks against the corresponding invoices because she reposed full and implicit trust and confidence on her bookkeeper. The issuance and delivery of the checks to the payees named therein were left to the bookkeeper. Petitioner admitted that she did not make any verification as to whether or not the checks were actually delivered to their respective payees. Although the respondent drawee Bank notified her of all checks presented to and paid by the bank, petitioner did not verify the correctness of the returned checks, much less check if the payees actually received the checks in payment for the supplies she received. In the course of her business operations covering a period of two years, petitioner issued, following her usual practice stated above, a total of eighty-two (82) checks in favor of several suppliers. These checks were all presented by the indorsees as holders thereof to, and honored by, the respondent drawee Bank. Respondent drawee Bank correspondingly debited the amounts thereof against petitioner's checking account numbered 30-00038-1. Most of the aforementioned checks were for amounts in excess of her actual obligations to the various payees as shown in their corresponding invoices. To mention a few:

". . . 1) in Check No. 621127, dated June 27, 1984 in the amount of P11,895.23 in favor of Kawsek Inc. (Exh. A-60), appellant's actual obligation to said payee was only P895.33 (Exh. A-83); (2) in Check No. 652282 issued on September 18, 1984 in favor of Senson Enterprises in the amount of P11,041.20 (Exh. A-67) appellant's actual obligation to said payee was only P1,041.20 (Exh. 7); (3) in Check No. 589092 dated April 7, 1984 for the amount of P11,672.47 in favor of Marchem (Exh. A-61) appellant's obligation was only P1,672.47 (Exh. B); (4) in Check No. 620450 dated May 10, 1984 in favor of Knotberry for P11,677.10 (Exh. A-31) her actual obligation was only P677.10 (Exhs. C and C-1); (5) in Check No. 651862 dated August 9, 1984 in favor of Malinta Exchange Mart for P11,107.16 (Exh. A-62), her obligation was only P1,107.16 (Exh. D-2); (6) in Check No. 651863 dated August 11, 1984 in favor of Grocer's International Food Corp. in the amount of P11,335.60 (Exh. A-66), her obligation was only P1,335.60 (Exh. E and E-1); (7) in Check No. 589019 dated March 17, 1984 in favor of Sophy Products in the amount of P11,648.00 (Exh. A-78), her obligation was only P648.00 (Exh. G); (8) in Check No. 589028 dated March 10, 1984 for the amount of P11,520.00 in favor of the Yakult Philippines (Exh. A-73), the latter's invoice was only P520.00 (Exh. H-2); (9) in Check No. 62033 dated May 24, 1984 in the amount of P11,504.00 in favor of Monde Denmark Biscuit (Exh. A-34), her obligation was only P504.00 (Exhs. I-1 and I-2)." 2 Practically, all the checks issued and honored by the respondent drawee Bank were crossed checks. 3 Aside from the daily notice given to the petitioner by the respondent drawee Bank, the latter also furnished her with a monthly statement of her bank transactions, attaching thereto all the cancelled checks she had issued and which were debited against her current account. It was only after the lapse of more than two (2) years that petitioner found out about the fraudulent manipulations of her bookkeeper. cdphil All the eighty-two (82) checks with forged signatures of the payees were brought to Ernest L. Boon, Chief Accountant of respondent

drawee Bank at the Buendia branch, who, without authority therefor, accepted them all for deposit at the Buendia branch to the credit and/or in the accounts of Alfredo Y. Romero and Benito Lam. Ernest L. Boon was a very close friend of Alfredo Y. Romero. Sixty-three (63) out of the eighty-two (82) checks were deposited in Savings Account No. 00844-5 of Alfredo Y. Romero at the respondent drawee Bank's Buendia branch, and four (4) checks in his Savings Account No. 32-81-9 at its Ongpin branch. The rest of the checks were deposited in Account No. 0443-4, under the name of Benito Lam at the Elcano branch of the respondent drawee Bank.

About thirty (30) of the payees whose names were specifically written on the checks testified that they did not receive nor even see the subject checks and that the indorsements appearing at the back of the checks were not theirs.

The team of auditors from the main office of the respondent drawee Bank which conducted periodical inspection of the branches' operations failed to discover, check or stop the unauthorized acts of Ernest L. Boon. Under the rules of the respondent drawee Bank, only a Branch Manager, and no other official of the respondent drawee Bank, may accept a second indorsement on a check for deposit. In the case at bar, all the deposit slips of the eighty-two (82) checks in question were initialed and/or approved for deposit by Ernest L. Boon. The Branch Managers of the Ongpin and Elcano branches accepted the deposits made in the Buendia branch and credited the accounts of Alfredo Y. Romero and Benito Lam in their respective branches.

On November 7, 1984, petitioner made a written demand on respondent drawee Bank to credit her account with the money value of the eighty-two (82) checks totalling P1,208,606.89 for having been wrongfully charged against her account. Respondent drawee Bank refused to grant petitioner's demand. On January 23, 1985, petitioner filed the complaint with the Regional Trial Court.

This is not a suit by the party whose signature was forged on a check drawn against the drawee bank. The payees are not parties to

the case. Rather, it is the drawer, whose signature is genuine, who instituted this action to recover from the drawee bank the money value of eighty-two (82) checks paid out by the drawee bank to holders of those checks where the indorsements of the payees were forged. How and by whom the forgeries were committed are not established on the record, but the respective payees admitted that they did not receive those checks and therefore never indorsed the same. The applicable law is the Negotiable Instruments Law 4 (heretofore referred to as the NIL). Section 23 of the NIL provides: "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." LibLex
Under the aforecited provision, forgery is a real or absolute defense by the party whose signature is forged. A party whose signature to an instrument was forged was never a party and never gave his consent to the contract which gave rise to the instrument. Since his signature does not appear in the instrument, he cannot be held liable thereon by anyone, not even by a holder in due course. Thus, if a person's signature is forged as a maker of a promissory note, he cannot be made to pay because he never made the promise to pay. Or where a person's signature as a drawer of a check is forged, the drawee bank cannot charge the amount thereof against the drawer's account because he never gave the bank the order to pay. And said section does not refer only to the forged signature of the maker of a promissory note and of the drawer of a check. It covers also a forged indorsement, i.e., the forged signature of the payee or indorsee of a note or check. Since under said provision a forged signature is "wholly inoperative", no one can gain title to the instrument through such forged indorsement. Such an indorsement prevents any subsequent party from acquiring any right as against any party whose name appears prior to the forgery.

Although rights may exist between and among parties subsequent to the forged indorsement, not one of them can acquire rights against parties prior to the forgery. Such forged indorsement cuts off the rights of all subsequent parties as against parties prior to the forgery. However, the law makes an exception to these rules where a party is precluded from setting up forgery as a defense.

As a matter of practical significance, problems arising from forged indorsements of checks may generally be broken into two types of cases: (1) where forgery was accomplished by a person not associated with the drawer — for example a mail robbery; and (2) where the indorsement was forged by an agent of the drawer. This difference in situations would determine the effect of the drawer's negligence with respect to forged indorsements. While there is no duty resting on the depositor to look for forged indorsements on his cancelled checks in contrast to a duty imposed upon him to look for forgeries of his own name, a depositor is under a duty to set up an accounting system and a business procedure as are reasonably calculated to prevent or render difficult the forgery of indorsements, particularly by the depositor's own employees. And if the drawer (depositor) learns that a check drawn by him has been paid under a forged indorsement, the drawer is under duty promptly to report such fact to the drawee bank. 5 For his negligence or failure either to discover or to report promptly the fact of such forgery to the drawee, the drawer loses his right against the drawee who has debited his account under the forged indorsement. 6 In other words, he is precluded from using forgery as a basis for his claim for recrediting of his account.

In the case at bar, petitioner admitted that the checks were filled up and completed by her trusted employee, Alicia Galang, and were later given to her for her signature. Her signing the checks made the negotiable instrument complete. Prior to signing the checks, there was no valid contract yet.

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument to the payee for the purpose of giving effect thereto. 7 The first delivery of the

instrument, complete in form, to the payee who takes it as a holder, is called issuance of the instrument. 8 Without the initial delivery of the instrument from the drawer of the check to the payee, there can be no valid and binding contract and no liability on the instrument.

Petitioner completed the checks by signing them as drawer and thereafter authorized her employee Alicia Galang to deliver the eighty-two (82) checks to their respective payees. Instead of issuing the checks to the payees as named in the checks, Alicia Galang delivered them to the Chief Accountant of the Buendia branch of the respondent drawee Bank, a certain Ernest L. Boon. It was established that the signatures of the payees as first indorsers were forged. The record fails to show the identity of the party who made the forged signatures. The checks were then indorsed for the second time with the names of Alfredo Y. Romero and Benito Lam, and were deposited in the latter's accounts as earlier noted. The second indorsements were all genuine signatures of the alleged holders. All the eighty-two (82) checks bearing the forged indorsements of the payees and the genuine second indorsements of Alfredo Y. Romero and Benito Lam were accepted for deposit at the Buendia branch of respondent drawee Bank to the credit of their respective savings accounts in the Buendia, Ongpin and Elcano branches of the same bank. The total amount of P1,208,606.89, represented by eighty-two (82) checks, were credited and paid out by respondent drawee Bank to Alfredo Y. Romero and Benito Lam, and debited against petitioner's checking account No. 13-00038-1, Caloocan branch. LLpr

As a rule, a drawee bank who has paid a check on which an indorsement has been forged cannot charge the drawer's account for the amount of said check. An exception to this rule is where the drawer is guilty of such negligence which causes the bank to honor such a check or checks. If a check is stolen from the payee, it is quite obvious that the drawer cannot possibly discover the forged indorsement by mere examination of his cancelled check. This accounts for the rule that although a depositor owes a duty to his

drawee bank to examine his cancelled checks for forgery of his own signature, he has no similar duty as to forged indorsements. A different situation arises where the indorsement was forged by an employee or agent of the drawer, or done with the active participation of the latter. Most of the cases involving forgery by an agent or employee deal with the payee's indorsement. The drawer and the payee oftentimes have business relations of long standing. The continued occurrence of business transactions of the same nature provides the opportunity for the agent/employee to commit the fraud after having developed familiarity with the signatures of the parties. However, sooner or later, some leak will show on the drawer's books. It will then be just a question of time until the fraud is discovered. This is specially true when the agent perpetrates a series of forgeries as in the case at bar.

The negligence of a depositor which will prevent recovery of an unauthorized payment is based on failure of the depositor to act as a prudent businessman would under the circumstances. In the case at bar, the petitioner relied implicitly upon the honesty and loyalty of her bookkeeper, and did not even verify the accuracy of the amounts of the checks she signed against the invoices attached thereto. Furthermore, although she regularly received her bank statements, she apparently did not carefully examine the same nor the check stubs and the returned checks, and did not compare them with the sales invoices. Otherwise, she could have easily discovered the discrepancies between the checks and the documents serving as bases for the checks. With such discovery, the subsequent forgeries would not have been accomplished. It was not until two years after the bookkeeper commenced her fraudulent scheme that petitioner discovered that eighty-two (82) checks were wrongfully charged to her account, at which time she notified the respondent drawee Bank.

It is highly improbable that in a period of two years, not one of petitioner's suppliers complained of non-payment. Assuming that even one single complaint had been made, petitioner would have been duty-bound, as far as the respondent drawee Bank was

concerned, to make an adequate investigation on the matter. Had this been done, the discrepancies would have been discovered, sooner or later. Petitioner's failure to make such adequate inquiry constituted negligence which resulted in the bank's honoring of the subsequent checks with forged indorsements. On the other hand, since the record mentions nothing about such a complaint, the possibility exists that the checks in question covered inexistent sales. But even in such a case, considering the length of a period of two (2) years, it is hard to believe that petitioner did not know or realize that she was paying much more than she should for the supplies she was actually getting. A depositor may not sit idly by, after knowledge has come to her that her funds seem to be disappearing or that there may be a leak in her business, and refrain from taking the steps that a careful and prudent businessman would take in such circumstances and if taken, would result in stopping the continuance of the fraudulent scheme. If she fails to take such steps, the facts may establish her negligence, and in that event, she would be estopped from recovering from the bank. 9

One thing is clear from the records — that the petitioner failed to examine her records with reasonable diligence whether before she signed the checks or after receiving her bank statements. Had the petitioner examined her records more carefully, particularly the invoice receipts, cancelled checks, check book stubs, and had she compared the sums written as amounts payable in the eighty-two (82) checks with the pertinent sales invoices, she would have easily discovered that in some checks, the amounts did not tally with those appearing in the sales invoices. Had she noticed these discrepancies, she should not have signed those checks, and should have conducted an inquiry as to the reason for the irregular entries. Likewise, had petitioner been more vigilant in going over her current account by taking careful note of the daily reports made by respondent drawee Bank on her issued checks, or at least made random scrutiny of her cancelled checks returned by respondent drawee Bank at the close of each month, she could have easily

discovered the fraud being perpetrated by Alicia Galang, and could have reported the matter to the respondent drawee Bank. The respondent drawee Bank then could have taken immediate steps to prevent further commission of such fraud. Thus, petitioner's negligence was the proximate cause of her loss. And since it was her negligence which caused the respondent drawee Bank to honor the forged checks or prevented it from recovering the amount it had already paid on the checks, petitioner cannot now complain should the bank refuse to recredit her account with the amount of such checks. 10 Under Section 23 of the NIL, she is now precluded from using the forgery to prevent the bank's debiting of her account. cdphil

The doctrine in the case of Great Eastern Life Insurance Co. vs. Hongkong & Shanghai Bank 11 is not applicable to the case at bar because in said case, the check was fraudulently taken and the signature of the payee was forged not by an agent or employee of the drawer. The drawer was not found to be negligent in the handling of its business affairs and the theft of the check by a total stranger was not attributable to negligence of the drawer; neither was the forging of the payee's indorsement due to the drawer's negligence. Since the drawer was not negligent, the drawee was duty-bound to restore to the drawer's account the amount theretofore paid under the check with a forged payee's indorsement because the drawee did not pay as ordered by the drawer.

Petitioner argues that respondent drawee Bank should not have honored the checks because they were crossed checks. Issuing a crossed check imposes no legal obligation on the drawee not to honor such a check. It is more of a warning to the holder that the check cannot be presented to the drawee bank for payment in cash. Instead, the check can only be deposited with the payee's bank which in turn must present it for payment against the drawee bank in the course of normal banking transactions between banks. The crossed check cannot be presented for payment but it can only be deposited and the drawee bank may only pay to another bank in the payee's or indorser's account.

Petitioner likewise contends that banking rules prohibit the drawee bank from having checks with more than one indorsement. The banking rule banning acceptance of checks for deposit or cash payment with more than one indorsement unless cleared by some bank officials does not invalidate the instrument; neither does it invalidate the negotiation or transfer of the said check. In effect, this rule destroys the negotiability of bills/checks by limiting their negotiation by indorsement of only the payee. Under the NIL, the only kind of indorsement which stops the further negotiation of an instrument is a restrictive indorsement which prohibits the further negotiation thereof.

"Sec. 36. When indorsement restrictive. — An indorsement is restrictive which either.

(a) Prohibits further negotiation of the instrument; or.

xxx xxx xxx"

In this kind of restrictive indorsement, the prohibition to transfer or negotiate must be written in express words at the back of the instrument, so that any subsequent party may be forewarned that it ceases to be negotiable. However, the restrictive indorsee acquires the right to receive payment and bring any action thereon as any indorser, but he can no longer transfer his rights as such indorsee where the form of the indorsement does not authorize him to do so. 12

Although the holder of a check cannot compel a drawee bank to honor it because there is no privity between them, as far as the drawer-depositor is concerned, such bank may not legally refuse to honor a negotiable bill of exchange or a check drawn against it with more than one indorsement if there is nothing irregular with the bill or check and the drawer has sufficient funds. The drawee cannot be compelled to accept or pay the check by the drawer or any holder because as a drawee, he incurs no liability on the check unless he accepts it. But the drawee will make itself liable to a suit for damages at the instance of the drawer for wrongful dishonor of the bill or check. LLpr

Thus, it is clear that under the NIL, petitioner is precluded from raising the defense of forgery by reason of her gross negligence. But under Section 196 of the NIL, any case not provided for in the Act shall be governed by the provisions of existing legislation. Under the laws of quasi-delict, she cannot point to the negligence of the respondent drawee Bank in the selection and supervision of its employees as being the cause of the loss because her negligence is the proximate cause thereof and under Article 2179 of the Civil Code, she may not be awarded damages. However, under Article 1170 of the same Code the respondent drawee Bank may be held liable for damages. The article provides —

"Those who in the performance of their obligations are guilty of fraud, negligence or delay, and those who in any manner contravene the tenor thereof, are liable for damages."

There is no question that there is a contractual relation between petitioner as depositor (obligee) and the respondent drawee bank as the obligor. In the performance of its obligation, the drawee bank is bound by its internal banking rules and regulations which form part of any contract it enters into with any of its depositors. When it violated its internal rules that second endorsements are not to be accepted without the approval of its branch managers and it did accept the same upon the mere approval of Boon, a chief accountant, it contravened the tenor of its obligation at the very least, if it were not actually guilty of fraud or negligence. Furthermore, the fact that the respondent drawee Bank did not discover the irregularity with respect to the acceptance of checks with second indorsement for deposit even without the approval of the branch manager despite periodic inspection conducted by a team of auditors from the main office constitutes negligence on the part of the bank in carrying out its obligations to its depositors. Article 1173 provides —

"The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and correspondents with the circumstance of the persons, of the time and of the place. . . ."

We hold that banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be a high degree of diligence, if not the utmost diligence. Surely, respondent drawee Bank cannot claim it exercised such a degree of diligence that is required of it. There is no way We can allow it now to escape liability for such negligence. Its liability as obligor is not merely vicarious but primary wherein the defense of exercise of due diligence in the selection and supervision of its employees is of no moment. Premises considered, respondent drawee Bank is adjudged liable to share the loss with the petitioner on a fifty-fifty ratio in accordance with Article 1172 which provides:

"Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances."

With the foregoing provisions of the Civil Code being relied upon, it is being made clear that the decision to hold the drawee bank liable is based on law and substantial justice and not on mere equity. And although the case was brought before the court not on breach of contractual obligations, the courts are not precluded from applying to the circumstances of the case the laws pertinent thereto. Thus, the fact that petitioner's negligence was found to be the proximate cause of her loss does not preclude her from recovering damages. The reason why the decision dealt on a discussion on proximate cause is due to the error pointed out by petitioner as allegedly committed by the respondent court. And in breaches of contract under Article 1173, due diligence on the part of the defendant is not a defense.

PREMISES CONSIDERED, the case is hereby ordered REMANDED to the trial court for the reception of evidence to determine the exact amount of loss suffered by the petitioner, considering that she partly benefited from the issuance of the questioned checks since the obligation for which she issued them were apparently extinguished, such that only the excess amount

over and above the total of these actual obligations must be considered as loss of which one half must be paid by respondent drawee bank to herein petitioner.

SO ORDERED.

Narvasa, C .J ., Feliciano, Regalado and Nocon, JJ., concur.

Footnotes

* Penned by Associate Celso L. Magsino, Associate Justices Nathanael P. De Pano, Jr. and Cesar D. Francisco, concurring.

1. Rollo, p. 11.
2. Rollo, pp. 20-21; CA Decision, pp. 2-3. See Notes 2-6 thereof.
3. A crossed check is defined as a check crossed with two (2) lines, between which are either the name of a bank or the words "and company," in full or abbreviated. In the former case, the banker on whom it is drawn must not pay the money for the check to any other than the banker named; in the latter case, he must not pay it to any other than a banker. Black's Law Dictionary 301 (4th Ed.), citing 2 Steph. Comm. 118, note C; 7 Exch. 389; [1903] A.C. 240; Farmers' Bank V. Johnson, King & Co., 134 Ga. 486, 68 S.E. 85, 30 L.R.A., N.S. 697.
4. Act No. 2031, enacted on February 3, 1911.
5. Britton, Bills and Notes, Sec. 143, pp. 663-664.
6. City of New York vs. Bronx County Trust Co., 261 N.Y. 64, 184 N.E. 495 (1933); Detroit Piston Ring Co. vs. Wayne County & Home Savings Bank, 252 Mich. 163, 233 N.W. 185 (1930); C.E. Erickson Co. vs. Iowa Nat. Bank, 211 Iowa 495, 230 N.W. 342 (1930).
7. NIL, Sec. 16.
8. Ibid., Sec. 191, par. 10.
9. Detroit Piston Ring Co. vs. Wayne County & Home Savings Bank, supra, note 3.
10. Defiance Lumber Co. vs. Bank of California, N.A., 180 Wash. 533, 41 P. 2d 135 (1935); National Surety Co. vs. President and Directors of Manhattan Co., et al., 252 N.Y. 247, 169 N.E. 372 (1929); Erickson Co. vs. Iowa National Bank, supra, note 3.

11. 43 Phil. 678 (1922).
12. NIL, Sec. 37.

SECOND DIVISION
[G.R. No. 107382. January 31, 1996.]
ASSOCIATED BANK, petitioner, vs. HON. COURT OF APPEALS, PROVINCE OF TARLAC and PHILIPPINE NATIONAL BANK, respondents.
[G.R. No. 107612. January 31, 1996.]
PHILIPPINE NATIONAL BANK, petitioner, vs. HONORABLE COURT OF APPEALS, PROVINCE OF TARLAC, and ASSOCIATED BANK, respondents.
Jose A. Soluta, Jr. and Associates, for Associated Bank.
Santiago, Jr., Vidad, Corpus & Associates, for PNB.
The Solicitor General, for public respondent.
SYLLABUS
1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS; A FORGED SIGNATURE IS WHOLLY INOPERATIVE AND NO ONE CAN GAIN TITLE TO THE INSTRUMENT THROUGH IT. — A forged signature, whether it be that of the drawer or the payee, is wholly inoperative and no one can gain title to the instrument through it. A person whose signature to an instrument was forged was never a party and never consented to the contract which allegedly gave rise to such instrument. Section 23 does not avoid the instrument but only the forged signature. Thus, a forged indorsement does not operate as the payee's indorsement.
2. ID.; ID.; ID.; EXCEPTION. — The exception to the general rule in Section 23 is where "a party against whom it is sought to enforce a right is precluded from setting up the forgery or want of authority." Parties who warrant or admit the genuineness of the signature in question and those who, by their acts, silence or negligence are estopped from setting up the defense of forgery, are precluded from using this defense. Indorsers, persons negotiating

by delivery and acceptors are warrantors of the genuineness of the signatures on the instrument.

3. ID.; ID.; BEARER INSTRUMENT; SIGNATURE OF PAYEE OR HOLDER, NOT NECESSARY TO PASS TITLE TO THE INSTRUMENT. — In bearer instruments, the signature of the payee or holder is unnecessary to pass title to the instrument. Hence, when the indorsement is a forgery, only the person whose signature is forged can raise the defense of forgery against a holder in due course.

4. ID.; ID.; ORDER INSTRUMENT; SIGNATURE OF HOLDER, ESSENTIAL TO TRANSFER TITLE TO THE INSTRUMENT; EFFECT OF FORGED INDORSEMENT OF HOLDER. — Where the instrument is payable to order at the time of the forgery, such as the checks in this case, the signature of its rightful holder (here, the payee hospital) is essential to transfer title to the same instrument. When the holder's indorsement is forged, all parties prior to the forgery may raise the real defense of forgery against all parties subsequent thereto. cdasia

5. ID.; ID.; ID.; LIABILITY OF GENERAL ENDORSER — An indorser of an order instrument warrants "that the instrument is genuine and in all respects what it purports to be; that he has a good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his indorsement valid and subsisting." He cannot interpose the defense that signatures prior to him are forged.

6. ID.; ID.; ID.; ID.; COLLECTING BANK WHERE CHECK IS DEPOSITED AND INDORSES CHECK, AN INDORSER. — A collecting bank where a check is deposited and which indorses the check upon presentment with the drawee bank, is such an indorser. So even if the indorsement on the check deposited by the bank's client is forged, the collecting bank is bound by his warranties as an indorser and cannot set up the defense of forgery as against the drawee bank.

7. ID.; ID.; ID.; PAYMENT UNDER A FORGED INDORSEMENT IS NOT TO THE DRAWERS' ORDER;

REASON. — The bank on which a check is drawn, known as the drawee bank, is under strict liability to pay the check to the order of the payee. The drawer's instructions are reflected on the face and by the terms of the check. Payment under a forged indorsement is not to the drawer's order. When the drawee bank pays a person other than the payee, it does not comply with the terms of the check and violates its duty to charge its customer's (the drawer) account only for properly payable items. Since the drawee bank did not pay a holder or other person entitled to receive payment, it has no right to reimbursement from the drawer. The general rule then is that the drawee bank may not debit the drawer's account and is not entitled to indemnification from the drawer. The risk of loss must perforce fall on the drawee bank.

8. ID.; ID.; ID.; ID.; EXCEPTIONS. — If the drawee bank can prove a failure by the customer/drawer to exercise ordinary care that substantially contributed to the making of the forged signature, the drawer is precluded from asserting the forgery. If at the same time the drawee bank was also negligent to the point of substantially contributing to the loss, then such loss from the forgery can be apportioned between the negligent drawer and the negligent bank.

9. ID.; ID.; ID.; WHERE THE DRAWERS' SIGNATURE IS FORGED, THE DRAWER CAN RECOVER FROM THE DRAWEE BANK. — In cases involving a forged check, where the drawer's signature is forged, the drawer can recover from the drawee bank. No drawee bank has a right to pay a forged check. If it does, it shall have to recredit the amount of the check to the account of the drawer. The liability chain ends with the drawee bank whose responsibility it is to know the drawer's signature since the latter is its customer.

10. ID.; ID.; ID.; IN CASES OF FORGED INDORSEMENTS, THE LOSS FALLS ON THE PARTY WHO TOOK THE CHECK FROM THE FORGER OR THE FORGER HIMSELF. — In cases involving checks with forged indorsements, such as the present petition, the chain of liability does not end with the drawee bank.

The drawee bank may not debit the account of the drawer but may generally pass liability back through the collection chain to the party who took from the forger and, of course, to the forger himself, if available. In other words, the drawee bank can seek reimbursement or a return of the amount it paid from the presentor bank or person. Theoretically, the latter can demand reimbursement from the person who indorsed the check to it and so on. The loss falls on the party who took the check from the forger, or on the forger himself. Since a forged indorsement is inoperative, the collecting bank had no right to be paid by the drawee bank. The former must necessarily return the money paid by the latter because it was paid wrongfully.

11. ID.; ID.; ID.; ID.; CASE AT BAR. — In this case, the checks were indorsed by the collecting bank (Associated Bank) to the drawee bank (PNB). The former will necessarily be liable to the latter for the checks bearing forged indorsements. If the forgery is that of the payee's or holder's indorsement, the collecting bank is held liable, without prejudice to the latter proceeding against the forger.

12. ID.; ID.; ID.; GENERAL INDORSER; COLLECTING BANK OR LAST ENDORSER SUFFERS LOSS ON FORGED INDORSEMENT; REASON. — More importantly, by reason of the statutory warranty of a general indorser in Section 66 of the Negotiable Instruments Law, a collecting bank which indorses a check bearing a forged indorsement and presents it to the drawee bank guarantees all prior indorsements, including the forged indorsement. It warrants that the instrument is genuine, and that it is valid and subsisting at the time of his indorsement. Because the indorsement is a forgery, the collecting bank commits a breach of this warranty and will be accountable to the drawee bank. This liability scheme operates without regard to fault on the part of the collecting/presenting bank. Even if the latter bank was not negligent, it would still be liable to the drawee bank because of its indorsement. The Court has consistently ruled that "the collecting bank or last endorser generally suffers the loss because it has the

duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements." Moreover, the collecting bank is made liable because it is privy to the depositor who negotiated the check. The bank knows him, his address and history because he is a client. It has taken a risk on his deposit. The bank is also in a better position to detect forgery, fraud or irregularity in the indorsement.

13. ID.; ID.; ID.; DRAWEE BANK NOT LIABLE FOR LOSS ON FORGED INDORSEMENT; REASON. — The drawee bank is not similarly situated as the collecting bank because the former makes no warranty as to the genuineness of any indorsement. The drawee bank's duty is but to verify the genuineness of the drawer's signature and not of the indorsement because the drawer is its client.

14. ID.; ID.; ID.; ID.; DUTY OF DRAWEE BANK TO PROMPTLY INFORM PRESENTOR OF THE FORGERY UPON DISCOVERY; EFFECT OF FAILURE TO PROMPTLY INFORM. — The drawee bank can recover the amount paid on the check bearing a forged indorsement from the collecting bank. However, a drawee bank has the duty to promptly inform the presentor of the forgery upon discovery. If the drawee bank delays in informing the presentor of the forgery, thereby depriving said presentor of the right to recover from the forger, the former is deemed negligent and can no longer recover from the presentor.

15. ID.; ID.; ID.; ID.; ID.; ID.; EFFECT OF CONTRIBUTORY NEGLIGENCE IN CASE AT BAR. — Applying these rules to the case at bench, PNB, the drawee bank, cannot debit the current account of the Province of Tarlac because it paid checks which bore forged indorsements. However, if the Province of Tarlac as drawer was negligent to the point of substantially contributing to the loss, then the drawee bank PNB can charge its account. If both drawee bank-PNB and drawer-Province of Tarlac were negligent, the loss should be properly apportioned between them. The loss

incurred by drawee bank-PNB can be passed on to the collecting bank-Associated Bank which presented and indorsed the checks to it. Associated Bank can, in turn, hold the forger, Fausto Pangilinan, liable. If PNB negligently delayed in informing Associated Bank of the forgery, thus depriving the latter of the opportunity to recover from the forger, it forfeits its right to reimbursement and will be made to bear the loss. After careful examination of the records, the Court finds that the Province of Tarlac was equally negligent and should, therefore, share the burden of loss from the checks bearing a forged indorsement. The Province of Tarlac permitted Fausto Pangilinan to collect the checks when the latter, having already retired from government service, was no longer connected with the hospital. With the exception of the first check (dated January 17, 1978), all the checks were issued and released after Pangilinan's retirement on February 28, 1978. After nearly three years, the Treasurer's office was still releasing the checks to the retired cashier. In addition, some of the aid allotment checks were released to Pangilinan and the others to Elizabeth Juco, the new cashier. The fact that there were now two persons collecting the checks for the hospital is an unmistakable sign of an irregularity which should have alerted employees in the Treasurer's office of the fraud being committed. There is also evidence indicating that the provincial employees were aware of Pangilinan's retirement and consequent dissociation from the hospital. The failure of the Province of Tarlac to exercise due care contributed to a significant degree to the loss tantamount to negligence. Hence, the Province of Tarlac should be liable for part of the total amount paid on the questioned checks. The drawee bank PNB also breached its duty to pay only according to the terms of the check. Hence, it cannot escape liability and should also bear part of the loss. The Court finds as reasonable, the proportionate sharing of fifty percent-fifty percent (50%-50%). Due to the negligence of the Province of Tarlac in releasing the checks to an unauthorized person (Fausto Pangilinan), in allowing the retired hospital cashier to receive the checks for the payee hospital for a

period close to three years and in not properly ascertaining why the retired hospital cashier was collecting checks for the payee hospital in addition to the hospital's real cashier, respondent Province contributed to the loss amounting to P203,300.00 and shall be liable to the PNB for fifty (50%) percent thereof. In effect, the Province of Tarlac can only recover fifty percent (50%) of P203,300.00 from PNB. The collecting bank, Associated Bank, shall be liable to PNB for fifty (50%) percent of P203,300.00. It is liable on its warranties as indorser of the checks which were deposited by Fausto Pangilinan, having guaranteed the genuineness of all prior indorsements, including that of the chief of the payee hospital, Dr. Adena Canlas. Associated Bank was also remiss in its duty to ascertain the genuineness of the payee's indorsement.

16. ID.; ID.; ID.; FORGERY; DELAY IN INFORMING COLLECTING BANK OF FORGERY BY THE DRAWEE BANK SIGNIFIES NEGLIGENCE. — A delay in informing the collecting bank (Associated Bank) of the forgery, which deprives it of the opportunity to go after the forger, signifies negligence on the part of the drawee bank (PNB) and will preclude it from claiming reimbursement.

17. ID.; ID.; ID.; RETURN OF FORGED INDORSEMENT; 24-HOUR PERIOD BUT NOT BEYOND PERIOD FOR FILING LEGAL ACTION FOR BANKS OUTSIDE METRO MANILA; CASE AT BAR. — Under Section 4(c) of CB Circular No. 580, items bearing a forged endorsement shall be returned within twenty-four (24) hours after discovery of the forgery but in no event beyond the period fixed or provided by law for filing of a legal action by the returning bank. Section 23 of the PCHC Rules deleted the requirement that items bearing a forged endorsement should be returned within twenty-four hours. Associated Bank now argues that the aforementioned Central Bank Circular is applicable. Since PNB did not return the questioned checks within twenty-four hours, but several days later, Associated Bank alleges that PNB should be considered negligent and not entitled to reimbursement of the amount it paid on the checks. The Central Bank circular was

in force for all banks until June 1980 when the Philippine Clearing House Corporation (PCHC) was set up and commenced operations. Banks in Metro Manila were covered by the PCHC while banks located elsewhere still had to go through Central Bank Clearing. In any event, the twenty-four-hour return rule was adopted by the PCHC until it was changed in 1982. The contending banks herein, which are both branches in Tarlac province, are therefore not covered by PCHC Rules but by CB Circular No. 580. Clearly then, the CB circular was applicable when the forgery of the checks was discovered in 1981.

18. ID.; ID.; ID.; ID.; RATIONALE. — The rule mandates that the checks be returned within twenty-four hours after discovery of the forgery but in no event beyond the period fixed by the law for filing a legal action. The rationale of the rule is to give the collecting bank (which indorsed the check) adequate opportunity to proceed against the forger. If prompt notice is not given, the collecting bank may be prejudiced and lose the opportunity to go after its depositor.

19. ID.; ID.; ID.; ID.; FAILURE TO RETURN FORGED INDORSEMENT WITHIN 24 HOURS FROM DISCOVERY DOES NOT PREJUDICE COLLECTING BANK WHICH PRESENTED FORGER AS ITS REBUTTAL WITNESS. — The Court finds that even if PNB did not return the questioned checks to Associated Bank within twenty-four hours, as mandated by the rule, PNB did not commit negligent delay. Under the circumstances, PNB gave prompt notice to Associated Bank and the latter bank was not prejudiced in going after Fausto Pangilinan. After the Province of Tarlac informed PNB of the forgeries, PNB necessarily had to inspect the checks and conduct its own investigation. Thereafter, it requested the Provincial Treasurer's office on March 31, 1981 to return the checks for verification. The Province of Tarlac returned the checks only on April 22, 1981. Two days later, Associated Bank received the checks from PNB. Associated Bank was also furnished a copy of the Province's letter of demand to PNB dated March 20, 1981, thus giving it notice of

the forgeries. At this time, however, Pangilinan's account with Associated had only P24.63 in it. Had Associated Bank decided to debit Pangilinan's account, it could not have recovered the amounts paid on the questioned checks. In addition, while Associated Bank filed a fourth-party complaint against Fausto Pangilinan, it did not present evidence against Pangilinan and even presented him as its rebuttal witness. Hence, Associated Bank was not prejudiced by PNB's failure to comply with the twenty-four-hour return rule.

20. REMEDIAL LAW; ACTIONS; ESTOPPEL; WILL NOT APPLY TO DRAWEE BANK WHO PAID AND CLEARED CHECKS WITH FORGED INDORSEMENT. — Associated Bank contends that PNB is estopped from requiring reimbursement because the latter paid and cleared the checks. The Court finds this contention unmeritorious. Even if PNB cleared and paid the checks, it can still recover from Associated Bank. This is true even if the payee's Chief Officer who was supposed to have indorsed the checks is also a customer of the drawee bank. PNB's duty was to verify the genuineness of the drawer's signature and not the genuineness of payee's indorsement. Associated Bank, as the collecting bank, is the entity with the duty to verify the genuineness of the payee's indorsement.

21. CIVIL LAW; OBLIGATIONS AND CONTRACTS; THERE IS NO PRIVITY OF CONTRACT BETWEEN THE DRAWER AND COLLECTING BANK; DRAWER CAN RECOVER FROM DRAWEE BANK AND DRAWEE BANK CAN SEEK REIMBURSEMENT FROM COLLECTING BANK. — PNB also avers that respondent court erred in adjudicating circuitous liability by directing PNB to return to the Province of Tarlac the amount of the checks and then directing Associated Bank to reimburse PNB. The Court finds nothing wrong with the mode of the award. The drawer, Province of Tarlac, is a client or customer of the PNB, not of Associated Bank. There is no privity of contract between the drawer and the collecting bank.

22. COMMERCIAL LAW; BANKS; BANK DEPOSITS ARE LOANS; RECOVERY OF AMOUNT DEPOSITED IN

CURRENT ACCOUNT GIVEN 6% INTEREST PER ANNUM. — The trial court made PNB and Associated Bank liable with legal interest from March 20, 1981, the date of extrajudicial demand made by the Province of Tarlac on PNB. The payments to be made in this case stem from the deposits of the Province of Tarlac in its current account with the PNB. Bank deposits are considered under the law as loans. Central Bank Circular No. 416 prescribes a twelve percent (12%) interest per annum for loans, forebearance of money, goods or credits in the absence of express stipulation. Normally, current accounts are likewise interest-bearing, by express contract, thus excluding them from the coverage of CB Circular No 416. In this case, however, the actual interest rate, if any, for the current account opened by the Province of Tarlac with PNB was not given in evidence. Hence, the Court deems it wise to affirm the trial court's use of the legal interest rate, or six percent (6%) per annum. The interest rate shall be computed from the date of default, or the date of judicial or extrajudicial demand. The trial court did not err in granting legal interest from March 20, 1981, the date of extrajudicial demand.

D E C I S I O N

ROMERO, J p:

Where thirty checks bearing forged endorsements are paid, who bears the loss, the drawer, the drawee bank or the collecting bank? This is the main issue in these consolidated petitions for review assailing the decision of the Court of Appeals in "Province of Tarlac v. Philippine National Bank v. Associated Bank v. Fausto Pangilinan, et. al." (CA-G.R. No. CV No. 17962). 1

The facts of the case are as follows: cdasia

The Province of Tarlac maintains a current account with the Philippine National Bank (PNB) Tarlac Branch where the provincial funds are deposited. Checks issued by the Province are signed by the Provincial Treasurer and countersigned by the Provincial Auditor or the Secretary of the Sangguniang Bayan.

A portion of the funds of the province is allocated to the Concepcion Emergency Hospital. 2 The allotment checks for said

government hospital are drawn to the order of "Concepcion Emergency Hospital, Concepcion, Tarlac" or "The Chief, Concepcion Emergency Hospital, Concepcion, Tarlac." The checks are released by the Office of the Provincial Treasurer and received for the hospital by its administrative officer and cashier.
In January 1981, the books of account of the Provincial Treasurer were post-audited by the Provincial Auditor. It was then discovered that the hospital did not receive several allotment checks drawn by the Province. cdasia
On February 19, 1981, the Provincial Treasurer requested the manager of the PNB to return all of its cleared checks which were issued from 1977 to 1980 in order to verify the regularity of their encashment. After the checks were examined, the Provincial Treasurer learned that 30 checks amounting to P203,300.00 were encashed by one Fausto Pangilinan, with the Associated Bank acting as collecting bank.
It turned out that Fausto Pangilinan, who was the administrative officer and cashier of payee hospital until his retirement on February 28, 1978, collected the questioned checks from the office of the Provincial Treasurer. He claimed to be assisting or helping the hospital follow up the release of the checks and had official receipts. 3 Pangilinan sought to encash the first check 4 with Associated Bank. However, the manager of Associated Bank refused and suggested that Pangilinan deposit the check in his personal savings account with the same bank. Pangilinan was able to withdraw the money when the check was cleared and paid by the drawee bank, PNB.
After forging the signature of Dr. Adena Canlas who was chief of the payee hospital, Pangilinan followed the same procedure for the second check, in the amount of P5,000.00 and dated April 20, 1978, 5 as well as for twenty-eight other checks of various amounts and on various dates. The last check negotiated by Pangilinan was for P8,000.00 and dated February 10, 1981. 6 All the checks bore the stamp of Associated Bank which reads "All prior endorsements guaranteed ASSOCIATED BANK." cdasia

Jesus David, the manager of Associated Bank testified that Pangilinan made it appear that the checks were paid to him for certain projects with the hospital. 7 He did not find as irregular the fact that the checks were not payable to Pangilinan but to the Concepcion Emergency Hospital. While he admitted that his wife and Pangilinan's wife are first cousins, the manager denied having given Pangilinan preferential treatment on this account. 8

On February 26, 1981, the Provincial Treasurer wrote the manager of the PNB seeking the restoration of the various amounts debited from the current account of the Province. 9

In turn, the PNB manager demanded reimbursement from the Associated Bank on May 15, 1981. 10 cdasia

As both banks resisted payment, the Province of Tarlac brought suit against PNB which, in turn, impleaded Associated Bank as third-party defendant. The latter then filed a fourth-party complaint against Adena Canlas and Fausto Pangilinan. 11

After trial on the merits, the lower court rendered its decision on March 21, 1988, disposing as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered: cdasia

1. On the basic complaint, in favor of plaintiff Province of Tarlac and against defendant Philippine National Bank (PNB), ordering the latter to pay to the former, the sum of Two Hundred Three Thousand Three Hundred (P203,300.00) Pesos with legal interest thereon from March 20, 1981 until fully paid;

2. On the third-party complaint, in favor of defendant/third-party plaintiff Philippine National Bank (PNB) and against third-party defendant/fourth-party plaintiff Associated Bank ordering the latter to reimburse to the former the amount of Two Hundred Three Thousand Three Hundred (P203,300.00) Pesos with legal interests thereon from March 20, 1981 until fully paid;

3. On the fourth-party complaint, the same is hereby ordered dismissed for lack of cause of action as against fourth-party defendant Adena Canlas and lack of jurisdiction over the person of

fourth-party defendant Fausto Pangilinan as against the latter. cdasia
4. On the counterclaims on the complaint, third-party complaint and fourth-party complaint, the same are hereby ordered dismissed for lack of merit.
SO ORDERED." 12
PNB and Associated Bank appealed to the Court of Appeals. 13 Respondent court affirmed the trial court's decision in toto on September 30, 1992. cdasia
Hence these consolidated petitions which seek a reversal of respondent appellate court's decision.
PNB assigned two errors. First, the bank contends that respondent court erred in exempting the Province of Tarlac from liability when, in fact, the latter was negligent because it delivered and released the questioned checks to Fausto Pangilinan who was then already retired as the hospital's cashier and administrative officer. PNB also maintains its innocence and alleges that as between two innocent persons, the one whose act was the cause of the loss, in this case the Province of Tarlac, bears the loss.
Next, PNB asserts that it was error for the court to order it to pay the province and then seek reimbursement from Associated Bank. According to petitioner bank, respondent appellate Court should have directed Associated Bank to pay the adjudged liability directly to the Province of Tarlac to avoid circuity. 14 cdasia
Associated Bank, on the other hand, argues that the order of liability should be totally reversed, with the drawee bank (PNB) solely and ultimately bearing the loss.
Respondent court allegedly erred in applying Section 23 of the Philippine Clearing House Rules instead of Central Bank Circular No. 580, which, being an administrative regulation issued pursuant to law, has the force and effect of law. 15 The PCHC Rules are merely contractual stipulations among and between member-banks. As such, they cannot prevail over the aforesaid CB Circular. It likewise contends that PNB, the drawee bank, is estopped from asserting the defense of guarantee of prior indorsements against

Associated Bank, the collecting bank. In stamping the guarantee (for all prior indorsements), it merely followed a mandatory requirement for clearing and had no choice but to place the stamp of guarantee; otherwise, there would be no clearing. The bank will be in a "no-win" situation and will always bear the loss as against the drawee bank. 16 cdasia

Associated Bank also claims that since PNB already cleared and paid the value of the forged checks in question, it is now estopped from asserting the defense that Associated Bank guaranteed prior indorsements. The drawee bank allegedly has the primary duty to verify the genuineness of payee's indorsement before paying the check. 17

While both banks are innocent of the forgery, Associated Bank claims that PNB was at fault and should solely bear the loss because it cleared and paid the forged checks.

xxx xxx xxx

The case at bench concerns checks payable to the order of Concepcion Emergency Hospital or its Chief. They were properly issued and bear the genuine signatures of the drawer, the Province of Tarlac. The infirmity in the questioned checks lies in the payee's (Concepcion Emergency Hospital) indorsements which are forgeries. At the time of their indorsement, the checks were order instruments. cdasia

Checks having forged indorsements should be differentiated from forged checks or checks bearing the forged signature of the drawer. Section 23 of the Negotiable Instruments Law (NIL) provides:

Sec. 23. FORGED SIGNATURE, EFFECT OF. — When a signature is forged or made without 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. cdasia

A forged signature, whether it be that of the drawer or the payee, is wholly inoperative and no one can gain title to the instrument through it. A person whose signature to an instrument was forged was never a party and never consented to the contract which allegedly gave rise to such instrument. 18 Section 23 does not avoid the instrument but only the forged signature. 19 Thus, a forged indorsement does not operate as the payee's indorsement.
The exception to the general rule in Section 23 is where "a party against whom it is sought to enforce a right is precluded from setting up the forgery or want of authority." Parties who warrant or admit the genuineness of the signature in question and those who, by their acts, silence or negligence are estopped from setting up the defense of forgery, are precluded from using this defense.
Indorsers, persons negotiating by delivery and acceptors are warrantors of the genuineness of the signatures on the instrument. 20
In bearer instruments, the signature of the payee or holder is unnecessary to pass title to the instrument. Hence, when the indorsement is a forgery, only the person whose signature is forged can raise the defense of forgery against a holder in due course. 21 cdasia
The checks involved in this case are order instruments, hence, the following discussion is made with reference to the effects of a forged indorsement on an instrument payable to order.
Where the instrument is payable to order at the time of the forgery, such as the checks in this case, the signature of its rightful holder (here, the payee hospital) is essential to transfer title to the same instrument. When the holder's indorsement is forged, all parties prior to the forgery may raise the real defense of forgery against all parties subsequent thereto. 22
An indorser of an order instrument warrants "that the instrument is genuine and in all respects what it purports to be; that he has a good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his indorsement valid and

subsisting." 23 He cannot interpose the defense that signatures prior to him are forged. cdasia

A collecting bank where a check is deposited and which indorses the check upon presentment with the drawee bank, is such an indorser. So even if the indorsement on the check deposited by the banks' client is forged, the collecting bank is bound by his warranties as an indorser and cannot set up the defense of forgery as against the drawee bank.

The bank on which a check is drawn, known as the drawee bank, is under strict liability to pay the check to the order of the payee. The drawer's instructions are reflected on the face and by the terms of the check. Payment under a forged indorsement is not to the drawer's order. When the drawee bank pays a person other than the payee, it does not comply with the terms of the check and violates its duty to charge its customer's (the drawer) account only for properly payable items. Since the drawee bank did not pay a holder or other person entitled to receive payment, it has no right to reimbursement from the drawer. 24 The general rule then is that the drawee bank may not debit the drawer's account and is not entitled to indemnification from the drawer. 25 The risk of loss must perforce fall on the drawee bank.

However, if the drawee bank can prove a failure by the customer/drawer to exercise ordinary care that substantially contributed to the making of the forged signature, the drawer is precluded from asserting the forgery. cdasia

If at the same time the drawee bank was also negligent to the point of substantially contributing to the loss, then such loss from the forgery can be apportioned between the negligent drawer and the negligent bank. 26

In cases involving a forged check, where the drawer's signature is forged, the drawer can recover from the drawee bank. No drawee bank has a right to pay a forged check. If it does, it shall have to recredit the amount of the check to the account of the drawer. The liability chain ends with the drawee bank whose responsibility it is to know the drawer's signature since the latter is its customer. 27

In cases involving checks with forged indorsements, such as the present petition, the chain of liability does not end with the drawee bank. The drawee bank may not debit the account of the drawer but may generally pass liability back through the collection chain to the party who took from the forger and, of course, to the forger himself, if available. 28 In other words, the drawee bank can seek reimbursement or a return of the amount it paid from the presentor bank or person. 29 Theoretically, the latter can demand reimbursement from the person who indorsed the check to it and so on. The loss falls on the party who took the check from the forger, or on the forger himself. cdasia

In this case, the checks were indorsed by the collecting bank (Associated Bank) to the drawee bank (PNB). The former will necessarily be liable to the latter for the checks bearing forged indorsements. If the forgery is that of the payee's or holder's indorsement, the collecting bank is held liable, without prejudice to the latter proceeding against the forger.

Since a forged indorsement is inoperative, the collecting bank had no right to be paid by the drawee bank. The former must necessarily return the money paid by the latter because it was paid wrongfully. 30

More importantly, by reason of the statutory warranty of a general indorser in Section 66 of the Negotiable Instruments Law, a collecting bank which indorses a check bearing a forged indorsement and presents it to the drawee bank guarantees all prior indorsements, including the forged indorsement. It warrants that the instrument is genuine, and that it is valid and subsisting at the time of his indorsement. Because the indorsement is a forgery, the collecting bank commits a breach of this warranty and will be accountable to the drawee bank. This liability scheme operates without regard to fault on the part of the collecting/presenting bank. Even if the latter bank was not negligent, it would still be liable to the drawee bank because of its indorsement. cdasia

The Court has consistently ruled that "the collecting bank or last endorser generally suffers the loss because it has the duty to

ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements." 31

The drawee bank is not similarly situated as the collecting bank because the former makes no warranty as to the genuineness of any indorsement. 32 The drawee bank's duty is but to verify the genuineness of the drawer's signature and not of the indorsement because the drawer is its client.

Moreover, the collecting bank is made liable because it is privy to the depositor who negotiated the check. The bank knows him, his address and history because he is a client. It has taken a risk on his deposit. The bank is also in a better position to detect forgery, fraud or irregularity in the indorsement. cdasia

Hence, the drawee bank can recover the amount paid on the check bearing a forged indorsement from the collecting bank. However, a drawee bank has the duty to promptly inform the presentor of the forgery upon discovery. If the drawee bank delays in informing the presentor of the forgery, thereby depriving said presentor of the right to recover from the forger, the former is deemed negligent and can no longer recover from the presentor. 33

Applying these rules to the case at bench, PNB, the drawee bank, cannot debit the current account of the Province of Tarlac because it paid checks which bore forged indorsements. However, if the Province of Tarlac as drawer was negligent to the point of substantially contributing to the loss, then the drawee bank PNB can charge its account. If both drawee bank-PNB and drawer-Province of Tarlac were negligent, the loss should be properly apportioned between them.

The loss incurred by drawee bank-PNB can be passed on to the collecting bank-Associated Bank which presented and indorsed the checks to it. Associated Bank can, in turn, hold the forger, Fausto Pangilinan, liable. cdasia

If PNB negligently delayed in informing Associated Bank of the forgery, thus depriving the latter of the opportunity to recover from

the forger, it forfeits its right to reimbursement and will be made to bear the loss.

After careful examination of the records, the Court finds that the Province of Tarlac was equally negligent and should, therefore, share the burden of loss from the checks bearing a forged indorsement.

The Province of Tarlac permitted Fausto Pangilinan to collect the checks when the latter, having already retired from government service, was no longer connected with the hospital. With the exception of the first check (dated January 17, 1978), all the checks were issued and released after Pangilinan's retirement on February 28, 1978. After nearly three years, the Treasurer's office was still releasing the checks to the retired cashier. In addition, some of the aid allotment checks were released to Pangilinan and the others to Elizabeth Juco, the new cashier. The fact that there were now two persons collecting the checks for the hospital is an unmistakable sign of an irregularity which should have alerted employees in the Treasurer's office of the fraud being committed. There is also evidence indicating that the provincial employees were aware of Pangilinan's retirement and consequent dissociation from the hospital. Jose Meru, the Provincial Treasurer, testified: cdasia

"ATTY. MORGA:

Q Now, is it true that for a given month there were two releases of checks, one went to Mr. Pangilinan and one went to Miss Juco?

JOSE MERU: cdasia

A Yes, sir.

Q Will you please tell us how at the time (sic) when the authorized representative of Concepcion Emergency Hospital is and was supposed to be Miss Juco?

A Well, as far as my investigation show (sic) the assistant cashier told me that Pangilinan represented himself as also authorized to help in the release of these checks and we were apparently misled because they accepted the representation of Pangilinan that he was helping them in the release of the checks

and besides according to them they were, Pangilinan, like the rest, was able to present an official receipt to acknowledge these receipts and according to them since this is a government check and believed that it will eventually go to the hospital following the standard procedure of negotiating government checks, they released the checks to Pangilinan aside from Miss Juco." 34 cdasia
The failure of the Province of Tarlac to exercise due care contributed to a significant degree to the loss tantamount to negligence. Hence, the Province of Tarlac should be liable for part of the total amount paid on the questioned checks.
The drawee bank PNB also breached its duty to pay only according to the terms of the check. Hence, it cannot escape liability and should also bear part of the loss.
As earlier stated, PNB can recover from the collecting bank. cdasia
In the case of Associated Bank v. CA, 35 six crossed checks with forged indorsements were deposited in the forger's account with the collecting bank and were later paid by four different drawee banks. The Court found the collecting bank (Associated) to be negligent and held:
"The Bank should have first verified his right to endorse the crossed checks, of which he was not the payee, and to deposit the proceeds of the checks to his own account. The Bank was by reason of the nature of the checks put upon notice that they were issued for deposit only to the private respondent's account. . . ."
The situation in the case at bench is analogous to the above case, for it was not the payee who deposited the checks with the collecting bank. Here, the checks were all payable to Concepcion Emergency Hospital but it was Fausto Pangilinan who deposited the checks in his personal savings account. cdasia
Although Associated Bank claims that the guarantee stamped on the checks (All prior and/or lack of endorsements guaranteed) is merely a requirement forced upon it by clearing house rules, it cannot but remain liable. The stamp guaranteeing prior indorsements is not an empty rubric which a bank must fulfill for the sake of convenience. A bank is not required to accept all the

checks negotiated to it. It is within the bank's discretion to receive a check for no banking institution would consciously or deliberately accept a check bearing a forged indorsement. When a check is deposited with the collecting bank, it takes a risk on its depositor. It is only logical that this bank be held accountable for checks deposited by its customers.

A delay in informing the collecting bank (Associated Bank) of the forgery, which deprives it of the opportunity to go after the forger, signifies negligence on the part of the drawee bank (PNB) and will preclude it from claiming reimbursement.

It is here that Associated Bank's assignment of error concerning C.B. Circular No. 580 and Section 23 of the Philippine Clearing House Corporation Rules comes to fore. Under Section 4 (c) of CB Circular No. 580, items bearing a forged endorsement shall be returned within twenty-four (24) hours after discovery of the forgery but in no event beyond the period fixed or provided by law for filing of a legal action by the returning bank. Section 23 of the PCHC Rules deleted the requirement that items bearing a forged endorsement should be returned within twenty-four hours. Associated Bank now argues that the aforementioned Central Bank Circular is applicable. Since PNB did not return the questioned checks within twenty-four hours, but several days later, Associated Bank alleges that PNB should be considered negligent and not entitled to reimbursement of the amount it paid on the checks.

cdasia

The Court deems it unnecessary to discuss Associated Bank's assertions that CB Circular No. 580 is an administrative regulation issued pursuant to law and as such, must prevail over the PCHC rule. The Central Bank circular was in force for all banks until June 1980 when the Philippine Clearing House Corporation (PCHC) was set up and commenced operations. Banks in Metro Manila were covered by the PCHC while banks located elsewhere still had to go through Central Bank Clearing. In any event, the twenty-four-hour return rule was adopted by the PCHC until it was changed in 1982. The contending banks herein, which are both

branches in Tarlac province, are therefore not covered by PCHC Rules but by CB Circular No. 580. Clearly then, the CB circular was applicable when the forgery of the checks was discovered in 1981.

The rule mandates that the checks be returned within twenty-four hours after discovery of the forgery but in no event beyond the period fixed by law for filing a legal action. The rationale of the rule is to give the collecting bank (which indorsed the check) adequate opportunity to proceed against the forger. If prompt notice is not given, the collecting bank may be prejudiced and lose the opportunity to go after its depositor.

The Court finds that even if PNB did not return the questioned checks to Associated Bank within twenty-four hours, as mandated by the rule, PNB did not commit negligent delay. Under the circumstances, PNB gave prompt notice to Associated Bank and the latter bank was not prejudiced in going after Fausto Pangilinan. After the Province of Tarlac informed PNB of the forgeries, PNB necessarily had to inspect the checks and conduct its own investigation. Thereafter, it requested the Provincial Treasurer's office on March 31, 1981 to return the checks for verification. The Province of Tarlac returned the checks only on April 22, 1981. Two days later, Associated Bank received the checks from PNB. 36 cdasia

Associated Bank was also furnished a copy of the Province's letter of demand to PNB dated March 20, 1981, thus giving it notice of the forgeries. At this time, however, Pangilinan's account with Associated had only P24.63 in it. 37 Had Associated Bank decided to debit Pangilinan's account, it could not have recovered the amounts paid on the questioned checks. In addition, while Associated Bank filed a fourth-party complaint against Fausto Pangilinan, it did not present evidence against Pangilinan and even presented him as its rebuttal witness. 38 Hence, Associated Bank was not prejudiced by PNB's failure to comply with the twenty-four-hour return rule.

Next, Associated Bank contends that PNB is estopped from requiring reimbursement because the latter paid and cleared the checks. The Court finds this contention unmeritorious. Even if PNB cleared and paid the checks, it can still recover from Associated Bank. This is true even if the payee's Chief Officer who was supposed to have indorsed the checks is also a customer of the drawee bank. 39 PNB's duty was to verify the genuineness of the drawer's signature and not the genuineness of payee's indorsement. Associated Bank, as the collecting bank, is the entity with the duty to verify the genuineness of the payee's indorsement.

PNB also avers that respondent court erred in adjudging circuitous liability by directing PNB to return to the Province of Tarlac the amount of the checks and then directing Associated Bank to reimburse PNB. The Court finds nothing wrong with the mode of the award. The drawer, Province of Tarlac, is a client or customer of the PNB, not of Associated Bank. There is no privity of contract between the drawer and the collecting bank. cdasia

The trial court made PNB and Associated Bank liable with legal interest from March 20, 1981, the date of extrajudicial demand made by the Province of Tarlac on PNB. The payments to be made in this case stem from the deposits of the Province of Tarlac in its current account with the PNB. Bank deposits are considered under the law as loans. 40 Central Bank Circular No. 416 prescribes a twelve percent (12%) interest per annum for loans, forebearance of money, goods or credits in the absence of express stipulation. Normally, current accounts are likewise interest-bearing, by express contract, thus excluding them from the coverage of CB Circular No. 416. In this case, however, the actual interest rate, if any, for the current account opened by the Province of Tarlac with PNB was not given in evidence. Hence, the Court deems it wise to affirm the trial court's use of the legal interest rate, or six percent (6%) per annum. The interest rate shall be computed from the date of default, or the date of judicial or extrajudicial demand. 41 The trial court did not err in granting legal interest from March 20, 1981, the date of extrajudicial demand.

The Court finds as reasonable, the proportionate sharing of fifty percent-fifty percent (50%-50%). Due to the negligence of the Province of Tarlac in releasing the checks to an unauthorized person (Fausto Pangilinan), in allowing the retired hospital cashier to receive the checks for the payee hospital for a period close to three years and in not properly ascertaining why the retired hospital cashier was collecting checks for the payee hospital in addition to the hospital's real cashier, respondent Province contributed to the loss amounting to P203,300.00 and shall be liable to the PNB for fifty (50%) percent thereof. In effect, the Province of Tarlac can only recover fifty percent (50%) of P203,300.00 from PNB.

The collecting bank, Associated Bank, shall be liable to PNB for fifty (50%) percent of P203,300.00. It is liable on its warranties as indorser of the checks which were deposited by Fausto Pangilinan, having guaranteed the genuineness of all prior indorsements, including that of the chief of the payee hospital, Dr. Adena Canlas. Associated Bank was also remiss in its duty to ascertain the genuineness of the payee's indorsement.

IN VIEW OF THE FOREGOING, the petition for review filed by the Philippine National Bank (G.R. No. 107612) is hereby PARTIALLY GRANTED. The petition for review filed by the Associated Bank (G.R. No. 107382) is hereby DENIED. The decision of the trial court is MODIFIED. The Philippine National Bank shall pay fifty percent (50%) of P203,300.00 to the Province of Tarlac, with legal interest from March 20, 1981 until the payment thereof. Associated Bank shall pay fifty percent (50%) of P203,300.00 to the Philippine National Bank, likewise, with legal interest from March 20, 1981 until payment is made. cdasia

SO ORDERED

Regalado, Puno and Mendoza, JJ., concur.

Footnotes

1. Penned by Justice Asaali S. Isnani, with Associate Justices Arturo B. Buena and Ricardo P. Galvez, concurring, dated September 30, 1992, Rollo, p. 22.

2. Provincial aid was given irregularly. Hospital staff would often call the provincial treasurer's office to inquire whether there was an allotment check for the hospital. The hospital's administrative officer and cashier would then go to the provincial treasurer's office to pick up the check.

Checks received by the hospital are deposited in the account of the National Treasury with the PNB. All income of the hospital in excess of the amount which the National Government has directed it to raise, is excess income. The latter is given back to the hospital after a supplemental budget is prepared. When the latter is approved, an advice of allotment is made. Then the hospital requests a cash disbursement ceiling. When approved, this is brought to the Ministry of Health. The regional office of said Ministry then prepares a check for the hospital. The check will be deposited in the hospital's current account at the PNB. (Culled from the testimony of Dr. Adena Canlas, TSN, October 17, 1983, pp. 8-11; December 6, 1983, pp. 43-44). cdasia

3. TSN, March 13, 1984, pp. 51-60.
4. Check No. 530863 K, dated January 17, 1978 for P10,000.00.
5. Check No. 526788 K. cdasia
6. Check No. 391351 L.
7. TSN, July 10, 1985, pp. 14-15.
8. TSN, July 10, 1985, p. 20-21; 34-35; September 24, 1985. cdasia
9. Exhibit FF for Province of Tarlac. On March 20, 1981, the Province of Tarlac reiterated its request in another letter to PNB. Associated Bank was allegedly furnished with a copy of this letter. (Records, pp. 246-247) PNB requested the Province to return the checks in a letter dated March 31, 1981. The checks were returned to PNB on April 22, 1981. (Exhibit GG) On April 24, 1981, PNB gave the checks to Associated Bank. (Exhibit 5) Associated Bank returned the checks to PNB on April 28, 1981, along with a letter stating its refusal to return the money paid by PNB. (Exhibit 6)
10. Exhibit "MM" for Province of Tarlac.

11. Civil Case No. 6227, "Province of Tarlac v. Philippine National Bank; Philippine National Bank v. Associated Bank; Associated Bank v. Fausto Pangilinan and Adena G. Canlas," Regional Trial Court Branch 64, Tarlac, Tarlac. cdasia
12. Penned by Judge Arturo U. Barias, Jr., Rollo, pp. 391-392.
13. CA-G.R. CV No. 17962.
14. Petition, pp. 6-7; Rollo, pp. 13-14, G.R. No. 107612. cdasia
15. Citing Antique Sawmills, Inc. v. Zayco, 17 SCRA 316, et al., Petition, p. 9, Rollo, p. 10.
16. Associated Bank's Petition, p. 13.
17. Id., at 12. cdasia
18. J. CAMPOS & M. LOPEZ-CAMPOS, NEGOTIABLE INSTRUMENTS LAW, 227-230 (4th ed., 1990).
19. I. A. AGBAYANI, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES 198 (1989 ed.).
20. Id., at 199. cdasia
21. J. VITUG, PANDECT OF COMMERCIAL LAW AND JURISPRUDENCE 51-53 (Rev. ed., 1990).
22. Id.
23. Section 66, Negotiable Instruments Law. cdasia
24. S. NICKLES, NEGOTIABLE INSTRUMENTS AND OTHER RELATED COMMERCIAL PAPER 416 (2nd ed., 1993).
25. Great Eastern Life Insurance Co. v. Hongkong and Shanghai Banking Corp., 43 Phil. 678; Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corporation, G.R. No. L-74917, January 20, 1988, 157 SCRA 188; CAMPOS & LOPEZ-CAMPOS, op. cit. note 18 at 283, citing La Fayette v. Merchants Bank, 73 Ark 561; Wills v. Barney, 22 Cal 240; Wellington National Bank v. Robbins, 71 Kan 748.
26. R. JORDAN & W. WARREN, NEGOTIABLE INSTRUMENTS AND LETTERS OF CREDIT 216 (1992). cdasia
27. Id.
28. Id., at 216-235; VITUG, op. cit. note 21 at 53.

29. Banco de Oro v. Equitable Banking Corp., supra; Great Eastern Life Insurance Co. v. HSBC, supra.
30. Article 2154 of the Civil Code provides: "If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises." Banco de Oro v. Equitable Banking Corp., supra. cdasia
31. Bank of the Phil. Islands v. CA, G.R. No. 102383, November 26, 1992, 216 SCRA 51, 63 citing Banco de Oro v. Equitable Banking Corp., supra; Great Eastern Life Insurance Co. v. HSBC, supra.
32. CAMPOS & LOPEZ-CAMPOS, op. cit. note 18 at 283 citing Inter-state Trust Co. v. U.S. National Bank, 185 Pac. 260; Hongkong and Shanghai Banking Corp. v. People's Bank and Trust Co., supra.
33. JORDAN & WARREN, op. cit. note 26 at 217; CAMPOS & LOPEZ-CAMPOS, op. cit. note 18 at 283.
34. TSN, June 19, 1984, pp. 10-11. cdasia
35. G.R. No. 89802, May 7, 1992, 208 SCRA 465.
36. See footnote 9.
37. Exhibit "3-G" for Associated Bank.
38. TSN, January 8, 1987. cdasia
39. San Carlos Milling Co. Ltd. v. BPI, 59 Phil. 59.
40. Article 1980 of the Civil Code reads: Fixed savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan.
41. Eastern Shipping Lines, Inc. v. CA, G.R. No. 97412, July 12, 1994, 234 SCRA 78. cdasia

FIRST DIVISION
[G.R. No. L-55079. November 19, 1982.]
METROPOLITAN BANK and TRUST COMPANY, petitioner, vs. THE FIRST NATIONAL CITY BANK and THE COURT OF APPEALS, respondents.
Rosales, Perez & Associates for petitioner.

Siguion, Reyna, Montecillo and Ongsiako for respondent PNCB.

SYNOPSIS

On August 25, 1964, a check for P50,000.00 payable to CASH drawn by Joaquin Cunanan and Co. on First National City Bank (FNCB) was deposited with the Metropolitan Bank and Trust Co. (Metro Bank) by a certain Salvador Sales. The check was cleared the same day and the amount credited to his deposit with Metro Bank. On separate dates, Sales withdrew P480.00, then P32,100.00 and, finally, on August 31, 1964, the balance of P17,920.00 of his total deposit with Metro Bank. The withdrawal of the balance was allowed only when FNCB, upon verification made by Metro Bank of the regularity and genuineness of the check deposit, assured Metro Bank that the fast movement of the account was "not unusual." On September 3, 1964, FNCB returned the cancelled check to drawer Joaquin Cunanan and Co.. That same day, the company notified FNCB that the check had been altered, the actual amount of P50.00 having been raised to P50,000.00, and the name of the payee, Manila Polo Club, having been superimposed with the word CASH. When Metro Bank refused to reimburse FNCB for the amount of P50,000.00, it filed an action for recovery of the amount with the Court of First Instance of Manila. After trial, the Trial Court rendered judgment ordering Metro Bank to reimburse FNCB the amount of P50,000.00. On appeal, the Court of Appeals affirmed the decision. Hence, the present petition.

The Supreme Court held that petitioner and private respondent are bound by the 24-hour clearing house regulation of the Central Bank which requires the drawee bank receiving the check for clearing from the Central Bank Clearing House to return the check to the collecting bank within the 24-hour period if the check is defective for any reason; and, that consequently, the failure of private respondent to call the attention of petitioner to the alteration of the check until after the lapse of 9 days, negates whatever rights it may have against petitioner.

Assailed decision set aside.

SYLLABUS

1. COMMERCIAL LAW; BANKING LAWS; 24-HOUR CLEARING HOUSE REGULATION; APPLICABILITY TO CASE AT BAR. — The facts of this case fall within the clearing procedures prescribed under Section 4 of Central Bank Circular No. 9 (February 17, 1949) as amended by Circular No. 138 (January 30, 1962), and Circular No. 169 (March 30, 1964). Under the procedure prescribed, the drawee bank receiving the check for clearing from the Central Bank Clearing House must return the check to the collecting bank within the 24-hour period if the check is defective for any reason.

2. ID.; ID.; ID.; CONSTITUTIONALITY THERE OF UPHELD. — The validity of the 24-hour clearing house regulations has been upheld by this Court in Republic vs. Equitable Banking Corporation, 10 SCRA 8 (1964). As held therein, since both parties are part of our banking system, and both are subject to the regulations of the Central Bank, they are bound by the 24-hour clearing house rule of the Central Bank.

3. ID.; ID.; ID,; FAILURE TO COMPLY WITH REQUIREMENT THEREOF NEGATES WHATEVER RIGHT DRAWEE BANK MAY HAVE AGAINST COLLECTING BANK; CASE AT BAR. — In this case, the check was not returned to Metro Bank, the collecting bank, in accordance with the 24-hour clearing house period, but was cleared by FNCB, the drawee bank. Failure of FNCB, therefore, to call the attention of Metro Bank to the alteration of the check in question until after the lapse of nine days, negates whatever right it might have had against Metro Bank in the light of the said Central Bank Circular. Its remedy lies not against Metro Bank, but against the party responsible for changing the name of the payee (Hongkong and Shanghai Banking Corporation vs. People's Bank and Trust Co., 35 SCRA 140 [1970]) and the amount on the face of the check.

4. ID.; ID.; ID.; LIMITS GUARANTEE OF COLLECTING BANK ON ALL PREVIOUS INDORSEMENTS; CASE AT BAR. — FNCB contend that the stamp reading, "Metropolitan Bank and Trust Company Cleared (illegible) office. All prior

indorsements and/or Lack of endorsement Guaranteed" made by Metro Bank, is an unqualified representation that the endorsement on the check was that of the true payee, and that the amount thereon was the correct amount. In that connection, this Court in the Hongkong and Shanghai Bank case (35 SCRA 140 [1970]) ruled; ". . But Plaintiff Bank insists that Defendant Bank is liable on its indorsement during clearing house operations. The indorsement, itself, is very clear when it begins with words 'For clearance, clearing office . . .. In other words, such an indorsement must be read together with the 24-hour regulation on clearing House Operations of the Central Bank. Once that 24-hour period is over, the liability on such an indorsement has ceased. This being so, Plaintiff Bank has not made out a case for relief." The factual milieu of said case is in point with the case at bar and, hence, controlling.

D E C I S I O N

MELENCIO-HERRERA, J p:

This is a Petition for Review on Certiorari of the Decision of the Court of Appeals in CA-G.R. No. 57129-R entitled, First National City Bank vs. Metropolitan Bank and Trust Company, which affirmed in toto the Decision of the Court of First Instance of Manila, Branch VIII, in Civil Case No. 61488, ordering petitioner herein, Metropolitan Bank, to reimburse respondent First National City Bank the amount of P50,000.00, with legal rate of interest from June 25, 1965, and to pay attorney's fees of P5,000.00 and costs. cdtai

The controversy arose from the following facts:

On August 25, 1964, Check No. 7166 dated July 8, 1964 for P50,000.00, payable to CASH, drawn by Joaquin Cunanan & Company on First National City Bank (FNCB for brevity) was deposited with Metropolitan Bank and Trust Company (Metro Bank for short) by a certain Salvador Sales. Earlier that day, Sales had opened a current account with Metro Bank depositing P500.00 in cash. 1 Metro Bank immediately sent the cash check to the

Clearing House of the Central Bank with the following words stamped at the back of the check:
"Metropolitan Bank and Trust Company Cleared (illegible) office All prior endorsements and/or Lack of endorsements Guaranteed." 2
The check was cleared the same day. Private respondent paid petitioner through clearing the amount of P50,000.00, and Sales was credited with the said amount in his deposit with Metro Bank. On August 26, 1964, Sales made his first withdrawal of P480.00 from his current account. On August 28, 1964, he withdrew P32,100.00. Then on August 31, 1964, he withdrew the balance of P17,920.00 and closed his account with Metro Bank.
On September 3, 1964, or nine (9) days later, FNCB returned cancelled Check No. 7166 to drawer Joaquin Cunanan & Company, together with the monthly statement of the company's account with FNCB. That same day, the company notified FNCB that the check had been altered. The actual amount of P50.00 was raised to P50,000.00, and over the name of the payee, Manila Polo Club, was superimposed the word CASH.
FNCB notified Metro Bank of the alteration by telephone, confirming it the same day with a letter, which was received by Metro Bank on the following day, September 4, 1964.
On September 10, 1964, FNCB wrote Metro Bank asking for reimbursement of the amount of P50,000.00. The latter did not oblige, so that FNCB reiterated its request on September 29, 1964. Metro Bank was adamant in its refusal.
On June 29, 1965, FNCB filed in the Court of First Instance of Manila, Branch VIII, Civil Case No. 61488 against Metro Bank for recovery of the amount of P50,000.00.
On January 27, 1975, the Trial Court rendered its Decision ordering Metro Bank to reimburse FNCB the amount of P50,000.00 with legal rate of interest from June 25, 1965 until fully paid, to pay attorney's fees of P5,000.00, and costs.

Petitioner appealed said decision to the Court of Appeals (CA-G.R. No. 57129-R). On August 29, 1980, respondent Appellate Court 3 affirmed in toto the judgment of the Trial Court. LLphil
Petitioner came to this instance on appeal by Certiorari, alleging:
"I
The Respondent Court of Appeals erred in completely ignoring and disregarding the 24-hour clearing house rule provided for under Central Bank Circular No. 9, as amended, although:
1. The 24-hour regulation of the Central Bank in clearing house operations is valid and banks are subject to and are bound by the same; and
2. The 24-hour clearing house rule applies to the present case of the petitioner and the private respondent.
II
The Respondent Court of Appeals erred in relying heavily on its decision in Gallaites, et al. vs. RCA, etc., promulgated on October 23, 1950 for the same is not controlling and is not applicable to the present case.
III
The Respondent Court of Appeals erred in disregarding and in not applying the doctrines in the cases of Republic of the Philippines vs. Equitable Banking Corporation (10 SCRA 8) and Hongkong & Shanghai Banking Corporation vs. People's Bank and Trust Company (35 SCRA 140) for the same are controlling and apply four square to the present case.
IV
The Respondent Court of Appeals erred in not finding the private respondent guilty of operative negligence which is the proximate cause of the loss."
The material facts of the case are not disputed. The issue for resolution is, which bank is liable for the payment of the altered check, the drawee bank (FNCB) or the collecting bank (Metro Bank)?
The transaction occurred during the effectivity of Central Bank Circular No. 9 (February 17, 1949) as amended by Circular No.

138 (January 30, 1962), and Circular No. 169 (March 30, 1964). Section 4 of said Circular, as amended, states:

"Section 4. Clearing Procedures.

(c) Procedures for Returned Items.

Items which should be returned for any reason whatsoever shall be delivered to and received through the clearing Office in the special red envelopes and shall be considered and accounted as debits to the banks to which the items are returned. Nothing in this section shall prevent the returned items from being settled by reimbursement to the bank, institution or entity returning the items. All items cleared on a particular clearing shall be returned not later than 3:30 P.M. on the following business day.

xxx xxx xxx"

The facts of this case fall within said Circular. Under the procedure prescribed, the drawee bank receiving the check for clearing from the Central Bank Clearing House must return the check to the collecting bank within the 24-hour period if the check is defective for any reason.

Metro Bank invokes this 24-hour regulation of the Central Bank as its defense. FNCB on the other hand, relies on the guarantee of all previous indorsements made by Metro Bank which guarantee had allegedly misled FNCB into believing that the check in question was regular and the payee's indorsements genuine; as well as on "the general rule of law founded on equity and justice that a drawee or payor bank which in good faith pays the amount of materially altered check to the holder thereof is entitled to recover its payment from the said holder, even if he be an innocent holder." 4

The validity of the 24-hour clearing house regulation has been upheld by this Court in Republic vs. Equitable Banking Corporation, 10 SCRA 8 (1964). As held therein, since both parties are part of our banking system, and both are subject to the regulations of the Central Bank, they are bound by the 24-hour clearing house rule of the Central Bank.

In this case, the check was not returned to Metro Bank in accordance with the 24-hour clearing house period, but was cleared by FNCB. Failure of FNCB, therefore, to call the attention of Metro Bank to the alteration of the check in question until after the lapse of nine days, negates whatever right it might have had against Metro Bank in the light of the said Central Bank Circular. Its remedy lies not against Metro Bank, but against the party responsible for the changing the name of the payee 5 and the amount on the face of the check.

FNCB contends that the stamp reading,

"Metropolitan Bank and Trust Company Cleared (illegible) office All prior endorsements and/or Lack of endorsements Guaranteed." 6

made by Metro Bank is an unqualified representation that the endorsement on the check was that of the true payee, and that the amount thereon was the correct amount. In that connection, this Court in the Hongkong & Shanghai Bank case, supra, ruled: LLpr

" . . . But Plaintiff Bank insists that Defendant Bank is liable on its indorsement during clearing house operations. The indorsement, itself, is very clear when it begins with words 'For clearance, clearing office . . . In other words, such an indorsement must be read together with the 24-hour regulation on clearing House Operations of the Central Bank. Once that 24-hour period is over, the liability on such an indorsement has ceased. This being so, Plaintiff Bank has not made out a case for relief." 7

Consistent with this ruling, Metro Bank can not be held liable for the payment of the altered check.

Moreover, FNCB did not deny the allegation of Metro Bank that before it allowed the withdrawal of the balance of P17,920.00 by Salvador Sales, Metro Bank withheld payment and first verified, through its Assistant Cashier Federico Uy, the regularity and genuineness of the check deposit from Marcelo Mirasol, Department officer of FNCB, because its (Metro Bank) attention was called by the fast movement of the account. Only upon being

assured that the same is 'not unusual' did Metro Bank allow the withdrawal of the balance.

Reliance by respondent Court of Appeals, on its own ruling in Gallaites vs. RCA, CA-G.R. No. 3805, October 23, 1950, by stating:

" . . . The laxity of appellant in its dealing with customers particularly in cases where the identity of the person is new to them (as in the case at bar) and in the obvious carelessness of the appellant in handling checks which can easily be forged or altered boil down to one conclusion-negligence in the first order. This negligence enabled a swindler to succeed in fraudulently encashing the check in question thereby defrauding drawee bank (appellee) in the amount thereof."

is misplaced not only because the factual milieu is not four square with this case but more so because it cannot prevail over the doctrine laid down by this Court in the Hongkong & Shanghai Bank case which is more in point and, hence, controlling: LibLex

WHEREFORE, the challenged Decision of respondent Court of Appeals of August 29, 1980 is hereby set aside, and Civil Case No. 61488 is hereby dismissed.

Costs against private respondent The First National City Bank.

SO ORDERED.

Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Teehankee, J., took no part.

Footnotes

1. p. 58, Record on Appeal.
2. pp. 8, 25 & 60, ibid.
3. Per Villaluz, J., Escolin and Villasor, JJ., concurring.
4. Art. 2154, Civil Code.
5. Hongkong & Shanghai Banking Corporation vs. People's Bank & Trust Co., 35 SCRA 1.40 (1970).
6. pp. 8, 25 & 60, Record on Appeal.
7. p. 34, Petitioner's Brief.

** Mr. Justice Claudio Teehankee took no part, having been counsel for petitioner bank (then defendant) in the Court of First Instance of Manila, Branch VIII.

FIRST DIVISION

[G.R. No. L-42725. April 22, 1991.]

REPUBLIC BANK, petitioner, vs. COURT OF APPEALS and FIRST NATIONAL CITY BANK, respondents.

Lourdes C. Dorado for petitioner.

Siguion Reyna, Montecillo & Ongsiako for private respondent Citibank.

SYLLABUS

1. COMMERCIAL LAW; BANKING LAWS; 24-HOUR CLEARING HOUSE RULE APPLIES TO COMMERCIAL BANKS; FAILURE OF DRAWEE BANK TO COMPLY WITH RULE ABSOLVES COLLECTING BANKS. — The 24-hour clearing house rule is a valid rule applicable to commercial banks (Republic vs. Equitable Banking Corporation, 10 SCRA 8 [1964]; Metropolitan Bank & Trust Co. vs. First National City Bank, 118 SCRA 537). It is true that when an endorsement is forged, the collecting bank or last endorser, as a general rule, bears the loss (Banco de Oro Savings & Mortgage Bank vs. Equitable Banking Corp., 157 SCRA 188). But the unqualified endorsement of the collecting bank on the check should be read together with the 24-hour regulation on clearing house operation (Metropolitan Bank & Trust Co. vs. First National City Bank, supra). Thus, when the drawee bank fails to return a forged or altered check to the collecting bank within the 24-hour clearing period, the collecting bank is absolved from liability.

2. ID.; ID.; ID.; ID.; REMEDY OF DRAWEE BANK IS AGAINST PARTY RESPONSIBLE FOR FORGERY OR ALTERATION. — Every bank that issues checks for the use of its customers should know whether or not the drawer's signature thereon is genuine, whether there are sufficient funds in the

drawer's account to cover checks issued, and it should be able to detect alterations, erasures, superimpositions or intercalations thereon, for these instruments are prepared, printed and issued by itself, it has control of the drawer's account, and it is supposed to be familiar with the drawer's signature. It should possess appropriate detecting devices for uncovering forgeries and/or alterations on these instruments. Unless an alteration is attributable to the fault or negligence of the drawer himself, such as when he leaves spaces on the check which would allow the fraudulent insertion of additional numerals in the amount appearing thereon, the remedy of the drawee bank that negligently clears a forged and/or altered check for payment is against the party responsible for the forgery or alteration (Hongkong & Shanghai Banking Corp. vs. People's Bank & Trust Co., 35 SCRA 140), otherwise, it bears the loss. It may not charge the amount so paid to the account of the drawer, if the latter was free from blame, nor recover it from the collecting bank if the latter made payment after proper clearance from the drawee.

D E C I S I O N

GRIÑO-AQUINO, J p:

On January 25, 1966, San Miguel Corporation (SMC for short), drew a dividend Check No. 108854 for P240, Philippine currency, on its account in the respondent First National City Bank ("FNCB" for brevity) in favor of J. Roberto C. Delgado, a stockholder. After the check had been delivered to Delgado, the amount on its face was fraudulently and without authority of the drawer, SMC, altered by increasing it from P240 to P9,240. The check was indorsed and deposited on March 14, 1966 by Delgado in his account with the petitioner Republic Bank (hereafter "Republic").

Republic accepted the check for deposit without ascertaining its genuineness and regularity. Later, Republic endorsed the check to FNCB by stamping on the back of the check "all prior and/or lack of indorsement guaranteed" and presented it to FNCB for payment through the Central Bank Clearing House. Believing the check was genuine, and relying on the guaranty and endorsement of Republic

appearing on the back of the check, FNCB paid P9,240 to Republic through the Central Bank Clearing House on March 15, 1966.
On April 19, 1966, SMC notified FNCB of the material alteration in the amount of the check in question. FNCB lost no time in recrediting P9,240 to SMC. On May 19, 1966, FNCB informed Republic in writing of the alteration and the forgery of the endorsement of J. Roberto C. Delgado. By then, Delgado had already withdrawn his account from Republic.
On August 15, 1966, FNCB demanded that Republic refund the P9,240 on the basis of the latter's endorsement and guaranty. Republic refused, claiming there was delay in giving it notice of the alteration; that it was not guilty of negligence; that it was the drawer's (SMC's) fault in drawing the check in such a way as to permit the insertion of numerals increasing the amount; that FNCB, as drawee, was absolved of any liability to the drawer (SMC), thus, FNCB had no right of recourse against Republic.
On April 8, 1968, the trial court rendered judgment ordering Republic to pay P9,240 to FNCB with 6% interest per annum from February 27, 1967 until fully paid, plus P2,000 for attorney's fees and costs of the suit. The Court of Appeals affirmed that decision, but modified the award of attorney's fees by reducing it to P1,000 without pronouncement as to costs (CA-G.R. No. 41691-R, December 22, 1975). cdrep
In this petition for review, the lone issue is whether Republic, as the collecting bank, is protected, by the 24-hour clearing house rule, found in CB Circular No. 9, as amended, from liability to refund the amount paid by FNCB, as drawee of the SMC dividend check.
The petition for review is meritorious and must be granted.
The 24-hour clearing house rule embodied in Section 4(c) of Central Bank Circular No. 9, as amended, provides:
"Items which should be returned for any reason whatsoever shall be returned directly to the bank, institution or entity from which the item was received. For this purpose, the Receipt for Returned Checks (Cash Form No. 9) should be used. The original and

duplicate copies of said Receipt shall be given to the Bank, institution or entity which returned the items and the triplicate copy should be retained by the bank, institution or entity whose demand is being returned. At the following clearing, the original of the Receipt for Returned Checks shall be presented through the Clearing Office as a demand against the bank, institution or entity whose item has been returned. Nothing in this section shall prevent the returned items from being settled by direct reimbursement to the bank, institution or entity returning the items. All items cleared at 11:00 o'clock A.M. shall be returned not later than 2:00 o'clock P.M. on the same day and all items cleared at 3:00 o'clock P.M. shall be returned not later than 8:30 A.M. of the following business day except for items cleared on Saturday which may be returned not later than 8:30 A.M. of the following day."

The 24-hour clearing house rule is a valid rule applicable to commercial banks (Republic vs. Equitable Banking Corporation, 10 SCRA 8 [1964]; Metropolitan Bank & Trust Co. vs. First National City Bank, 118 SCRA 537).

It is true that when an endorsement is forged, the collecting bank or last endorser, as a general rule, bears the loss (Banco de Oro Savings & Mortgage Bank vs. Equitable Banking Corp., 167 SCRA 188). But the unqualified endorsement of the collecting bank on the check should be read together with the 24-hour regulation on clearing house operation (Metropolitan Bank & Trust Co. vs. First National City Bank, supra). Thus, when the drawee bank fails to return a forged or altered check to the collecting bank within the 24-hour clearing period, the collecting bank is absolved from liability. The following decisions of this Court are also relevant and persuasive:

In Hongkong & Shanghai Banking Corp. vs. People's Bank & Trust Co. (35 SCRA 140), a check for P14,608.05 was drawn by the Philippine Long Distance Telephone Company on the Hongkong & Shanghai Banking Corporation payable to the same bank. It was mailed to the payee but fell into the hands of a certain Florentino Changco who erased the name of the payee, typed his

own name, and thereafter deposited the altered check in his account in the People's Bank & Trust Co. which presented it to the drawee bank with the following indorsement: LLphil
"For clearance, clearing office. All prior endorsements and or lack of endorsements guaranteed. People's Bank and Trust Company."
The check was cleared by the drawee bank (Hongkong & Shanghai Bank), whereupon the People's Bank credited Changco with the amount of the check. Changco thereafter withdrew the contents of his bank account. A month later, when the check was returned to PLDT, the alteration was discovered. The Hongkong & Shanghai Bank sued to recover from the People's Bank the sum of P14,608.05. The complaint was dismissed. Affirming the decision of the trial court, this Court held:
"The entire case of plaintiff is based on the indorsement that has been heretofore copied — namely, a guarantee of all prior indorsement, made by People's Bank and since such an indorsement carries with it a concomitant guarantee of genuineness, the People's Bank is liable to the Hongkong Shanghai Bank for alteration made in the name of payee. On the other hand, the People's Bank relies on the '24-hour' regulation of the Central Bank that requires after a clearing, that all cleared items must be returned not later than 3:00 P.M. of the following business day. And since the Hongkong Shanghai Bank only advised the People's Bank as to the alteration on April 12, 1965 or 27 days after clearing, the People's Bank claims that it is now too late to do so. This regulation of the Central Bank as to 24 hours is challenged by Plaintiff Bank as being merely part of an ingenious device to facilitate banking transactions. Be that what it may — as both Plaintiff as well as Defendant Banks are part of our banking system and both are subject to regulations of the Central Bank — they are both bound by such regulations. . . . But Plaintiff Bank insists that Defendant Bank is liable on its indorsement during clearing house operations. The indorsement, itself, is very clear when it begins with the words 'For clearance, clearing office . . .' In other words, such an indorsement must be read together with the

24-hour regulation on clearing House Operations of the Central Bank. Once that 24-hour period is over, the liability on such an indorsement has ceased. This being so, Plaintiff Bank has not made out a case for relief."

"xxx xxx xxx

"Moreover, in one of the very cases relied upon by plaintiff, as appellant, mention is made of a principle on which defendant Bank could have acted without incurring the liability now sought to be imposed by plaintiff. Thus: 'It is a settled rule that a person who presents for payment checks such as are here involved guarantees the genuineness of the check, and the drawee bank need concern itself with nothing but the genuineness of the signature, and the state of the account with it of the drawee.' (Interstate Trust Co. vs. United States National Bank, 185 Pac. 260 [1919]). If at all, then, whatever remedy the plaintiff has would lie not against defendant Bank but as against the party responsible for changing the name of the payee. Its failure to call the attention of defendant Bank as to such alteration until after the lapse of 27 days would, in the light of the above Central Bank circular, negate whatever right it might have had against defendant Bank. . . ." (35 SCRA 140, 142-143; 145-146.)

In Metropolitan Bank & Trust Co. vs. First National City Bank, et al. (118 SCRA 537, 542) a check for P50, drawn by Joaquin Cunanan and Company on its account at FNCB and payable to Manila Polo Club, was altered by changing the amount to P50,000 and the payee was changed to "Cash." It was deposited by a certain Salvador Sales in his current account in the Metropolitan Bank which sent it to the clearing house. The check was cleared the same day by FNCB which paid the amount of P50,000 to Metro Bank. Sales immediately withdrew the whole amount and closed his account. Nine (9) days later, the alteration was discovered and FNCB sought to recover from Metro Bank what it had paid. The trial court and the Court of Appeals rendered judgment for FNCB but this Court reversed it. We ruled:

"The validity of the 24-hour clearing house regulation has been upheld by this Court in Republic vs. Equitable Banking Corporation, 10 SCRA 8 (1964). As held therein, since both parties are part of our banking system, and both are subject to the regulations of the Central Bank, they are bound by the 24-hour clearing house rule of the Central Bank. prLL

"In this case, the check was not returned to Metro Bank in accordance with the 24-hour clearing house period, but was cleared by FNCB. Failure of FNCB, therefore, to call the attention of Metro Bank to the alteration of the check in question until after the lapse of nine days, negates whatever right it might have had against Metro Bank in the light of the said Central Bank Circular. Its remedy lies not against Metro Bank, but against the party responsible for changing the name of the payee (Hongkong & Shanghai Banking Corp. vs. People's Bank & Trust Co., 35 SCRA 140) and the amount on the face of the check." (p. 542.)

Every bank that issues checks for the use of its customers should know whether or not the drawer's signature thereon is genuine, whether there are sufficient funds in the drawer's account to cover checks issued, and it should be able to detect alterations, erasures, superimpositions or intercalations thereon, for these instruments are prepared, printed and issued by itself, it has control of the drawer's account, and it is supposed to be familiar with the drawer's signature. It should possess appropriate detecting devices for uncovering forgeries and/or alterations on these instruments. Unless an alteration is attributable to the fault or negligence of the drawer himself, such as when he leaves spaces on the check which would allow the fraudulent insertion of additional numerals in the amount appearing thereon, the remedy of the drawee bank that negligently clears a forged and/or altered check for payment is against the party responsible for the forgery or alteration (Hongkong & Shanghai Banking Corp. vs. People's Bank & Trust Co., 35 SCRA 140), otherwise, it bears the loss. It may not charge the amount so paid to the account of the drawer, if the latter was free from blame, nor recover it from the collecting bank if the

latter made payment after proper clearance from the drawee. As this Court pointed out in Philippine National Bank vs. Quimpo, et al., 158 SCRA 582, 584:

"There is nothing inequitable in such a rule for if in the regular course of business the check comes to the drawee bank which, having the opportunity to ascertain its character, pronounces it to be valid and pays it, it is not only a question of payment under mistake, but payment in neglect of duty which the commercial law places upon it, and the result of its negligence must rest upon it."

The Court of Appeals erred in laying upon Republic, instead of on FNCB the drawee bank, the burden of loss for the payment of the altered SMC check, the fraudulent character of which FNCB failed to detect and warn Republic about, within the 24-hour clearing house rule. The Court of Appeals departed from the ruling of this Court in an earlier PNB case, that:

"Where a loss, which must be borne by one of two parties alike innocent of forgery, can be traced to the neglect or fault of either, it is reasonable that it would be borne by him, even if innocent of any intentional fraud, through whose means it has succeeded. (Phil. National Bank vs. National City Bank of New York, 63 Phil. 711, 733.)"

WHEREFORE, the petition for review is granted. The decision of the Court of Appeals is hereby reversed and set aside, and another is entered absolving the petitioner Republic Bank from liability to refund to the First National City Bank the sum of P9,240, which the latter paid on the check in question. No costs.

SO ORDERED.

Narvasa, Gancayco and Medialdea, JJ., concur.

Cruz, J., took no part.

SECOND DIVISION

[G.R. No. 121413. January 29, 2001.]

PHILIPPINE COMMERCIAL INTERNATIONAL BANK (formerly INSULAR BANK OF ASIA AND AMERICA),

petitioner, vs. COURT OF APPEALS and FORD PHILIPPINES, INC. and CITIBANK, N.A., respondents.
[G.R. No. 121479. January 29, 2001.]
FORD PHILIPPINES, INC., petitioner-plaintiff, vs. COURT OF APPEALS and CITIBANK, N.A. and PHILIPPINE COMMERCIAL INTERNATIONAL BANK, respondents.
[G.R. No. 128604. January 29, 2001.]
FORD PHILIPPINES, INC., petitioner, vs. CITIBANK, N.A., PHILIPPINE COMMERCIAL INTERNATIONAL BANK and THE COURT OF APPEALS, respondents.
Romulo, Mabanta, Buenaventura, Sayoc & Delos Angeles for Ford Philippines, Inc.
Agabin, Verzola, Hermoso, Layaoen & De Castro for private respondent PCIB.
Angara, Abello, Concepcion, Regala & Cruz for respondent Citibank.
SYNOPSIS
Ford Philippines drew and issued Citibank Check. No. SN 04867 on October 19, 1977, Citibank Check No. SN 10597 on July 19, 1978 and Citibank Check No. SN-16508 on April 20, 1979, all in favor of the Commissioner of Internal Revenue (CIR) for payment of its percentage taxes. The checks were crossed and deposited with the IBAA, now PCIB, BIR's authorized collecting bank. The first check was cleared containing an indorsement that "all prior indorsements and/or lack of indorsements guaranteed." The same, however, was replaced with two (2) IBAA's managers' checks based on a call and letter request made by Godofredo Rivera, Ford's General Ledger Accountant, on an alleged error in the computation of the tax due without IBAA verifying the authority of Rivera. These manager's checks were later deposited in another bank and misappropriated by the syndicate. The last two checks were cleared by the Citibank but failed to discover that the clearing stamps do not bear any initials. The proceeds of the checks were also illegally diverted or switched by officers of PCIB — members of the syndicate, who eventually encashed them. Ford, which was

compelled to pay anew the percentage taxes, sued in two actions for collection against the two banks on January 20, 1983, barely six years from the date the first check was returned to the drawer. The direct perpetrators of the crime are now fugitives from justice. In the first case, the trial court held that Citibank and IBAA were jointly and severally liable for the checks, but on review by certiorari, the Court of Appeals held only IBAA (PCIB) solely liable for the amount of the first check. In the second case involving the last two checks, the trial court absolved PCIB from liability and held that only the Citibank is liable for the checks issued by Ford. However, on appeal, the Court of Appeals held both banks liable for negligence in the selection and supervision of their employees resulting in the erroneous encashment of the checks. These two rulings became the subject of the present recourse.

The relationship between a holder of a commercial paper and the bank to which it is sent for collection is that of a principal and an agent and the diversion of the amount of the check is justified only by proof of authority from the drawer; that in crossed checks, the collecting bank is bound to scrutinize the check and know its depositors before clearing indorsement; that as a general rule, banks are liable for wrongful or tortuous acts of its agents within the scope and in the course of their employment; that failure of the drawee bank to seasonably discover irregularity in the checks constitutes negligence and renders the bank liable for loss of proceeds of the checks; that an action upon a check prescribes in ten (10) years; and that the contributory negligence of the drawer shall reduce the damages he may recover against the collecting bank.

SYLLABUS

1. CIVIL LAW; TORTS AND DAMAGES; LIABILITY OF MASTER FOR NEGLIGENCE OF HIS OWN SERVANT OR AGENT. — On this point, jurisprudence regarding the imputed negligence of employer in a master-servant relationship is instructive. Since a master may be held for his servant's wrongful

act, the law imputes to the master the act of the servant, and if that act is negligent or wrongful and proximately results in injury to a third person, the negligence or wrongful conduct is the negligence or wrongful conduct of the master, for which he is liable. The general rule is that if the master is injured by the negligence of a third person and by the concurring contributory negligence of his own servant or agent, the latter's negligence is imputed to his superior and will defeat the superior's action against the third person, assuming, of course that the contributory negligence was the proximate cause of the injury of which complaint is made.

2. ID.; ID.; PROXIMATE CAUSE, DEFINED. — As defined, proximate cause is that which, in the natural and continuous sequence, unbroken by any efficient, intervening cause produces the injury, and without which the result would not have occurred.

3. ID.; ID.; LIABILITY OF MASTER FOR NEGLIGENCE OF HIS OWN SERVANT OR AGENT; ESTOPPEL, REQUIRED. — Given these circumstances, the mere fact that the forgery was committed by a drawer-payor's confidential employee or agent, who by virtue of his position had unusual facilities for perpetrating the fraud and imposing the forged paper upon the bank, does not entitle the bank to shift the loss to the drawer-payor, in the absence of some circumstance raising estoppel against the drawer. This rule likewise applies to the checks fraudulently negotiated or diverted by the confidential employees who hold them in their possession.

4. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS; CHECKS; RELATIONSHIP BETWEEN HOLDER OF COMMERCIAL PAPER AND BANK TO WHICH IT IS SENT FOR COLLECTION IS THAT OF PRINCIPAL AND AGENT; DIVERSION OF AMOUNT OF CHECK, JUSTIFIED ONLY BY PROOF OF AUTHORITY FROM DRAWER. — It is a well-settled rule that the relationship between the payee or holder of commercial paper and the bank to which it is sent for collection is, in the absence of an agreement to the contrary, that of principal and agent. A bank which receives such paper for collection is the agent of the payee or holder. Even considering arguendo, that the

diversion of the amount of a check payable to the collecting bank in behalf of the designated payee may be allowed, still such diversion must be properly authorized by the payor. Otherwise stated, the diversion can be justified only by proof of authority from the drawer, or that the drawer has clothed his agent with apparent authority to receive the proceeds of such check.
5. ID.; ID.; ID.; CROSSED CHECKS; COLLECTING BANK BOUND TO SCRUTINIZE CHECK AND KNOW ITS DEPOSITORS BEFORE CLEARING INDORSEMENT; CASE AT BAR. — Indeed, the crossing of the check with the phrase "Payee's Account Only," is a warning that the check should be deposited only in the account of the CIR. Thus, it is the duty of the collecting bank PCIBank to ascertain that the check be deposited in payee's account only. Therefore, it is the collecting bank (PCIBank) which is bound to scrutinize the check and to know its depositors before it could make the clearing indorsement "all prior indorsements and/or lack of indorsement guaranteed." Lastly, banking business requires that the one who first cashes and negotiates the check must take some precautions to learn whether or not it is genuine. And if the one cashing the check through indifference or other circumstance assists the forger in committing the fraud, he should not be permitted to retain the proceeds of the check from the drawee whose sole fault was that it did not discover the forgery or the defect in the title of the person negotiating the instrument before paying the check. For this reason, a bank which cashes a check drawn upon another bank, without requiring proof as to the identity of persons presenting it, or making inquiries with regard to them, cannot hold the proceeds against the drawee when the proceeds of the checks were afterwards diverted to the hands of a third party. In such cases the drawee bank has a right to believe that the cashing bank (or the collecting bank) had, by the usual proper investigation, satisfied itself of the authenticity of the negotiation of the checks. Thus, one who encashed a check which had been forged or diverted and in turn received payment thereon from the drawee, is guilty of negligence which proximately

contributed to the success of the fraud practiced on the drawee bank. The latter may recover from the holder the money paid on the check. Having established that the collecting bank's negligence is the proximate cause of the loss, we conclude that PCIBank is liable in the amount corresponding to the proceeds of Citibank Check No. SN-04867.

6. CIVIL LAW; TORTS AND DAMAGES; AS A GENERAL RULE, BANKS ARE LIABLE FOR WRONGFUL OR TORTUOUS ACT OF ITS OFFICERS OR AGENTS ACTING WITHIN SCOPE AND COURSE OF EMPLOYMENT. — As a general rule, however, a banking corporation is liable for the wrongful or tortuous acts and declarations of its officers or agents within the course and scope of their employment. A bank will be held liable for the negligence of its officers or agents when acting within the course and scope of their employment. It may be liable for the tortuous acts of its officers even as regards that species of tort of which malice is an essential element. A bank holding out its officers and agents as worthy of confidence will not be permitted to profit by the frauds these officers or agents were enabled to perpetrate in the apparent course of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom. For the general rule is that a bank is liable for the fraudulent acts or representations of an officer or agent acting within the course and apparent scope of his employment or authority. And if an officer or employee of a bank, in his official capacity, receives money to satisfy an evidence of indebtedness lodged with his bank for collection, the bank is liable for his misappropriation of such sum.

7. ID.; ID.; ID.; FAILURE OF DRAWEE BANK TO DISCOVER ABSENCE OF INITIALS ON CLEARING STAMPS CONSTITUTES NEGLIGENCE. — Citibank should have scrutinized Citibank Check Numbers SN 10597 and 16508 before paying the amount of the proceeds thereof to the collecting bank of the BIR. One thing is clear from the record: the clearing stamps at the back of Citibank Check Nos. SN 10597 and 16508 do not bear

any initials. Citibank failed to notice and verify the absence of the clearing stamps. Had this been duly examined, the switching of the worthless checks to Citibank Check Nos. 10597 and 16508 would have been discovered in time. For this reason, Citibank had indeed failed to perform what was incumbent upon it, which is to ensure that the amount of the checks should be paid only to its designated payee. The fact that the drawee bank did not discover the irregularity seasonably, in our view, constitutes negligence in carrying out the bank's duty to its depositors. The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.

8. ID.; ID.; ID.; DOCTRINE OF COMPARATIVE NEGLIGENCE RENDERS BANKS LIABLE FOR LOSS OF PROCEEDS OF CHECKS; RATIONALE. — Thus, invoking the doctrine of comparative negligence, we are of the view that both PCIBank and Citibank failed in their respective obligations and both were negligent in the selection and supervision of their employees resulting in the encashment of Citibank Check Nos. SN 10597 and 16508. Thus, we are constrained to hold them equally liable for the loss of the proceeds of said checks issued by Ford in favor of the CIR. Time and again, we have stressed that banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be very high, if not the highest, degree of diligence. A bank's liability as obligor is not merely vicarious but primary, wherein the defense of exercise of due diligence in the selection and supervision of its employees is of no moment. Banks handle daily transactions involving millions of pesos. By the very nature of their work the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. Banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.

9. ID.; PRESCRIPTION OF ACTIONS; ACTION UPON A CHECK PRESCRIBES IN TEN YEARS. — The statute of limitations begins to run when the bank gives the depositor notice of the payment, which is ordinarily when the check is returned to the alleged drawer as a voucher with a statement of his account, and an action upon a check is ordinarily governed by the statutory period applicable to instruments in writing. Our laws on the matter provide that the action upon a written contract must be brought within ten years from the time the right of action accrues. Hence, the reckoning time for the prescriptive period begins when the instrument was issued and the corresponding check was returned by the bank to its depositor (normally a month thereafter).

10. ID.; ID.; ID.; CASE AT BAR. — Applying the same rule, the cause of action for the recovery of the proceeds of Citibank Check No. SN 04867 would normally be a month after December 19, 1977, when Citibank paid the face value of the check in the amount of P4,746,114.41. Since the original complaint for the cause of action was filed on January 20, 1983, barely six years had lapsed. Thus, we conclude that Ford's cause of action to recover the amount of Citibank Check No. SN 04867 was seasonably filed within the period provided by law.

11. ID.; DAMAGES; CONTRIBUTORY NEGLIGENCE OF PLAINTIFF SHALL REDUCE DAMAGES HE MAY RECOVER. — Finally, we also find that Ford is not completely blameless in its failure to detect the fraud. Failure on the part of the depositor to examine its passbook, statements of account, and cancelled checks and to give notice within a reasonable time (or as required by statute) of any discrepancy which it may in the exercise of due care and diligence find therein, serves to mitigate the banks' liability by reducing the award of interest from twelve percent (12%) to six percent (6%) per annum. As provided in Article 1172 of the Civil Code of the Philippines, responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances. In quasi-delicts, the

contributory negligence of the plaintiff shall reduce the damages that he may recover.

D E C I S I O N

QUISUMBING, J p:

These consolidated petitions involve several fraudulently negotiated checks.

The original actions a quo were instituted by Ford Philippines to recover from the drawee bank CITIBANK, N.A. (Citibank) and collecting bank, Philippine Commercial International Bank (PCIBank) [formerly Insular Bank of Asia and America], the value of several checks payable to the Commissioner of Internal Revenue, which were embezzled allegedly by an organized syndicate. ASHECD

G.R. Nos. 121413 and 121479 are twin petitions for review of the March 27, 1995 Decision 1 of the Court of Appeals in CA-G.R CV No. 25017, entitled "Ford Philippines, Inc. vs. Citibank N.A. and Insular Bank of Asia and America (now Philippine Commercial International Bank), and the August 8, 1995 Resolution, 2 ordering the collecting bank Philippine Commercial International Bank to pay the amount of Citibank Check No. SN-04867.

In G.R. No. 128604, petitioner Ford Philippines assails the October 15, 1996 Decision 3 of the Court of Appeals and its March 5, 1997 Resolution 4 in CA-G.R. No. 28430 entitled "Ford Philippines, Inc. vs. Citibank N.A. and Philippine Commercial International Bank," affirming in toto the judgment of the trial court holding the defendant drawee bank Citibank N.A., solely liable to pay the amount of P12,163,298.10 as damages for the misapplied proceeds of the plaintiff's Citibank Check Numbers SN-10597 and 16508.

I. GR Nos. 121413 and 121479

The stipulated facts submitted by the parties as accepted by the Court of Appeals as follows:

"On October 19, 1977, the plaintiff Ford drew and issued its Citibank Check No. SN-04867 in the amount of P4,746,114.41, in favor of the Commissioner of Internal Revenue as payment of

plaintiff's percentage or manufacturer's sales taxes for the third quarter of 1977.

The aforesaid check was deposited with the defendant IBAA (now PCIBank) and was subsequently cleared at the Central Bank. Upon presentment with the defendant Citibank, the proceeds of the check was paid to IBAA as collecting or depository bank.

The proceeds of the same Citibank check of the plaintiff was never paid to or received by the payee thereof, the Commissioner of Internal Revenue.

As a consequence, upon demand of the Bureau and/or Commissioner of Internal Revenue, the plaintiff was compelled to make a second payment to the Bureau of Internal Revenue of its percentage/manufacturers' sales taxes for the third quarter of 1977 and that said second payment of plaintiff in the amount of P4,746,114.41 was duly received by the Bureau of Internal Revenue.

It is further admitted by defendant Citibank that during the time of the transactions in question, plaintiff had been maintaining a checking account with defendant Citibank; that Citibank Check No. SN-04867 which was drawn and issued by the plaintiff in favor of the Commissioner of Internal Revenue was a crossed check in that, on its face were two parallel lines and written in between said lines was the phrase "Payee's Account Only"; and that defendant Citibank paid the full face value of the check in the amount of P4,746,114.41 to the defendant IBAA.

It has been duly established that for the payment of plaintiff's percentage tax for the last quarter of 1977, the Bureau of Internal Revenue issued Revenue Tax Receipt No. 18747002, dated October 20, 1977, designating therein in Muntinlupa, Metro Manila, as the authorized agent bank of Metrobank, Alabang Branch to receive the tax payment of the plaintiff.

On December 19, 1977, plaintiff's Citibank Check No. SN-04867, together with the Revenue Tax Receipt No. 18747002, was deposited with defendant IBAA, through its Ermita Branch. The latter accepted the check and sent it to the Central Clearing House

for clearing on the same day, with the indorsement at the back "all prior indorsements and/or lack of indorsements guaranteed." Thereafter, defendant IBAA presented the check for payment to defendant Citibank on same date, December 19, 1977, and the latter paid the face value of the check in the amount of P4,746,114.41. Consequently, the amount of P4,746,114.41 was debited in plaintiff's account with the defendant Citibank and the check was returned to the plaintiff.

Upon verification, plaintiff discovered that its Citibank Check No. SN-04867 in the amount of P4,746,114.41 was not paid to the Commissioner of Internal Revenue. Hence, in separate letters dated October 26, 1979, addressed to the defendants, the plaintiff notified the latter that in case it will be re-assessed by the BIR for the payment of the taxes covered by the said checks, then plaintiff shall hold the defendants liable for reimbursement of the face value of the same. Both defendants denied liability and refused to pay.

In a letter dated February 28, 1980 by the Acting Commissioner of Internal Revenue addressed to the plaintiff — supposed to be Exhibit "D", the latter was officially informed, among others, that its check in the amount of P4,746,114.41 was not paid to the government or its authorized agent and instead encashed by unauthorized persons, hence, plaintiff has to pay the said amount within fifteen days from receipt of the letter. Upon advice of the plaintiff's lawyers, plaintiff on March 11, 1982, paid to the Bureau of Internal Revenue, the amount of P4,746,114.41, representing payment of plaintiff's percentage tax for the third quarter of 1977.

As a consequence of defendant's refusal to reimburse plaintiff of the payment it had made for the second time to the BIR of its percentage taxes, plaintiff filed on January 20, 1983 its original complaint before this Court.

On December 24, 1985, defendant IBAA was merged with the Philippine Commercial International Bank (PCI Bank) with the latter as the surviving entity.

Defendant Citibank maintains that; the payment it made of plaintiff's Citibank Check No. SN-04867 in the amount of

P4,746,114.41 "was in due course"; it merely relied on the clearing stamp of the depository/collecting bank, the defendant IBAA that "all prior indorsements and/or lack of indorsements guaranteed"; and the proximate cause of plaintiff's injury is the gross negligence of defendant IBAA in indorsing the plaintiff's Citibank check in question.

It is admitted that on December 19, 1977 when the proceeds of plaintiff's Citibank Check No. SN-04867 was paid to defendant IBAA as collecting bank, plaintiff was maintaining a checking account with defendant Citibank." 5

Although it was not among the stipulated facts, an investigation by the National Bureau of Investigation (NBI) revealed that Citibank Check No. SN-04867 was recalled by Godofredo Rivera, the General Ledger Accountant of Ford. He purportedly needed to hold back the check because there was an error in the computation of the tax due to the Bureau of Internal Revenue (BIR). With Rivera's instruction, PCIBank replaced the check with two of its own Manager's Checks (MCs). Alleged members of a syndicate later deposited the two MCs with the Pacific Banking Corporation.

Ford, with leave of court, filed a third-party complaint before the trial court impleading Pacific Banking Corporation (PBC) and Godofredo Rivera, as third party defendants. But the court dismissed the complaint against PBC for lack of cause of action. The court likewise dismissed the third-party complaint against Godofredo Rivera because he could not be served with summons as the NBI declared him as a "fugitive from justice".

On June 15, 1989, the trial court rendered its decision, as follows:

"Premises considered, judgment is hereby rendered as follows:

1. Ordering the defendants Citibank and IBAA (now PCI Bank), jointly and severally, to pay the plaintiff the amount of P4,746,114.41 representing the face value of plaintiff's Citibank Check No. SN-04867, with interest thereon at the legal rate starting January 20, 1983, the date when the original complaint was filed until the amount is fully paid, plus costs;

2. On defendant Citibank's cross-claim: ordering the cross-defendant IBAA (now PCI BANK) to reimburse defendant Citibank for whatever amount the latter has paid or may pay to the plaintiff in accordance with the next preceding paragraph;
3. The counterclaims asserted by the defendants against the plaintiff, as well as that asserted by the cross-defendant against the cross-claimant are dismissed, for lack of merits; and
4. With costs against the defendants.
SO ORDERED." 6
Not satisfied with the said decision, both defendants, Citibank and PCIBank, elevated their respective petitions for review on certiorari to the Court of Appeals. On March 27, 1995, the appellate court issued its judgment as follows:
"WHEREFORE, in view of the foregoing, the court AFFIRMS the appealed decision with modifications.
The court hereby renders judgment:
1. Dismissing the complaint in Civil Case No. 49287 insofar as defendant Citibank N.A. is concerned;
2. Ordering the defendant IBAA now PCI Bank to pay the plaintiff the amount of P4,746,114.41 representing the face value of plaintiff's Citibank Check No. SN-04867, with interest thereon at the legal rate starting January 20, 1983. the date when the original complaint was filed until the amount is fully paid;
3. Dismissing the counterclaims asserted by the defendants against the plaintiff as well as that asserted by the cross-defendant against the cross-claimant, for lack of merits.
Costs against the defendant IBAA (now PCI Bank).
IT IS SO ORDERED." 7
PCIBank moved to reconsider the above-quoted decision of the Court of Appeals, while Ford filed a "Motion for Partial Reconsideration." Both motions were denied for lack of merit.
Separately, PCIBank and Ford filed before this Court, petitions for review by certiorari under Rule 45.
In G.R. No. 121413, PCIBank seeks the reversal of the decision and resolution of the Twelfth Division of the Court of Appeals

contending that it merely acted on the instruction of Ford and such cause of action had already prescribed.

PCIBank sets forth the following issues for consideration:

I. Did the respondent court err when, after finding that the petitioner acted on the check drawn by respondent Ford on the said respondent's instructions, it nevertheless found the petitioner liable to the said respondent for the full amount of the said check.

II. Did the respondent court err when it did not find prescription in favor of the petitioner. 8

In a counter move, Ford filed its petition docketed as G.R. No. 121479, questioning the same decision and resolution of the Court of Appeals, and praying for the reinstatement in toto of the decision of the trial court which found both PCIBank and Citibank jointly and severally liable for the loss.

In G.R. No. 121479, appellant Ford presents the following propositions for consideration:

I. Respondent Citibank is liable to petitioner Ford considering that:

1. As drawee bank, respondent Citibank owes to petitioner Ford, as the drawer of the subject check and a depositor of respondent Citibank, an absolute and contractual duty to pay the proceeds of the subject check only to the payee thereof, the Commissioner of Internal Revenue.

2. Respondent Citibank failed to observe its duty as banker with respect to the subject check, which was crossed and payable to "Payee's Account Only."

3. Respondent Citibank raises an issue for the first time on appeal; thus the same should not be considered by the Honorable Court.

4. As correctly held by the trial court, there is no evidence of gross negligence on the part of petitioner Ford. 9

II. PCIBank is liable to petitioner Ford considering that:

1. There were no instructions from petitioner Ford to deliver the proceeds of the subject check to a person other than the payee named therein, the Commissioner of the Bureau of Internal

Revenue; thus, PCIBank's only obligation is to deliver the proceeds to the Commissioner of the Bureau of Internal Revenue. 10

2. PCIBank which affixed its indorsement on the subject check ("All prior indorsement and/or lack of indorsement guaranteed"), is liable as collecting bank. 11

3. PCIBank is barred from raising issues of fact in the instant proceedings. 12

4. Petitioner Ford's cause of action had not prescribed. 13

II. G.R. No. 128604

The same syndicate apparently embezzled the proceeds of checks intended, this time, to settle Ford's percentage taxes appertaining to the second quarter of 1978 and the first quarter of 1979.

The facts as narrated by the Court of Appeals are as follows:

Ford drew Citibank Check No. SN-10597 on July 19, 1978 in the amount of P5,851,706.37 representing the percentage tax due for the second quarter of 1978 payable to the Commissioner of Internal Revenue. A BIR Revenue Tax Receipt No. 28645385 was issued for the said purpose.

On April 20, 1979, Ford drew another Citibank Check No. SN-16508 in the amount of P6,311,591.73, representing the payment of percentage tax for the first quarter of 1979 and payable to the Commissioner of Internal Revenue. Again a BIR Revenue Tax Receipt No. A-1697160 was issued for the said purpose. DcSEHT

Both checks were "crossed checks" and contain two diagonal lines on its upper left corner between which were written the words "payable to the payee's account only."

The checks never reached the payee, CIR. Thus, in a letter dated February 28, 1980, the BIR, Region 4-B, demanded for the said tax payments the corresponding periods above-mentioned.

As far as the BIR is concerned, the said two BIR Revenue Tax Receipts were considered "fake and spurious". This anomaly was confirmed by the NBI upon the initiative of the BIR. The findings forced Ford to pay the BIR anew, while an action was filed against

Citibank and PCIBank for the recovery of the amount of Citibank Check Numbers SN-10597 and 16508.

The Regional Trial Court of Makati, Branch 57, which tied the case, made its findings on the modus operandi of the syndicate, as follows:

"A certain Mr. Godofredo Rivera was employed by the plaintiff FORD as its General Ledger Accountant. As such, he prepared the plaintiff's check marked Ex. 'A' [Citibank Check No. SN-10597] for payment to the BIR. Instead, however, of delivering the same to the payee, he passed on the check to a co-conspirator named Remberto Castro who was a pro-manager of the San Andres Branch of PCIB. * In connivance with one Winston Dulay, Castro himself subsequently opened a Checking Account in the name of a fictitious person denominated as 'Reynaldo Reyes' in the Meralco Branch of PCIBank where Dulay works as Assistant Manager. After an initial deposit of P100.00 to validate the account, Castro deposited a worthless Bank of America Check in exactly the same amount as the first FORD check (Exh. "A", P5,851,706.37) while this worthless check was coursed through PCIB's main office enroute to the Central Bank for clearing, replaced this worthless check with FORD's Exhibit 'A' and accordingly tampered the accompanying documents to cover the replacement. As a result, Exhibit 'A' was cleared by defendant CITIBANK, and the fictitious deposit account of 'Reynaldo Reyes' was credited at the PCIB Meralco Branch with the total amount of the FORD check Exhibit 'A'. The same method was again utilized by the syndicate in profiting from Exh. 'B' [Citibank Check No. SN-16508] which was subsequently pilfered by Alexis Marindo, Rivera's Assistant at FORD.

From this 'Reynaldo Reyes' account, Castro drew various checks distributing the shares of the other participating conspirators namely (1) CRISANTO BERNABE, the mastermind who formulated the method for the embezzlement; (2) RODOLFO R. DE LEON a customs broker who negotiated the initial contact between Bernabe, FORD's Godofredo Rivera and PCIB's

Remberto Castro; (3) JUAN CASTILLO who assisted de Leon in the initial arrangements; (4) GODOFREDO RIVERA, FORD's accountant who passed on the first check (Exhibit "A") to Castro; (5) REMBERTO CASTRO, PCIB's pro-manager at San Andres who performed the switching of checks in the clearing process and opened the fictitious Reynaldo Reyes account at the PCIB Meralco Branch; (6) WINSTON DULAY, PCIB's Assistant Manager at its Meralco Branch, who assisted Castro in switching the checks in the clearing process and facilitated the opening of the fictitious Reynaldo Reyes' bank account; (7) ALEXIS MARINDO, Rivera's Assistant at FORD, who gave the second check (Exh. "B") to Castro; (8) ELEUTERIO JIMENEZ, BIR Collection Agent who provided the fake and spurious revenue tax receipts to make it appear that the BIR had received FORD's tax payments.
Several other persons and entities were utilized by the syndicate as conduits in the disbursements of the proceeds of the two checks, but like the aforementioned participants in the conspiracy, have not been impleaded in the present case. The manner by which the said funds were distributed among them are traceable from the record of checks drawn against the original "Reynaldo Reyes" account and indubitably identify the parties who illegally benefited therefrom and readily indicate in what amounts they did so." 14
On December 9, 1988, Regional Trial Court of Makati, Branch 57, held drawee-bank, Citibank, liable for the value of the two checks while absolving PCIBank from any liability, disposing as follows:
"WHEREFORE, judgment is hereby rendered sentencing defendant CITIBANK to reimburse plaintiff FORD the total amount of P12,163,298.10 prayed for in its complaint, with 6% interest thereon from date of first written demand until full payment, plus P300,000.00 attorney's fees and expenses of litigation, and to pay the defendant, PCIB (on its counterclaim to crossclaim) the sum of P300,000.00 as attorney's fees and costs of litigation, and pay the costs.
SO ORDERED." 15

Both Ford and Citibank appealed to the Court of Appeals which affirmed, in toto, the decision of the trial court. Hence, this petition.

Petitioner Ford prays that judgment be rendered setting aside the portion of the Court of Appeals decision and its resolution dated March 5, 1997, with respect to the dismissal of the complaint against PCIBank and holding Citibank solely responsible for the proceeds of Citibank Check Numbers SN-10597 and 16508 for P5,851,706.73 and P6,311,591.73 respectively.

Ford avers that the Court of Appeals erred in dismissing the complaint against defendant PCIBank considering that:

I. Defendant PCIBank was clearly negligent when it failed to exercise the diligence required to be exercised by it as a banking institution.

II. Defendant PCIBank clearly failed to observe the diligence required in the selection and supervision of its officers and employees.

III. Defendant PCIBank was, due to its negligence, clearly liable for the loss or damage resulting to the plaintiff Ford as a consequence of the substitution of the check consistent with Section 5 of Central Bank Circular No. 580 series of 1977.

IV. Assuming arguendo that defendant PCIBank did not accept, endorse or negotiate in due course the subject checks, it is liable, under Article 2154 of the Civil Code, to return the money which it admits having received, and which was credited to it in its Central Bank account. 16

The main issue presented for our consideration by these petitions could be simplified as follows: Has petitioner Ford the right to recover from the collecting bank (PCIBank) and the drawee bank (Citibank) the value of the checks intended as payment to the Commissioner of Internal Revenue? Or has Ford's cause of action already prescribed?

Note that in these cases, the checks were drawn against the drawee bank, but the title of the person negotiating the same was allegedly defective because the instrument was obtained by fraud and

unlawful means, and the proceeds of the checks were not remitted to the payee. It was established that instead of paying the checks to the CIR, for the settlement of the appropriate quarterly percentage taxes of Ford, the checks were diverted and encashed for the eventual distribution among the members of the syndicate. As to the unlawful negotiation of the check the applicable law is Section 55 of the Negotiable Instruments Law (NIL), which provides:
"When title defective — The title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud."
Pursuant to this provision, it is vital to show that the negotiation is made by the perpetrator in breach of faith amounting to fraud. The person negotiating the checks must have gone beyond the authority given by his principal. If the principal could prove that there was no negligence in the performance of his duties, he may set up the personal defense to escape liability and recover from other parties who, through their own negligence, allowed the commission of the crime.
In this case, we note that the direct perpetrators of the offense, namely the embezzlers belonging to a syndicate, are now fugitives from justice. They have, even if temporarily, escaped liability for the embezzlement of millions of pesos. We are thus left only with the task of determining who of the present parties before us must bear the burden of loss of these millions. It all boils down to the question of liability based on the degree of negligence among the parties concerned.
Foremost, we must resolve whether the injured party, Ford, is guilty of the "imputed contributory negligence" that would defeat its claim for reimbursement, bearing in mind that its employees, Godofredo Rivera and Alexis Marindo, were among the members of the syndicate.

Citibank points out that Ford allowed its very own employee, Godofredo Rivera, to negotiate the checks to his co-conspirators, instead of delivering them to the designated authorized collecting bank (Metrobank-Alabang) of the payee, CIR. Citibank bewails the fact that Ford was remiss in the supervision and control of its own employees, inasmuch as it only discovered the syndicate's activities through the information given by the payee of the checks after an unreasonable period of time.

PCIBank also blames Ford of negligence when it allegedly authorized Godofredo Rivera to divert the proceeds of Citibank Check No. SN-04867, instead of using it to pay the BIR. As to the subsequent run-around of funds of Citibank Check Nos. SN-10597 and 16508, PCIBank claims that the proximate cause of the damage to Ford lies in its own officers and employees who carried out the fraudulent schemes and the transactions. These circumstances were not checked by other officers of the company, including its comptroller or internal auditor. PCIBank contends that the inaction of Ford despite the enormity of the amount involved was a sheer negligence and stated that, as between two innocent persons, one of whom must suffer the consequences of a breach of trust, the one who made it possible, by his act of negligence, must bear the loss.

For its part, Ford denies any negligence in the performance of its duties. It avers that there was no evidence presented before the trial court showing lack of diligence on the part of Ford. And, citing the case of Gempesaw vs. Court of Appeals, 17 Ford argues that even if there was a finding therein that the drawer was negligent, the drawee bank was still ordered to pay damages.

Furthermore, Ford contends that Godofredo Rivera was not authorized to make any representation in its behalf, specifically, to divert the proceeds of the checks. It adds that Citibank raised the issue of imputed negligence against Ford for the first time on appeal. Thus, it should not be considered by this Court.

On this point, jurisprudence regarding the imputed negligence of employer in a master-servant relationship is instructive. Since a

master may be held for his servant's wrongful act, the law imputes to the master the act of the servant, and if that act is negligent or wrongful and proximately results in injury to a third person, the negligence or wrongful conduct is the negligence or wrongful conduct of the master, for which he is liable. 18 The general rule is that if the master is injured by the negligence of a third person and by the concurring contributory negligence of his own servant or agent, the latter's negligence is imputed to his superior and will defeat the superior's action against the third person, assuming, of course that the contributory negligence was the proximate cause of the injury of which complaint is made. 19

Accordingly, we need to determine whether or not the action of Godofredo Rivera, Ford's General Ledger Accountant, and/or Alexis Marindo, his assistant, was the proximate cause of the loss or damage. As defined, proximate cause is that which, in the natural and continuous sequence, unbroken by any efficient, intervening cause produces the injury, and without which the result would not have occurred. 20

It appears that although the employees of Ford initiated the transactions attributable to an organized syndicate, in our view, their actions were not the proximate cause of encashing the checks payable to the CIR. The degree of Ford's negligence, if any, could not be characterized as the proximate cause of the injury to the parties.

The Board of Directors of Ford, we note, did not confirm the request of Godofredo Rivera to recall Citibank Check No. SN-04867. Rivera's instruction to replace the said check with PCIBank's Manager's Check was not in the ordinary course of business which could have prompted PCIBank to validate the same.

As to the preparation of Citibank Checks Nos. SN-10597 and 16508, it was established that these checks were made payable to the CIR. Both were crossed checks. These checks were apparently turned around by Ford's employees, who were acting on their own personal capacity.

Given these circumstances, the mere fact that the forgery was committed by a drawer-payor's confidential employee or agent, who by virtue of his position had unusual facilities for perpetrating the fraud and imposing the forged paper upon the bank, does not entitle the bank to shift the loss to the drawer-payor, in the absence of some circumstance raising estoppel against the drawer. 21 This rule likewise applies to the checks fraudulently negotiated or diverted by the confidential employees who hold them in their possession.

With respect to the negligence of PCIBank in the payment of the three checks involved, separately, the trial courts found variations between the negotiation of Citibank Check No. SN-04867 and the misapplication of total proceeds of Checks SN-10597 and 16508. Therefore, we have to scrutinize, separately, PCIBank's share of negligence when the syndicate achieved its ultimate agenda of stealing the proceeds of these checks.

G.R. Nos. 121413 and 121479

Citibank Check No. SN-04867 was deposited at PCIBank through its Ermita Branch. It was coursed through the ordinary banking transaction, sent to Central Clearing with the indorsement at the back "all prior indorsements and/or lack of indorsements guaranteed," and was presented to Citibank for payment. Thereafter PCIBank, instead of remitting the proceeds to the CIR, prepared two of its Manager's checks and enabled the syndicate to encash the same. cDCEHa

On record, PCIBank failed to verify the authority of Mr. Rivera to negotiate the checks. The neglect of PCIBank employees to verify whether his letter requesting for the replacement of the Citibank Check No. SN-04867 was duly authorized, showed lack of care and prudence required in the circumstances.

Furthermore, it was admitted that PCIBank is authorized to collect the payment of taxpayers in behalf of the BIR. As an agent of BIR, PCIBank is duty bound to consult its principal regarding the unwarranted instructions given by the payor or its agent. As aptly stated by the trial court, to wit:

". . . Since the questioned crossed check was deposited with IBAA [now PCIBank], which claimed to be a depository/collecting bank of the BIR, it has the responsibility to make sure that the check in question is deposited in Payee's account only.

xxx xxx xxx

As agent of the BIR (the payee of the check), defendant IBAA should receive instructions only from its principal BIR and not from any other person especially so when that person is not known to the defendant. It is very imprudent on the part of the defendant IBAA to just rely on the alleged telephone call of one (Godofredo Rivera and in his signature to the authenticity of such signature considering that the plaintiff is not a client of the defendant IBAA."

It is a well-settled rule that the relationship between the payee or holder of commercial paper and the bank to which it is sent for collection is, in the absence of an agreement to the contrary, that of principal and agent. 22 A bank which receives such paper for collection is the agent of the payee or holder. 23

Even considering arguendo, that the diversion of the amount of a check payable to the collecting bank in behalf of the designated payee may be allowed, still such diversion must be properly authorized by the payor. Otherwise stated, the diversion can be justified only by proof of authority from the drawer, or that the drawer has clothed his agent with apparent authority to receive the proceeds of such check.

Citibank further argues that PCI Bank's clearing stamp appearing at the back of the questioned checks stating that ALL PRIOR INDORSEMENTS AND/OR LACK OF INDORSEMENTS GUARANTEED should render PCIBank liable because it made it pass through the clearing house and therefore Citibank had no other option but to pay it. Thus, Citibank asserts that the proximate cause of Ford's injury is the gross negligence of PCIBank. Since the questioned crossed check was deposited with PCIBank, which claimed to be a depository/collecting bank of the BIR, it had the

responsibility to make sure that the check in question is deposited in Payee's account only.
Indeed, the crossing of the check with the phrase "Payee's Account Only," is a warning that the check should be deposited only in the account of the CIR. Thus, it is the duty of the collecting bank PCIBank to ascertain that the check be deposited in payee's account only. Therefore, it is the collecting bank (PCIBank) which is bound to scrutinize the check and to know its depositors before it could make the clearing indorsement "all prior indorsements and/or lack of indorsement guaranteed".
In Banco de Oro Savings and Mortgage Bank vs. Equitable Banking Corporation, 24 we ruled:
"Anent petitioner's liability on said instruments, this court is in full accord with the ruling of the PCHC's Board of Directors that:
'In presenting the checks for clearing and for payment, the defendant made an express guarantee on the validity of "all prior endorsements." Thus, stamped at the back of the checks are the defendant's clear warranty: ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENTS GUARANTEED. Without such warranty, plaintiff would not have paid on the checks.'
No amount of legal jargon can reverse the clear meaning of defendant's warranty. As the warranty has proven to be false and inaccurate, the defendant is liable for any damage arising out of the falsity of its representation." 25 AcaEDC
Lastly, banking business requires that the one who first cashes and negotiates the check must take some precautions to learn whether or not it is genuine. And if the one cashing the check through indifference or other circumstance assists the forger in committing the fraud, he should not be permitted to retain the proceeds of the check from the drawee whose sole fault was that it did not discover the forgery or the defect in the title of the person negotiating the instrument before paying the check. For this reason, a bank which cashes a check drawn upon another bank, without requiring proof as to the identity of persons presenting it, or making inquiries with

regard to them, cannot hold the proceeds against the drawee when the proceeds of the checks were afterwards diverted to the hands of a third party. In such cases the drawee bank has a right to believe that the cashing bank (or the collecting bank) had, by the usual proper investigation, satisfied itself of the authenticity of the negotiation of the checks. Thus, one who encashed a check which had been forged or diverted and in turn received payment thereon from the drawee, is guilty of negligence which proximately contributed to the success of the fraud practiced on the drawee bank. The latter may recover from the holder the money paid on the check. 26

Having established that the collecting bank's negligence is the proximate cause of the loss, we conclude that PCIBank is liable in the amount corresponding to the proceeds of Citibank Check No. SN-04867.

G.R. No. 128604

The trial court and the Court of Appeals found that PCIBank had no official act in the ordinary course of business that would attribute to it the case of the embezzlement of Citibank Check Numbers SN-10597 and 16508, because PCIBank did not actually receive nor hold the two Ford checks at all. The trial court held, thus:

"Neither is there any proof that defendant PCIBank contributed any official or conscious participation in the process of the embezzlement. This Court is convinced that the switching operation (involving the checks while in transit for "clearing") were the clandestine or hidden actuations performed by the members of the syndicate in their own personal, covert and private capacity and done without the knowledge of the defendant PCIBank. . . ." 27

In this case, there was no evidence presented confirming the conscious participation of PCIBank in the embezzlement. As a general rule, however, a banking corporation is liable for the wrongful or tortuous acts and declarations of its officers or agents within the course and scope of their employment. 28 A bank will

be held liable for the negligence of its officers or agents when acting within the course and scope of their employment. It may be liable for the tortuous acts of its officers even as regards that species of tort of which malice is an essential element. In this case, we find a situation where the PCIBank appears also to be the victim of the scheme hatched by a syndicate in which its own management employees had participated:

The pro-manager of San Andres Branch of PCIBank, Remberto Castro, received Citibank Check Numbers SN 10597 and 16508. He passed the checks to a co-conspirator, an Assistant Manager of PCIBank's Meralco Branch, who helped Castro open a Checking account of a fictitious person named "Reynaldo Reyes." Castro deposited a worthless Bank of America Check in exactly the same amount of Ford checks. The syndicate tampered with the checks and succeeded in replacing the worthless checks and the eventual encashment of Citibank Check Nos. SN 10597 and 16508. The PCIBank Pro-manager, Castro, and his co-conspirator Assistant Manager apparently performed their activities using facilities in their official capacity or authority but for their personal and private gain or benefit.

A bank holding out its officers and agents as worthy of confidence will not be permitted to profit by the frauds these officers or agents were enabled to perpetrate in the apparent course of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom. For the general rule is that a bank is liable for the fraudulent acts or representations of an officer or agent acting within the course and apparent scope of his employment or authority. 29 And if an officer or employee of a bank, in his official capacity, receives money to satisfy an evidence of indebtedness lodged with his bank for collection, the bank is liable for his misappropriation of such sum. 30

Moreover, as correctly pointed out by Ford, Section 5 31 of Central Bank Circular No. 580, Series of 1977 provides that any

theft affecting items in transit for clearing, shall be for the account of sending bank, which in this case is PCIBank.
But in this case, responsibility for negligence does not lie on PCIBank's shoulders alone.
The evidence on record shows that Citibank as drawee bank was likewise negligent in the performance of its duties. Citibank failed to establish that its payment of Ford's checks were made in due course and legally in order. In its defense, Citibank claims the genuineness and due execution of said checks, considering that Citibank (1) has no knowledge of any infirmity in the issuance of the checks in question (2) coupled by the fact that said checks were sufficiently funded and (3) the endorsement of the Payee or lack thereof was guaranteed by PCIBank (formerly IBAA), thus, it has the obligation to honor and pay the same.
For its part, Ford contends that Citibank as the drawee bank owes to Ford an absolute and contractual duty to pay the proceeds of the subject check only to the payee thereof, the CIR. Citing Section 62 32 of the Negotiable Instruments Law, Ford argues that by accepting the instrument, the acceptor which is Citibank engages that it will pay according to the tenor of its acceptance, and that it will pay only to the payee, (the CIR), considering the fact that here the check was crossed with annotation "Payees Account Only."
As ruled by the Court of Appeals, Citibank must likewise answer for the damages incurred by Ford on Citibank Checks Numbers SN 10597 and 16508, because of the contractual relationship existing between the two. Citibank, as the drawee bank breached its contractual obligation with Ford and such degree of culpability contributed to the damage caused to the latter. On this score, we agree with the respondent court's ruling.
Citibank should have scrutinized Citibank Check Numbers SN 10597 and 16508 before paying the amount of the proceeds thereof to the collecting bank of the BIR. One thing is clear from the record: the clearing stamps at the back of Citibank Check Nos. SN 10597 and 16508 do not bear any initials. Citibank failed to notice and verify the absence of the clearing stamps. Had this been duly

examined, the switching of the worthless checks to Citibank Check Nos. 10597 and 16508 would have been discovered in time. For this reason, Citibank had indeed failed to perform what was incumbent upon it, which is to ensure that the amount of the checks should be paid only to its designated payee. The fact that the drawee bank did not discover the irregularity seasonably, in our view, constitutes negligence in carrying out the bank's duty to its depositors. The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. 33

Thus, invoking the doctrine of comparative negligence, we are of the view that both PCIBank and Citibank failed in their respective obligations and both were negligent in the selection and supervision of their employees resulting in the encashment of Citibank Check Nos. SN 10597 and 16508. Thus, we are constrained to hold them equally liable for the loss of the proceeds of said checks issued by Ford in favor of the CIR.

Time and again, we have stressed that banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be very high, if not the highest, degree of diligence. 34 A bank's liability as obligor is not merely vicarious but primary, wherein the defense of exercise of due diligence in the selection and supervision of its employees is of no moment. 35

Banks handle daily transactions involving millions of pesos. 36 By the very nature of their work the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. 37 Banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees. 38

On the issue of prescription, PCIBank claims that the action of Ford had prescribed because of its inability to seek judicial relief

seasonably, considering that the alleged negligent act took place prior to December 19, 1977 but the relief was sought only in 1983, or seven years thereafter.

The statute of limitations begins to run when the bank gives the depositor notice of the payment, which is ordinarily when the check is returned to the alleged drawer as a voucher with a statement of his account, 39 and an action upon a check is ordinarily governed by the statutory period applicable to instruments in writing. 40

Our laws on the matter provide that the action upon a written contract must be brought within ten years from the time the right of action accrues. 41 Hence, the reckoning time for the prescriptive period begins when the instrument was issued and the corresponding check was returned by the bank to its depositor (normally a month thereafter). Applying the same rule, the cause of action for the recovery of the proceeds of Citibank Check No. SN 04867 would normally be a month after December 19, 1977, when Citibank paid the face value of the check in the amount of P4,746,114.41. Since the original complaint for the cause of action was filed on January 20, 1983, barely six years had lapsed. Thus, we conclude that Ford's cause of action to recover the amount of Citibank Check No. SN 04867 was seasonably filed within the period provided by law.

Finally, we also find that Ford is not completely blameless in its failure to detect the fraud. Failure on the part of the depositor to examine its passbook, statements of account, and cancelled checks and to give notice within a reasonable time (or as required by statute) of any discrepancy which it may in the exercise of due care and diligence find therein, serves to mitigate the banks' liability by reducing the award of interest from twelve percent (12%) to six percent (6%) per annum. As provided in Article 1172 of the Civil Code of the Philippines, responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the

circumstances. In quasi-delicts, the contributory negligence of the plaintiff shall reduce the damages that he may recover. 42 ScAIaT
WHEREFORE, the assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 25017 are AFFIRMED. PCIBank, known formerly as Insular Bank of Asia and America, is declared solely responsible for the loss of the proceeds of Citibank Check No. SN 04867 in the amount P4,746,114.41, which shall be paid together with six percent (6%) interest thereon to Ford Philippines Inc. from the date when the original complaint was filed until said amount is fully paid.
However, the Decision and Resolution of the Court of Appeals in CA-G.R. No. 28430 are MODIFIED as follows: PCIBank and Citibank are adjudged liable for and must share the loss, (concerning the proceeds of Citibank Check Numbers SN 10597 and 16508 totalling P12,163,298.10) on a fifty-fifty ratio, and each bank is ORDERED to pay Ford Philippines Inc. P6,081,649.05, with six percent (6%) interest thereon, from the date the complaint was filed until full payment of said amount.
Costs against Philippine Commercial International Bank and Citibank, N.A.
SO ORDERED.
Bellosillo, Mendoza, Buena and De Leon, Jr., JJ., concur.
Footnotes
1. Penned by Justice B. A. Adefuin-de la Cruz and concurred in by Justices Jesus M. Elbinias and Lourdes K. Tayao-Jaguros, rollo, G.R. No. 121413, pp. 27-42.
2. Rollo, G.R. No. 121413, pp. 44-45.
3. Penned by Justice Jose C. de la Rama and concurred in by Justices Emeterio C. Cui and Eduardo G. Montenegro, rollo, G.R. No. 128604, pp. 45-60.
4. Rollo, G.R. No. 128604, pp. 42-43.
5. Supra, see note 1, pp. 32-34 (All citations omitted).
6. Rollo, G.R. No. 121413, pp. 131-132.
7. Id. at 41-42.
8. Id. at 18.

9. Rollo, G.R. No. 121479, pp. 162-163.
10. Id. at 181.
11. Id. at 186.
12. Id. at 188.
13. Id. at 192.
* Initials stand for Philippine Commercial International Bank, or PCIBank.
14. Supra, see note 3, pp. 47-49.
15. Id. at 46.
16. Id. at 24-25.
17. 218 SCRA 682 (1993).
18. Am Jur 2d, Volume 58, Negligence, Section 458.
19. Am Jur 2d, Volume 58, Negligence, Section 464.
20. Vda. de Bataclan, et al. vs. Medina, 102 Phil. 181, 186 (1957).
21. Am Jur 2d, Volume 10, Banks, Section 604 (1963 Edition).
22. Id. at Section 697.
23. Ibid.
24. 157 SCRA 188 (1988).
25. Id. at 194.
26. Supra note 20 at Section 611.
27. Rollo, G.R. No. 128604, pp. 56-57.
28. Supra note 20 at Section 110.
29. Id. at Sec. 111.
30. Id. at Sec. 113.
31. Sec 5. Loss of Clearing Items — Any loss or damage arising from theft, pilferage, or other causes affecting items in transit shall be for the account of the sending bank/branch, institution or entity concerned.
32. Sec. 62, Negotiable Instruments Law.
33. Simex International (Manila), Inc. vs. Court of Appeals, 183 SCRA 360, 367 (1990).
34. Supra, see note 17, at p. 697.
35. Ibid.
36. BPI vs. Court of Appeals, 216 SCRA 51, 71 (1992).

37. Ibid.
38. Ibid.
39. Supra note 20 at Section 605.
40. Ibid.
41. CIVIL CODE, Art. 1144.
42. CIVIL CODE, Art. 2214.

SECOND DIVISION
[G.R. No. 139130. November 27, 2002.]
RAMON K. ILUSORIO, petitioner, vs. HON. COURT OF APPEALS, and THE MANILA BANKING CORPORATION, respondents.
People's Law Office for petitioner.
Puyat Jacinto & Santos and Asedillo and Associates for TMBC.
SYNOPSIS
Petitioner is a prominent businessman, and as he was going out of the country a number of times, he entrusted to his secretary his credit cards and his checkbook with blank checks. Subsequently, petitioner filed a criminal action against his aforesaid secretary for estafa thru falsification for encashing and depositing to her personal account seventeen checks drawn against the account of the petitioner at respondent bank. Petitioner then requested the respondent bank to credit back and restore to his account the value of the checks which were wrongfully encashed, but respondent bank refused. Hence, petitioner filed the instant case. Manila Bank sought the expertise of the National Bureau of Investigation in determining the genuineness of the signatures appearing on the checks. However, petitioner failed to submit his specimen signatures for purposes of comparison with those on the questioned checks. Consequently, the trial court dismissed the case. On appeal, the Court of Appeals held that petitioner's own negligence was the proximate cause of his loss. Hence, this petition. SaDICE
In affirming the decision of the Court of Appeals, the Supreme Court ruled that petitioner has no cause of action against Manila

Bank. To be entitled to damages, petitioner has the burden of proving negligence on the part of the bank for failure to detect the discrepancy in the signatures on the checks. It is incumbent upon petitioner to establish the fact of forgery, i.e., by submitting his specimen signatures and comparing them with those on the questioned checks. Petitioner, by his own inaction, was precluded from setting up forgery.

The Court likewise ruled that under Section 23 of the Negotiable Instruments Law, petitioner is precluded from setting up the forgery, assuming there is forgery, due to his own negligence in entrusting to his secretary his credit cards and checkbook including the verification of his statements of account.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL. — We stress the rule that the factual findings of a trial court, especially when affirmed by the appellate court, are binding upon us and entitled to utmost respect and even finality. We find no palpable error that would warrant a reversal of the appellate court's assessment of facts anchored upon the evidence on record.

2. CIVIL LAW; QUASI-DELICT; DAMAGES CANNOT BE RECOVERED WHEN PLAINTIFF'S OWN NEGLIGENCE IS THE IMMEDIATE AND PROXIMATE CAUSE OF INJURY; CASE AT BAR. — Petitioner's failure to examine his bank statements appears as the proximate cause of his own damage. Proximate cause is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. In the instant case, the bank was not shown to be remiss in its duty of sending monthly bank statements to petitioner so that any error or discrepancy in the entries therein could be brought to the bank's attention at the earliest opportunity. But, petitioner failed to examine these bank statements not because he was prevented by some cause in not doing so, but because he did not pay sufficient

attention to the matter. Had he done so, he could have been alerted to any anomaly committed against him. In other words, petitioner had sufficient opportunity to prevent or detect any misappropriation by his secretary had he only reviewed the status of his accounts based on the bank statements sent to him regularly. In view of Article 2179 of the New Civil Code, when the plaintiff's own negligence was the immediate and proximate cause of his injury, no recovery could be had for damages. HIEAcC

3. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; FORGERY; EFFECT OF FORGED SIGNATURE; EXCEPTION; CASE AT BAR. — Petitioner further contends that under Section 23 of the Negotiable Instruments Law a forged check is inoperative, and that Manila Bank had no authority to pay the forged checks. True, it is a rule that when a signature is forged or made without the authority of the person whose signature it purports to be, the check is wholly inoperative. No right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party, can be acquired through or under such signature. However, the rule does provide for an exception, namely: "unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority." In the instant case, it is the exception that applies. In our view, petitioner is precluded from setting up the forgery, assuming there is forgery, due to his own negligence in entrusting to his secretary his credit cards and checkbook including the verification of his statements of account.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PLAINTIFF IN CRIMINAL ACTION IS THE STATE, FOR THE COMMISSION OF FELONY IS AN OFFENSE AGAINST THE STATE; CASE AT BAR. — [T]he fact that Manila Bank had filed a case for estafa against Eugenio would not stop it from asserting the fact that forgery has not been clearly established. Petitioner cannot hold private respondent in estoppel for the latter is not the actual party to the criminal action. In a criminal action, the State is the plaintiff,

for the commission of a felony is an offense against the State. Thus, under Section 2, Rule 110 of the Rules of Court the complaint or information filed in court is required to be brought in the name of the "People of the Philippines." SCDaET

D E C I S I O N

QUISUMBING, J p:

This petition for review seeks to reverse the decision 1 promulgated on January 28, 1999 by the Court of Appeals in CA-G.R. CV No. 47942, affirming the decision of the then Court of First Instance of Rizal, Branch XV (now the Regional Trial Court of Makati, Branch 138) dismissing Civil Case No. 43907, for damages. STHAaD

The facts as summarized by the Court of Appeals are as follows: Petitioner is a prominent businessman who, at the time material to this case, was the Managing Director of Multinational Investment Bancorporation and the Chairman and/or President of several other corporations. He was a depositor in good standing of respondent bank, the Manila Banking Corporation, under current Checking Account No. 06-09037-0. As he was then running about 20 corporations, and was going out of the country a number of times, petitioner entrusted to his secretary, Katherine 2 E. Eugenio, his credit cards and his checkbook with blank checks. It was also Eugenio who verified and reconciled the statements of said checking account. 3

Between the dates September 5, 1980 and January 23, 1981, Eugenio was able to encash and deposit to her personal account about seventeen (17) checks drawn against the account of the petitioner at the respondent bank, with an aggregate amount of P119,634.34. Petitioner did not bother to check his statement of account until a business partner apprised him that he saw Eugenio use his credit cards. Petitioner fired Eugenio immediately, and instituted a criminal action against her for estafa thru falsification before the Office of the Provincial Fiscal of Rizal. Private respondent, through an affidavit executed by its employee, Mr. Dante Razon, also lodged a complaint for estafa thru falsification

of commercial documents against Eugenio on the basis of petitioner's statement that his signatures in the checks were forged. 4 Mr. Razon's affidavit states:

That I have examined and scrutinized the following checks in accordance with prescribed verification procedures with utmost care and diligence by comparing the signatures affixed thereat against the specimen signatures of Mr. Ramon K. Ilusorio which we have on file at our said office on such dates,

xxx xxx xxx

That the aforementioned checks were among those issued by Manilabank in favor of its client MR. RAMON K. ILUSORIO, . . .

That the same were personally encashed by KATHERINE E. ESTEBAN, an executive secretary of MR. RAMON K. ILUSORIO in said Investment Corporation;

That I have met and known her as KATHERINE E. ESTEBAN the attending verifier when she personally encashed the above-mentioned checks at our said office;

That MR. RAMON K. ILUSORIO executed an affidavit expressly disowning his signature appearing on the checks further alleged to have not authorized the issuance and encashment of the same. . . . 5

Petitioner then requested the respondent bank to credit back and restore to its account the value of the checks which were wrongfully encashed but respondent bank refused. Hence, petitioner filed the instant case. 6

At the trial, petitioner testified on his own behalf, attesting to the truth of the circumstances as narrated above, and how he discovered the alleged forgeries. Several employees of Manila Bank were also called to the witness stand as hostile witnesses. They testified that it is the bank's standard operating procedure that whenever a check is presented for encashment or clearing, the signature on the check is first verified against the specimen signature cards on file with the bank. IDEScC

Manila Bank also sought the expertise of the National Bureau of Investigation (NBI) in determining the genuineness of the

signatures appearing on the checks. However, in a letter dated March 25, 1987, the NBI informed the trial court that they could not conduct the desired examination for the reason that the standard specimens submitted were not sufficient for purposes of rendering a definitive opinion. The NBI then suggested that petitioner be asked to submit seven (7) or more additional standard signatures executed before or about, and immediately after the dates of the questioned checks. Petitioner, however, failed to comply with this request.

After evaluating the evidence on both sides, the court a quo rendered judgment on May 12, 1994 with the following dispositive portion:

WHEREFORE, finding no sufficient basis for plaintiff's cause herein against defendant bank, in the light of the foregoing considerations and established facts, this case would have to be, as it is hereby DISMISSED.

Defendant's counterclaim is likewise DISMISSED for lack of sufficient basis.

SO ORDERED. 7

Aggrieved, petitioner elevated the case to the Court of Appeals by way of a petition for review but without success. The appellate court held that petitioner's own negligence was the proximate cause of his loss. The appellate court disposed as follows:

WHEREFORE, the judgment appealed from is AFFIRMED. Costs against the appellant.

SO ORDERED. 8

Before us, petitioner ascribes the following errors to the Court of Appeals:

A. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE RESPONDENT BANK IS ESTOPPED FROM RAISING THE DEFENSE THAT THERE WAS NO FORGERY OF THE SIGNATURES OF THE PETITIONER IN THE CHECK BECAUSE THE RESPONDENT FILED A CRIMINAL COMPLAINT FOR ESTAFA THRU FALSIFICATION OF COMMERCIAL DOCUMENTS AGAINST KATHERINE

EUGENIO USING THE AFFIDAVIT OF PETITIONER STATING THAT HIS SIGNATURES WERE FORGED AS PART OF THE AFFIDAVIT-COMPLAINT. 9

B. THE COURT OF APPEALS ERRED IN NOT APPLYING SEC. 23, NEGOTIABLE INSTRUMENTS LAW. 10

C. THE COURT OF APPEALS ERRED IN NOT HOLDING THE BURDEN OF PROOF IS WITH THE RESPONDENT BANK TO PROVE THE DUE DILIGENCE TO PREVENT DAMAGE, TO THE PETITIONER, AND THAT IT WAS NOT NEGLIGENT IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES. 11

D. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT BANK SHOULD BEAR THE LOSS, AND SHOULD BE MADE TO PAY PETITIONER, WITH RECOURSE AGAINST KATHERINE EUGENIO ESTEBAN. 12

Essentially the issues in this case are: (1) whether or not petitioner has a cause of action against private respondent; and (2) whether or not private respondent, in filing an estafa case against petitioner's secretary, is barred from raising the defense that the fact of forgery was not established. aDSIHc

Petitioner contends that Manila Bank is liable for damages for its negligence in failing to detect the discrepant checks. He adds that as a general rule a bank which has obtained possession of a check upon an unauthorized or forged endorsement of the payee's signature and which collects the amount of the check from the drawee is liable for the proceeds thereof to the payee. Petitioner invokes the doctrine of estoppel, saying that having itself instituted a forgery case against Eugenio, Manila Bank is now estopped from asserting that the fact of forgery was never proven.

For its part, Manila Bank contends that respondent appellate court did not depart from the accepted and usual course of judicial proceedings, hence there is no reason for the reversal of its ruling. Manila Bank additionally points out that Section 23 13 of the Negotiable Instruments Law is inapplicable, considering that the

fact of forgery was never proven. Lastly, the bank negates petitioner's claim of estoppel. 14

On the first issue, we find that petitioner has no cause of action against Manila Bank. To be entitled to damages, petitioner has the burden of proving negligence on the part of the bank for failure to detect the discrepancy in the signatures on the checks. It is incumbent upon petitioner to establish the fact of forgery, i.e., by submitting his specimen signatures and comparing them with those on the questioned checks. Curiously though, petitioner failed to submit additional specimen signatures as requested by the National Bureau of Investigation from which to draw a conclusive finding regarding forgery. The Court of Appeals found that petitioner, by his own inaction, was precluded from setting up forgery. Said the appellate court:

We cannot fault the court a quo for such declaration, considering that the plaintiff's evidence on the alleged forgery is not convincing enough. The burden to prove forgery was upon the plaintiff, which burden he failed to discharge. Aside from his own testimony, the appellant presented no other evidence to prove the fact of forgery. He did not even submit his own specimen signatures, taken on or about the date of the questioned checks, for examination and comparison with those of the subject checks. On the other hand, the appellee presented specimen signature cards of the appellant, taken at various years, namely, in 1976, 1979 and 1981 (Exhibits "1", "2", "3" and "7"), showing variances in the appellant's unquestioned signatures. The evidence further shows that the appellee, as soon as it was informed by the appellant about his questioned signatures, sought to borrow the questioned checks from the appellant for purposes of analysis and examination (Exhibit "9"), but the same was denied by the appellant. It was also the former which sought the assistance of the NBI for an expert analysis of the signatures on the questioned checks, but the same was unsuccessful for lack of sufficient specimen signatures. 15

Moreover, petitioner's contention that Manila Bank was remiss in the exercise of its duty as drawee lacks factual basis. Consistently,

the CA and the RTC found that Manila Bank employees exercised due diligence in cashing the checks. The bank's employees in the present case did not have a hint as to Eugenio's modus operandi because she was a regular customer of the bank, having been designated by petitioner himself to transact in his behalf.
According to the appellate court, the employees of the bank exercised due diligence in the performance of their duties. Thus, it found that:
The evidence on both sides indicates that TMBC's employees exercised due diligence before encashing the checks. Its verifiers first verified the drawer's signatures thereon as against his specimen signature cards, and when in doubt, the verifier went further, such as by referring to a more experienced verifier for further verification. In some instances the verifier made a confirmation by calling the depositor by phone. It is only after taking such precautionary measures that the subject checks were given to the teller for payment.
Of course it is possible that the verifiers of TMBC might have made a mistake in failing to detect any forgery — if indeed there was. However, a mistake is not equivalent to negligence if they were honest mistakes. In the instant case, we believe and so hold that if there were mistakes, the same were not deliberate, since the bank took all the precautions. 16
As borne by the records, it was petitioner, not the bank, who was negligent. Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would do. 17 In the present case, it appears that petitioner accorded his secretary unusual degree of trust and unrestricted access to his credit cards, passbooks, check books, bank statements, including custody and possession of cancelled checks and reconciliation of accounts. Said the Court of Appeals on this matter:
Moreover, the appellant had introduced his secretary to the bank for purposes of reconciliation of his account, through a letter dated

July 14, 1980 (Exhibit "8"). Thus, the said secretary became a familiar figure in the bank. What is worse, whenever the bank verifiers call the office of the appellant, it is the same secretary who answers and confirms the checks.

The trouble is, the appellant had put so much trust and confidence in the said secretary, by entrusting not only his credit cards with her but also his checkbook with blank checks. He also entrusted to her the verification and reconciliation of his account. Further adding to his injury was the fact that while the bank was sending him the monthly Statements of Accounts, he was not personally checking the same. His testimony did not indicate that he was out of the country during the period covered by the checks. Thus, he had all the opportunities to verify his account as well as the cancelled checks issued thereunder — month after month. But he did not, until his partner asked him whether he had entrusted his credit card to his secretary because the said partner had seen her use the same. It was only then that he was minded to verify the records of his account. 18

The abovecited findings are binding upon the reviewing court. We stress the rule that the factual findings of a trial court, especially when affirmed by the appellate court, are binding upon us 19 and entitled to utmost respect 20 and even finality. We find no palpable error that would warrant a reversal of the appellate court's assessment of facts anchored upon the evidence on record.

SCHIcT

Petitioner's failure to examine his bank statements appears as the proximate cause of his own damage. Proximate cause is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. 21 In the instant case, the bank was not shown to be remiss in its duty of sending monthly bank statements to petitioner so that any error or discrepancy in the entries therein could be brought to the bank's attention at the earliest opportunity. But, petitioner failed to examine these bank statements not because he was prevented by some cause in not

doing so, but because he did not pay sufficient attention to the matter. Had he done so, he could have been alerted to any anomaly committed against him. In other words, petitioner had sufficient opportunity to prevent or detect any misappropriation by his secretary had he only reviewed the status of his accounts based on the bank statements sent to him regularly. In view of Article 2179 of the New Civil Code, 22 when the plaintiff's own negligence was the immediate and proximate cause of his injury, no recovery could be had for damages.

Petitioner further contends that under Section 23 of the Negotiable Instruments Law a forged check is inoperative, and that Manila Bank had no authority to pay the forged checks. True, it is a rule that when a signature is forged or made without the authority of the person whose signature it purports to be, the check is wholly inoperative. No right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party, can be acquired through or under such signature. However, the rule does provide for an exception, namely: "unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority." In the instant case, it is the exception that applies. In our view, petitioner is precluded from setting up the forgery, assuming there is forgery, due to his own negligence in entrusting to his secretary his credit cards and checkbook including the verification of his statements of account. Petitioner's reliance on Associated Bank vs. Court of Appeals 23 and Philippine Bank of Commerce vs. CA 24 to buttress his contention that respondent Manila Bank as the collecting or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements is misplaced. In the cited cases, the fact of forgery was not in issue. In the present case, the fact of forgery was not established with certainty. In those cited cases, the collecting banks were held to be negligent for failing to observe precautionary measures to detect the forgery. In the case before us, both courts below uniformly found that Manila Bank's personnel diligently performed their duties, having

compared the signature in the checks from the specimen signatures on record and satisfied themselves that it was petitioner's.
On the second issue, the fact that Manila Bank had filed a case for estafa against Eugenio would not estop it from asserting the fact that forgery has not been clearly established. Petitioner cannot hold private respondent in estoppel for the latter is not the actual party to the criminal action. In a criminal action, the State is the plaintiff, for the commission of a felony is an offense against the State. 25 Thus, under Section 2, Rule 110 of the Rules of Court the complaint or information filed in court is required to be brought in the name of the "People of the Philippines." 26
Further, as petitioner himself stated in his petition, respondent bank filed the estafa case against Eugenio on the basis of petitioner's own affidavit, 27 but without admitting that he had any personal knowledge of the alleged forgery. It is, therefore, easy to understand that the filing of the estafa case by respondent bank was a last ditch effort to salvage its ties with the petitioner as a valuable client, by bolstering the estafa case which he filed against his secretary.
All told, we find no reversible error that can be ascribed to the Court of Appeals. AaIDHS
WHEREFORE, the instant petition is DENIED for lack of merit. The assailed decision of the Court of Appeals dated January 28, 1999 in CA-G.R. CV No. 47942, is AFFIRMED.
Costs against petitioner.
SO ORDERED.
Bellosillo, Acting C.J., Mendoza, Austria-Martinez and Callejo, Sr., JJ., concur.
Footnotes
1. Rollo, pp. 26-30.
2. Also spelled as "Catherine" in some parts of the record.
3. Rollo, p. 26.
4. TSN, October 6, 1983, p. 58.
5. Rollo, pp. 108-109.
6. Id. at 27.

7. Ibid.
8. Id. at 30.
9. Id. at 10.
10. Id. at 14.
11. Id. at 15.
12. Id. at 17.
13. Sec. 23. Forged signature, effect of. 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.
14. Rollo, p. 49.
15. Id. at 28.
16. Id. at 29.
17. Bank of the Philippine Islands vs. Court of Appeals, 326 SCRA 641, 657 (2000).
18. Supra, note 16.
19. Lorenzana vs. People, 353 SCRA 396, 403 (2001).
20. Ong vs. CA, 272 SCRA 725, 730 (1997).
21. Supra, note 17 at 659.
22. Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. . . .
23. 252 SCRA 620, 633 (1996).
24. 269 SCRA 695, 703-710 (1997).
25. Binay vs. Sandiganbayan, 316 SCRA 65, 100 (1999).
26. SEC. 2. The complaint or information. — The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved.
27. Rollo, p. 9.

SECOND DIVISION

[G.R. No. 129015. August 13, 2004.]

SAMSUNG CONSTRUCTION COMPANY PHILIPPINES, INC., petitioner, vs. FAR EAST BANK AND TRUST COMPANY AND COURT OF APPEALS, respondents.

Alan A. Leynes for petitioner.

Angara Abello Concepcion Regala & Cruz for private respondent.

SYNOPSIS

A check in the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00) had been encashed from the account of petitioner Samsung Construction in the Far East Bank. The sole signatory to the account, Jong Kyu Lee, alleged that his signature had been forged. Consequently, petitioner filed a Complaint for Violation of Section 23 of the Negotiable Instruments Law.

The general rule is to the effect that a forged signature is wholly inoperative and payment made through such signature is ineffectual; thus, if payment is made, the drawee cannot charge it to the drawer's account. In the instant case, as the Court found that there was forgery and that Samsung Construction was not precluded from setting such defense because of its' negligence, the Bank is thus liable, irrespective of its good faith, in paying a forged check. AcISTE

SYLLABUS

1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; WHERE SIGNATURE THEREIN FORGED. — Section 23 of the Negotiable Instruments Law states: 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. The general rule is to the effect that a forged signature

is "wholly inoperative", and payment made "through or under such signature" is ineffectual or does not discharge the instrument. If payment is made, the drawee cannot charge it to the drawer's account. The traditional justification for the result is that the drawee is in a superior position to detect a forgery because he has the maker's signature and is expected to know and compare it. The rule has a healthy cautionary effect on banks by encouraging care in the comparison of the signatures against those on the signature cards they have on file. Moreover, the very opportunity of the drawee to insure and to distribute the cost among its customers who use checks makes the drawee an ideal party to spread the risk to insurance.

2. ID.; ID.; ID.; CASE AT BAR. — Under Section 23 of the Negotiable Instruments Law, forgery is a real or absolute defense by the party whose signature is forged. On the premise that Jong's signature was indeed forged, FEBTC is liable for the loss since it authorized the discharge of the forged check. Such liability attaches even if the bank exerts due diligence and care in preventing such faulty discharge. Forgeries often deceive the eye of the most cautious experts; and when a bank has been so deceived, it is a harsh rule which compels it to suffer although no one has suffered by its being deceived. The forgery may be so near like the genuine as to defy detection by the depositor himself, and yet the bank is liable to the depositor if it pays the check. DTISaH

3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; THAT DOCUMENT FORMALLY PRESENTED IS GENUINE; OVERWHELMED IN CASE AT BAR. — A document formally presented is presumed to be genuine until it is proved to be fraudulent. In a forgery trial, this presumption must be overcome but this can only be done by convincing testimony and effective illustrations. During the testimony of PNP expert Rosario Perez, the RTC bluntly noted that "apparently, there [are] differences on that questioned signature and the standard signatures". This Court, in examining the signatures, makes a similar finding. The PNP

expert excused the noted "differences" by asserting that they were mere "variations", which are normal deviations found in writing. Yet the RTC, which had the opportunity to examine the relevant documents and to personally observe the expert witness, clearly disbelieved the PNP expert. The Court similarly finds the testimony of the PNP expert as unconvincing. During the trial, she was confronted several times with apparent differences between strokes in the questioned signature and the genuine samples. Each time, she would just blandly assert that these differences were just "variations," as if the mere conjuration of the word would sufficiently disquiet whatever doubts about the deviations. Such conclusion, standing alone, would be of little or no value unless supported by sufficiently cogent reasons which might amount almost to a demonstration. The RTC was sufficiently convinced by the NBI examiner's testimony, and explained her reasons in its Decisions. While the Court of Appeals disagreed and upheld the findings of the PNP, it failed to convincingly demonstrate why such findings were more credible than those of the NBI expert. As a throwaway, the assailed Decision noted that the PNP, not the NBI, had the opportunity to examine the specimen signature card signed by Jong, which was relied upon by the employees of FEBTC in authenticating Jong's signature. The distinction is irrelevant in establishing forgery. Forgery can be established comparing the contested signatures as against those of any sample signature duly established as that of the persons whose signature was forged. FEBTC lays undue emphasis on the fact that the PNP examiner did compare the questioned signature against the bank signature cards. The crucial fact in question is whether or not the check was forged, not whether the bank could have detected the forgery. The latter issue becomes relevant only if there is need to weigh the comparative negligence between the bank and the party whose signature was forged.

4. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; WHERE SIGNATURE THEREIN FORGED; DEFENSE OF FORGERY BARRED WHERE PARTY GUILTY OF

NEGLIGENCE NOT SUFFICIENTLY ESTABLISHED. — We recognize that Section 23 of the Negotiable Instruments Law bars a party from setting up the defense of forgery if it is guilty of negligence. Yet, we are unable to conclude that Samsung Construction was guilty of negligence in this case. The appellate court failed to explain precisely how the Korean accountant was negligent or how more care and prudence on his part would have prevented the forgery. We cannot sustain this "tar and feathering" resorted to without any basis. The bare fact that the forgery was committed by an employee of the party whose signature was forged cannot necessarily imply that such party's negligence was the cause for the forgery. Employers do not possess the preternatural gift of cognition as to the evil that may lurk within the hearts and minds of their employees. Admittedly, the record does not clearly establish what measures Samsung Construction employed to safeguard its blank checks. Jong did testify that his accountant, Kyu, kept the checks inside a "safety box", and no contrary version was presented by FEBTC. However, such testimony cannot prove that the checks were indeed kept in a safety box, as Jong's testimony on that point is hearsay, since Kyu, and not Jong, would have the personal knowledge as to how the checks were kept. Still, in the absence of evidence to the contrary, we can conclude that there was no negligence on Samsung Construction's part. The presumption remains that every person takes ordinary care of his concerns, and that the ordinary course of business has been followed. Negligence is not presumed, but must be proven by him who alleges it. While the complaint was lodged at the instance of Samsung Construction, the matter it had to prove was the claim it had alleged — whether the check was forged. It cannot be required as well to prove that it was not negligent, because the legal presumption remains that ordinary care was employed. Thus, it was incumbent upon FEBTC, in defense, to prove the negative fact that Samsung Construction was negligent. While the payee, as in this case, may not have the personal knowledge as to the standard procedures observed by the drawer, it

well has the means of disputing the presumption of regularity. Proving a negative fact may be "a difficult office", but necessarily so, as it seeks to overcome a presumption in law. FEBTC was unable to dispute the presumption of ordinary care exercised by Samsung Construction, hence we cannot agree with the Court of Appeals' finding of negligence. CEcaTH

5. ID.; ID.; ID.; DEGREE OF CARE AND DILIGENCE REQUIRED OF BANKS. — The Court recently emphasized that the highest degree of care and diligence is required of banks. Banks are engaged in a business impressed with public interest, and it is their duty to protect in return their many clients and depositors who transact business with them. They have the obligation to treat their client's account meticulously and with the highest degree of care, considering the fiduciary nature of their relationship. The diligence required of banks, therefore, is more than that of a good father of a family.

6. ID.; ID.; ID.; GENERAL RULE APPLIES REGARDLESS OF GOOD FAITH. — Still, even if the bank performed with utmost diligence, the drawer whose signature was forged may still recover from the bank as long as he or she is not precluded from setting up the defense of forgery. After all, Section 23 of the Negotiable Instruments Law plainly states that no right to enforce the payment of a check can arise out of a forged signature. Since the drawer, Samsung Construction, is not precluded by negligence from setting up the forgery, the general rule should apply. Consequently, if a bank pays a forged check, it must be considered as paying out of its funds and cannot charge the amount so paid to the account of the depositor. A bank is liable, irrespective of its good faith, in paying a forged check. TADcCS

D E C I S I O N

TINGA, J p:

Called to fore in the present petition is a classic textbook question — if a bank pays out on a forged check, is it liable to reimburse the drawer from whose account the funds were paid out? The Court of Appeals, in reversing a trial court decision adverse to the bank,

invoked tenuous reasoning to acquit the bank of liability. We reverse, applying time-honored principles of law.
The salient facts follow. DCcTHa
Plaintiff Samsung Construction Company Philippines, Inc. ("Samsung Construction"), while based in Biñan, Laguna, maintained a current account with defendant Far East Bank and Trust Company 1 ("FEBTC") at the latter's Bel-Air, Makati branch. 2 The sole signatory to Samsung Construction's account was Jong Kyu Lee ("Jong"), its Project Manager, 3 while the checks remained in the custody of the company's accountant, Kyu Yong Lee ("Kyu"). 4
On 19 March 1992, a certain Roberto Gonzaga presented for payment FEBTC Check No. 432100 to the bank's branch in Bel-Air, Makati. The check, payable to cash and drawn against Samsung Construction's current account, was in the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00). The bank teller, Cleofe Justiani, first checked the balance of Samsung Construction's account. After ascertaining there were enough funds to cover the check, 5 she compared the signature appearing on the check with the specimen signature of Jong as contained in the specimen signature card with the bank. After comparing the two signatures, Justiani was satisfied as to the authenticity of the signature appearing on the check. She then asked Gonzaga to submit proof of his identity, and the latter presented three (3) identification cards. 6
At the same time, Justiani forwarded the check to the branch Senior Assistant Cashier Gemma Velez, as it was bank policy that two bank branch officers approve checks exceeding One Hundred Thousand Pesos, for payment or encashment. Velez likewise counterchecked the signature on the check as against that on the signature card. He too concluded that the check was indeed signed by Jong. Velez then forwarded the check and signature card to Shirley Syfu, another bank officer, for approval. Syfu then noticed that Jose Sempio III ("Sempio"), the assistant accountant of Samsung Construction, was also in the bank. Sempio was well-

known to Syfu and the other bank officers, he being the assistant accountant of Samsung Construction. Syfu showed the check to Sempio, who vouched for the genuineness of Jong's signature. Confirming the identity of Gonzaga, Sempio said that the check was for the purchase of equipment for Samsung Construction. Satisfied with the genuineness of the signature of Jong, Syfu authorized the bank's encashment of the check to Gonzaga.
The following day, the accountant of Samsung Construction, Kyu, examined the balance of the bank account and discovered that a check in the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00) had been encashed. Aware that he had not prepared such a check for Jong's signature, Kyu perused the checkbook and found that the last blank check was missing. 7 He reported the matter to Jong, who then proceeded to the bank. Jong learned of the encashment of the check, and realized that his signature had been forged. The Bank Manager reputedly told Jong that he would be reimbursed for the amount of the check. 8 Jong proceeded to the police station and consulted with his lawyers. 9 Subsequently, a criminal case for qualified theft was filed against Sempio before the Laguna court. 10
In a letter dated 6 May 1992, Samsung Construction, through counsel, demanded that FEBTC credit to it the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00), with interest. 11 In response, FEBTC said that it was still conducting an investigation on the matter. Unsatisfied, Samsung Construction filed a Complaint on 10 June 1992 for violation of Section 23 of the Negotiable Instruments Law, and prayed for the payment of the amount debited as a result of the questioned check plus interest, and attorney's fees. 12 The case was docketed as Civil Case No. 92-61506 before the Regional Trial Court ("RTC") of Manila, Branch 9. 13
During the trial, both sides presented their respective expert witnesses to testify on the claim that Jong's signature was forged. Samsung Corporation, which had referred the check for investigation to the NBI, presented Senior NBI Document

Examiner Roda B. Flores. She testified that based on her examination, she concluded that Jong's signature had been forged on the check. On the other hand, FEBTC, which had sought the assistance of the Philippine National Police (PNP), 14 presented Rosario C. Perez, a document examiner from the PNP Crime Laboratory. She testified that her findings showed that Jong's signature on the check was genuine. 15

Confronted with conflicting expert testimony, the RTC chose to believe the findings of the NBI expert. In a Decision dated 25 April 1994, the RTC held that Jong's signature on the check was forged and accordingly directed the bank to pay or credit back to Samsung Construction's account the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00), together with interest tolled from the time the complaint was filed, and attorney's fees in the amount of Fifteen Thousand Pesos (P15,000.00).

FEBTC timely appealed to the Court of Appeals. On 28 November 1996, the Special Fourteenth Division of the Court of Appeals rendered a Decision, 16 reversing the RTC Decision and absolving FEBTC from any liability. The Court of Appeals held that the contradictory findings of the NBI and the PNP created doubt as to whether there was forgery. 17 Moreover, the appellate court also held that assuming there was forgery, it occurred due to the negligence of Samsung Construction, imputing blame on the accountant Kyu for lack of care and prudence in keeping the checks, which if observed would have prevented Sempio from gaining access thereto. 18 The Court of Appeals invoked the ruling in PNB v. National City Bank of New York 19 that, if a loss, which must be borne by one or two innocent persons, can be traced to the neglect or fault of either, such loss would be borne by the negligent party, even if innocent of intentional fraud. 20

Samsung Construction now argues that the Court of Appeals had seriously misapprehended the facts when it overturned the RTC's finding of forgery. It also contends that the appellate court erred in finding that it had been negligent in safekeeping the check, and in

applying the equity principle enunciated in PNB v. National City Bank of New York. TAcDHS

Since the trial court and the Court of Appeals arrived at contrary findings on questions of fact, the Court is obliged to examine the record to draw out the correct conclusions. Upon examination of the record, and based on the applicable laws and jurisprudence, we reverse the Court of Appeals.

Section 23 of the Negotiable Instruments Law states:

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. (Emphasis supplied)

The general rule is to the effect that a forged signature is "wholly inoperative," and payment made "through or under such signature" is ineffectual or does not discharge the instrument. 21 If payment is made, the drawee cannot charge it to the drawer's account. The traditional justification for the result is that the drawee is in a superior position to detect a forgery because he has the maker's signature and is expected to know and compare it. 22 The rule has a healthy cautionary effect on banks by encouraging care in the comparison of the signatures against those on the signature cards they have on file. Moreover, the very opportunity of the drawee to insure and to distribute the cost among its customers who use checks makes the drawee an ideal party to spread the risk to insurance. 23

Brady, in his treatise The Law of Forged and Altered Checks, elucidates:

When a person deposits money in a general account in a bank, against which he has the privilege of drawing checks in the ordinary course of business, the relationship between the bank and the depositor is that of debtor and creditor. So far as the legal relationship between the two is concerned, the situation is the same

as though the bank had borrowed money from the depositor, agreeing to repay it on demand, or had bought goods from the depositor, agreeing to pay for them on demand. The bank owes the depositor money in the same sense that any debtor owes money to his creditor. Added to this, in the case of bank and depositor, there is, of course, the bank's obligation to pay checks drawn by the depositor in proper form and presented in due course. When the bank receives the deposit, it impliedly agrees to pay only upon the depositor's order. When the bank pays a check, on which the depositor's signature is a forgery, it has failed to comply with its contract in this respect. Therefore, the bank is held liable.

The fact that the forgery is a clever one is immaterial. The forged signature may so closely resemble the genuine as to defy detection by the depositor himself. And yet, if a bank pays the check, it is paying out its own money and not the depositor's.

The forgery may be committed by a trusted employee or confidential agent. The bank still must bear the loss. Even in a case where the forged check was drawn by the depositor's partner, the loss was placed upon the bank. The case referred to is Robinson v. Security Bank, Ark., 216 S. W. Rep. 717. In this case, the plaintiff brought suit against the defendant bank for money which had been deposited to the plaintiff's credit and which the bank had paid out on checks bearing forgeries of the plaintiff's signature.

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It was held that the bank was liable. It was further held that the fact that the plaintiff waited eight or nine months after discovering the forgery, before notifying the bank, did not, as a matter of law, constitute a ratification of the payment, so as to preclude the plaintiff from holding the bank liable . . .

This rule of liability can be stated briefly in these words: "A bank is bound to know its depositors' signature." The rule is variously expressed in the many decisions in which the question has been considered. But they all sum up to the proposition that a bank must know the signatures of those whose general deposits it carries. 24

By no means is the principle rendered obsolete with the advent of modern commercial transactions. Contemporary texts still affirm this well-entrenched standard. Nickles, in his book Negotiable Instruments and Other Related Commercial Paper wrote, thus:
The deposit contract between a payor bank and its customer determines who can draw against the customer's account by specifying whose signature is necessary on checks that are chargeable against the customer's account. Therefore, a check drawn against the account of an individual customer that is signed by someone other than the customer, and without authority from her, is not properly payable and is not chargeable to the customer's account, inasmuch as any "unauthorized signature on an instrument is ineffective" as the signature of the person whose name is signed. 25
Under Section 23 of the Negotiable Instruments Law, forgery is a real or absolute defense by the party whose signature is forged. 26 On the premise that Jong's signature was indeed forged, FEBTC is liable for the loss since it authorized the discharge of the forged check. Such liability attaches even if the bank exerts due diligence and care in preventing such faulty discharge. Forgeries often deceive the eye of the most cautious experts; and when a bank has been so deceived, it is a harsh rule which compels it to suffer although no one has suffered by its being deceived. 27 The forgery may be so near like the genuine as to defy detection by the depositor himself, and yet the bank is liable to the depositor if it pays the check. 28
Thus, the first matter of inquiry is into whether the check was indeed forged. A document formally presented is presumed to be genuine until it is proved to be fraudulent. In a forgery trial, this presumption must be overcome but this can only be done by convincing testimony and effective illustrations. 29
In ruling that forgery was not duly proven, the Court of Appeals held:
[There] is ground to doubt the findings of the trial court sustaining the alleged forgery in view of the conflicting conclusions made by

handwriting experts from the NBI and the PNP, both agencies of the government. EaIDAT

xxx xxx xxx

These contradictory findings create doubt on whether there was indeed a forgery. In the case of Tenio-Obsequio v. Court of Appeals, 230 SCRA 550, the Supreme Court held that forgery cannot be presumed; it must be proved by clear, positive and convincing evidence.

This reasoning is pure sophistry. Any litigator worth his or her salt would never allow an opponent's expert witness to stand uncontradicted, thus the spectacle of competing expert witnesses is not unusual. The trier of fact will have to decide which version to believe, and explain why or why not such version is more credible than the other. Reliance therefore cannot be placed merely on the fact that there are colliding opinions of two experts, both clothed with the presumption of official duty, in order to draw a conclusion, especially one which is extremely crucial. Doing so is tantamount to a jurisprudential cop-out.

Much is expected from the Court of Appeals as it occupies the penultimate tier in the judicial hierarchy. This Court has long deferred to the appellate court as to its findings of fact in the understanding that it has the appropriate skill and competence to plough through the minutiae that scatters the factual field. In failing to thoroughly evaluate the evidence before it, and relying instead on presumptions haphazardly drawn, the Court of Appeals was sadly remiss. Of course, courts, like humans, are fallible, and not every error deserves a stern rebuke. Yet, the appellate court's error in this case warrants special attention, as it is absurd and even dangerous as a precedent. If this rationale were adopted as a governing standard by every court in the land, barely any actionable claim would prosper, defeated as it would be by the mere invocation of the existence of a contrary "expert" opinion.

On the other hand, the RTC did adjudge the testimony of the NBI expert as more credible than that of the PNP, and explained its reason behind the conclusion:

After subjecting the evidence of both parties to a crucible of analysis, the court arrived at the conclusion that the testimony of the NBI document examiner is more credible because the testimony of the PNP Crime Laboratory Services document examiner reveals that there are a lot of differences in the questioned signature as compared to the standard specimen signature. Furthermore, as testified to by Ms. Rhoda Flores, NBI expert, the manner of execution of the standard signatures used reveals that it is a free rapid continuous execution or stroke as shown by the tampering terminal stroke of the signatures whereas the questioned signature is a hesitating slow drawn execution stroke. Clearly, the person who executed the questioned signature was hesitant when the signature was made. 30

During the testimony of PNP expert Rosario Perez, the RTC bluntly noted that "apparently, there [are] differences on that questioned signature and the standard signatures." 31 This Court, in examining the signatures, makes a similar finding. The PNP expert excused the noted "differences" by asserting that they were mere "variations," which are normal deviations found in writing. 32 Yet the RTC, which had the opportunity to examine the relevant documents and to personally observe the expert witness, clearly disbelieved the PNP expert. The Court similarly finds the testimony of the PNP expert as unconvincing. During the trial, she was confronted several times with apparent differences between strokes in the questioned signature and the genuine samples. Each time, she would just blandly assert that these differences were just "variations," 33 as if the mere conjuration of the word would sufficiently disquiet whatever doubts about the deviations. Such conclusion, standing alone, would be of little or no value unless supported by sufficiently cogent reasons which might amount almost to a demonstration. 34

The most telling difference between the questioned and genuine signatures examined by the PNP is in the final upward stroke in the signature, or "the point to the short stroke of the terminal in the capital letter 'L,'" as referred to by the PNP examiner who had

marked it in her comparison chart as “point no. 6.” To the plain eye, such upward final stroke consists of a vertical line which forms a ninety degree (90º) angle with the previous stroke. Of the twenty one (21) other genuine samples examined by the PNP, at least nine (9) ended with an upward stroke. 35 However, unlike the questioned signature, the upward strokes of eight (8) of these signatures are looped, while the upward stroke of the seventh 36 forms a severe forty-five degree (45º) with the previous stroke. The difference is glaring, and indeed, the PNP examiner was confronted with the inconsistency in point no. 6.

Q: Now, in this questioned document point no. 6, the “s” stroke is directly upwards.

A: Yes, sir.

Q: Now, can you look at all these standard signature (sic) were (sic) point 6 is repeated or the last stroke “s” is pointing directly upwards?

A: There is none in the standard signature, sir. 37

Again, the PNP examiner downplayed the uniqueness of the final stroke in the questioned signature as a mere variation, 38 the same excuse she proffered for the other marked differences noted by the Court and the counsel for petitioner. 39

There is no reason to doubt why the RTC gave credence to the testimony of the NBI examiner, and not the PNP expert’s. The NBI expert, Rhoda Flores, clearly qualifies as an expert witness. A document examiner for fifteen years, she had been promoted to the rank of Senior Document Examiner with the NBI, and had held that rank for twelve years prior to her testimony. She had placed among the top five examinees in the Competitive Seminar in Question Document Examination, conducted by the NBI Academy, which qualified her as a document examiner. 40 She had trained with the Royal Hongkong Police Laboratory and is a member of the International Association for Identification. 41 As of the time she testified, she had examined more than fifty to fifty-five thousand questioned documents, on an average of fifteen to twenty documents a day. 42 In comparison, PNP document

examiner Perez admitted to having examined only around five hundred documents as of her testimony. 43

In analyzing the signatures, NBI Examiner Flores utilized the scientific comparative examination method consisting of analysis, recognition, comparison and evaluation of the writing habits with the use of instruments such as a magnifying lense, a stereoscopic microscope, and varied lighting substances. She also prepared enlarged photographs of the signatures in order to facilitate the necessary comparisons. 44 She compared the questioned signature as against ten (10) other sample signatures of Jong. Five of these signatures were executed on checks previously issued by Jong, while the other five contained in business letters Jong had signed. 45 The NBI found that there were significant differences in the handwriting characteristics existing between the questioned and the sample signatures, as to manner of execution, link/connecting strokes, proportion characteristics, and other identifying details. 46

The RTC was sufficiently convinced by the NBI examiner's testimony, and explained her reasons in its Decisions. While the Court of Appeals disagreed and upheld the findings of the PNP, it failed to convincingly demonstrate why such findings were more credible than those of the NBI expert. As a throwaway, the assailed Decision noted that the PNP, not the NBI, had the opportunity to examine the specimen signature card signed by Jong, which was relied upon by the employees of FEBTC in authenticating Jong's signature. The distinction is irrelevant in establishing forgery. Forgery can be established comparing the contested signatures as against those of any sample signature duly established as that of the persons whose signature was forged. SaHIEA

FEBTC lays undue emphasis on the fact that the PNP examiner did compare the questioned signature against the bank signature cards. The crucial fact in question is whether or not the check was forged, not whether the bank could have detected the forgery. The latter issue becomes relevant only if there is need to weigh the comparative negligence between the bank and the party whose signature was forged.

At the same time, the Court of Appeals failed to assess the effect of Jong's testimony that the signature on the check was not his. 47 The assertion may seem self-serving at first blush, yet it cannot be ignored that Jong was in the best position to know whether or not the signature on the check was his. While his claim should not be taken at face value, any averments he would have on the matter, if adjudged as truthful, deserve primacy in consideration. Jong's testimony is supported by the findings of the NBI examiner. They are also backed by factual circumstances that support the conclusion that the assailed check was indeed forged. Judicial notice can be taken that is highly unusual in practice for a business establishment to draw a check for close to a million pesos and make it payable to cash or bearer, and not to order. Jong immediately reported the forgery upon its discovery. He filed the appropriate criminal charges against Sempio, the putative forger. 48

Now for determination is whether Samsung Construction was precluded from setting up the defense of forgery under Section 23 of the Negotiable Instruments Law. The Court of Appeals concluded that Samsung Construction was negligent, and invoked the doctrines that "where a loss must be borne by one of two innocent person, can be traced to the neglect or fault of either, it is reasonable that it would be borne by him, even if innocent of any intentional fraud, through whose means it has succeeded 49 or who put into the power of the third person to perpetuate the wrong." 50 Applying these rules, the Court of Appeals determined that it was the negligence of Samsung Construction that allowed the encashment of the forged check.

In the case at bar, the forgery appears to have been made possible through the acts of one Jose Sempio III, an assistant accountant employed by the plaintiff Samsung [Construction] Co. Philippines, Inc. who supposedly stole the blank check and who presumably is responsible for its encashment through a forged signature of Jong Kyu Lee. Sempio was assistant to the Korean accountant who was in possession of the blank checks and who through negligence,

enabled Sempio to have access to the same. Had the Korean accountant been more careful and prudent in keeping the blank checks Sempio would not have had the chance to steal a page thereof and to effect the forgery. Besides, Sempio was an employee who appears to have had dealings with the defendant Bank in behalf of the plaintiff corporation and on the date the check was encashed, he was there to certify that it was a genuine check issued to purchase equipment for the company. 51

We recognize that Section 23 of the Negotiable Instruments Law bars a party from setting up the defense of forgery if it is guilty of negligence. 52 Yet, we are unable to conclude that Samsung Construction was guilty of negligence in this case. The appellate court failed to explain precisely how the Korean accountant was negligent or how more care and prudence on his part would have prevented the forgery. We cannot sustain this "tar and feathering" resorted to without any basis.

The bare fact that the forgery was committed by an employee of the party whose signature was forged cannot necessarily imply that such party's negligence was the cause for the forgery. Employers do not possess the preternatural gift of cognition as to the evil that may lurk within the hearts and minds of their employees. The Court's pronouncement in PCI Bank v. Court of Appeals 53 applies in this case, to wit:

[T]he mere fact that the forgery was committed by a drawer-payor's confidential employee or agent, who by virtue of his position had unusual facilities for perpetrating the fraud and imposing the forged paper upon the bank, does not entitle the bank to shift the loss to the drawer-payor, in the absence of some circumstance raising estoppel against the drawer. 54

Admittedly, the record does not clearly establish what measures Samsung Construction employed to safeguard its blank checks. Jong did testify that his accountant, Kyu, kept the checks inside a "safety box," 55 and no contrary version was presented by FEBTC. However, such testimony cannot prove that the checks were indeed kept in a safety box, as Jong's testimony on that point is hearsay,

since Kyu, and not Jong, would have the personal knowledge as to how the checks were kept.
Still, in the absence of evidence to the contrary, we can conclude that there was no negligence on Samsung Construction's part. The presumption remains that every person takes ordinary care of his concerns, 56 and that the ordinary course of business has been followed. 57 Negligence is not presumed, but must be proven by him who alleges it. 58 While the complaint was lodged at the instance of Samsung Construction, the matter it had to prove was the claim it had alleged — whether the check was forged. It cannot be required as well to prove that it was not negligent, because the legal presumption remains that ordinary care was employed.
Thus, it was incumbent upon FEBTC, in defense, to prove the negative fact that Samsung Construction was negligent. While the payee, as in this case, may not have the personal knowledge as to the standard procedures observed by the drawer, it well has the means of disputing the presumption of regularity. Proving a negative fact may be "a difficult office," 59 but necessarily so, as it seeks to overcome a presumption in law. FEBTC was unable to dispute the presumption of ordinary care exercised by Samsung Construction, hence we cannot agree with the Court of Appeals' finding of negligence.
The assailed Decision replicated the extensive efforts which FEBTC devoted to establish that there was no negligence on the part of the bank in its acceptance and payment of the forged check. However, the degree of diligence exercised by the bank would be irrelevant if the drawer is not precluded from setting up the defense of forgery under Section 23 by his own negligence. The rule of equity enunciated in PNB v. National City Bank of New York, 60 as relied upon by the Court of Appeals, deserves careful examination. SEAHcT
The point in issue has sometimes been said to be that of negligence. The drawee who has paid upon the forged signature is held to bear the loss, because he has been negligent in failing to recognize that the handwriting is not that of his customer. But it

follows obviously that if the payee, holder, or presenter of the forged paper has himself been in default, if he has himself been guilty of a negligence prior to that of the banker, or if by any act of his own he has at all contributed to induce the banker's negligence, then he may lose his right to cast the loss upon the banker. 61 (Emphasis supplied)

Quite palpably, the general rule remains that the drawee who has paid upon the forged signature bears the loss. The exception to this rule arises only when negligence can be traced on the part of the drawer whose signature was forged, and the need arises to weigh the comparative negligence between the drawer and the drawee to determine who should bear the burden of loss. The Court finds no basis to conclude that Samsung Construction was negligent in the safekeeping of its checks. For one, the settled rule is that the mere fact that the depositor leaves his check book lying around does not constitute such negligence as will free the bank from liability to him, where a clerk of the depositor or other persons, taking advantage of the opportunity, abstract some of the check blanks, forges the depositor's signature and collect on the checks from the bank. 62 And for another, in point of fact Samsung Construction was not negligent at all since it reported the forgery almost immediately upon discovery. 63

It is also worth noting that the forged signatures in PNB v. National City Bank of New York were not of the drawer, but of indorsers. The same circumstance attends PNB v. Court of Appeals, 64 which was also cited by the Court of Appeals. It is accepted that a forged signature of the drawer differs in treatment than a forged signature of the indorser.

The justification for the distinction between forgery of the signature of the drawer and forgery of an indorsement is that the drawee is in a position to verify the drawer's signature by comparison with one in his hands, but has ordinarily no opportunity to verify an indorsement. 65

Thus, a drawee bank is generally liable to its depositor in paying a check which bears either a forgery of the drawer's signature or a

forged indorsement. But the bank may, as a general rule, recover back the money which it has paid on a check bearing a forged indorsement, whereas it has not this right to the same extent with reference to a check bearing a forgery of the drawer's signature. 66 The general rule imputing liability on the drawee who paid out on the forgery holds in this case.

Since FEBTC puts into issue the degree of care it exercised before paying out on the forged check, we might as well comment on the bank's performance of its duty. It might be so that the bank complied with its own internal rules prior to paying out on the questionable check. Yet, there are several troubling circumstances that lead us to believe that the bank itself was remiss in its duty. The fact that the check was made out in the amount of nearly one million pesos is unusual enough to require a higher degree of caution on the part of the bank. Indeed, FEBTC confirms this through its own internal procedures. Checks below twenty-five thousand pesos require only the approval of the teller; those between twenty-five thousand to one hundred thousand pesos necessitate the approval of one bank officer; and should the amount exceed one hundred thousand pesos, the concurrence of two bank officers is required. 67

In this case, not only did the amount in the check nearly total one million pesos, it was also payable to cash. That latter circumstance should have aroused the suspicion of the bank, as it is not ordinary business practice for a check for such large amount to be made payable to cash or to bearer, instead of to the order of a specified person. 68 Moreover, the check was presented for payment by one Roberto Gonzaga, who was not designated as the payee of the check, and who did not carry with him any written proof that he was authorized by Samsung Construction to encash the check. Gonzaga, a stranger to FEBTC, was not even an employee of Samsung Construction. 69 These circumstances are already suspicious if taken independently, much more so if they are evaluated in concurrence. Given the shadiness attending Gonzaga's presentment of the check, it was not sufficient for FEBTC to have

merely complied with its internal procedures, but mandatory that all earnest efforts be undertaken to ensure the validity of the check, and of the authority of Gonzaga to collect payment therefor.
According to FEBTC Senior Assistant Cashier Gemma Velez, the bank tried, but failed, to contact Jong over the phone to verify the check. 70 She added that calling the issuer or drawer of the check to verify the same was not part of the standard procedure of the bank, but an "extra effort." 71 Even assuming that such personal verification is tantamount to extraordinary diligence, it cannot be denied that FEBTC still paid out the check despite the absence of any proof of verification from the drawer. Instead, the bank seems to have relied heavily on the say-so of Sempio, who was present at the bank at the time the check was presented.
FEBTC alleges that Sempio was well-known to the bank officers, as he had regularly transacted with the bank in behalf of Samsung Construction. It was even claimed that everytime FEBTC would contact Jong about problems with his account, Jong would hand the phone over to Sempio. 72 However, the only proof of such allegations is the testimony of Gemma Velez, who also testified that she did not know Sempio personally, 73 and had met Sempio for the first time only on the day the check was encashed. 74 In fact, Velez had to inquire with the other officers of the bank as to whether Sempio was actually known to the employees of the bank. 75 Obviously, Velez had no personal knowledge as to the past relationship between FEBTC and Sempio, and any averments of her to that effect should be deemed hearsay evidence. Interestingly, FEBTC did not present as a witness any other employee of their Bel-Air branch, including those who supposedly had transacted with Sempio before.
Even assuming that FEBTC had a standing habit of dealing with Sempio, acting in behalf of Samsung Construction, the irregular circumstances attending the presentment of the forged check should have put the bank on the highest degree of alert. The Court recently emphasized that the highest degree of care and diligence is required of banks.

Banks are engaged in a business impressed with public interest, and it is their duty to protect in return their many clients and depositors who transact business with them. They have the obligation to treat their client's account meticulously and with the highest degree of care, considering the fiduciary nature of their relationship. The diligence required of banks, therefore, is more than that of a good father of a family. 76

Given the circumstances, extraordinary diligence dictates that FEBTC should have ascertained from Jong personally that the signature in the questionable check was his.

Still, even if the bank performed with utmost diligence, the drawer whose signature was forged may still recover from the bank as long as he or she is not precluded from setting up the defense of forgery. After all, Section 23 of the Negotiable Instruments Law plainly states that no right to enforce the payment of a check can arise out of a forged signature. Since the drawer, Samsung Construction, is not precluded by negligence from setting up the forgery, the general rule should apply. Consequently, if a bank pays a forged check, it must be considered as paying out of its funds and cannot charge the amount so paid to the account of the depositor. 77 A bank is liable, irrespective of its good faith, in paying a forged check. 78

WHEREFORE, the Petition is GRANTED. The Decision of the Court of Appeals dated 28 November 1996 is REVERSED, and the Decision of the Regional Trial Court of Manila, Branch 9, dated 25 April 1994 is REINSTATED. Costs against respondent.

SO ORDERED. AHSaTI

Puno, Austria-Martinez, Callejo, Sr. and Chico-Nazario, JJ ., concur.

Footnotes

1. Later acquired by or merged with the Bank of the Philippine Islands.
2. Rollo, p. 35.
3. Ibid.
4. Id. at 28.

5. Ibid.
6. Ibid.
7. Rollo, p. 35.
8. See TSN dated 25 June 1993, p. 10.
9. Id. at 9.
10. See TSN dated 15 June 1993, p. 26.
11. Ibid.
12. Act No. 2031.
13. Presided by Judge E.G. Sandoval, now Justice of the Sandiganbayan.
14. TSN dated 8 October 1993, p. 8.
15. Rollo, p. 24.
16. Penned by Justice S. Montoya, concurred in by Justices G. Jacinto and A. Tuquero.
17. Rollo, p. 38.
18. Ibid.
19. 63 Phil 711 (1936).
20. Rollo, p. 38.
21. Bank of Philippine Islands v. Court of Appeals, G.R. No. 102383, 26 November 1992, 216 SCRA 51, 65.
22. Farnsworth, E.A., Negotiable Instruments: Cases and Materials, 2nd ed. (1959), at 173.
23. Id. at 174.
24. Brady, J.E., The Law of Forged and Altered Checks (1925), at 6-7. Case citations omitted.
25. Nickles, S.H., Negotiable Instruments and Other Related Commercial Paper, 2nd ed. (1993), at 415.
26. Gempesaw v. Court of Appeals, G.R. No. 92244, 9 February 1993, 218 SCRA 682, 689.
27. Philippine National Bank v. National City Bank of New York, 63 Phil. 711, 743-744 (1936); citing 17 A. L. R., 891; 5 R. C. L., 559.
28. Brady, H.J., Brady on Bank Checks, 3rd ed. (1962), at 475; citing Hardy v. Chesapeake Bank (1879) 51Md. 562, 34 Am. Rep. 325.

29. Osborn, A., Questioned Document Problems, 2nd ed. (1946), at 181-182.
30. Rollo, p. 31.
31. TSN dated 8 October 1993, p. 15.
32. Id. at 15 and 19.
33. See TSN dated 8 October 1993, pp. 15, 17, 19, 34, 36 and 38.
34. Venuto v. Lizzo, 148 App. Div. 164, 132 N.Y. Supp. 1066 (1911), as cited in A. Osborn, supra, note 29.
35. Defendant's Exhibits Nos. "S-1," "S-7," "S-8," "S-9," "S-10," "S-12," "S-14," "S-15," and "S-16."
36. Defendant's Exhibit No. "S-9."
37. TSN dated 8 October 1993, p. 35.
38. Id. at 19 and 36.
39. Supra, note 26.
40. TSN dated 27 April 1993, p. 5.
41. Id. at 7.
42. Id. at 7-8.
43. TSN dated 8 October 1993, p. 4.
44. TSN dated 27 April 1993, pp. 18-19.
45. Id. at 14.
46. Per NBI Questioned Documents Report No. 244-492, Plaintiff's Exhibit "D."
47. See TSN dated 25 January 1993, p. 7.
48. See note 10.
49. Rollo, p. 38, citing PNB v. National City Bank of New York, 63 Phil. 711, 733 (1936), which in turn cites Gloucester Bank v. Salem Bank, 17 Mass., 33; First Nat. Bank of Danvers vs. First National Bank of Salem, 151 Mass., 280; and B.B. Ford & Co. v. People's Bank of Orangeburg, 74 S.C., 180.
50. Ibid., citing PNB v. CA, 134 Phil. 829, 834 (1968), which in turn cites Blondeau v. Nano, 61 Phil. 625, 631, 632.
51. Rollo, p. 38.
52. MWSS v. Court of Appeals, G.R. No. L-62943, 14 July 1986, 143 SCRA 20, 31.

53. G.R. Nos. 121413, 121479 and 128604, 29 January 2001, 350 SCRA 446.
54. Ibid at 465.
55. TSN dated 25 January 1993, pp. 19, 31.
56. See Section 3(d), Rule 131, Rules of Court.
57. See Section 3(q), Rule 131, Rules of Court.
58. Taylor v. Manila Electric Railroad, 16 Phil. 8, 28 (1910), citing Scaevola, Jurisprudencia del Codigo Civil, vol. 6, 551, 552.
59. US v. Tria, 17 Phil. 303, 307 (1910).
60. 63 Phil. 711 (1936).
61. Id. at 740; citing 2 Morse on Banks and Banking, 5th ed., secs. 464 and 466, pp. 82-85 and 86, 87.
62. Brady, J.E., The Law of Forged and Altered Checks, supra, note 24, at 24-27; citing MacIntosh v. Bank, 123 Mass. 393; East St. Louis Cotton Oil Co. v. Bank of Steele, Mo., 205 S.W. Rep. 96.
63. "For his failure or negligence either to discover or to report promptly the fact of such forgery to the drawee, the drawer loses his right against the drawee who has debited his account under the forged indorsement."

Gempesaw v. Court of Appeals, G.R. No. 92244, 9 February 1993, 218 SCRA 682, 690; citing American jurisprudence. "A bank may escape liability where the depositor's negligence consists of failure to properly examine his bank statements and cancelled checks and failure to notify the bank of forgery within a reasonable time." H. Bailey, supra, note 28, at 477. But see note 24.
64. G.R. No. L-26001, 29 October 1968, 25 SCRA 693.
65. Farnsworth, E.A., supra note 22, at 173.
66. Brady, J.E., supra, note 24, at 5.
67. See TSN dated 12 July 1993, p. 8.
68. "When the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty." Sec. 8, Act No. 2031 (Negotiable Instruments Law). Worthy of note is the fact that a check payable to bearer is more likely to be forged than one that is payable to order. The unofficial essence of

bearer check is that anyone who possesses or holds it can indorse or receive payment for it which implies that payment is not limited to a particular person. See Nickles, S.H., Matheson, J.H., and Adams, E.S., Modern Commercial Paper: The New Law of Negotiable Instruments and Related Commercial Paper (1994), at 61.

69. See TSN dated 26 July 1993, p. 18.
70. See TSN dated 12 July 1993, p. 11.
71. Ibid.
72. Id. at 17.
73. Id. at 18.
74. TSN dated 26 July 1993, p. 3.
75. Id. at 6.
76. Westmont Bank v. Ong, G.R. No. 132560, 30 January 2002, 375 SCRA 212, 220-221.
77. Traders Royal Bank v. Radio Philippines Network, Inc., G.R. No. 138510, 10 October 2002, 390 SCRA 608, 614.
78. Bailey, H.J., supra, note 28 at 474.

FIRST DIVISION

[G.R. No. 107508. April 25, 1996.]

PHILIPPINE NATIONAL BANK, petitioner, vs. COURT OF APPEALS, CAPITOL CITY DEVELOPMENT BANK, PHILIPPINE BANK OF COMMUNICATIONS, and F. ABANTE MARKETING, respondents.

Monsod Tamargo Valencia & Associates for private respondent Capitol City Development Bank.

Siguion Reyna Montecillo & Ongsiako for private respondent Philippine Bank of Communications.

SYLLABUS

1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS; MATERIAL ALTERATION, DEFINED. — An alteration is said to be material if it alters the effect of the instrument. It means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party or an unauthorized addition of

words or numbers or other change to an incomplete instrument relating to the obligation of a party. In other words, a material alteration is one which changes the items which are required to be stated under Section 1 of the Negotiable Instruments Law.

2. ID.; ID.; IMMATERIAL ALTERATION; EFFECT ON THE INSTRUMENT. — In his book entitled "Pandect of Commercial Law and Jurisprudence," Justice Jose C. Vitug opines that "an innocent alteration (generally, changes on items other than those required to be stated under Sec. 1, N.I.L.) and spoliation (alterations done by a stranger) will not avoid the instrument, but the holder may enforce it only according to its original tenor.

3. ID.; ID.; ID.; PRESENT IN CASE AT BAR. — The case at bench is unique in the sense that what was altered is the serial number of the check in question, an item which, it can readily be observed, is not an essential requisite for negotiability under Section 1 of the Negotiable Instruments Law. The aforementioned alteration did not change the relations between the parties. The name of the drawer and the drawee were not altered. The intended payee was the same. The sum of money due to the payee remained the same. The check's serial number is not the sole indication of its origin. As succinctly found by the Court of Appeals, the name of the government agency which issued the subject check was prominently printed therein. The check's issuer was therefore sufficiently identified, rendering the referral to the serial number redundant and inconsequential. Petitioner, thus cannot refuse to accept the check in question on the ground that the serial number was altered, the same being an immaterial or innocent one.

4. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF DEMANDS FACTUAL, LEGAL AND EQUITABLE JUSTIFICATION. — The award of attorney's fees lies within the discretion of the court and depends upon the circumstances of each case. However, the discretion of the court to award attorney's fees under Article 2208 of the Civil Code of the Philippines demands factual, legal and equitable justification, without which the award is a conclusion without a premise and improperly left to

speculation and conjecture. It becomes a violation of the proscription against the imposition of a penalty on the right to litigate (Universal Shipping Lines, Inc. v. Intermediate Appellate Court, 188 SCRA 170 [1990]). The reason for the award must be stated in the text of the court's decision. If it is stated only in the dispositive portion of the decision, the same shall be disallowed. As to the award of attorney's fees being an exception rather than the rule, it is necessary for the court to make findings of fact and law that would bring the case within the exception and justify the grant of the award (Refractories Corporation of the Philippines v. Intermediate Appellate Court, 176 SCRA 539).

D E C I S I O N

KAPUNAN, J p:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the decision dated April 29, 1992 of respondent Court of Appeals in CA-G.R. CV No. 24776 and its resolution dated September 16, 1992, denying petitioner Philippine National Bank's motion for reconsideration of said decision.

The facts of the cases are as follows:

A check with serial number 7-3666-223-3, dated August 7, 1981 in the amount of P97,650.00 was issued by the Ministry of Education and Culture (now Department of Education, Culture and Sports [DECS]) payable to F. Abante Marketing. This check was drawn against Philippine National Bank (herein petitioner).

On August 11, 1981, F. Abante Marketing, a client of Capitol City Development Bank (Capitol), deposited the questioned check in its savings account with said bank. In turn, Capitol deposited the same in its account with the Philippine Bank of Communications (PBCom) which, in turn, sent the check to petitioner for clearing. Petitioner cleared the check as good and, thereafter, PBCom credited Capitol's account for the amount stated in the check. However, on October 19, 1981, petitioner returned the check to PBCom and debited PBCom's account for the amount covered by the check, the reason being that there was a "material alteration" of the check number.

PBCom, as collecting agent of Capitol, then proceeded to debit the latter's account for the same amount, and subsequently, sent the check back to petitioner. Petitioner, however, returned the check to PBCom.

On the other hand, Capitol could not, in turn, debit F. Abante Marketing's account since the latter had already withdrawn the amount of the check as of October 15, 1981. Capitol sought clarification from PBCom and demanded the re-crediting of the amount. PBCom followed suit by requesting an explanation and re-crediting from petitioner.

Since the demands of Capitol were not heeded, it filed a civil suit with the Regional Trial Court of Manila against PBCom which, in turn, filed a third-party complaint against petitioner for reimbursement/indemnity with respect to the claims of Capitol. Petitioner, on its part, filed a fourth-party complaint against F. Abante Marketing.

On October 3, 1989; the Regional Trial Court rendered its decision the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

1.) On plaintiff's complaint, defendant Philippine Bank of Communications is ordered to re-credit or reimburse plaintiff Capitol City Development Bank the amount of P97,650.00, plus interest of 12 percent thereto from October 19, 1981 until the amount is fully paid;

2.) On Philippine Bank of Communications third-party complaint, third-party defendant PNB is ordered to reimburse and indemnify Philippine Bank of Communications for whatever amount PBCom pays to plaintiff;

3.) On Philippine National Bank's fourth-party complaint, F. Abante Marketing is ordered to reimburse and indemnify PNB for whatever amount PNB pays to PBCom;

4.) On attorney's fees, Philippine Bank of Communications is ordered to pay Capitol City Development Bank attorney's fees in the amount of Ten Thousand (P10,000.00) Pesos; but PBCom is entitled to reimbursement/indemnity from PNB; and Philippine

National Bank to be, in turn, reimbursed or indemnified by F. Abante Marketing for the same amount;

5.) The Counterclaims of PBCom and PNB are hereby dismissed;

6.) No pronouncement as to costs.

SO ORDERED. 1

An appeal was interposed before the respondent Court of Appeals which rendered its decision on April 29, 1992, the decretal portion of which reads:

WHEREFORE, the judgment appealed from is modified by exempting PBCom from liability to plaintiff-appellee for attorney's fees and ordering PNB to honor the check for P97,650.00, with interest as declared by the trial court, and pay plaintiff-appellee attorney's fees of P10,000.00. After the check shall have been honored by PNB, PBCom shall re-credit plaintiff-appellee's account with it with the amount. No pronouncement as to costs.

SO ORDERED. 2

A motion for reconsideration of the decision was denied by the respondent Court in its resolution dated September 16, 1992 for lack of merit. 3

Hence, petitioner filed the instant petition which raises the following issues:

I

WHETHER OR NOT AN ALTERATION OF THE SERIAL NUMBER OF A CHECK IS A MATERIAL ALTERATION UNDER THE NEGOTIABLE INSTRUMENTS LAW.

II

WHETHER OR NOT A CERTIFICATION HEREIN ISSUED BY THE MINISTRY OF EDUCATION CAN BE GIVEN WEIGHT IN EVIDENCE.

III

WHETHER OR NOT A DRAWEE BANK WHO FAILED TO RETURN A CHECK WITHIN THE TWENTY FOUR (24) HOUR CLEARING PERIOD MAY RECOVER THE VALUE OF THE CHECK FROM THE COLLECTING BANK.

IV
WHETHER OR NOT IN THE ABSENCE OF MALICE OR ILL WILL PETITIONER PNB MAY BE HELD LIABLE FOR ATTORNEY'S FEES. 4
We find no merit in the petition.
We shall first deal with the effect of the alteration of the serial number on the negotiability of the check in question.
Petitioner anchors its position on Section 125 of the Negotiable Instrument Law (ACT No. 2031) 5 which provides:
SECTION 125. What constitutes a material alteration. — Any alteration which changes:
(a) The date;
(b) The sum payable, either for principal or interest;
(c) The time or place of payment;
(d) The number or the relations of the parties;
(e) The medium or currency in which payment is to be made;
(f) Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.
Petitioner alleges that there is no hard and fast rule in the interpretation of the aforequoted provision of the Negotiable Instruments Law. It maintains that under Section 125(f), any change that alters the effect of the instrument is a material alteration. 6
We do not agree.
An alteration is said to be material if it alters the effect of the instrument. 7 It means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party. 8 In other words, a material alteration is one which changes the items which are required to be stated under Section 1 of the Negotiable Instrument Law.
Section 1 of the Negotiable Instruments Law provides:

SECTION 1. Form of negotiable instruments. — An instrument to be negotiable must conform to the following requirements:

(a) It must be in writing and signed by the maker or drawer;

(b) Must contain an unconditional promise or order to pay a sum certain in money;

(c) Must be payable on demand, or at a fixed or determinable future time;

(d) Must be payable to order or to bearer; and

(e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

In his book entitled "Pandect of Commercial Law and Jurisprudence," Justice Jose C. Vitug opines that "an innocent alteration (generally, changes on items other than those required to be stated under Sec. 1, N.I.L.) and spoliation (alterations done by a stranger) will not avoid the instrument, but the holder may enforce it only according to its original tenor." 9

Reproduced hereunder are some examples of material and immaterial alterations:

A. Material Alterations:

(1) Substituting the words "or bearer" for "order."

(2) Writing "protest waived" above blank indorsements.

(3) A change in the date from which interest is to run.

(4) A check was originally drawn as follows: "Iron County Bank, Crystal Falls, Mich. Aug. 5, 1901. Pay to G.L. or order $9 fifty cents CTR." The insertion of the figure 5 before the figure 9, the instrument being otherwise unchanged.

(5) Adding the words "with interest" with or without a fixed rate.

(6) An alteration in the maturity of a note, whether the time for payment is thereby curtailed or extended.

(7) An instrument was payable "First Nat'l Bank" the plaintiff added the word "Marion."

(8) Plaintiff, without consent of the defendant, struck out the name of the defendant as payee and inserted the name of the maker of the original note.

(9) Striking out the name of the payee and substituting that of the person who actually discounted the note.
(10) Substituting the address of the maker for the name of a co-maker. 10
B. Immaterial Alterations:
(1) Changing "I promise to pay" to "We promise to pay", where there are two makers.
(2) Adding the word "annual" after the interest clause.
(3) Adding the date of maturity as a marginal notation.
(4) Filling in the date of the actual delivery where the makers of a note gave it with the date in blank, "July . . ."
(5) An alteration of the marginal figures of a note where the sum stated in words in the body remained unchanged.
(6) The insertion of the legal rate of interest where the note had a provision for "interest at . . . per cent."
(7) A printed form of promissory note had on the margin the printed words, "Extended to . . ." The holder on or after maturity wrote in the blank space the words "May 1, 1913," as a reference memorandum of a promise made by him to the principal maker at the time the words were written to extend the time of payment.
(8) Where there was a blank for the place of payment, filling in the blank with the place desired.
(9) Adding to an indorsee's name the abbreviation "Cash" when it had been agreed that the draft should be discounted by the trust company of which the indorsee was cashier.
(10) The indorsement of a note by a stranger after its delivery to the payee at the time the note was negotiated to the plaintiff.
(11) An extension of time given by the holder of a note to the principal maker, without the consent of the surety co-maker. 11
The case at the bench is unique in the sense that what was altered is the serial number of the check in question, an item which, it can readily be observed, is not an essential requisite for negotiability under Section 1 of the Negotiable Instruments Law. The aforementioned alteration did not change the relations between the parties. The name of the drawer and the drawee were not altered.

The intended payee was the same. The sum of money due to the payee remained the same. Despite these findings, however, petitioner insists, that:

xxx xxx xxx

It is an accepted concept, besides being a negotiable instrument itself, that a TCAA check by its very nature is the medium of exchange of governments (sic) instrumentalities or agencies. And as (a) safety measure, every government office o(r) agency (is) assigned TCAA checks bearing different number series.

A concrete example is that of the disbursements of the Ministry of Education and Culture. It is issued by the Bureau of Treasury sizeable bundles of checks in booklet form with serial numbers different from other government office or agency. Now, for fictitious payee to succeed in its malicious intentions to defraud the government, all it needs to do is to get hold of a TCAA Check and have the serial numbers of portion (sic) thereof changed or altered to make it appear that the same was issued by the MEC. Otherwise, stated, it is through the serial numbers that (a) TCAA Check is determined to have been issued by a particular office or agency of the government. 12

xxx xxx xxx

Petitioner's arguments fail to convince. The check's serial number is not the sole indication of its origin. As succinctly found by the Court of Appeals, the name of the government agency which issued the subject check was prominently printed therein. The check's issuer was therefore insufficiently identified, rendering the referral to the serial number redundant and inconsequential. Thus, we quote with favor the findings of the respondent court:

xxx xxx xxx

If the purpose of the serial number is merely to identify the issuing government office or agency, its alteration in this case had no material effect whatsoever on the integrity of the check. The identity of the issuing government office or agency was not changed thereby and the amount of the check was not charged against the account of another government office or agency which

had no liability under the check. The owner and issuer of the check is boldly and clearly printed on its face, second line from the top: "MINISTRY OF EDUCATION AND CULTURE," and below the name of the payee are the rubber-stamped words: "Ministry of Educ. & Culture." These words are not alleged to have been falsely or fraudulently intercalated into the check. The ownership of the check is established without the necessity of recourse to the serial number. Neither is there any proof that the amount of the check was erroneously charged against the account of a government office or agency other than the Ministry of Education and Culture. Hence, the alteration in the number of the check did not affect or change the liability of the Ministry of Education and Culture under the check and, therefore, is immaterial. The genuineness of the amount and the signatures therein of then Deputy Minister of Education Hermenegildo C. Dumlao and of the resident Auditor, Penomio C. Alvarez are not challenged. Neither is the authenticity of the different codes appearing therein questioned . . . . 13 (Emphasis ours.)

Petitioner, thus cannot refuse to accept the check in question on the ground that the serial number was altered, the same being an immaterial or innocent one.

We now go to the second issue. It is petitioner's submission that the certification issued by Minrado C. Batonghinog, Cashier III of the MEC clearly shows that the check was altered. Said certification reads:

July 22, 1985

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of this Office, TCAA PNB Check No. SN7-3666223-3 dated August 7, 1981 drawn in favor of F. Abante Marketing in the amount of NINETY (S)EVEN THOUSAND SIX HUNDRED FIFTY PESOS ONLY (P97,650.00) was not issued by this Office nor released to the payee concerned. The series number of said check was not included among those requisition by this Office from the Bureau of Treasury.

Very truly yours,
(SGD.) MINRADO C. BATONGHINOG
Cashier III. 14

Petitioner claims that even if the author of the certification issued by the Ministry of Education and Culture (MEC) was not presented, still the best evidence of the material alteration would be the disputed check itself and the serial number thereon. Petitioner thus assails the refusal of respondent court to give weight to the certification because the author thereof was not presented to identify it and to be cross-examined thereon. 15

We agree with the respondent court.

The one who signed the certification was not presented before the trial court to prove that the said document was really the document he prepared and that the signature below the said document is his own signature. Neither did petitioner present an eyewitness to the execution of the questioned document who could possibly identify it. 16 Absent this proof, we cannot rule on the authenticity of the contents of the certification. Moreover, as we previously emphasized, there was no material alteration on the check, the change of its serial number not being substantial to its negotiability.

Anent the third issue — whether or not the drawee bank may still recover the value of the check from the collecting bank even if it failed to return the check within the twenty-four (24) hour clearing period because the check was tampered — suffice it to state that since there is no material alteration in the check, petitioner has no right to dishonor it and return it to PBCom, the same being in all respects negotiable.

However, the amount of P10,000.00 as attorney's fees is hereby deleted. In their respective decisions, the trial court and the Court of Appeals failed to explicitly state the rationale for the said award. The trial court merely ruled as follows:

With respect to Capitol's claim for damages consisting of alleged loss of opportunity, this Court finds that Capitol failed to adequately substantiate its claim. What Capitol had presented was

a self-serving, unsubstantiated and speculative computation of what it allegedly could have earned or realized were it not for the debit made by PBCom which was triggered by the return and debit made by PNB. However, this Court finds that it would be fair and reasonable to impose interest at 12% per annum on the principal amount of the check computed from October 19, 1981 (the date PBCom debited Capitol's account) until the amount is fully paid and reasonable attorney's fees. 17 (Emphasis ours.)

And contrary to the Court of Appeals' resolution, petitioner unambiguously questioned before it the award of attorney's fees, assigning the latter as one of the errors committed by the trial court. 18

The foregoing is in conformity with the guiding principles laid down in a long line of cases and reiterated recently in Consolidated Bank & Trust Corporation (Solidbank) v. Court of Appeals: 19

The award of attorney's fees lies within the discretion of the court and depends upon the circumstances of each case. However, the discretion of the court to award attorney's fees under Article 2208 of the Civil Code of the Philippines demands factual, legal and equitable justification, without which the award is a conclusion without a premise and improperly left to speculation and conjecture. It becomes a violation of the proscription against the imposition of a penalty on the right to litigate (Universal Shipping Lines Inc. v. Intermediate Appellate Court, 188 SCRA 170 [1990]). The reason for the award must be stated in the text of the court's decision. If it is stated only in the dispositive portion of the decision, the same shall be disallowed. As to the award of attorney's fees being an exception rather than the rule, it is necessary for the court to make findings of fact and law that would bring the case within exception and justify the grant of the award (Refractories Corporation of the Philippines v. Intermediate Appellate Court, 176 SCRA 539).

WHEREFORE, premises considered, except for the deletion of the award of attorney's fees, the decision of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Padilla, Bellosillo, Vitug and Hermosisima, Jr., JJ., concur.

Footnotes

1. CA Rollo, p. 28.
2. Rollo, pp. 21-28.
3. Id., at 30-31.
4. Id., at 10-11.
5. The Negotiable Instruments Law of the Philippines was patterned after the draft approved by the Commissioner on Uniform State Laws in the United States. (Agbayani Commentaries and Jurisprudence on the COMMERCIAL LAWS OF THE PHILIPPINES, Vol. 1, p. 99-100).
6. Rollo, p. 11.
7. Agbayani, Commentaries and Jurisprudence on the COMMERCIAL LAWS OF THE PHILIPPINES, Vol. 1, 1992 ed., p. 403.
8. Nickles, Negotiable Instruments and other related Commercial Paper, 1993 2nd ed., p. 168.
9. Vitug, Pandect of Commercial Law and Jurisprudence, 1990 ed., p. 55.
10. Agbayani, Commentaries & Jurisprudence on the COMMERCIAL LAWS OF THE PHILIPPINES, Vol. 1, 1992 ed., pp. 403-404.
11. Id., at 404-405.
12. Rollo, p. 78.
13. Rollo, pp. 21-28.
14. Rollo, p. 26.
15. Ibid.
16. R.J. Francisco, Evidence, 1993 ed., p. 505.

The due execution of a document could be proved through the testimony of (1) the person who executed it; (2) the person before whom its execution was acknowledged; or (3) any person who was present and saw it executed and delivered, or who, after its execution and delivery, saw it and recognized the

signatures, or by a person to whom the parties to the instrument had previously confessed the execution thereof . . .
17. CA Rollo, Decision of RTC, p. 5.
18. CA Rollo, Brief of Appellant PNB, pp. 15-16.
19. 246 SCRA 193 (1995); See also, Toyota Shaw, Inc. v. CA, 244 SCRA 320 (1995).

EN BANC
[G.R. No. L-2861. February 26, 1951.]
ENRIQUE P. MONTINOLA, plaintiff-appellant, vs. THE PHILIPPINE NATIONAL BANK, ET AL., defendants-appellees.
Quijano, Rosete & Lucena, for appellant.
Second Assistant Corporate Counsel Hilarion U. Jarencio, for appellee Philippine National Bank.
Solicitor General Felix Bautista Angelo and Solicitor Augusto M. Luciano,for appellee Provincial Treasurer of Misamis Oriental.
SYLLABUS
1. NEGOTIABLE INSTRUMENT; MATERIAL ALTERATION WHICH DISCHARGES THE INSTRUMENT. — On May 2, 1942, L in his capacity as Provincial Treasurer of Misamis Oriental as drawer, issued a check to R in the sum of P100,000, on the Philippines National Bank as drawee. R sold P30,000 of the check to m for P90,000 Japanese Military notes, of which only P45,000 was paid by M. The writing made by R at the back of the check was to the effect that he was assigning only P30,000 of the value of the document with an instruction to the bank to pay P30,000 to m and to deposit the balance to R's credit. This writing was, however, mysteriously obliterated and in its place, a supposed indorsement appearing on the back of the check was made. At the time of the transfer of this check to M about the last days of December, 1944 or the first days of January, 1845, the check was long overdue by about 2-1/2 years. In August, 1947, M instituted an action against the Philippine National Bank and the Provincial Treasurer of Misamis Oriental to collect the sum of

P100,000, the amount of the aforesaid check. There now appears on the face of said check the words in parenthesis "Agent, Phil. National Bank" under the signature of L purportedly showing that L issued the check as agent of the Philippine National Bank. Held: The words "Agent, Phil. National Bank" now appearing on the face of the check were added or placed in the instrument after it was issued by the Provincial Treasurer L to R. The check was issued by only as Provincial Treasurer and as an official of the Government, which was under obligation to provide the USAFE with advance funds, and not as agent of the bank, which had no such obligation. The addition of those words was made after the check had been transferred by R to M. The insertion of the words "Agent, Phil. National Bank," which converts the bank from a mere drawee to a drawer and therefore changes its liability, constitutes a material alteration of the instrument without the consent of the parties liable thereon, and so discharges the instrument.

2. ID.; INDORSEMENT OF PART OF AMOUNT PAYABLE, IS NOT NEGOTIATION OF INSTRUMENT BUT MAY BE REGARDED AS MERE ASSIGNMENT. — Where the indorsement of a check is only for a part of the amount payable, it is not legally negotiated within the meaning of section 32 of the Negotiable Instruments Law which provides that "the indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorse a part only of the amount payable does not operate as a negotiation of the instrument." M may, therefore, not be regarded as an indorse. At most he may be regarded as a mere assignee of the P30,000 sold to him by R, in which case, as such Provincial Treasurer of Misamis Oriental against R.

3. ID.; HOLDER IN DUE COURSE; HOLDER WHO HAS TAKEN THE INSTRUMENT AFTER IT WAS LONG OVERDUE; ASSIGNEE IS NOT A PAYEE. — Neither can M de considered as a holder in due course because section 52 of the Negotiable Instruments Law defines a holder in due course as a holder who taken the instrument under certain conditions, one of

which is that he became the holder before it was overdue. When M received the check, it was long overdue. And, M is not even a holder because section 191 of the same law defines holder as the payee or indorse of a bill or note and m is not a payee. Neither is he an indorse, for being only indorse he is considered merely as an assignee.

4. ID.; INSTRUMENT ISSUED TO DISTRIBUTION OFFICER OF USAFE, WHO HAS NO RIGHT TO INDORSE IT PERSONALLY. — Where an instrument was issued to R not as a person but as the disbursing officer of the USAFE, he has no right to indorse the instrument personally and if he does, the negotiation constitutes a breach of trust, and he transfers nothing to the indorse.

5. QUESTIONED DOCUMENTS; DISCREPANCIES BETWEEN PHOTOSTATIC COPY TAKEN BEFORE TEARING AND BURNING OF CHECK AND PRESENT CONDITION THEREOF SHOW WORDS IN QUESTION WERE INSERTED AFTER SAID TEARING AND BURNING. — Recovery on a check, Exhibit A, depended on the presence of the words "Agent, Phil. National Bank" under the signature of L, at time Exhibit A was drawn. But the photostatic copy, Exhibit B, admittedly taken before Exhibit A was burned and torn, showed marked discrepancies between Exhibits A and B as to the position of the words in question in relation to the words "Provincial Treasurer". Held: The inference is plain that the words "Agent, Phil. National Bank" were inserted after the check was burned and torn.

D E C I S I O N

MONTEMAYOR, J p:

In August, 1947, Enrique P. Montinola filed a complaint in the Court of First Instance of Manila against the Philippine National Bank and the Provincial Treasurer of Misamis Oriental to collect the sum of P100,000, the amount of Check No. 1382 issued on May 2, 1942 by the Provincial Treasurer of Misamis Oriental to Mariano V. Ramos and supposedly indorsed to Montinola. After

hearing, the court rendered a decision dismissing the complaint with costs against plaintiff-appellant. Montinola has appealed from that decision directly to this Court inasmuch as the amount in controversy exceeds P50,000.

There is no dispute as to the following facts. In April and May, 1942, Ubaldo D. Laya was the Provincial Treasurer of Misamis Oriental. As such Provincial Treasurer he was ex officio agent of the Philippine National Bank branch in that province. Mariano V. Ramos worked under him as assistant agent in the bank branch aforementioned. In April of that year 1942, the currency being used in Mindanao, particularly Misamis Oriental and Lanao which had not yet been occupied by the Japanese invading forces, was the emergency currency which had been issued since January, 1942 by the Mindanao Emergency Currency Board by authority of the late President Quezon.

About April 26, 1942, thru the recommendation of Provincial Treasurer Laya, his assistant agent M. V. Ramos was inducted into the United States Armed Forces in the Far East (USAFFE) as disbursing officer of an army division. As such disbursing officer, M. V. Ramos on April 30, 1942, went to the neighboring Province of Lanao to procure a cash advance in the amount of P800,000 for the use of the USAFFE in Cagayan de Misamis. Pedro Encarnacion, Provincial Treasurer of Lanao did not have that amount in cash. So, he gave Ramos P300,000 in emergency notes and a check for P500,000. On May 2, 1942 Ramos went to the office of Provincial Treasurer Laya at Misamis Oriental to encash the check for P500,000 which he had received from the Provincial Treasurer of Lanao. Laya did not have enough cash to cover the check so he gave Ramos P400,000 in emergency notes and a check No. 1382 for P100,000 drawn on the Philippine National Bank. According to Laya he had previously deposited P500,000 emergency notes in the Philippine National Bank branch in Cebu and he expected to have the check issued by him cashed in Cebu against said deposit.

Ramos had no opportunity to cash the check because in the evening of the same day the check was issued to him, the Japanese forces entered the capital of Misamis Oriental, and on June 10, 1942, the USAFFE forces to which he was attached surrendered. Ramos was made a prisoner of war until February 12, 1943, after which, he was released and he resumed his status as a civilian. About the last days of December, 1944 or the first days of January, 1945, M. V. Ramos allegedly indorsed this check No. 1382 to Enrique P. Montinola. The circumstances and conditions under which the negotiation or transfer was made are in controversy. According to Montinola's version, sometime in June, 1944, Ramos, needing money with which to buy foodstuffs and medicine, offered to sell him the check; to be sure that it was genuine and negotiable, Montinola, accompanied by his agents and by Ramos himself, went to see President Carmona of the Philippine National Bank in Manila about said check; that after examining it President Carmona told him that it was negotiable but that he should not let the Japanese catch him with it because possession of the same would indicate that he was still waiting for the return of the Americans to the Philippines; that he and Ramos finally agreed to the sale of the check for P850,000 Japanese military notes, payable in installments; that of this amount, P450,000 was paid to Ramos in Japanese military notes in five installments, and the balance of P400,000 was paid in kind, namely, four bottles of sulphatiasole, each bottle containing 1,000 tablets, and each tablet valued at P100; that upon payment of the full price, M. V. Ramos duly indorsed the check to him. This indorsement which now appears on the back of the document is described in detail by the trial court as follows:

"The endorsement now appearing at the back of the check (see Exhibit A-1) may be described as follows: The words, 'pay to the order of ' — in rubber stamp and in violet color are placed about one inch from the top. This is followed by the words 'Enrique P. Montinola' in typewriting which is approximately 5/8 of an inch below the stamped words 'pay to the order of'. Below 'Enrique P.

Montinola', in typewriting are the words and figures also in typewriting, '517 Isabel Street' and about 1/8 of an inch therefrom, the edges of the check appear to have been burned, but there are words stamped apparently in rubber stamp which, according to Montinola, are a facsimile of the signature of Ramos. There is a signature which apparently reads 'M. V. Ramos' also in green ink but made in handwriting."

To the above description we may add that the name of M. V. Ramos is handprinted in green ink, under the signature. According to Montinola, he asked Ramos to handprint it because Ramos' signature was not clear.

Ramos in his turn told the court that the agreement between himself and Montinola regarding the transfer of the check was that he was selling only P30,000 of the check and for this reason, at the back of the document he wrote in longhand the following:

"Pay to the order of Enrique P. Montinola P30,000 only. The balance to be deposited in the Philippine National Bank to the credit of M. V. Ramos."

Ramos further said that in exchange for this assignment of P30,000 Montinola would pay him P90,000 in Japanese military notes but that Montinola gave him only two checks of P20,000 and P25,000, leaving a balance unpaid of P45,000. In this he was corroborated by Atty. Simeon Ramos Jr. who told the court that the agreement between Ramos and Montinola was that the latter, for the sale to him of P30,000 of the check, was to pay Ramos P90,000 in Japanese military notes; that when the first check for P20,000 was issued by Montinola, he (Simeon) prepared a document evidencing said payment of P20,000; that when the second check for P25,000 was issued by Montinola, he (Simeon) prepared another document with two copies, one for Montinola and the other for Ramos, both signed by Montinola and M. V. Ramos, evidencing said payment, with the understanding that the balance of P45,000 would be paid in a few days.

The indorsement or writing described by M. V. Ramos which had been written by him at the back of the check, Exhibit A, does not

now appear at the back of said check. What appears thereon is the indorsement testified to by Montinola and described by the trial court as reproduced above. Before going into a discussion of the merits of the version given by Ramos and Montinola as to the indorsement or writing at the back of the check, it is well to give a further description of it as we shall do later.

When Montinola filed his complaint in 1947 he stated therein that the check had been lost, and so in lieu thereof he filed a supposed photostatic copy. However, at the trial, he presented the check itself and had its face marked Exhibit A and the back thereof Exhibit A-1. But the check is badly mutilated, blotted, torn and partly burned, and its condition can best be appreciated by seeing it. Roughly, it may be stated that looking at the face of the check (Exhibit A) we see that the left third portion of the paper has been cut off perpendicularly and severed from the remaining 2/3 portion; a triangular portion of the upper right hand corner of said remaining 2/3 portion has been similarly cut off and severed, and to keep and attach this triangular portion and the rectangular 1/3 portion to the rest of the document, the entire check is pasted on both sides with cellophane; the edges of the severed portions as well as of the remaining major portion, where cut bear traces of burning and searing; there is a big blot with indelible ink about the right middle portion, which seems to have penetrated to the back of the check (Exhibit A-1), which back bears a larger smear right under the blot, but not as black and sharp as the blot itself; finally, all this tearing, burning, blotting and smearing and pasting of the check renders it difficult if not impossible to read some of the words and figures on the check. In explanation of the mutilation of the check Montinola told the court that several months after indorsing and delivering the check to him, Ramos demanded the return of the check to him, threatening Montinola with bodily harm, even death by himself or his guerrilla forces if he did not return said check, and that in order to justify the non-delivery of the document and to discourage Ramos from getting it back, he (Montinola) had to resort to the mutilation of the document.

As to what was really written at the back of the check which Montinola claims to be a full indorsement of the check, we agree with the trial court that the original writing of Ramos on the back of the check was to the effect that he was assigning only P30,000 of the value of the document and that he was instructing the bank to deposit to his credit the balance. This writing was in some mysterious way obliterated, and in its place was placed the present indorsement appearing thereon. Said present indorsement occupies a good portion of the back of the check. It has already been described in detail. As to how said present indorsement came to be written, the circumstances surrounding its preparation, the supposed participation of M. V. Ramos in it and the writing originally appearing on the reverse side of the check, Exhibit A-1, we quote with approval what the trial court presided over by Judge Conrado V. Sanchez, in its well-prepared decision, says on these points:

"The alleged indorsement: 'Pay to the order of Enrique P. Montinola the amount of P30,000 only. The balance to be deposited to the credit of M. V. Ramos', signed by M. V. Ramos — according to the latter — does not now appear at the back of the check. A different indorsement, as aforesaid, now appears.

"Had Montinola really paid in full the sum of P850,000 in Japanese Military Notes as consideration for the check? The following observations are in point:.

"(a) According to plaintiff's witness Gregorio A. Cortado, the oval line in violet, enclosing 'P.' of the words 'Enrique P. Montinola' and the line in the form of cane handle crossing the word 'street' in the words and figures '517 Isabel Street' in the endorsement Exhibit A-1, are 'unusual' to him, and that as far as he could remember this writing did not appear on the instrument and he had no knowledge as to how it happened to be there. Obviously Cortado had no recollection as to how such marks ever were stamped at the back of the check.

"(b) Again Cortado, speaking of the endorsement as it now appears at the back of the check (Exh. A-1) stated that Ramos

typewrote these words outside of the premises of Montinola, that is, in a nearby house. Montinola, on the other hand, testified that Ramos typewrote the words 'Enrique P. Montinola, 517 Isabel Street', in his own house. Speaking of the rubber stamp used at the back of the check and which produced the words 'pay to the order of', Cortado stated that when he (Cortado), Atadero, Montinola and Ramos returned in group to the house of Montinola, the rubber stamp was already in the house of Montinola, and it was on the table of the upper floor of the house, together with the stamp pad used to stamp the same. Montinola, on the other hand, testified that Ramos carried in his pocket the said rubber stamp as well as the ink pad, and stamped it in his house.

"The unusually big space occupied by the indorsement on the back of the check and the discrepancies in the versions of Montinola and his witness Cortado just noted, create doubts as to whether or not really Ramos made the indorsement as it now appears at the back of Exhibit A. One thing difficult to understand is why Ramos should go into the laborious task of placing the rubber stamp 'Pay to the order of' and afterwards move to the typewriter and write the words 'Enrique P. Montinola' and '517 Isabel Street', and finally sign his name too far below the main indorsement.

"(c) Another circumstance which bears heavily upon the claim of plaintiff Montinola that he acquired the full value of the check and paid the full consideration therefor is the present condition of said check. It is now so unclean and discolored; it is pasted in cellophane, blotted with ink on both sides torn into three parts, and with portions thereof burned - all done by plaintiff, the alleged owner thereof.

"The acts done by the very plaintiff on a document so important and valuable to him, and which according to him involves his life savings, approximate intentional cancellation. The only reason advanced by plaintiff as to why he tore the check, burned the torn edges and blotted out the registration at the back, is found in the following: That Ramos came to his house, armed with a revolver, threatened his life and demanded from him the return of the check;

that when he informed Ramos that he did not have it in the house, but in some deposit outside thereof and that Ramos promised to return the next day; that the same night he tore the check into three parts, burned the sides with a parrafin candle to show traces of burning; and that upon the return of Ramos the next day he showed the two parts of the check, the triangle on the right upper part and the torn piece on the left part, and upon seeing the condition thereof Ramos did not bother to get the check back. He also said that he placed the blots in indelible ink to prevent Ramos — if he would be forced to surrender the middle part of the check — from seeing that it was registered in the General Auditing Office.

"Conceding at the moment these facts to be true, the question is: Why should Montinola be afraid of Ramos? Montinola claims that Ramos went there about April, 1945, that is, during liberation. If he believed he was standing by his rights, he could have very well sought police protection or transferred to some place where Ramos could not bother him. And then, if really Ramos did not have anything more to do with this check for the reason that Montinola had obtained in full the amount thereof, there could not be any reason why Ramos should have threatened Montinola as stated by the latter. Under the circumstances, the most logical conclusion is that Ramos wanted the check at all costs because Montinola did not acquire the check to such an extent that it borders on intentional cancellation thereof (see Sections 119- 123 Negotiable Instruments Law) there is room to believe that Montinola did not have so much investments in that check as to have adopted an 'what do I care?' attitude.

"And there is the circumstance of the alleged loss of the check. At the time of the filing of the complaint the check was allegedly lost, so much so that a photostatic copy thereof was merely attached to the complaint (see paragraph 7 of the complaint). Yet, during the trial the original check Exhibit A was produced in court.

"But a comparison between the photostatic copy and the original check reveals discrepancies between the two. The condition of the check as it was produced is such that it was partially burned,

partially blotted, badly mutilated, discolored and pasted with cellophane. What is worse is that Montinola's excuse as to how it was lost, that it was mixed up with household effects is not plausible, considering the fact that it involves his life savings, and that before the alleged loss, he took extreme pains and precautions to save the check from the possible ravages of the war, had it photographed, registered said check with the General Auditing Office and he knew that Ramos, since liberation, was not after the possession of that check.

"(d) It seems that Montinola was not so sure as to what he had testified to in reference to the consideration he paid for the check. In court he testified that he paid P450,000 in cash from June to December 1944, and P400,000 worth of sulphatiazole in January 1945 to complete the alleged consideration of P850,000. When Montinola testified this way in court, obviously he overlooked a letter he wrote to the provincial treasurer of Cagayan, Oriental Misamis, dated May 1, 1947, Exhibit 8 of the record. In that letter Exhibit 3, Montinola told Provincial Treasurer Elizalde of Misamis Oriental that 'Ramos endorsed it (referring to check) to me for goods in kind, medicine, etc., received by him for the use of the guerrillas.' In said letter Exhibit 3, Montinola did not mention the cash that he paid for the check.

"From the foregoing the court concludes that plaintiff Montinola came into the possession of the check in question about the end of December 1944 by reason of the fact that M. V. Ramos sold to him P30,000 of the face value thereof in consideration of the sum of P90,000 Japanese money, of which only one-half or P45,000 (in Japanese money) was actually paid by said plaintiff to Ramos." (R. on A., pp. 31-33; Brief of Appellee, pp. 14-20.)

At the beginning of this decision, we stated that as Provincial Treasurer of Misamis Oriental, Ubaldo D. Laya was ex officio agent of the Philippine National Bank branch in that province. On the face of the check (Exh. A) we now find the words in parenthesis "Agent, Phil. National Bank" under the signature of Laya, purportedly showing that he issued the check as agent of the

Philippine National Bank. If this is true, then the bank is not only drawee but also a drawer of the check, and Montinola evidently is trying to hold the Philippine National Bank liable in that capacity of drawer, because as drawee alone, inasmuch as the bank has not yet accepted or certified the check, it may yet avoid payment. Laya, testifying in court, stated that he issued the check only as Provincial Treasurer, and that the words in parenthesis "Agent, Phil. National Bank" now appearing under his signature did not appear on the check when he issued the same. In this he was corroborated by the payee M. V. Ramos who equally assured the court that when he received the check and then delivered it to Montinola, those words did not appear under the signature of Ubaldo D. Laya. We again quote with approval the pertinent portion of the trial court's decision:

"The question is reduced to whether or not the words, 'Agent, Phil, National Bank' were added after Laya had issued the check. In a straightforward manner and without vacillation Laya positively testified that the check Exhibit A was issued by him in his capacity as Provincial Treasurer of Misamis Oriental and that the words 'Agent, Phil. National Bank' which now appear on the check Exhibit A were not typewritten below his signature when he signed the said check and delivered the same to Ramos. Laya assured the court that there could not be any mistake as to this. For, according to Laya, when he issued checks in his capacity as agent of the Misamis Oriental agency of the Philippine National Bank the said check must be countersigned by the cashier of the said agency — not by the provincial auditor. He also testified that the said check was issued by him in his capacity as provincial treasurer of Misamis Oriental and that is why the same was countersigned by Provincial Auditor Flores. The Provincial Auditor at that time had no connection in any capacity with the Misamis Oriental agency of the Philippine National Bank. Plaintiff Montinola on the other hand testified that when he received the check Exhibit A it already bore the words 'Agent, Phil. National Bank' below the signature of Laya and the printed words 'Provincial Treasurer'.

"After considering the testimony of the one and the other, the court finds that the preponderance of the evidence supports Laya's testimony. In the first place, his testimony was corroborated by the payee M. V. Ramos. But what renders more probable the testimony of Laya and Ramos is the fact that the money for which the check was issued was expressly for the use of the USAFFE of which Ramos was then disbursing officer, so much so that upon the delivery of the P400,000 in emergency notes and the P100,000 check to Remos, Laya credited his depository accounts as provincial treasurer with the corresponding credit entry. In the normal course of events the check could not have been issued by the bank, and this is borne by the fact that the signature of Laya was countersigned by the provincial auditor, not the bank cashier. And then, too there is the circumstance that this check was issued by the provincial treasurer of Lanao to Ramos who requisitioned the said funds in his capacity as disbursing officer of the USAFFE. The check, Exhibit A is not what we may term in business parlance, 'certified check' or 'cashier's check.'.

"Besides, at the time the check was issued, Laya already knew that Cebu and Manila were already occupied. He could not have therefore issued the check — as a bank employee — payable at the central office of the Philippine National Bank.

"Upon the foregoing circumstances the court concludes that the words 'Agent, Phil. National Bank' below the signature of Ubaldo D. Laya and the printed words 'Provincial Treasurer' were added in the check after the same was issued by the Provincial Treasurer of Misamis Oriental."

From all the foregoing, we may safely conclude as we do that the words "Agent, Phil. National Bank" now appearing on the face of the check (Exh. A) were added or placed in the instrument after it was issued by Provincial Treasurer Laya to M. V. Ramos. There is no reason known to us why Provincial Treasurer Laya should issue the check (Exh. A) as agent of the Philippine National Bank. Said check for P100,000 was issued to complete the payment of the other check for P500,000 issued by the Provincial Treasurer of

Lanao to Ramos, as part of the advance funds for the USAFFE in Cagayan de Misamis. The balance of P400,000 in cash was paid to Ramos by Laya from the funds, not of the bank but of the Provincial Treasury. Said USAFFE were being financed not by the Bank but by the Government and, presumably, one of the reasons for the issuance of the emergency notes in Mindanao was for this purpose. As already stated, according to Provincial Treasurer Laya, upon receiving a relatively considerable amount of these emergency notes for his office, he deposited P500,000 of said currency in the Philippine National Bank branch in Cebu, and that in issuing the check (Exh. A), he expected to have it cashed at said Cebu bank branch against his deposit of P500,000.

The logical conclusion, therefore, is that the check was issued by Laya only as Provincial Treasurer and as an official of the Government which was under obligation to provide the USAFFE with advance funds, and not by the Philippine National Bank which had no such obligation. The very Annex C, made part of plaintiff's complaint, and later introduced in evidence for him as Exhibit E states that Laya issued the check "in his capacity as Provincial Treasurer of Misamis Oriental", obviously, not as agent of the Bank.

Now, did M. V. Ramos add or place those words below the signature of Laya before transferring the check to Montinola? Let us bear in mind that Ramos before his induction into the USAFFE had been working as assistant of Treasurer Laya as ex-officio agent of the Misamis Oriental branch of the Philippine National Bank. Naturally, Ramos must have known the procedure followed there as to the issuance of checks, namely, that when a check is issued by the Provincial Treasurer as such, it is countersigned by the Provincial Auditor as was done on the check (Exhibit A), but that if the Provincial Treasurer issues a check as agent of the Philippine National Bank, the check is countersigned not by the Provincial Auditor who has nothing to do with the bank, but by the bank cashier, which was not done in this case. It is not likely, therefore, that Ramos had made the insertion of the words "Agent, Phil.

National Bank" after he received the check, because he should have realized that following the practice already described, the check having been issued by Laya as Provincial Treasurer, and not as agent of the bank, and since the check bears the countersignature not of the Bank cashier but of the Provincial Auditor, the addition of the words "Agent, Phil. National Bank" could not change the status and responsibility of the bank. It is therefore more logical to believe and to find that the addition of those words was made after the check had been transferred by Ramos to Montinola. Moreover, there are other facts and circumstances involved in the case which support this view. Referring to the mimeographed record on appeal filed by the plaintiff- appellant, we find that in transcribing and copying the check, particularly the face of it (Exhibit A) in the complaint, the words "Agent, Phil. National Bank" now appearing on the face of the check under the signature of the Provincial Treasurer, is missing. Unless the plaintiff in making this copy or transcription in the complaint committed a serious omission which is decisive as far as the bank is concerned, the inference is, that at the time the complaint was filed, said phrase did not appear on the face of the check. That probably was the reason why the bank in its motion to dismiss dated September 2, 1947, contended that if the check in question had been issued by the provincial treasurer in his capacity as agent of the Philippine National Bank, said treasurer would have placed below his signature the words "Agent of the Philippine National Bank". The plaintiff because of the alleged loss of the check, allegedly attached to the complaint a photostatic copy of said check and marked it as Annex A. But in transcribing and copying said Annex A in his complaint, the phrase "Agent, Phil. National Bank" does not appear under the signature of the provincial treasurer. We tried to verify this discrepancy by going over the original records of the Court of First Instance so as to compare the copy of Annex A in the complaint, with the original Annex A, the photostatic copy, but said original Annex A appears to be missing from the record. How it disappeared is not explained.

Of course, now we have in the list of exhibits a photostatic copy marked Annex A and Exhibit B, but according to the manifestation of counsel for the plaintiff dated October 15, 1948, said photostatic copy now marked Annex A and Exhibit B was submitted on October 15, 1948, in compliance with the verbal order of the trial court. It is therefore evident that the Annex A now available is not the same original Annex A attached to the complaint in 1947.

There is one other circumstance, important and worth noting. If Annex A also marked Exhibit B is the photostatic copy of the original check No. 1382 particularly the face thereof (Exhibit A), then said photostatic copy should be a faithful and accurate reproduction of the check, particularly of the phrase "Agent, Phil. National Bank" now appearing under the signature of the Provincial Treasurer on the face of the original check (Exhibit A). But a minute examination of and comparison between Annex A, the photostatic copy also marked Exhibit B and the face of the check, Exhibit A, especially with the aid of a hand lens, show notable differences and discrepancies. For instance, on Exhibit A, the letter A of the word "Agent" is toward the right of the tail of the beginning letter of the signature of Ubaldo D. Laya; this same letter "A" however in Exhibit B is directly under said tail.

The letter "N" of the word "National" on Exhibit A is underneath the space between "Provincial" and "Treasurer"; but the same letter "N" is directly under the letter "I" of the word "Provincial" in Exhibit B.

The first letter "a" of the word "National" is under "T" of the word "Treasurer" in Exhibit A; but the same letter "a" in Exhibit "B" is just below the space between the words "Provincial" and "Treasurer".

The letter "k" of the word "Bank" in Exhibit A is after the green perpendicular border line near the lower righthand corner of the edge of the check (Exh. A); this same letter "k" however, on Exhibit B is on the very border line itself or even before said border line.

The closing parenthesis ")" on Exhibit A is a little far from the perpendicular green border line and appears to be double instead of one single line; this same ")" on Exhibit B appears in a single line and is relatively nearer to the border line.

There are other notable discrepancies between the check Annex A and the photostatic copy, Exhibit B, as regards the relative position of the phrase "Agent, Phil. National Bank", with the title Provincial Treasurer, giving ground to the doubt that Exhibit B is a photostatic copy of the check (Exhibit A).

We then have the following facts. Exhibit A was issued by Laya in his capacity as Provincial Treasurer of Misamis Oriental as drawer on the Philippine National Bank as drawee. Ramos sold P30,000 of the check to Enrique P. Montinola for P90,000 Japanese military notes, of which only P45,000 was paid by Montinola. The writing made by Ramos at the back of the check was an instruction to the bank to pay P30,000 to Montinola and to deposit the balance to his (Ramos) credit. This writing was obliterated and in its place we now have the supposed indorsement appearing on the back of the check (Exh. A-1).

At the time of the transfer of this check (Exh. A) to Montinola about the last days of December, 1944, or the first days of January, 1945, the check which, being a negotiable instrument, was payable on demand, was long overdue by about 2 1/2 years. It may therefore be considered even then, a stale check. Of course, Montinola claims that about June, 1944 when Ramos supposedly approached him for the purpose of negotiating the check, he (Montinola) consulted President Carmona of the Philippine National Bank who assured him that the check was good and negotiable. However, President Carmona on the witness stand flatly denied Montinola's claim and assured the court that the first time that he saw Montinola was after the Philippine National Bank, of which he was President, reopened, after liberation, around August or September, 1945, and that when shown the check he told Montinola that it was stale. M. V. Ramos also told the court

that it is not true that he ever went with Montinola to see President Carmona about the check in 1944.

On the basis of the facts above related there are several reasons why the complaint of Montinola cannot prosper. The insertion of the words "Agent, Phil. National Bank" which converts the bank from a mere drawee to a drawer and therefore changes its liability, constitutes a material alteration of the instrument without the consent of the parties liable thereon, and so discharges the instrument. (Section 124 of the Negotiable Instruments Law). The check was not legally negotiated within the meaning of the Negotiable Instruments Law. Section 32 of the same law provides that "the indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, . . . (as in this case) does not operate as a negotiation of the instrument." Montinola may therefore not be regarded as an indorsee. At most he may be regarded as a mere assignee of the P30,000 sold to him by Ramos, in which case, as such assignee, he is subject to all defenses available to the drawer Provincial Treasurer of Misamis Oriental and against Ramos. Neither can Montinola be considered as a holder in due course because section 52 of said law defines a holder in due course as a holder who has taken the instrument under certain conditions, one of which is that he became the holder before it was overdue. When Montinola received the check, it was long overdue. And, Montinola is not even a holder because section 191 of the same law defines holder as the payee or indorsee of a bill or note and Montinola is not a payee. Neither is he an indorsee for as already stated, at most he can be considered only as assignee. Neither could it be said that he took it in good faith. As already stated, he has not paid the full amount of P90,000 for which Ramos sold him P30,000 of the value of the check. In the second place, as was stated by the trial court in its decision, Montinola speculated on the check and took a chance on its being paid after the war. Montinola must have known that at the time the check was issued in May, 1942, the money circulating in

Mindanao and the Visayas was only the emergency notes and that the check was intended to be payable in that currency. Also, he should have known that a check for such a large amount of P100,000 could not have been issued to Ramos in his private capacity but rather in his capacity as disbursing officer of the USAFFE, and that at the time that Ramos sold a part of the check to him, Ramos was no longer connected with the USAFFE but already a civilian who needed the money only for himself and his family.

As already stated, as a mere assignee Montinola is subject to all the defenses available against assignor Ramos. And, Ramos had he retained the check may not now collect its value because it had been issued to him as disbursing officer. As observed by the trial court, the check was issued to M. V. Ramos not as a person but M. V. Ramos as the disbursing officer of the USAFFE. Therefore, he had no right to indorse it personally to plaintiff. It was negotiated in breach of trust, hence he transferred nothing to the plaintiff.

In view of all the foregoing, finding no reversible error in the decision appealed from, the same is hereby affirmed with costs.

In the prayer for relief contained at the end of the brief for the Philippine National Bank dated September 27, 1949, we find this prayer:.

"It is also respectfully prayed that this Honorable Court refer the check, Exhibit A, to the City Fiscal's Office for appropriate criminal action against the plaintiff-appellant if the facts so warrant."

Subsequently, in a petition signed by plaintiff-appellant Enrique P. Montinola dated February 27, 1950 he asked this Court to allow him to withdraw the original check (Exh. A) for him to keep, expressing his willingness to submit it to the Court whenever needed for examination and verification. The bank on March 2, 1950 opposed the said petition on the ground that inasmuch as the appellant's cause of action in this case is based on the said check, it is absolutely necessary for the court to examine the original in order to see the actual alterations supposedly made thereon, and

that should this Court grant the prayer contained in the bank's brief that the check be later referred to the city fiscal for appropriate action, said check may no longer be available if the appellant is allowed to withdraw said document. In view of said opposition this Court by resolution of March 6, 1950, denied said petition for withdrawal.

Acting upon the petition contained in the bank's brief already mentioned, once the decision becomes final, let the Clerk of Court transmit to the city fiscal the check (Exh. A) together with all pertinent papers and documents in this case, for any action he may deem proper in the premises.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Reyes and Bautista Angelo, JJ., concur.

[G.R. No. 129910. September 5, 2006.]

THE INTERNATIONAL CORPORATE BANK, INC., petitioner, vs. COURT OF APPEALS and PHILIPPINE NATIONAL BANK, respondents.

D E C I S I O N

CARPIO, J p:

The Case

Before the Court is a petition for review 1 assailing the 9 August 1994 Amended Decision 2 and the 16 July 1997 Resolution 3 of the Court of Appeals in CA-G.R. CV No. 25209. TAIESD

The Antecedent Facts

The case originated from an action for collection of sum of money filed on 16 March 1982 by the International Corporate Bank, Inc. 4 ("petitioner") against the Philippine National Bank ("respondent"). The case was raffled to the then Court of First Instance (CFI) of Manila, Branch 6. The complaint was amended on 19 March 1982. The case was eventually re-raffled to the Regional Trial Court of Manila, Branch 52 ("trial court").

The Ministry of Education and Culture issued 15 checks 5 drawn against respondent which petitioner accepted for deposit on various dates. The checks are as follows:

Check Number	Date	Payee	Amount
7-3694621-4	7-20-81	Trade Factors, Inc.	P97,500.00
7-3694609-6	7-27-81	Romero D. Palmares	98,500.50
7-3666224-4	8-03-81	Trade Factors, Inc.	99,800.00
7-3528348-4	8-07-81	Trade Factors, Inc.	98,600.00
7-3666225-5	8-10-81	Antonio Lisan	98,900.00
7-3688945-6	8-10-81	Antonio Lisan	97,700.00
7-4535674-1	8-21-81	Golden City Trading	95,300.00
7-4535675-2	8-21-81	Red Arrow Trading	96,400.00
7-4535699-5	8-24-81	Antonio Lisan	94,200.00
7-4535700-6	8-24-81	Antonio Lisan	95,100.00
7-4697902-2	9-18-81	Ace Enterprises, Inc.	96,000.00
7-4697925-6	9-18-81	Golden City Trading	93,030.00
7-4697011-6	10-02-81	Wintrade Marketing	90,960.00
7-4697909-4	10-02-81	ABC Trading, Inc.	99,300.00
7-4697922-3	10-05-81	Golden Enterprises	96,630.00

The checks were deposited on the following dates for the following accounts:

Check Number	Date Deposited	Account Deposited
7-3694621-4	7-23-81	CA 0060 02360 3
7-3694609-6	7-28-81	CA 0060 02360 3
7-3666224-4	8-4-81	CA 0060 02360 3
7-3528348-4	8-11-81	CA 0060 02360 3
7-3666225-5	8-11-81	SA 0061 32331 7
7-3688945-6	8-17-81	CA 0060 30982 5
7-4535674-1	8-26-81	CA 0060 02360 3
7-4535675-2	8-27-81	CA 0060 02360 3
7-4535699-5	8-31-81	CA 0060 30982 5
7-4535700-6	8-24-81	SA 0061 32331 7
7-4697902-2	9-23-81	CA 0060 02360 3
7-4697925-6	9-23-81	CA 0060 30982 5
7-4697011-6	10-7-81	CA 0060 02360 3
7-4697909-4	10-7-81	CA 0060 30982 5 6

After 24 hours from submission of the checks to respondent for clearing, petitioner paid the value of the checks and allowed the

withdrawals of the deposits. However, on 14 October 1981, respondent returned all the checks to petitioner without clearing them on the ground that they were materially altered. Thus, petitioner instituted an action for collection of sums of money against respondent to recover the value of the checks.

The Ruling of the Trial Court

The trial court ruled that respondent is expected to use reasonable business practices in accepting and paying the checks presented to it. Thus, respondent cannot be faulted for the delay in clearing the checks considering the ingenuity in which the alterations were effected. The trial court observed that there was no attempt from petitioner to verify the status of the checks before petitioner paid the value of the checks or allowed withdrawal of the deposits. According to the trial court, petitioner, as collecting bank, could have inquired by telephone from respondent, as drawee bank, about the status of the checks before paying their value. Since the immediate cause of petitioner's loss was the lack of caution of its personnel, the trial court held that petitioner is not entitled to recover the value of the checks from respondent. EAISDH

The dispositive portion of the trial court's Decision reads:

WHEREFORE, judgment is hereby rendered dismissing both the complaint and the counterclaim. Costs shall, however be assessed against the plaintiff.

SO ORDERED. 7

Petitioner appealed the trial court's Decision before the Court of Appeals.

The Ruling of the Court of Appeals

In its 10 October 1991 Decision, 8 the Court of Appeals reversed the trial court's Decision. Applying Section 4(c) of Central Bank Circular No. 580, series of 1977, 9 the Court of Appeals held that checks that have been materially altered shall be returned within 24 hours after discovery of the alteration. However, the Court of Appeals ruled that even if the drawee bank returns a check with material alterations after discovery of the alteration, the return would not relieve the drawee bank from any liability for its failure

to return the checks within the 24-hour clearing period. The Court of Appeals explained:

Does this mean that, as long as the drawee bank returns a check with material alteration within 24 hour[s] after discovery of such alteration, such return would have the effect of relieving the bank of any liability whatsoever despite its failure to return the check within the 24-hour clearing house rule?

We do not think so.

Obviously, such bank cannot be held liable for its failure to return the check in question not later than the next regular clearing. However, this Court is of the opinion and so holds that it could still be held liable if it fails to exercise due diligence in verifying the alterations made. In other words, such bank would still be expected, nay required, to make the proper verification before the 24-hour regular clearing period lapses, or in cases where such lapses may be deemed inevitable, that the required verification should be made within a reasonable time.

The implication of the rule that a check shall be returned within the 24-hour clearing period is that if the collecting bank paid the check before the end of the aforesaid 24-hour clearing period, it would be responsible therefor such that if the said check is dishonored and returned within the 24-hour clearing period, the drawee bank cannot be held liable. Would such an implication apply in the case of materially altered checks returned within 24 hours after discovery? This Court finds nothing in the letter of the above-cited C.B. Circular that would justify a negative answer. Nonetheless, the drawee bank could still be held liable in certain instances. Even if the return of the check/s in question is done within 24 hours after discovery, if it can be shown that the drawee bank had been patently negligent in the performance of its verification function, this Court finds no reason why the said bank should be relieved of liability.

Although banking practice has it that the presumption of clearance is conclusive when it comes to the application of the 24-hour clearing period, the same principle may not be applied to the 24-

hour period vis-a-vis material alterations in the sense that the drawee bank which returns materially altered checks within 24 hours after discovery would be conclusively relieved of any liability thereon. This is because there could well be various intervening events or factors that could affect the rights and obligations of the parties in cases such as the instant one including patent negligence on the part of the drawee bank resulting in an unreasonable delay in detecting the alterations. While it is true that the pertinent proviso in C.B. Circular No. 580 allows the drawee bank to return the altered check within the period "provided by law for filing a legal action", this does not mean that this would entitle or allow the drawee bank to be grossly negligent and, inspite thereof, avail itself of the maximum period allowed by the above-cited Circular. The discovery must be made within a reasonable time taking into consideration the facts and circumstances of the case. In other words, the aforementioned C.B. Circular does not provide the drawee bank the license to be grossly negligent on the one hand nor does it preclude the collecting bank from raising available defenses even if the check is properly returned within the 24-hour period after discovery of the material alteration. 10

The Court of Appeals rejected the trial court's opinion that petitioner could have verified the status of the checks by telephone call since such imposition is not required under Central Bank rules. The dispositive portion of the 10 October 1991 Decision reads:

PREMISES CONSIDERED, the decision appealed from is hereby REVERSED and the defendant-appellee Philippine National Bank is declared liable for the value of the fifteen checks specified and enumerated in the decision of the trial court (page 3) in the amount of P1,447,920.00 TCDcSE

SO ORDERED. 11

Respondent filed a motion for reconsideration of the 10 October 1991 Decision. In its 9 August 1994 Amended Decision, the Court of Appeals reversed itself and affirmed the Decision of the trial court dismissing the complaint.

In reversing itself, the Court of Appeals held that its 10 October 1991 Decision failed to appreciate that the rule on the return of altered checks within 24 hours from the discovery of the alteration had been duly passed by the Central Bank and accepted by the members of the banking system. Until the rule is repealed or amended, the rule has to be applied.

Petitioner moved for the reconsideration of the Amended Decision. In its 16 July 1997 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the recourse to this Court.

The Issues

Petitioner raises the following issues in its Memorandum:

1. Whether the checks were materially altered;
2. Whether respondent was negligent in failing to recognize within a reasonable period the altered checks and in not returning the checks within the period; and
3. Whether the motion for reconsideration filed by respondent was out of time thus making the 10 October 1991 Decision final and executory. 12

The Ruling of This Court

Filing of the Petition under both Rules 45 and 65

Respondent asserts that the petition should be dismissed outright since petitioner availed of a wrong mode of appeal. Respondent cites Ybañez v. Court of Appeals 13 where the Court ruled that "a petition cannot be subsumed simultaneously under Rule 45 and Rule 65 of the Rules of Court, and neither may petitioners delegate upon the court the task of determining under which rule the petition should fall."

The remedies of appeal and certiorari are mutually exclusive and not alternative or successive. 14 However, this Court may set aside technicality for justifiable reasons. The petition before the Court is clearly meritorious. Further, the petition was filed on time both under Rules 45 and 65. 15 Hence, in accordance with the liberal spirit which pervades the Rules of Court and in the interest of

justice, 16 we will treat the petition as having been filed under Rule 45.

Alteration of Serial Number Not Material

The alterations in the checks were made on their serial numbers. Sections 124 and 125 of Act No. 2031, otherwise known as the Negotiable Instruments Law, provide:

SEC. 124. Alteration of instrument; effect of. — Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

SEC. 125. What constitutes a material alteration. — Any alteration which changes:

(a) The date;
(b) The sum payable, either for principal or interest;
(c) The time or place of payment;
(d) The number or the relations of the parties;
(e) The medium or currency in which payment is to be made;

or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. cTDaEH

The question on whether an alteration of the serial number of a check is a material alteration under the Negotiable Instruments Law is already a settled matter. In Philippine National Bank v. Court of Appeals, this Court ruled that the alteration on the serial number of a check is not a material alteration. Thus:

An alteration is said to be material if it alters the effect of the instrument. It means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party. In other words, a material alteration is one which changes the items which

are required to be stated under Section 1 of the Negotiable Instrument[s] Law.

Section 1 of the Negotiable Instruments Law provides:

Section 1. Form of negotiable instruments. An instrument to be negotiable must conform to the following requirements:

(a) It must be in writing and signed by the maker or drawer;

(b) Must contain an unconditional promise or order to pay a sum certain in money;

(c) Must be payable on demand, or at a fixed or determinable future time;

(d) Must be payable to order or to bearer; and

(e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

In his book entitled "Pandect of Commercial Law and Jurisprudence," Justice Jose C. Vitug opines that "an innocent alteration (generally, changes on items other than those required to be stated under Sec. 1, N.I.L.) and spoliation (alterations done by a stranger) will not avoid the instrument, but the holder may enforce it only according to its original tenor.

xxx xxx xxx

The case at the bench is unique in the sense that what was altered is the serial number of the check in question, an item which, it can readily be observed, is not an essential requisite for negotiability under Section 1 of the Negotiable Instruments Law. The aforementioned alteration did not change the relations between the parties. The name of the drawer and the drawee were not altered. The intended payee was the same. The sum of money due to the payee remained the same. . . .

xxx xxx xxx

The check's serial number is not the sole indication of its origin. As succinctly found by the Court of Appeals, the name of the government agency which issued the subject check was prominently printed therein. The check's issuer was therefore sufficiently identified, rendering the referral to the serial number redundant and inconsequential. . . .

xxx xxx xxx

Petitioner, thus cannot refuse to accept the check in question on the ground that the serial number was altered, the same being an immaterial or innocent one. 17

Likewise, in the present case the alterations of the serial numbers do not constitute material alterations on the checks.

Incidentally, we agree with the petitioner's observation that the check in the PNB case appears to belong to the same batch of checks as in the present case. The check in the PNB case was also issued by the Ministry of Education and Culture. It was also drawn against PNB, respondent in this case. The serial number of the check in the PNB case is 7-3666-223-3 and it was issued on 7 August 1981.

Timeliness of Filing of Respondent's Motion for Reconsideration

Respondent filed its motion for reconsideration of the 10 October 1991 Decision on 6 November 1991. Respondent's motion for reconsideration states that it received a copy of the 10 October 1991 Decision on 22 October 1991. 18 Thus, it appears that the motion for reconsideration was filed on time. However, the Registry Return Receipt shows that counsel for respondent or his agent received a copy of the 10 October 1991 Decision on 16 October 1991, 19 not on 22 October 1991 as respondent claimed. Hence, the Court of Appeals is correct when it noted that the motion for reconsideration was filed late. Despite its late filing, the Court of Appeals resolved to admit the motion for reconsideration "in the interest of substantial justice." 20

There are instances when rules of procedure are relaxed in the interest of justice. However, in this case, respondent did not proffer any explanation for the late filing of the motion for reconsideration. Instead, there was a deliberate attempt to deceive the Court of Appeals by claiming that the copy of the 10 October 1991 Decision was received on 22 October 1991 instead of on 16 October 1991. We find no justification for the posture taken by the Court of Appeals in admitting the motion for reconsideration.

Thus, the late filing of the motion for reconsideration rendered the 10 October 1991 Decision final and executory. cCaATD
The 24-Hour Clearing Time
The Court will not rule on the proper application of Central Bank Circular No. 580 in this case. Since there were no material alterations on the checks, respondent as drawee bank has no right to dishonor them and return them to petitioner, the collecting bank. 21 Thus, respondent is liable to petitioner for the value of the checks, with legal interest from the time of filing of the complaint on 16 March 1982 until full payment. 22 Further, considering that respondent's motion for reconsideration was filed late, the 10 October 1991 Decision, which held respondent liable for the value of the checks amounting to P1,447,920, had become final and executory.
WHEREFORE, we SET ASIDE the 9 August 1994 Amended Decision and the 16 July 1997 Resolution of the Court of Appeals. We rule that respondent Philippine National Bank is liable to petitioner International Corporate Bank, Inc. for the value of the checks amounting to P1,447,920, with legal interest from 16 March 1982 until full payment. Costs against respondent.
DCcAIS
SO ORDERED.
Quisumbing, Carpio-Morales, Tinga and Velasco, Jr., JJ., concur.
Footnotes
1. Petitioner denominated the petition as filed under both Rule 45 and Rule 65 of the 1997 Rules of Civil Procedure.
2. Penned by Associate Justice Serafin V.C. Guingona with Associate Justices Jorge S. Imperial and Justo P. Torres, Jr., concurring. Rollo, pp. 25-34.
3. Penned by Associate Justice Jorge S. Imperial with Associate Justices Ramon U. Mabutas, Jr. and Hilarion L. Aquino, concurring. Rollo, p. 23.
4. Now the Union Bank of the Philippines.
5. The first 14 checks were the subject of the complaint while the last check was included in the amended complaint.

6. The deposit slip of Check No. 7-4697922-3 was not presented before the trial court.
7. Rollo, p. 295.
8. Penned by Associate Justice Serafin V.C. Guingona with Associate Justices Luis A. Javellana and Jorge S. Imperial, concurring. Rollo, pp. 47-58.
9. Section 4(c) provides:

SECTION 4. Clearing Procedures.

xxx xxx xxx

(c) Procedure for Returned Items

Items which should be returned for any reason whatsoever shall be presented not later than the next regular clearing for local exchanges. Out-of-town exchanges shall be returned within the period specified in the Memorandum to Authorized Agent Banks announcing the opening of clearing facilities in each of the authorized regional clearing centers. . . .

Items which have been the subject of a material alteration or items bearing a forged endorsement when such endorsement is necessary for negotiation shall be returned within twenty-four (24) hours after discovery of the alteration or the forgery but in no event beyond the period fixed or provided by law for filing of a legal action by the returning bank/branch, institution or entity against the bank/branch, institution or entity sending the same.

xxx xxx xxx

10. Rollo, pp. 53-54.
11. Id. at 58.
12. Id. at 251-252.
13. 323 Phil. 643 (1996).
14. Ligon v. CA, 355 Phil. 503 (1998).
15. Nuñez v. GSIS Family Bank, G.R. No. 163988, 17 November 2005, 475 SCRA 305.
16. Id.
17. 326 Phil. 504 (1996), 511-516.
18. CA rollo, p. 86.

19. Id. at 73.
20. Id. at 90.
21. PNB v. CA, supra note 17.
22. Article 2209, Civil Code.

FIRST DIVISION
[G.R. No. 154469. December 6, 2006.]
METROPOLITAN BANK AND TRUST COMPANY, petitioner, vs. RENATO D. CABILZO, respondent.
D E C I S I O N
CHICO-NAZARIO, J p:
Before this Court is a Petition for Review on Certiorari, filed by petitioner Metropolitan Bank and Trust Company (Metrobank) seeking to reverse and set aside the Decision 1 of the Court of Appeals dated 8 March 2002 and its Resolution dated 26 July 2002 affirming the Decision of the Regional Trial Court (RTC) of Manila, Branch 13 dated 4 September 1998. The dispositive portion of the Court of Appeals Decision reads:
WHEREFORE, the assailed decision dated September 4, 1998 is AFFIRMED with modifications (sic) that the awards for exemplary damages and attorney's fees are hereby deleted.
HDCAaS
Petitioner Metrobank is a banking institution duly organized and existing as such under Philippine laws. 2
Respondent Renato D. Cabilzo (Cabilzo) was one of Metrobank's clients who maintained a current account with Metrobank Pasong Tamo Branch. 3
On 12 November 1994, Cabilzo issued a Metrobank Check No. 985988, payable to "CASH" and postdated on 24 November 1994 in the amount of One Thousand Pesos (P1,000.00). The check was drawn against Cabilzo's Account with Metrobank Pasong Tamo Branch under Current Account No. 618044873-3 and was paid by Cabilzo to a certain Mr. Marquez, as his sales commission. 4

Subsequently, the check was presented to Westmont Bank for payment. Westmont Bank, in turn, indorsed the check to Metrobank for appropriate clearing. After the entries thereon were examined, including the availability of funds and the authenticity of the signature of the drawer, Metrobank cleared the check for encashment in accordance with the Philippine Clearing House Corporation (PCHC) Rules.

On 16 November 1994, Cabilzo's representative was at Metrobank Pasong Tamo Branch to make some transaction when he was asked by a bank personnel if Cabilzo had issued a check in the amount of P91,000.00 to which the former replied in the negative. On the afternoon of the same date, Cabilzo himself called Metrobank to reiterate that he did not issue a check in the amount of P91,000.00 and requested that the questioned check be returned to him for verification, to which Metrobank complied. 5

Upon receipt of the check, Cabilzo discovered that Metrobank Check No. 985988 which he issued on 12 November 1994 in the amount of P1,000.00 was altered to P91,000.00 and the date 24 November 1994 was changed to 14 November 1994. 6

Hence, Cabilzo demanded that Metrobank re-credit the amount of P91,000.00 to his account. Metrobank, however, refused reasoning that it has to refer the matter first to its Legal Division for appropriate action. Repeated verbal demands followed but Metrobank still failed to re-credit the amount of P91,000.00 to Cabilzo's account. 7

On 30 June 1995, Cabilzo, thru counsel, finally sent a letter-demand 8 to Metrobank for the payment of P90,000.00, after deducting the original value of the check in the amount of P1,000.00. Such written demand notwithstanding, Metrobank still failed or refused to comply with its obligation. IcaHCS

Consequently, Cabilzo instituted a civil action for damages against Metrobank before the RTC of Manila, Branch 13. In his Complaint docketed as Civil Case No. 95-75651, Renato D. Cabilzo v. Metropolitan Bank and Trust Company, Cabilzo prayed that in

addition to his claim for reimbursement, actual and moral damages plus costs of the suit be awarded in his favor. 9

For its part, Metrobank countered that upon the receipt of the said check through the PCHC on 14 November 1994, it examined the genuineness and the authenticity of the drawer's signature appearing thereon and the technical entries on the check including the amount in figures and in words to determine if there were alterations, erasures, superimpositions or intercalations thereon, but none was noted. After verifying the authenticity and propriety of the aforesaid entries, including the indorsement of the collecting bank located at the dorsal side of the check which stated that, "all prior indorsements and lack of indorsement guaranteed," Metrobank cleared the check. 10

Anent thereto, Metrobank claimed that as a collecting bank and the last indorser, Westmont Bank should be held liable for the value of the check. Westmont Bank indorsed the check as the an unqualified indorser, by virtue of which it assumed the liability of a general indorser, and thus, among others, warranted that the instrument is genuine and in all respect what it purports to be.

In addition, Metrobank, in turn, claimed that Cabilzo was partly responsible in leaving spaces on the check, which, made the fraudulent insertion of the amount and figures thereon, possible. On account of his negligence in the preparation and issuance of the check, which according to Metrobank, was the proximate cause of the loss, Cabilzo cannot thereafter claim indemnity by virtue of the doctrine of equitable estoppel. DCTHaS

Thus, Metrobank demanded from Cabilzo, for payment in the amount of P100,000.00 which represents the cost of litigation and attorney's fees, for allegedly bringing a frivolous and baseless suit. 11

On 19 April 1996, Metrobank filed a Third-Party Complaint 12 against Westmont Bank on account of its unqualified indorsement stamped at the dorsal side of the check which the former relied upon in clearing what turned out to be a materially altered check.

Subsequently, a Motion to Dismiss 13 the Third-Party Complaint was then filed by Westmont bank because another case involving the same cause of action was pending before a different court. The said case arose from an action for reimbursement filed by Metrobank before the Arbitration Committee of the PCHC against Westmont Bank, and now the subject of a Petition for Review before the RTC of Manila, Branch 19.

In an Order 14 dated 4 February 1997, the trial court granted the Motion to Dismiss the Third-Party Complaint on the ground of litis pendentia.

On 4 September 1998, the RTC rendered a Decision 15 in favor of Cabilzo and thereby ordered Metrobank to pay the sum of P90,000.00, the amount of the check. In stressing the fiduciary nature of the relationship between the bank and its clients and the negligence of the drawee bank in failing to detect an apparent alteration on the check, the trial court ordered for the payment of exemplary damages, attorney's fees and cost of litigation. The dispositive portion of the Decision reads:

WHEREFORE, judgment is rendered ordering defendant Metropolitan Bank and Trust Company to pay plaintiff Renato Cabilzo the sum of P90,000 with legal interest of 6 percent per annum from November 16, 1994 until payment is made plus P20,000 attorney's fees, exemplary damages of P50,000, and costs of the suit. 16

Aggrieved, Metrobank appealed the adverse decision to the Court of Appeals reiterating its previous argument that as the last indorser, Westmont Bank shall bear the loss occasioned by the fraudulent alteration of the check. Elaborating, Metrobank maintained that by reason of its unqualified indorsement, Westmont Bank warranted that the check in question is genuine, valid and subsisting and that upon presentment the check shall be accepted according to its tenor. EDACSa

Even more, Metrobank argued that in clearing the check, it was not remiss in the performance of its duty as the drawee bank, but rather, it exercised the highest degree of diligence in accordance

with the generally accepted banking practice. It further insisted that the entries in the check were regular and authentic and alteration could not be determined even upon close examination.
In a Decision 17 dated 8 March 2002, the Court of Appeals affirmed with modification the Decision of the court a quo, similarly finding Metrobank liable for the amount of the check, without prejudice, however, to the outcome of the case between Metrobank and Westmont Bank which was pending before another tribunal. The decretal portion of the Decision reads:
WHEREFORE, the assailed decision dated September 4, 1998 is AFFIRMED with the modifications (sic) that the awards for exemplary damages and attorney's fees are hereby deleted. 18
Similarly ill-fated was Metrobank's Motion for Reconsideration which was also denied by the appellate court in its Resolution 19 issued on 26 July 2002, for lack of merit.
Metrobank now poses before this Court this sole issue:
THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING METROBANK, AS DRAWEE BANK, LIABLE FOR THE ALTERATIONS ON THE SUBJECT CHECK BEARING THE AUTHENTIC SIGNATURE OF THE DRAWER THEREOF.
We resolve to deny the petition.
An alteration is said to be material if it changes the effect of the instrument. It means that an unauthorized change in an instrument that purports to modify in any respect the obligation of a party or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party. 20 In other words, a material alteration is one which changes the items which are required to be stated under Section 1 of the Negotiable Instruments Law. cETCID
Section 1 of the Negotiable Instruments Law provides:
Section 1. Form of negotiable instruments. — An instrument to be negotiable must conform to the following requirements:
(a) It must be in writing and signed by the maker or drawer;

(b) Must contain an unconditional promise or order to pay a sum certain in money;
(c) Must be payable on demand or at a fixed determinable future time;
(d) Must be payable to order or to bearer; and
(e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.
Also pertinent is the following provision in the Negotiable Instrument Law which states:
Section 125. What constitutes material alteration. — Any alteration which changes:
(a) The date;
(b) The sum payable, either for principal or interest;
(c) The time or place of payment;
(d) The number or the relation of the parties; aIHCSA
(e) The medium or currency in which payment is to be made;
Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect is a material alteration.
In the case at bar, the check was altered so that the amount was increased from P1,000.00 to P91,000.00 and the date was changed from 24 November 1994 to 14 November 1994. Apparently, since the entries altered were among those enumerated under Section 1 and 125, namely, the sum of money payable and the date of the check, the instant controversy therefore squarely falls within the purview of material alteration.
Now, having laid the premise that the present petition is a case of material alteration, it is now necessary for us to determine the effect of a materially altered instrument, as well as the rights and obligations of the parties thereunder. The following provision of the Negotiable Instrument Law will shed us some light in threshing out this issue:
Section 124. Alteration of instrument; effect of. — Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who

has himself made, authorized, and assented to the alteration and subsequent indorsers.

But when the instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration, he may enforce the payment thereof according to its original tenor. (Emphasis ours.)

Indubitably, Cabilzo was not the one who made nor authorized the alteration. Neither did he assent to the alteration by his express or implied acts. There is no showing that he failed to exercise such reasonable degree of diligence required of a prudent man which could have otherwise prevented the loss. As correctly ruled by the appellate court, Cabilzo was never remiss in the preparation and issuance of the check, and there were no indicia of evidence that would prove otherwise. Indeed, Cabilzo placed asterisks before and after the amount in words and figures in order to forewarn the subsequent holders that nothing follows before and after the amount indicated other than the one specified between the asterisks. cHaADC

The degree of diligence required of a reasonable man in the exercise of his tasks and the performance of his duties has been faithfully complied with by Cabilzo. In fact, he was wary enough that he filled with asterisks the spaces between and after the amounts, not only those stated in words, but also those in numerical figures, in order to prevent any fraudulent insertion, but unfortunately, the check was still successfully altered, indorsed by the collecting bank, and cleared by the drawee bank, and encashed by the perpetrator of the fraud, to the damage and prejudice of Cabilzo.

Verily, Metrobank cannot lightly impute that Cabilzo was negligent and is therefore prevented from asserting his rights under the doctrine of equitable estoppel when the facts on record are bare of evidence to support such conclusion. The doctrine of equitable estoppel states that when one of the two innocent persons, each guiltless of any intentional or moral wrong, must suffer a loss, it must be borne by the one whose erroneous conduct, either by

omission or commission, was the cause of injury. 21 Metrobank's reliance on this dictum, is misplaced. For one, Metrobank's representation that it is an innocent party is flimsy and evidently, misleading. At the same time, Metrobank cannot asseverate that Cabilzo was negligent and this negligence was the proximate cause 22 of the loss in the absence of even a scintilla proof to buttress such claim. Negligence is not presumed but must be proven by the one who alleges it. 23

Undoubtedly, Cabilzo was an innocent party in this instant controversy. He was just an ordinary businessman who, in order to facilitate his business transactions, entrusted his money with a bank, not knowing that the latter would yield a substantial amount of his deposit to fraud, for which Cabilzo can never be faulted. CTHaSD

We never fail to stress the remarkable significance of a banking institution to commercial transactions, in particular, and to the country's economy in general. The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. 24

Thus, even the humble wage-earner does not hesitate to entrust his life's savings to the bank of his choice, knowing that they will be safe in its custody and will even earn some interest for him. The ordinary person, with equal faith, usually maintains a modest checking account for security and convenience in the settling of his monthly bills and the payment of ordinary expenses. As for a businessman like the respondent, the bank is a trusted and active associate that can help in the running of his affairs, not only in the form of loans when needed but more often in the conduct of their day-to-day transactions like the issuance or encashment of checks. 25

In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. 26

The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. The appropriate degree of diligence required of a bank must be a high degree of diligence, if not the utmost diligence. 27

In the present case, it is obvious that Metrobank was remiss in that duty and violated that relationship. As observed by the Court of Appeals, there are material alterations on the check that are visible to the naked eye. Thus:

. . . The number "1" in the date is clearly imposed on a white figure in the shape of the number "2". The appellant's employees who examined the said check should have likewise been put on guard as to why at the end of the amount in words, i.e., after the word "ONLY", there are 4 asterisks, while at the beginning of the line or before said phrase, there is none, even as 4 asterisks have been placed before and after the word "CASH" in the space for payee. In addition, the 4 asterisks before the words "ONE THOUSAND PESOS ONLY" have noticeably been erased with typing correction paper, leaving white marks, over which the word "NINETY" was superimposed. The same can be said of the numeral "9" in the amount "91,000", which is superimposed over a whitish mark, obviously an erasure, in lieu of the asterisk which was deleted to insert the said figure. The appellant's employees should have again noticed why only 2 asterisks were placed before the amount in figures, while 3 asterisks were placed after such amount. The word "NINETY" is also typed differently and with a

lighter ink, when compared with the words "ONE THOUSAND PESOS ONLY." The letters of the word "NINETY" are likewise a little bigger when compared with the letters of the words "ONE THOUSAND PESOS ONLY". 28

Surprisingly, however, Metrobank failed to detect the above alterations which could not escape the attention of even an ordinary person. This negligence was exacerbated by the fact that, as found by the trial court, the check in question was examined by the cash custodian whose functions do not include the examinations of checks indorsed for payment against drawer's accounts. 29 Obviously, the employee allowed by Metrobank to examine the check was not verse and competent to handle such duty. These factual findings of the trial court is conclusive upon this court especially when such findings was affirmed the appellate court. 30

Apropos thereto, we need to reiterate that by the very nature of their work the degree of responsibility, care and trustworthiness expected of their employees and officials is far better than those of ordinary clerks and employees. Banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees. 31

In addition, the bank on which the check is drawn, known as the drawee bank, is under strict liability to pay to the order of the payee in accordance with the drawer's instructions as reflected on the face and by the terms of the check. Payment made under materially altered instrument is not payment done in accordance with the instruction of the drawer. HAICTD

When the drawee bank pays a materially altered check, it violates the terms of the check, as well as its duty to charge its client's account only for bona fide disbursements he had made. Since the drawee bank, in the instant case, did not pay according to the original tenor of the instrument, as directed by the drawer, then it has no right to claim reimbursement from the drawer, much less, the right to deduct the erroneous payment it made from the

drawer's account which it was expected to treat with utmost fidelity.

Metrobank vigorously asserts that the entries in the check were carefully examined: The date of the instrument, the amount in words and figures, as well as the drawer's signature, which after verification, were found to be proper and authentic and was thus cleared. We are not persuaded. Metrobank's negligence consisted in the omission of that degree of diligence required of a bank owing to the fiduciary nature of its relationship with its client.

Article 1173 of the Civil Code provides:

The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. . . . .

Beyond question, Metrobank failed to comply with the degree required by the nature of its business as provided by law and jurisprudence. If indeed it was not remiss in its obligation, then it would be inconceivable for it not to detect an evident alteration considering its vast knowledge and technical expertise in the intricacies of the banking business. This Court is not completely unaware of banks' practices of employing devices and techniques in order to detect forgeries, insertions, intercalations, superimpositions and alterations in checks and other negotiable instruments so as to safeguard their authenticity and negotiability. Metrobank cannot now feign ignorance nor claim diligence; neither can it point its finger at the collecting bank, in order to evade liability. IcaEDC

Metrobank argues that Westmont Bank, as the collecting bank and the last indorser, shall bear the loss. Without ruling on the matter between the drawee bank and the collecting bank, which is already under the jurisdiction of another tribunal, we find that Metrobank cannot rely on such indorsement, in clearing the questioned check. The corollary liability of such indorsement, if any, is separate and independent from the liability of Metrobank to Cabilzo.

The reliance made by Metrobank on Westmont Bank's indorsement is clearly inconsistent, if not totally offensive to the dictum that being impressed with public interest, banks should exercise the highest degree of diligence, if not utmost diligence in dealing with the accounts of its own clients. It owes the highest degree fidelity to its clients and should not therefore lightly rely on the judgment of other banks on occasions where its clients money were involve, no matter how small or substantial the amount at stake.

Metrobank's contention that it relied on the strength of collecting bank's indorsement may be merely a lame excuse to evade liability, or may be indeed an actual banking practice. In either case, such act constitutes a deplorable banking practice and could not be allowed by this Court bearing in mind that the confidence of public in general is of paramount importance in banking business.

What is even more deplorable is that, having been informed of the alteration, Metrobank did not immediately re-credit the amount that was erroneously debited from Cabilzo's account but permitted a full blown litigation to push through, to the prejudice of its client. Anyway, Metrobank is not left with no recourse for it can still run after the one who made the alteration or with the collecting bank, which it had already done. It bears repeating that the records are bare of evidence to prove that Cabilzo was negligent. We find no justifiable reason therefore why Metrobank did not immediately reimburse his account. Such ineptness comes within the concept of wanton manner contemplated under the Civil Code which warrants the imposition of exemplary damages, "by way of example or correction for the public good," in the words of the law. It is expected that this ruling will serve as a stern warning in order to deter the repetition of similar acts of negligence, lest the confidence of the public in the banking system be further eroded. 32

WHEREFORE, premises considered, the instant Petition is DENIED. The Decision dated 8 March 2002 and the Resolution dated 26 July 2002 of the Court of Appeals are AFFIRMED with

modification that exemplary damages in the amount of P50,000.00 be awarded. Costs against the petitioner. HIEASa
SO ORDERED.
Panganiban, C.J., Ynares-Santiago, Austria-Martinez and Callejo, Sr., JJ., concur.
Footnotes
1. Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Candido V. Rivera and Juan Q. Enriquez, Jr., concurring, CA-G.R. CV No. 66384. Rollo, pp. 18-25.
2. Records, p. 1.
3. Id.
4. Id. at 2.
5. Id.
6. Id. at 2-3.
7. Id. at 3.
8. Id. at 11.
9. Id. at 1-6.
10. Id. at 19-20.
11. Id. at 18-22.
12. Id. at 38-43.
13. Id. at 70-76.
14. Id. at 94-95.
15. Id. at 193-196.
16. Id. at 196.
17. CA rollo, pp. 45-52.
18. Id. at 52.
19. Id. at 95.
20. Philippine National Bank v. Court of Appeals, 326 Phil. 504, 511 (1996).
21. Metropolitan Waterworks and Sewerage System v. Court of Appeals, G.R. No. L-62943, 14 July 1986, 143 SCRA 20.
22. Proximate cause is that cause, which, in natural and continuous sequence, unbroken by any efficient and intervening cause, produces the injury, and without which the result would not have occurred. Vda de Bataclan v. Medina, 102 Phil. 181, 186

(1957).

23. Samsung Construction Company Philippines, Inc. v. Far East Bank and Trust Company, G.R. No. 129015, 13 August 2004, 436 SCRA 402, 417.
24. Simex v. Court of Appeals, G.R. No. 88013, 19 March 1990, 183 SCRA 360, 361, 366-367.
25. Id.
26. Id.
27. Id.
28. Rollo, p. 22.
29. Records, p. 195.
30. Samahan ng Magsasaka sa San Josep v. Valisno, G.R. No. 158314, 3 June 2004, 430 SCRA 629, 635.
31. Philippine Commercial and Industrial Bank v. Court of Appeals, G.R. No. 121413, 29 January 2001, 350 SCRA 446, 472.
32. Id.