51 Phil. 862

[G.R. No. 19512. November 21, 1923]

FAUSTINO LICHAUCO, AS GUARDIAN AD LITEM OF THE MINORS LUIS AND JULITA LICHAUCO, AND OF THE INCAPACITATED ZACARIAS LICHAUCO, PLAINTIFF AND APPELLANT, VS. TAN PHO, TAN U (ALIAS TAN O), CHUA GOC PIN, CHUA SON, CHUA MAR, CHUA HO, CHUA PO, CHUA KA TI, AND GALO LICAHUCO, DEFENDANTS AND APPELLEES.

[G.R. No. 19511]

TAN PHO, PETITIONER AND APPELLEE, VS. AMPARO NABLE JOSE, OPPONENT AND APPELLANT.

[G.R. No. 19595]

TAN PHO, PETITIONER AND APPELLEE, VS. AMPARO NABLE JOSE, OPPONENT AND APPELLANT.

D E C I S I O N

ROMUALDEZ, J.:

These three cases were jointly submitted by both parties in their oral argument by reason of their relation with one another, as will be seen further on.

For the same reason they were studied and voted on jointly by this court, and are now decided in this opinion.

Case G. R. No. 19512 deals with the nullity of a contract of lease of land, and the consequent rendition of accounts, executed by Galo Lichauco in his own behalf, by Geronimo Jose as guardian of the spendthrift Zacarias Lichauco, and by Amparo N. Jose as guardian of the minors Luis and Julita Lichauco, all as lessors, and by Tan Pho, as lessee. It was instituted by Faustino Lichauco, guardian *ad litem* both of the minors Luis and Julita Lichauco, and of the incapacitated Zacarias Lichauco, against the lessee Tan Pho, his principal Tan U (alias Tan O), the children of the latter, Chua Goc Pin, Chua Son, Chua Mar, Chua Ho, Chua Po, Chua Ka Ti and against Galo Lichauco, one of the lessors. In said case,

G. R. No. 19512, the Court of First Instance of Manila rendered judgment finding, among other things, that said contract of lease is valid. From this judgment plaintiff appealed.

Case G. R. No. 19511 was initiated in the original proceedings of the guardianship of the incapacitated Zacarias Lichauco, wherein Tan Pho, the aforementioned lessee petitioned the court to issue a *nunc pro tunc* order as of the month of December, 1913, approving the contract of lease which is the bone of contention in case G. R. No. 19512. Amparo N. Jose, as guardian of Zacarias Lichauco, objected to said petition and moved that the case be considered together with the one on the nullity of the lease (Record on appeal, G. R. No. 19511, pp. 25-42). This petition for a *nunc pro tunc* order was impliedly granted in the same decision rendered in the case which now is G. R. No. 19512. And Amparo N. Jose appealed to this court from that judgment.

Case G. R. No. 19595 was similarly initiated in the original proceedings of the guardianship of the minors Luis and Julita Lichauco, the said Tan Pho having presented in those proceedings a petition for a *nunc pro tunc* order as of December 1, 1913, approving the same contract of lease, the annulment of which is sought in case G. R. No. 19512. Amparo N. Jose, as guardian of the minors Luis and Julita, objected to said petition and likewise moved for its consideration with the one on the annulment of the lease (Record on appeal, G. R. No. 19595, pp. 19 to 30). The case was also impliedly decided favorably in the judgment referred to rendered in the case which is now G. R. No. 19512, for which reason Amparo N. Jose also appealed from said judgment.

The many errors assigned by the appellants in these three cases raise two fundamental questions, to wit: (a) The validity of the contract of lease; and (b) whether or not the registration of said lease in the registry is final and conclusive between the parties.

We shall examine these questions separately.

(a) THE VALIDITY OF THE CONTRACT OF LEASE

This contract is assailed as being void for three reasons: First, because the guardians of the incapacitated person and of the minors could not execute it; second, because it was not, and could not have been, authorized by the court; and third, because Tan Pho had no power to enter into it.

Power of the guardians.—The land which is the subject matter of this contract, located in Manila, contains about 1,812 square meters (pp. 49-51, Bill of Exceptions, G. R. No. 19512).

At the time the contract of lease was executed, the owners of this land were: Galo Lichauco, of one-third *pro indiviso*; Zacarias Lichauco, at that time incapacitated, of another one-third *pro indiviso*; and Luis Lichauco, then a minor, and Julita Lichauco, also at that time and still a minor, coowners of the remaining one-third part *pro indiviso*.

On October 14, 1913, Galo Lichauco and the respective guardians of the incapacitated person, and the said minors, executed a deed of lease of this land in favor of Tan Pho, in which the conditions relevant to the questions herein raised are given in the following clauses:

> "First: The lessors transfer and lease to the lessee a piece of land for the erection of buildings, belonging to the persons represented by the parties of the first part, located on Santo Cristo, Comercio, and Estero de Binondo Streets, of the District of Tondo of the City of Manila, for the erection thereon of a building of strong materials, for the period of twenty years, from the date of the execution of this instrument, for the price or rent of one thousand five hundred sixty pesos, Philippine currency, (P1,560) monthly, payable in advance and within the first ten days of each respective month, without the necessity of making an express demand therefor, and without the right to retain or delay it for any reason or pretext whatsoever; with the understanding that this monthly rental of one thousand five hundred sixty pesos, Philippine currency, shall begin to take effect upon March 1, 1914, the lessee being bound to pay as rent for the land leased up to that date, the rent which he has hitherto been paying, or nine hundred pesos, Philippine currency, (P900) monthly.
>
> "Second: It is a special condition of this contract that the lessee shall erect or cause to be erected upon said land a building of concrete and wood of the first and second groups of the approximate value of fifty-two thousand pesos, Philippine currency, (§N52,000) in accordance with the plan and specifications presented and deposited in the Court of First Instance of this city in proceeding No. 4923, the lessors' architect or person appointed therefor to have direct supervision of the construction of said building, without any right on the part of the lessee to object, under any circumstances, to the decisions of said architect or appointed person whenever they relate to materials employed or the labor which may not be in accordance with the approved plan and specifications.

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> "Ninth: Upon the termination of the period of this lease, all the improvements or buildings constructed on the leased land shall become the property of the owners of the land, without the lessee being entitled to payment or compensation of any kind, either by reason of said building or by the improvements on the land."

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As the lease was for a period greater than six years, the appellants maintain that the respective guardians of the incapacitated Zacarias Lichauco and the minors Luis and Julita Lichauco could not, without special power, make such a contract, according to the prohibition contained in article 1548 of the Civil Code, which reads:

> "No lease for a term of more than six years shall be made by the husband with respect to the property of his wife, by the father with respect to that of his children, by the guardian with respect to that of his ward, or by a manager in default of special power with respect to the property entrusted to him for management."

And they allege that not only did said guardians lack the special power required by this legal provision, but that no one could grant them such power on the date when the contract was entered into (October 14, 1913), because such power could only come from the family council (article 269, paragraph 5 of said Code) which had already been abolished by section 552 of the Code of Civil Procedure which went into effect on October 1, 1901; that our courts lacked authority to grant such special power until Act No. 2640 was promulgated, which was in 1916, years after the lease in question had been executed; that, while it is true that, according to this court's holding in the case of Enriquez vs. A. S. Watson & Co. (22 Phil., 623), the Courts of First Instance of the Philippines are empowered to authorize guardians to execute, in the name of their wards, leases for more than six years, yet, such a decision of this court is erroneous, because the Spanish jurisprudence upon which it is based, was revoked by the Supreme Court of Spain.

It is true that the guardians needed, and still need, special power to execute leases for more than six years; it is also true that the family council that could grant such special power had already been abolished when the present contract of lease was entered into. But it is not

true that at that time the Courts of First Instance of the Philippines lacked the power to grant authorization to that effect. The doctrine laid down in the said case of Enriquez vs. A. S. Watson & Co. must be respected in this jurisdiction. In said case two points were raised before this court and decided, to wit: Whether the lease was valid, one of the lessors being a minor, and whether the defendant therein or the intervener could, according to the contract, demolish a wall upon which the building on the property rested.

Of these two points, the first was decided by this court declaring that lease for twelve years valid for two reasons: First, because the minor lessor, who owned one-eighth of the leased property, was represented when the lease was executed by his legal guardian with authorization therefor from the court which approved the contract. In basing itself upon this first reason, this court did so recognizing in the Courts of First Instance the power to authorize and approve leases of this kind, and hence the following is found in the syllabus:

> “The minor in the case at bar having been represented by his legally appointed guardian and the action of the latter in signing the lease having been formally approved by the court, makes the contract of lease binding upon the minor.”

This is the doctrine applicable to the present case, and no Spanish decision is cited therein to support it, nor do the appellants in the instant cases invoke any decision of the Supreme Court of Spain contrary to this ruling.

Where this court did invoke Spanish jurisprudence in its support is in connection with the second reason for holding the lease in the case of Enriquez vs. A. S. Watson & Co. to be valid, in holding that in cases of that nature “the interests of the majority govern the minor, the latter having the right to appeal to the courts when the decision of the majority is gravely prejudicial to him.” And the latter doctrine is not in point in the cases now before us, inasmuch as there is no question here between the rights of a majority and those of any minor of the lessors the herein litigants.

Furthermore, in this connection, it may not be out of place to state, that Spanish jurisprudence promulgated after the withdrawal of the Spanish sovereignty in the Philippines, always worthy of consideration by our courts, is no longer binding.

> “Decisions of the courts of Spain rendered after 1898, construing Spanish law applicable to possessions ceded to the United States, although entitled to great

> consideration, do not preclude the local court from reaching an independent judgment." (Cordova vs. Folgueras, 227 U. S., 375.)

There is no sufficient reason why we should diverge in any way from the ruling laid down in the aforesaid case of Enriquez vs. A. S. Watson & Co., or for ignoring the important rule of *stare decisis*, in this case without a strong reason therefor.

Could the lease in question be, and was it actually, authorized by the court? This is the second proposition into which we have condensed the various reasons adduced by the appellants for attacking the validity of the lease in question.

In deciding the preceding question, we have held that the lease in question could legally have been authorized and approved by the court. We are now going to determine whether said contract was, in fact and in law, judicially approved.

In the first place, the question raised by the parties touching the evidence which should be admitted, presents itself for our consideration; that is, whether or not the parties must be held down to the second amended stipulation of facts, or may the appellees avail themselves of the additional evidence which comprises: A letter of Zacarias Lichauco, copied in the amended answer and found on page 115 of the bill of exceptions of case G. R. No. 19512, and which is the same Exhibit A attached to the *nunc pro tunc* motion presented in the case No. 4928, now G. R. No. 19511; a sworn statement of Honorable A. S. Crossfield, the Exhibit B attached to a similar motion presented in the case No. 10812, now G. R. No. 19595, and other affidavits concerning the question of whether or not the controverted lease was approved by the court.

In our opinion, this additional evidence contradicts none of the facts agreed upon by the parties in the aforementioned stipulation of facts; but are only suppletory data which amplify some of the stipulated facts. The trial court admitted it, and we find no error in said ruling.

> "Trial courts have the power, however, and a very wide discretion, to permit parties to withdraw from written stipulations waiving a jury trial and submitting the case upon an agreed statement of facts to the court, and such power is properly exercised where the application is made before the court has decided the cause under the written submission, and the party applying has discovered

> other pertinent facts since the submission was entered into, which the other party declines to embrace in the agreed statement; and the fact that, by the exercise of due diligence, the omitted facts might have been discovered before the submission was entered into, does not deprive the court of the power to grant the application to withdraw." (1 R. C. L., 779.)

After examining all the evidence presented, we find that Zacarias Lichauco, according to his letter of July 7, 1913, on which date he was not yet subject to guardianship, showed his acquiescence in a lease of the land in question under identical conditions, in so far as regards its duration of twenty years, with those given in the contract here in question, and which was executed more than three months after that date. This letter seems to indicate that what his guardian later did, had already been consented to by him. But it is certain that it was not Zacarias Lichauco who executed the contract, for he had already been declared incapacitated for such a transaction, but his guardian, and the latter needed judicial authorization to execute it. It cannot be said that in making the lease, his guardian did so by such authorization from his ward. His guardian needed another more legitimate authorization—a judicial one—to render the lease valid so far as its duration exceeded six years. At all events, the question with regard to his sons, the minors Luis and Julita, would have remained, for even if their guardian had been Zacarias Lichauco himself, he likewise should have needed the court's approval just as much. That there was no written judicial order approving the contract of lease in the records of the case, is a fact both proved and admitted by the parties.

The question is whether such a judicial approval was given even verbally, and if so, if such fact constitutes a sufficient ground for a *nunc pro tunc* order.

The facts contained in the evidence upon the point of whether or not there was such a judicial approval, are as follows:

> After the contract of lease, which we are examining, had been executed on October 14, 1913, Geronimo Jose, as guardian of Zacarias Lichauco, on the following day, October 15, 1913, presented to the court in the civil case No. 4923, now G. R. No. 19511, a motion praying that he be authorized to employ an attorney and to approve said contract of lease. With respect to the petition to employ an attorney, it appears that it was duly granted. But with regard to the petition for approval of the contract of lease, no written order, either favorable or

> unfavorable, was issued and there is nothing in any of the corresponding records to show, or even to indicate, that the court granted said petition.

Honorable A. S. Crossfield, who was then presiding over the trial court, and tried these guardianship cases, is no longer judge, and resigned years before this action for annulment of the much debated contract of lease was instituted. And as to what he would have declared, and also Amparo N. Jose, the parties stipulated as follows:

> "It is further agreed that Mr. A. S. Crossfield, formerly Judge of the Court of First Instance of Manila, would testify if called as witness on behalf of the defendant, and if permitted so to testify over the objection of the plaintiff as to its relevancy and competency, that to the best of his recollection Amparo Nable Jose, the guardian of said minors, requested and obtained the verbal permission of him, the said Crossfield, while acting as said Judge, to execute said lease on behalf of said minors, and that this stipulation shall be accepted by the court in lieu of such testimony; but plaintiff contends that such alleged verbal permission was not a judicial act, and is wholly inadmissible and incompetent to bind the minors or their estate, the record of the guardianship proceedings being the best and only competent evidence of any judicial authorization conferred upon said guardian.
>
> "It is further stipulated that the said Amparo Nable Jose, if called as a witness, and in the event of the testimony of the said Crossfield being admitted as to the alleged verbal request and permission to execute said lease, would positively deny that she ever requested or obtained permission from the said Crossfield to execute said lease."

In his affidavit, the Honorable A. S. Crossfield says:

> "I, A. S. Crossfield, after having been duly sworn, do depose and say:
>
> "1. That I am a resident of the City of Manila, a practicing lawyer by profession, and that during the entire year of 1913 I was a Judge of the Court of First Instance of the City of Manila, duly commissioned and qualified, and as such judge had in my charge all probate and guardianship matters arising within the

City of Manila.

“2. That among the guardianship matters under my control as such judge in that year, was the matter of the guardianship of the minors Luis and Julita Lichauco, case No. 10812, and included in the property of said minors was an undivided one-third interest in a parcel of land situated in Calle Santo Cristo, Calle Comercio and the Estero Binondo in the City of Manila, the remainder thereof being owned in equal undivided thirds by their father Zacarias Lichauco, and one Galo Lichauco, the brother of said Zacarias Lichauco, respectively.

“3. That prior to June of 1913, said property had been leased to one Chua Piengco, and to his estate after his death, at a monthly rental of P900, the lease running from month to month.

“4. That in June of 1913, a fire destroyed a large part of the improvements placed upon said land by said Chua Piengco, and gave rise to the necessity of financing the reconstruction of the building destroyed thereby.

“5. That on or about June 25th, 1913, a proposition was communicated to the court by Lichauco & Co. through Francisco Dominguez, whereby the said Lichauco & Company undertook to lease said property at a monthly rental of P1,000 for a period of twenty years, and to place improvements thereon at a cost of P40,000, said improvements to become the property of the owners at the expiration of the period.

“6. That on or about July 3rd, 1913, the above named Zacarias Lichauco presented to the court a proposition made by Tan Pho, as the administrator of the estate of Chua Piengco, and in representation of the widow and heirs of the said Chua Piengco, whereby the latter undertook to lease said property for twenty years at a monthly rental of P1,200, and to place improvements thereon costing not less than P40,000, the title to which should pass to the owners upon the expiration of the lease.

“7. That one of the coowners, Galo Lichauco, did not agree to either of these propositions, as a result of which there were various negotiations in the course of which I required that the said Tan Pho should submit plans and specifications of the building to be placed on the land leased. This was done, and I had the plans and specifications passed upon by, an expert to determine whether or not in

> reality the proposed building would cost the amount stipulated in the lease, as finally approved. These negotiations among all the parties interested culminated in the execution, in October, 1913, of two leases, one for the undivided third owned by the said Zacarias Lichauco, a copy of which, marked Exhibit B, is attached to the motion of the said Tan Pho, presented in case No. 4923 on January 23rd, 1922, and one for the undivided two-thirds owned by the said Galo Lichauco, by their mother and guardian, the said Amparo Nable Jose, so the said Tan Pho, as attorney in fact of the widow of the said Chua Piengco, for twenty years, at a monthly rental of P1,560, said lessees undertaking to place improvements on said property at a cost of not less than P52,000, the title to which should pass to the owners of the land upon the expiration of the lease.
>
> "8. That all the interested parties having agreed to these leases, I, as Judge of the Court of First Instance, approved of the same, in the presence and with the complete approval of all the parties interested, and I ordered the clerk to prepare orders for entry in the record in the above entitled case, and in the record of the cause of the Guardianship of Zacarias Lichauco, case No. 4923, approving of the said leases in all the parts thereof.
>
> (Sgd.) "A. S. CROSSFIELD"

But attorney F. Canillas, who at the time referred to in the above quoted document, was the deputy clerk, in turn, says the following in his affidavit:

> "Felipe Canillas being first duly sworn deposes and says:
>
> "That he is an attorney-at-law practicing his profession and residing in the City of Manila; that he was the assistant clerk of the Court of First Instance of Manila in charge of the Probate Division of said Court during the entire period from about the middle of the year 1910 until the month of May, 1917, during a considerable portion of which time the Honorable A. S. Crossfield presided over the said Probate Division as Judge; that affiant has read the affidavit of the said A. S. Crossfield of the 13th of February, 1922 presented by counsel for Tan Pho in the above entitled proceedings and also in the guardianship of Zacarias Lichauco, cause No. 4923 of the Court of First Instance of Manila; that the said A. S. Crossfield presided over said Probate Division during the year 1913 excepting the months of May and June to the best of affiant's recollection, during which

months the Honorable Charles S. Lobingier presided as Judge; that during the period of affiant's incumbency there was a book known as a 'libro de actas' kept in said Probate Division, in which an official record was prepared by affiant and signed by the presiding Judge at each session of the Court of all the orders and judgments of the said Probate Division of said Court; that affiant has examined the said 'libro de actas' for the year 1913 and that there is no entry therein of any authorization or approval of the leases mentioned in the affidavit of the said A. S. Crossfield nor of the orders mentioned in said affidavit, nor of any other order with reference to such leases; that affiant remembers the pendency in said Probate Division of the above entitled guardianship proceedings of the minors Luis and Julita Lichauco and of the guardianship proceedings of Zacarias Lichauco, civil cause No. 4923 of the Probate Division of said Court of First Instance of Manila, but the said A. S. Crossfield while presiding over said Probate Division at no time ordered affiant to prepare orders for entry in the record in the above entitled proceedings, nor in the record of the guardianship proceedings of said Zacarias Lichauco, case No. 4923, approving the said leases, nor did the said A. S. Crossfield give affiant any orders or instructions whatever with reference to the approval of said lease; that if any such instructions or orders had been given to affiant by the said judge he would immediately have made a note thereof and prepared the same.

"That there were a number of seals of the Probate Division of said Court which were accessible to attorneys and litigants and which could be used by them or by the Judge himself without the necessity of applying therefor to affiant as assistant clerk in charge of said Probate Division.

"Manila, P. I., February 17th, 1922.

(Sgd.) "F. CANILLAS

"Subscribed and sworn to before me, this 17th day of February, 1922, affiant exhibiting cedula No. F-10948 issued at the City of Manila, P. I., on the 13th day of January, 1921.

(Sgd.) "CHAS. A. MCDONOUGH
"Notary Public
"My commission expires December 31, 1922

"Doc. No. 21
"Page No. 88
"Not. Reg. for 1922"

The last paragraph of this affidavit tells how easy it was at that time to use the seal of the probate division of the court, and seems to detract from the value of the seal stamped upon one of the copies of the contract of lease, where said Honorable A. S. Crossfield approved the same over his signature. This particular point is the subject matter of the agreed statement of facts which is expressed as follows:

> "The said petition was presented to the Honorable A. S. Crossfield, then one of the Judges of the Court of First Instance of Manila, sitting in the branch of said court having jurisdiction over the said guardianship proceedings, such presentation being ex parte, without notice to the said Zacarias Lichauco or any other person. No order was entered of record upon the said petition, but some time after the execution of the said lease by the said Geronimo Jose as such guardian on behalf of the said Zacarias Lichauco, the lessee's duplicate of the lease, signed by the said Tan Pho and Geronimo Jose, heretofore referred to as having been acknowledged before a notary public on October 23rd, 1913, was by the said Judge endorsed as follows:
>
> "Approved.
>
> (Sgd.) "A. S. CROSSFIELD
> "*Judge*
>
> (And sealed with the seal of the Court of First Instance of Manila.)
>
> "It is also stipulated that the said Crossfield would, if permitted over the objection of counsel for plaintiff, testify that while he does not remember positively when he endorsed his approval on the said lessee's duplicate of said lease, to the best of his recollection the said Geronimo Jose requested and obtained it from him for the purpose of registering the lease, but that he is unable to recall the date of his signature more accurately by reason of the great lapse of time; but counsel for the plaintiff objects to the consideration of said testimony as to the date of said endorsement for the reason that said

> endorsement was not a judicial act and both it and its alleged date are wholly inadmissible, irrelevant and incompetent to bind the estate of the prodigal.
>
> "No such endorsement was placed upon the lessor's copies of said lease nor upon the copies retained by the notaries public before whom it was acknowledged, and the guardian of said minors had no notice or knowledge of such endorsement. No order of approval of said lease was entered in the guardianship proceedings, the only record thereof being the endorsement set forth above."

This copy of the lease, at the bottom of which appears said approval signed by Judge Crossfield, was not attached to the court records of the case, nor did it ever form a part thereof.

With these facts and on these premises, the judgment appealed from impliedly granted the *nunc pro tunc* motion filed by Tan Pho in the said guardianship proceedings Nos. 4923 and 10812, now G. R. Nos, 19511 and 19595, respectively. This judgment is now contested, and the fact that said petition was granted is assigned as error.

As evidence of record that the lease was judicially approved are cited, first, the motion presented by Zacarias Lichauco on August 1, 1913, which says: "It having been decided by this court that the land be leased to the administration of the testamentary estate of Chua Piengco," etc.; and second, the guardian's accounts from 1913 to 1919, approved by the court, wherein appear the payments of the rents stipulated in the contract of lease.

As to the motion of August 1, 1913, presented by Zacarias Lichauco, it is no proof of the judicial approval of the lease. Supposing them to be true, the allegations therein would only indicate that the court had decided that the land should be leased, but not that in fact and beforehand the contract to be later executed to that effect was approved.

As to the guardian's accounts from 1913 to 1919, they comprise the period of only six years, and their approval does not in any way indicate that the court in approving them, likewise approved the lease for more than six years, which is the lease requiring judicial approval, and not that for less than six years. It does not appear in these accounts that the rents therein spoken of were the result of a contract of lease for over six years. Furthermore, the approval of an administrator's accounts does not imply the approval of the contracts by virtue whereof the rents noted therein were received. The law, in requiring a guardian to render a statement of his accounts, demands that said guardian give detailed information to

the court of the property, both real and in cash, belonging to the ward, as well as of all the proceeds and interests belonging thereto and of the management and disposal thereof. (Sec. 555, No. 3, Code Civ. Proc.) And such accounts are submitted to the court in order that the latter may ascertain whether or not all of the .property and all the income during the period included therein are duly made to appear, and whether or not accounts are correctly kept, but the question of the legality and legitimacy of each entry is not necessarily submitted to the court. The approval of such accounts implies neither the adjudication of the property therein mentioned, nor the declaration of the legality of the income expressed therein.

The legal provision we have in this jurisdiction dealing with the subsequent writing and signing of interlocutory orders and judgments, is contained only in sections 12 and 13 of Act No. 867. We have no positive statute governing *nunc pro tunc* orders. There is something in our jurisprudence which does not, however, positively decide the question. We refer to the case of Lino Luna vs. Rodriguez and De los Angeles (37 Phil., 186).

What is established in our laws and jurisprudence is, that our Courts of First Instance, being courts of record, the orders and judgments rendered by them must appear in writing in the records of the court. In the present case it does not appear that there was any written order in the records of the Court of First Instance approving the lease in question. As we have pointed out, neither is there any entry in the records of these cases that might serve as a basis for the conclusion that the court in due time approved such a contract.

Turning now to the jurisprudence upon this point, we find the following:

> "The office of a judgment *nunc pro tunc* is to record some act of the court done at a former time which was not then carried into the record, and the power of a court to make such entries is restricted to placing upon the record evidence of judicial action which has been actually taken. It may be used to make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken. If the court has not rendered a judgment that it might or should have rendered, or if it has rendered an imperfect or improper judgment, it has no power to remedy these errors or omissions by ordering the entry *nunc pro tunc* of a proper judgment. Hence a court in entering a judgment *nunc pro tunc* has no power to construe what the judgment means, but only to enter of record such judgment as had been formerly rendered, but which had not been entered of record as rendered. In all cases the exercise of the power to enter judgments

nunc pro tunc presupposes the actual rendition of a judgment, and a mere right to a judgment will not furnish the basis for such an entry." (15 R. C L., pp. 622-623.)

"There can be no doubt that such an entry may operate so as to save proceedings which have been had before it is made, but where no proceedings have been had and the jurisdiction of the court over the subject has been withdrawn in the meantime, a court has no power to make a *nunc pro tunc* order. If the court has omitted to make an order, which it might or ought to have made, it cannot, at a subsequent term, be made *nunc pro tunc*. According to some authorities, in all cases in which an entry *nunc pro tunc* is made, the record should show the facts which authorize the entry, but other courts hold that in entering an order *nunc pro tunc* the court is not confined to an examination of the judge's minutes, or written evidence, but may proceed on any satisfactory evidence, including parol testimony. In the absence of a statute or rule of court requiring it, the failure of the judge to sign the journal entries or the record does not affect the force of the order granted." (20 R. C. L., p. 513.)

"The phrase *nunc pro tunc* signifies 'now for then,' or that a thing is done now that shall have the same legal force and effect as if done at the time it ought to have been done. A court may order an act done *nunc pro tunc* when it, or some one of its immediate ministerial officers, has done some act which for some reason has not been entered of record or otherwise noted at the time the order or judgment was made or should have been made to appear on the papers or proceedings by the ministerial officer." (Secou vs. Leroux, 1 N. M., 388, 389.)

"The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been." (Wilmerding vs. Corbin Banking Co., 28 South., 640, 641; 126 Ala., 268.)

"A *nunc pro tunc* entry in practice is an entry made now of something which was actually previously done, to have effect as of the former date. Its office is not to

> supply omitted action by the court, but to supply an omission in the record of action really had, but omitted through inadvertence or mistake." (Perkins vs. Haywood, 31 N. E., 670, 672.)
>
> "Except as to the rights of third parties, a judgment *nunc pro tunc* is retrospective, and has the same force and effect, to all intents and purposes, as if it had been entered at the time when the judgment was originally rendered." (Burns vs. Skelton, 68 S. W., 527; 29 Tex. City App., 453.)
>
> "It is competent for the court to make an entry *nunc pro tunc* after the term at which the transaction occurred, even though the rights of third persons may be affected. But entries *nunc pro tunc* will not be ordered except where this can be done without injustice to either party, and as a *nunc pro tunc* order is to supply on the record something which has actually occurred, it cannot supply omitted action by the court. Record entries *nunc pro tunc* can properly be made only when based on some writing in a cause which directly or by fair inference indicates the purpose of the entry so sought to be made, or on the personal knowledge and recollection of the court; but in a case where a statement of facts was filed after adjournment 6t the court for the term, but within the time allowed by an order not entered in the minutes on an oral motion made therefor at the trial, the court at a subsequent term was held to have jurisdiction to permit the filing of such order *nunc pro tunc* on the recollection of the judge and other parol testimony that the order had been applied for and granted during the previous term, without any memorandum or other written evidence thereof. A *nunc pro tunc* entry will be treated as a verity where not appealed from." (15 C. J., pp. 972-973.)

The question is whether or not a *nunc pro tunc* order may be entered when nothing appears from the files forming a part of the record, upon which such an order may be based. In the case of Gagnon vs. United States (193 U. S., 451; 48 Law. ed., 745), the following was said:

> "It may be gathered from these cases that, if a memorandum be entered upon the calendar that a certain document has been filed, such document, if lost, may be supplied by a copy in the hands of counsel; or where a judgment or, order has been entered upon the calendar, which does not appeal upon the journal, the court may order a new one to be entered *nunc pro tunc*. In such cases there is

> often a memorandum of some kind entered upon the calendar, or found in the files, and there is no impropriety in ascertaining the fact even by parol evidence and supplying the missing portion of the records. But the exercise of a power to recreate a record where no memorandum whatever exists of such record is evidently a dangerous one, and, although such power may have been occasionally given by the legislature in cases of overwhelming necessity, as, for instance, by the 'lost record act' passed by the general assembly of Illinois after the great fire in .Chicago in 1870 (Laws of Illinois, 1871-2, p. 650), such power has not been hitherto supposed to be inherent in courts of general jurisdiction. As the evidence upon which such restoration is made cannot be inquired into, if the jurisdiction to recreate the record exists, it might well happen that, upon the testimony of a single interested witness, the court would order a new record to be entered after a lapse, as in this case, of over thirty years, and when the judge and clerk have both died, and there was no possibility of contradicting the testimony of such single witness."

The appellee maintains that in the case of Wight-Nicholson (134 U. S., 136; 33 Law. ed., 865), it was held that it is a sufficient basis for a *nunc pro tunc* order to resort to parol evidence to supply the part omitted from the record, and that said case is cited in the case of Gagnon vs. United States, and consequently, has not been reversed in said case. We understand, however, that the parol evidence admitted in the case of Wight-Nicholson referred to, is not to supply the whole of a proceeding of which not a trace is to be found in the record, but to supply, as is said in one of the paragraphs of said case, the *part omitted* from the record; for said case dealt with a *nunc pro tunc* order issued by the Circuit Court for the District of Michigan, remanding said case to the Court of the District of Michigan. This order of remission was not an integral, independent and isolated order from the Circuit Court, but a necessary consequence in the course of the ordinary procedure of the order of said court denying the motions for a new trial and for arrest of judgment. Naturally, after the case had been sent by the District Court, wherein a verdict of guilty was rendered, to the Circuit Court to which the aforesaid motions for a new trial and for arrest of judgment were submitted, the ordinary procedure possible under the circumstances that the Circuit Court could follow was, either to grant or deny said motions. If it denied them, the necessary and logical consequence of such denial would be to return the case to the court of origin for further proceedings.

Now then, it appears from the record of the case that the said motions for a new trial and

for arrest of judgment were denied, but it was not made to appear in the same order that the case was returned to the District Court. The action of the Circuit Court in deciding said motions included the principal order of denial, and the necessary consequence of remanding the case to the trial court. Of this complete action in denying the motions and remanding the case to the court of origin, only the principal part (the denial) appeared in the record, without a trace therein of the accessory part (the remanding). As there appeared in writing in the record data concerning the principal part of the action taken by that court, such evidence served as a sufficient ground for a *nunc pro tunc* order for the purpose of supplying the written order not referring to the principal act that was already in writing, but only to the accessory part, which was the part left unwritten.

It cannot be said that the order to remand the case which was the only one that was the subject matter of the *nunc pro tunc* order was an independent act of said Circuit Court. Such order to remand must be based on some reason in order that it might be a judicial act, and the reason, the basis, the principal point of the order had been recorded in writing.

In consequence, we see no conflict between this case of Wight-Nicholson and that of Gagnon vs. United States. And, indeed, no such conflict exists; otherwise the United States Supreme Court would not have cited the ruling given in the case of Wight-Nicholson, in support of the conclusions laid down in the case of Gagnon vs. United States. Therefore, we take it that the doctrine on this point as enunciated in these cases is that for the entry of a *nunc pro tunc* order, it is required that the record present some visible data of the order which it is sought to be supplied by said *nunc pro tunc* order, whether it is the data referring to the whole of the order or merely limited to such portion thereof, that the part lacking from the record constitutes a necessary part, an inevitable and ordinary consequence of the portion appearing in the record.

In the present case, there exist no data, partial or integral, in the record regarding the judicial act of approving the lease in question.

The conclusion we have arrived at is that, although the lease in question could be approved by the court, nevertheless, such approval was neither obtained in due time, nor subsequently, inasmuch as the approbatory *nunc pro tunc* order impliedly entered in the judgment appealed from, is invalid on account of having been entered without a sufficient legal basis therefor.

We now pass to the third reason given by the appellants for the annulment of the lease, to

wit: Tan Pho's authority to enter into such a contract.

According to the instrument Exhibit A, Tan Pho took part in said contract as lessee in the capacity "as general attorney-in-fact of Tan-U, widow of the late Chua Piengco, and administrator of all of the property of the latter's heirs."

There are two points to determine: Tan Pho's powers as general attorney-in-fact of Tan-U and his powers as administrator of all the property of the heirs of the decedent Chua Piengco.

It has been proven that at the time of the execution of the contract of lease Tan Pho was the general attorney-in-fact of Tan-U (Exhibit B) and that said contract was later expressly approved and ratified by Tan-U herself (Exhibit C). We find that Tan Pho's authority as attorney-in-fact for Tan-U has been sufficiently proven.

With regard to his authority in relation to the heirs of Chua Piengco, the parties have admitted in paragraph I of the agreed statement of facts those alleged in paragraph VII of the complaint, wherein, among other things, the following is alleged:

> "That on the date of the execution of the said contract of lease, said Tan Pho was the administrator of the estate of the deceased Chua Piengco, which was not as yet partitioned among the heirs, etc."

The same thing was stipulated in the last part of paragraph 9 of the stipulation on facts (p. 9, Bill of Exceptions, G. R. No. 19512).

If Tan Pho was the administrator of the estate of Chua Piengco, then he had the power to manage the property of said estate. The employment of funds of the latter for the construction of a building on leased land, for the purpose of obtaining rents from such building is an investment of capital which may be considered as included in the powers of an administrator of a decedent's estate. We cannot force ourselves to believe that, in view of the facts of the case, Tan Pho took part in this lease as direct attorney-in-fact of the heirs of the deceased Chua Piengco. If at the time, the estate had not been partitioned, as it appears in the case, such heirs had as yet no hereditary property to dispose of, nor to answer for their acts, seeing that the estate was legally in the hands of the administrator.

Furthermore, these heirs who are some of the defendants in the case G. R. No. 19512, have

no more interest in the lease than is granted to them by Tan-U (paragraph 15, stipulation of facts). As the share of such heirs in this lease depends on the will of Tan-U, and as Tan-U has agreed to and ratified said contract, we find, that with respect to such interest of the said heirs in this lease, the lack of authority to execute it on the part of Tan Pho cannot be invoked to annul said contract.

Summarizing our conclusions with respect to the fundamental question touching the validity of the lease, we find that the lease in question must be held null in so far as it exceeds six years and affects the plaintiffs, for the reason that it lacked judicial approval.

(b) EFFICACY OF REGISTRATION

If the contract in question suffers from the vital defect above pointed out, was this cured by its registration in the certificate of title? This is the second principal question to decide.

This registration was obtained by the following proceedings:

Some time after the execution of the said contract of lease Galo Lichauco petitioned the Court of Land Registration for the registration of the leased land, the petition being signed at the bottom by Amparo N. Jose in behalf of Luis and Julita Lichauco, and by Geronimo Jose in behalf of Zacarias Lichauco agreeing thereto.

In the body of this petition it is alleged that the property was free of all encumbrances (paragraph 3) and that it was occupied by Tan Pho as attorney-in-fact for Tan-U (par. 5).

The advertisement of the petition was published, with the date of January 29, 1914, assigned for hearing, and upon the latter date, trial was had whereat the applicant Galo Lichauco, and attorney Catalino Sevilla, in behalf of Tan Pho as administrator of Chua Piengco, appeared. At that trial an agreement was entered into by and between Galo Lichauco, who appeared, and counsel for Tan Pho, in the following terms:

> "The parties agree that the Chinaman Tan Pho, general attorney-in-fact for Tan-U, widow of Chua Piengco, and administrator of the property of the heirs of Chua Piengco, and the applicants have, on October 14, 1913, entered into a contract of lease for twenty years from that date, the conditions of which are mentioned in the contract of lease.
>
> "The rental is P1,560 a month." (Bill of Exceptions, G. R. No. 19512, pp. 46-47.)

On April 3, 1914, the Court of Land Registration rendered judgment, the dispositive part of which is as follows:

> "* * * after a declaration of general default, the registration and adjudication of the land in question in this proceeding is hereby ordered in the name of the petitioners, in the following proportions: To Galo Lichauco, 1/3 part *pro indiviso*; to Zacarias Lichauco, 1/3 part *pro indiviso*, and to the minors Luis and Julita Lichauco, in equal parts, 1/3 part *pro indiviso*; it being understood that the land is subject to a contract of lease for twenty years in favor of Tan-U, administratrix of the property of the heirs of Chua Piengco, counting from October 14, 1913, at the rate of P1,560 monthly in advance, and upon the other conditions mentioned in the said contract."

In pursuance of this judgment, the proper decree was issued on July 21, 1914. It so appears, furthermore, from paragraph 14 of the stipulation of facts, it having likewise been agreed in said stipulation that said contract of lease was not registered in accordance with sections 50, 51, or 52 of Act No. 496 (page 12, Bill of Exceptions, G. R. No. 19512).

The non-registration of said instrument of lease does not detract from the legal efficacy of the decree and title, inasmuch as sections 50 *et seq.* above cited refer to the voluntary disposal of the property *after* the original registration of the land, and the lease in question was executed *before* said original registration.

Although it might be disputable whether or not those represented by the plaintiff were bound by the agreement made at the trial with respect to this lease, if this point had been raised in time, yet the fact is that, after the judgment became final and the one year fixed by section 38 of Act No. 496 for the revision of the decree has elapsed, the title thus, issued is valid and has the legal force given to it by Act No. 496, unless, according to this Act itself, it be amended or altered by the proper legal proceeding.

Such amendment and alteration take place in those cases to which section 112 of Act No. 496 refers, which reads as follows:

> "No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the clerk or any register of deed, except by order of

> the court. Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission, or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married; or, if registered as married, that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: *Provided, however*, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent.
>
> "Any petition filed under this section and all petitions and motions filed under the provisions of this Act after original registration, shall be filed and entitled in the original case in which the decree of registration was entered."

As may be seen, this provision authorizes the amendment and alteration of the certificate of title, among other cases, in those of the "extinguishment or lapse of registered real rights."

If the registered real right arising from the lease in question is, as it should be, declared invalid and without effect in so far as it affects the plaintiffs, being in excess of six years counted from the execution of said contract, such a declaration of nullity extinguishes said real right, as to the plaintiffs, which, without it, should have continued legally to exist, since such a contract is not void *per se*, but only voidable.

The instant petition for annulment, in effect, involves the petition that the right arising from the lease and registered in the registry, be declared extinguished with respect to the

petitioners, which extinction is the inevitable effect of the declaration of nullity. This petition, therefore enters the domain of Act No. 496, whereunder it has the effect of a petition for amending a certificate of title by virtue of the partial extinguishment of a right which occurred after its registration.

And there is no difficulty in so considering it, or in deciding the question so put, as all the interested parties have taken part in the present proceeding.

And the amendment of the certificate of title that may now be effected by virtue of the partial extinguishment of the registered right, will not constitute a revision of the original decree inasmuch as the amendment is based upon the extinguishment of a right, subsequent to its registration.

It must not be lost sight of that the contract of lease in question, as we have pointed out, is not void ab initio nor with respect to all the lessors, but only voidable, and only with respect to the plaintiffs. It is not void ab initio because, in regard to the plaintiffs, it contains the indispensable requisites for its existence. And it is voidable as to them because it lacks judicial approval, which defect invalidates it according to the law. Article 1300 of the Civil Code provides that:

> "Contracts entered into with all the requisites mentioned in article 1261 may be annulled, even if there be no lesion to the contracting parties, whenever they are subject to any of the vices which invalidate them in accordance with law."

By analogy, we cite the following rule:

> "The word *void*, as used in the statute authorizing the sale of infant's real estate, and providing that, unless bonds shall be given, the sale shall be void, should be construed to mean voidable." (Thornton vs. McGrath, 62 Ky., 350, 352.)

Since it is a contract that is merely voidable it has all the effects of being valid and efficacious, even with respect to the plaintiffs, so long as it is not declared void. For this reason, even though six years have elapsed since execution, the contract has been in effect in regard to the rights and obligations of the contracting parties between themselves, including the plaintiffs, demandable up to the date of the commencement of this action, to

which the effects of the declaration of the partial nullity of the said contract shall retroact, because the reason for such nullity already existed before the commencement of this action, the present judgment being limited to declaring it judicially. And the fact that the registration of the lease remains unaltered even after the commencement of this action, does not prevent the present declaration of nullity from being retroactive in its effects, as it does not appear from the record that there is any third party right, based on said registration.

This declaration of partial nullity of the contract of lease carries with it the necessity of declaring what are the rights of the several parties resulting from said declaration.

In the first place the contract in question remains unimpaired and valid with respect to Galo Lichauco, who did not join with the plaintiffs, but rather with the defendant Tan Pho, and to whom the reason for the annulment of the contract with respect to his colessors, the plaintiffs, does not apply. And the contract is null only in so far as it affects the incapacitated Zacarias Lichauco and the minors Luis and Julita Lichauco.

The effect of this declaration of partial nullity is that with respect to the plaintiffs, the stipulation contained in the contract with regard to the period of twenty years agreed upon, is void and without effect, as is that which provides that, upon the termination of said period, all the improvements or buildings erected on the land shall become the property of the owners of the land. Nevertheless, these stipulations, as well as the others contained in the contract, shall remain valid with respect to Galo Lichauco.

Another of its effects is, that in view of the circumstances of the case, all of which are compatible with the defendant's good faith, and in view of the character of the contract being merely voidable, the lessee's possession of the property to date, even so far as it affects the herein plaintiffs, has been, and still is, in good faith, as was also the construction of the buildings and improvements on said property. As a consequence of this conclusion, the lessees are the owners of said buildings and improvements erected upon the leased land by said lessee or by their order and at their expense, and consequently, said lessee is entitled to the accrued income of said buildings and improvements as the owner thereof.

In virtue of all these considerations, the judgment appealed from is reversed and it is hereby declared and ordered:

1. That the contract of lease here in question, executed on October 14, 1913 by Galo Lichauco and the respective guardians of Zacarias Lichauco and the minors Luis and Julita

Lichauco on the one side, and by Tan Pho on the other, is void as regards the plaintiffs, and the effects of this declaration of partial nullity retroacts to September 17, 1920, the date on which the complaint for nullity was presented.

2. Without prejudice to any contract or contracts which the interested parties herein may desire to execute in accordance with the law and in harmony with this opinion, the plaintiffs, from the time Tan Pho is notified of this decision, shall be entitled to appropriate two-thirds part *pro indiviso* of the buildings and improvements constructed by the party represented by said Tan Pho on the property in question, upon payment of the proper indemnity, according to the provisions of articles 361,453, and 454 of the Civil Code in force, or said plaintiffs shall have the right to compel the party represented by the defendant Tan Pho to pay to the plaintiffs the value of two-thirds *pro indiviso* of the land.

3. The plaintiffs shall be entitled to demand and to receive from the party represented by the defendant Tan Pho a rental for the occupation of two-thirds part *pro indiviso* of the land, from September 17, 1920, until said two-thirds part *pro indiviso* of the buildings and improvements constructed by said Tan Pho, becomes the property of the plaintiffs, as aforesaid, or until the two-thirds part *pro indiviso* of the land belonging to the plaintiffs becomes the property of the party represented by said Tan Pho in the manner specified in the preceding paragraph. The amount of this rental mentioned in this paragraph shall be fixed by the interested parties, reserving them the right to resort to the courts for its determination, in case they cannot reach an agreement; provided that the rents, which by virtue of the lease in question, the plaintiffs may have received or may receive from Tan Pho from September 17, 1920, shall be applied upon said rent to be agreed upon by the interested parties or judicially fixed.

4. The registrar of deeds of Manila is hereby ordered to amend the certificate of title to the land in question issued under decree No. 17729, in registration proceeding No. 9667, as also the corresponding books of registry, as well as the copies of said certificate of title, to the effect that said lease therein registered, as far as the plaintiffs are concerned, has been extinguished and rendered void and of no effect by virtue of this decision.

5. Let certified copies of the complaint and the answers filed in this case for the annulment of said lease, as well as a copy of the present decision be attached to said registration proceeding No. 9667, and certified copies of said decision be attached to each of the records of the three cases which are the subject matter of the present decision.

6. In all other respects the plaintiffs' petition is denied, without express pronouncement as to costs. So ordered.

Araullo, C. J., Street, Malcolm, Avanceña, Villamor, and *Johns, JJ.*, concur.

Date created: November 19, 2014