

100 Phil. 892

[G. R. No. L-8947. February 20, 1957]

THE SPOUSES JULIAN F. GONZAGA AND MERCEDES HERNAEZ, PLAINTIFFS AND APPELLEES, VS. THE REHABILITATION FINANCE CORPORATION, DEFENDANT AND APPELLANT.

D E C I S I O N

FELIX, J.:

Antecedents.— On May 30, 1940, the spouses Julian F. Gonzaga and Mercedes Hernaez executed in the office of the Philippine National Bank in the City of Bacolod: (1) a mortgage on their properties known as Lots Nos. 806 and 314 of the Cadastral Survey of Silay, and Lots Nos. 596 and 530 of the Cadastral Survey of Saravia, Occidental Negros, covered by Transfer Certificates of Title Nos. T-1587-R (T-8238), 1585-R (T-30864), 1586-R (T-8237) and 1584-R (T-30863)-Exhs. A, B, C and D), to secure the payment of a loan of P37,000 granted to them by the now defunct Agricultural and Industrial Bank, hereinafter referred to as the AIB; and (2) a deed of assignment as an additional security for the payment of the aforesaid loan to the AIB, wherein the former assigned to the latter 1,000 piculs of sugar annually for 9 years counting from the date of the instrument. Said mortgage and deed of assignment were registered with the office of the Registry of Property for the province of Occidental Negros and annotated on the corresponding transfer certificates of title aforementioned.

Immediately after the operation of the AIB by virtue of Commonwealth Act No. 459, approved June 9, 1939, the Philippine National Bank, Bacolod Branch, was made Gonzaga and Hernaez vs. Rehabilitation Finance Corp.

the agent thereof in the City of Bacolod, while in the island of Panay comprising the provinces of Iloilo, Capiz and Antique, the Iloilo Branch of the Philippine National Bank was the authorized agent of the AIB, both said branches taking charge of the business of their principal the AIB within their respective zones. However, on August 19, 1940, an Iloilo Branch of the AIB was established in Iloilo City, which branch was authorized to manage

and carry on the business of the AIB within the territory of the provinces of Iloilo, Negros Occidental, Capiz and Antique, as well as in the Cities of Iloilo and Bacolod. Public announcement of the opening of the said branch of the AIB was made and the branches of the Philippine National Bank in Iloilo and Bacolod were duly informed that their authority to act was terminated. But inasmuch as upon the opening of the Iloilo Branch of the AIB certain business transactions being handled by the Bacolod Branch of the Philippine National Bank in behalf of the AIB were still in the process of completion, the said Branch was allowed to carry on such transactions until such time as the release of the loans being applied for had been effected. Thus, in the case at bar, the spouses Gonzaga signed a promissory note for P37,000 in the office of the Bacolod Branch of the Philippine National Bank and received the proceeds of the loan on February 4, 1941 (Exh. 1), and upon the release of the proceeds of the loan the authority of the Philippine National Bank, Bacolod Branch, to act as agent of the AIB was terminated and all the records of the transactions with the spouses Gonzaga were then forwarded to the Iloilo Branch of the AIB, and it is to be noted in this connection that in the execution of the promissory note Exhibit 1, the debtors Julian F. Gonzaga and Mercedes Hernaez bound themselves to pay back the sum of P37,000 and interests due in the manner agreed upon in the promissory note, that is, in eight annual installments of P5,958.33, to be delivered at the office of the AIB *in the City of Manila*.

In January, 1942, after the war had broken but, the *Iloilo Branch* of the AIB opened a sub-office at Bacolod City for the purpose of facilitating the collections of mortgage obligations from different clients residing in the province of Occidental Negros (Exh. 7-RFC), which sub-office was located in the same office of the Provincial Treasurer of Negros Occidental. Publication was made of the opening of the sub-office under an officer in charge, Mr. Hilario Empig, which sub-office was closed when the Japanese forces landed in Negros Occidental sometime in May, 1942.

The Iloilo Branch of the AIB was reopened sometime during the year 1943 to handle the same business and covering the same territory as those it had previous to the outbreak of the war and the debtors of the AIB paid their indebtedness to the Iloilo Branch thereof, which was under the said officer in charge, Mr. Hilario Empig. This Branch of the AIB did not keep its money in its safe but deposited its cash with the Iloilo Branch of the Philippine National Bank, which latter Bank opened a free current account for the AIB and kept a ledger (Exh. J) showing the status of the said account.

On December 31, 1944, the Iloilo Branch of the AIB was closed to business.

Coming now to the transactions involved in the case at bar, We find that according to the promissory note (Exh. 1) the first amortization payment of the loan of P37,000 fell due on February 3, 1942, about three months before the Japanese invasion and occupation of Negros Island which took place in May of that year. The spouses Gonzaga as a result of the emergency failed to pay that first amortization to the AIB.

According to the version of the spouses Gonzaga, sometime after the Japanese occupation of both Negros and Panay Islands the Japanese Military Administration took control of all the banks, specially the Philippine National Bank and the AIB, undoubtedly for the purpose of liquidating or winding up the business of the said banks by the Japanese Military Administration; that in Negros Occidental a Japanese, Mr. Ishimoto, was assigned as a sort of liquidator for both the Philippine National Bank and the AIB; that Dr. Julian F. Gonzaga was summoned to the office of the Philippine National Bank in Bacolod by the Japanese liquidator of the Bank and was required to pay his obligation to the AIB, either in Japanese money or in genuine Philippine currency; that during the latter part of 1944 said Dr. Gonzaga received a letter from Mr. Jose Buenaventura, a prewar manager of the Philippine National Bank in the City of Bacolod, requesting him to report to his office, and upon meeting Mr. Buenaventura Dr. Gonzaga learned that the former manager was called back to office by the Japanese authorities of the Bank for the purpose of collecting the debts or obligations of those who had account with the Philippine National Bank and the AIB, and Mr. Buenaventura urged Dr. Gonzaga to pay his obligation with Japanese currency; that in compliance with the advice and demand of payment of his obligation to the AIB, Dr. Gonzaga went to see Mr. Buenaventura on *January 16, 1945* and bought check No. 3646-BR in the amount of P50,000 that he (Dr. Gonzaga) endorsed to the order of the AIB (Exhs. E and E-1) ; that on the same day, January 16, 1945, Mr. J. V. Buenaventura, the Manager of the Philippine National Bank, Bacolod Branch, sent the said draft (Exh. E) to Mr. C. S. Cervantes, Manager of the Iloilo Branch of the Philippine National Bank, with the letter Exhibit F, requesting Mr. Cervantes to *deliver said draft to the said AIB* for application to Dr. Gonzaga's indebtedness and that the corresponding receipt and release of mortgage be kept by Mr. Cervantes until called for; that on February 20, 1945, said Manager Mr. Cervantes upon receipt of the said check of P50,000, entered said draft in the current account of the AIB with the Philippine National Bank, as full payment of the accounts or obligations of Dr. Julian F. Gonzaga to the AIB, and in reply to the request contained in the letter (Exh. F) Mr. Cervantes sent to Mr. Buenaventura the following letter:

“As there is nobody to receive the payment in behalf of the Agricultural and

Industrial Bank, we have taken the liberty of crediting the amount to- their free current account with this institution, which step, we believe, will serve the purpose, although the release of mortgage will have to be executed later by said Bank. Copy of our self-explanatory credit advice to the Agricultural and Industrial Bank is hereto attached for your record;”

that Mr. Cervantes on the same day, February 20, 1945, notified the AIB by a self-explanatory credit advice (Exh. H) attached to the same of the letter¹ of the Branch Manager of the Philippine National Bank of Bacolod (Exh. F) and the reply thereto (Exh. G); that immediately after the liberation of the Philippines from the Japanese Imperial Forces of Occupation (the City of Bacolod was liberated on March 29, 1945, according to the records of the Commission of Civil Service and the Department of Justice), Dr. Gonzaga went to see Mr. Enrique Ledesma, the then manager of the now defunct AIB, in the Central Office in Manila, with the papers allegedly evidencing complete payment of his pre-war account of P37,000, undoubtedly to demand, apparently without success, the cancellation of the aforementioned deeds of mortgage (Exh. 4) and of the annual assignment of 1,000 piculs of sugar; that sometime in 1946 Dr. Gonzaga wrote a letter to the General Manager of the AIB in Manila soliciting a loan of P10,000, for the security of which he offered the same property originally mortgaged for P37,000, the writer stating in his letter (Exh. 2-RFC) that in case his proposition was not acceptable to the AIB, he was willing to offer an additional security of one of his agricultural lots having an area of 35 hectares; and that subsequently, on September 28, 1946, the AIB granted Dr. Gonzaga an additional loan of P8,000, secured by a *second mortgage* of the same property originally mortgaged to the same Bank for P37,000, subject to certain conditions, one of them being the following stipulations:

“2. That this additional loan be secured by a second mortgage on the same properties securing the original loan of P37,000 already granted.”

In contrast with the foregoing version of the spouses Gonzaga, We find that Administrative Ordinance No. 11, issued on *July 31, 1942*, by the Director General of the Japanese Military Administration (1 Off, Gaz., No. 7, July, 1942, p. 375), provides *only* for the liquidation of the banks of *hostile countries* mentioned therein, among which neither the Philippine National Bank nor the AIB and their respective branches were included; and that the proclamation issued by the Commander-in-Chief of the Imperial Japanese Forces, dated January 3, 1942 (1 Off. Gaz., No. 1, p. 9), regarding the use of (Imperial Japanese Government) war notes in

occupied area (of 10-peso, 5-peso, 1-peso and 1 centavo, 5 centavos, 10 centavos and 50 centavos denomination), and providing that “those who hold the war notes will be able to use them in making payments of all kinds,” practically fixed the value of the Japanese war notes at a par basis with the Philippine peso. The spouses Gonzaga do not state when Mr. Ishimoto demanded from them to settle their obligation with the AIB, but assuming their manifestation on this point to be true, such demand must have been made to them *on the second half of the year 1942*.

Executive Order No. 25 issued by President Osmena on November 18, 1945 (41 Off. Gaz., No. 1, April, 1945, p. 49), provides the following:

“6. Japanese Currency, Philippine National Bank Notes, (except duly authorized emergency issues), Notes of the Bank of the Philippine Islands, New Central Bank Notes and unauthorized emergency currencies *are not legal tender. Transactions in these currencies are prohibited.*”

,and it was 2 months thereafter, or on *January 16, 1945*, when Dr. Gonzaga bought in the Bacolod Branch of the Philippine National Bank check No. 364&-BR in the amount of P50,000 Japanese money with which to pay his obligation with the AIB amounting to such sum in Philippine currency. It is to be further noted that according to the Ballentyne Schedule, accepted by the Courts to contain an accurate estimate of values of the Philippine peso in relation to the Japanese money, in *January of 1945* ONE Philippine peso was worth 120 pesos in Japanese money.

The statement of account of the spouses Gonzaga regarding the loan of P37,000 for 8 years (Exh. 6) and covering the span of from *February 3, 1941* to *September 28, 1950*, shows a total obligation of P62,393.67.

The credit advice (Exh. H) was not received by the AIB, because the latter’s Iloilo Branch had already been closed and there was no one to receive it (Exh. G). Even the Head Office of the AIB in Manila was already closed when Dr. Gonzaga bought check No. 3646-BR for P50,000 Japanese money (Exh. E) on *January 16, 1945*, and on *January 2, 1947*, the AIB was abolished and the Rehabilitation Finance Corporation became its successor in interest.

The American forces liberated the City of Manila on *February 3, 1945* and the City of Iloilo sometime in *March* of the same year.

The case.- On December 4, 1948, the spouses Julian Gonzaga and Mercedes Hernaez instituted this action in the Court of First Instance of Negros Occidental against the Rehabilitation Finance Corporation, docketed as Civil Case No. 1134, for the purpose of securing, through the Courts, the cancellation of the deeds of mortgage (Exh. 3-RFC) and assignment; the return to plaintiffs of Transfer Certificates of Title Nos. T-1587-R (T-8238), 1585-R, (T-30864), 1586-R (T-8237) and 1584-R (T-30863) Exhs. A, B, C and D) ; the payment to plaintiffs of the sum of P5,000 for damages and attorney's fees.; the granting to plaintiffs of such other relief compatible with the merits of the action; and the payment of the costs of the suit. Defendant filed its answer (which was admitted by the court despite plaintiffs' motion requesting the defendant to be declared in default), stating special defenses and counterclaim and praying the court to render judgment:

1. Dismissing the complaint with costs against the plaintiffs;
2. Ordering the plaintiffs to pay the defendants on account of their original mortgage obligation of P37,000 the following sums:
(a) P57,349.87, representing the total amount of said obligation as of December 22, 1948, plus interest on said amount at the rate of 6 per cent per annum from said date up to the payment thereof; and (b) a sum equivalent to ten per cent (10%) of the total amount due the defendant, as attorney's fees agreed upon in the mortgage contract;
3. That a proviso be made that the foregoing is without prejudice to the rights of the defendant, Rehabilitation Finance Corporation, against the plaintiffs on account of their additional loan of P8,000 guaranteed by a second mortgage on the same properties involved in this case.

Defendant also prays for such other and further remedies as may be deemed just and equitable in the premises.

After proper proceedings and hearing the Court rendered decision on December 19, 1950, the dispositive part of which is as follows:

"IN VIEW OF AIX THE FOREGOING, the defendant is hereby sentenced to execute the deed of cancellation of the mortgage of the property and the deed of assignment described in the complaint, and to deliver to the plaintiffs the Transfer Certificates of Title Nos. T-1687-R (T-8238), 1586-R (T-8237), 1585-R

(T-3864) and 1584-R (T-30863) of the Register of Deeds of Negros Occidental and the Deed of Assignment with the annotation of the mortgage and deed of assignment already cancelled, and to pay the costs of this suit.”

Not satisfied with this decision, the defendant took the matter up to the Court of Appeals, wherein counsel for defendant Bank attributed to the Court *a quo* the commission of numerous errors, but the Appellate Tribunal certified the case to Us because the amount involved in the litigation exceeds P50,000, *The issues*.- From the assignment of errors made in appellant’s brief, We can easily see that the points in controversy in this case may be reduced to the following propositions:

(1) Was the Iloilo Branch of the Philippine National Bank an agent of the AIB when plaintiff Julian F. Gonzaga bought and endorsed check No. 3646-BR (Exh. E) in favor of the AIB and sent it to his creditor through the services of the Philippine National Bank Branches at Bacolod and Iloilo?(2) Was the Iloilo Branch of the Philippine National Bank empowered or authorized by the Iloilo Branch or the Head Office of the AIB to accept said check Exhibit E in payment *of plaintiffs’ obligation to the AIB, and was the alleged payment made in the manner aforestated, sufficient to oblige the AIB to liberate the mortgage and assignment executed by plaintiffs in its favor and to cause the cancellation and annulment of the annotations made in the titles given as security of plaintiffs’ obligation to pay back the loan of F37,000 and interests due thereon?(3) Even assuming that such payment was valid and binding upon the AIB, did the later acts of plaintiff spouses in connection with the obtainance arid procurement of the loan of F8,000 from the AIB, which they guaranteed with a second mortgage of the same properties they gave as security for the first loan of P37,000, constitute a waiver of all the rights they may have derived in virtue of said payment, or revive their obligation to satisfy anew the loan of P37,000 and interests guaranteed by a first mortgage of the aforementioned properties, which shall be paid anew as requested in defendant’s counterclaim?

Discussion of the controversy.- The facts of this case are minutely detailed in the statement of the “antecedents” made at the beginning of this decision. They are either undisputed or fully established and the mere enunciation thereof clearly describes the juridical situation submitted to Our consideration.

It appears from the record that soon- after the operation of the AIB after its creation by Commonwealth Act No. 495, approved June 9, 1939, the Bacolod Branch of the Philippine National Bank was the agent of that Bank until *August 19, 1940*, when the Iloilo Branch of the AIB was established in Iloilo City. For convenience or expediency the Bacolod Branch of the PNB was allowed to handle transactions in behalf of the AIB that were still in the process of completion and that is why in the case at bar the deed of mortgage (Exh. E) executed on May 31, 1940, to guarantee the loan of P37,000 was allowed to continue in the hands of the Bacolod Branch of the PNB up to February 3, 1941, when the promissory note (Exh. I) was issued by plaintiffs and the proceeds of the mortgage were *demandado to the* latter on the following day.

With respect to the *Iloilo* Branch of the PNB, this Branch was made also the agent of the AIB at about the same time that its sister branch of Bacolod was likewise made an agent of the AIB; but the Iloilo agency was terminated when on *August 19, 1940*, the Iloilo Branch of the AIB was established in Iloilo City. It is to be stated in this connection that the Iloilo Branch of the AIB was closed when in 1942 the Japanese invaded the Island of Panay and was reopened sometime in May of 1943 (Exh. J). Thereafter, the only relation existing between the AIB and the Iloilo Branch of the PNB was made to consist in the fact that the latter was the depository of the funds of the former, for which a free account was opened and a ledger (Exh. J) was kept showing the status of said account. The existence and operation of this free account from May of 1943 up to December 31, 1944, when the Iloilo Branch of the AIB was closed to business, cannot mean by any stretch of imagination that the Iloilo Branch of the PNB was an agent of the AIB, in so far as the business of this Bank was concerned, nor that it could receive directly from a customer any amount in payment of his obligation to the AIB without the previous acceptance and approval of the latter. As a matter of fact, the letter of Mr. Buenaventura, the Manager of the *Bacolod* Branch of the PNB (Exh. F) and the letter that Mr. Cervantes, the Manager of the Iloilo Branch of the same Bank, wrote in answer thereto (Exh. G), clearly show that in the participation these two managers took in the alleged payment of plaintiff's obligation, they did not purport to act as agents of the AIB, or to make Dr. Gonzaga believe that they were agents of said institution. Dr. Gonzaga himself testified that he did not inquire as to whether or not he was paying to the right party (the sum of F50,000 in Japanese money) when he bought the check Exhibit E, and that he did not know whether or not the PNB, *Bacolod* Branch, was an agent of the AIB. That Mr. Cervantes did not believe that his Branch was an agent of the AIB, or that he was acting as such seems evident, as otherwise he would have no need to state that "inasmuch as there is nobody to receive the above payment in behalf of the Agricultural and Industrial Bank, we

have taken the liberty of crediting the amount to their free current account with this institution.” In fact, it would have been enough and easier for Mr. Cervantes to issue a receipt for P50,000 in favor of Dr. Gonzaga in acknowledgment of the full payment of his mortgage obligation with the AIB. If either Mr. Buenaventura or Mr. Cervantes, or both, acted as agents, they evidently were of Dr. Gonzaga and not of the AIB. On the other hand, the record fails to show that at the time Dr. Gonzaga bought and endorsed check No. 3646-BR (Exh. E) in favor of the AIB and sent it to his creditor through the services of the managers of Bacolod and Iloilo Branches of the PNB, the latter Branch was empowered to receive for and in behalf of the AIB any payment in settlement of any obligation or money due the latter Bank. Moreover, according to the promissory note (Exh. 1) the debtors, the spouses Gonzaga, for value received, jointly and severally promised to pay the Agricultural and Industrial Bank, or order, *at its office at the City of Manila, Philippines*, on or before February 3, 1949, the sum of P37,000, Philippine currency, with interest at the rate of 6 per cent per annum from the date hereof (February 3, 1941) until paid. And this obligation of plaintiff spouses was not satisfied by sending check Exhibit E to Mr. Cervantes for *delivery* to the Iloilo Branch of the AIB. It may be stated in this connection that although said Executive Order No. 25, dated November 18, 1944, was only circumscribed to “all areas free from enemy occupation and control throughout the Philippines,” and the Cities of Bacolod and Iloilo had not yet been liberated on January 16, 1945, the declaration contained in said Executive Order (41 Off. Gaz., No. 1, p. 49), should have served as a warning to all officers and employees of the Government and of governmental institutions like the PNB and the AIB, as to what would be the policy of our Commonwealth with respect to Japanese military notes. This tends to establish that said Buenaventura and Cervantes must have acted as agents of plaintiff Gonzaga and not of the AIB, as otherwise they would have placed every obstacle in his way in order to prevent the payment and delivery of said Exhibit E, rather than to facilitate Gonzaga’s purpose, as Mr. Cervantes did when without previous acceptance or authority from the endorsee of the check (Exh. E), he credited that check to the free account of the AIB. (Note: according to the Ballantyne Schedule of values between the Japanese military notes and the genuine Philippine currency, in *January of 1945* one Philippine peso was equivalent to 120 pesos in Japanese war notes.) The fact that Exhibit J, which shows the free current account of the AIB in the *Iloilo* Branch of the PNB, indicates that numerous checks or cash in different amounts were deposited in the latter Bank to the account of the AIB, does not mean that said checks or cash were deposited directly by debtors of the AIB with the *Iloilo* Branch of the PNB in payment of their respective obligations, for in the natural course of events and of banking business, said amounts must have been deposited by checks endorsed or cash delivered by the AIB to that Branch of the

PNB. So, check Exhibit E for P50,000 in Japanese money *received by Mr. Cervantes and not by the AIB*, cannot have the effect of obliging the latter Bank to liberate the mortgage and assignment deeds executed by plaintiffs in favor of the AIB, nor of compelling this institution to cause the cancellation and annulment of the annotations made in the certificates of title (Exhs. A, B, C, and D) given as security for the payment of the loan of P37,000 and interests due thereon.

In view of this conclusion, there is no need of discussing the third proposition. We, however, prefer to say a few words of explanation. Even assuming that plaintiffs' payment of P50,000 in Japanese money was valid and binding upon the AIB, it appears on record that immediately after the liberation of the Philippines from the Japanese Military Forces of Occupation, Dr. Gonzaga went to see Mr. Enrique Ledesma, the manager of the now defunct AIB at the Central Office in Manila with the papers allegedly evidencing complete payment of his pre-war loan of P37,000. Undoubtedly Dr. Gonzaga's purpose in so doing was to demand, apparently without success, the cancellation of the aforementioned deed of mortgage (Exh. 4) and of annual assignment of 1,000 piculs of sugar. Notwithstanding his failure and instead of bringing an immediate action in court to attain his aforesaid purpose, *sometime in 1946*, Dr. Gonzaga wrote a letter to the General Manager of the AIB in Manila soliciting a loan of F10,000, for the security of which he offered the same properties previously mortgaged to said Bank to insure the payment of his first loan for P37,000, the writer stating in his, letter (Exh. 2-RFC) lots having an area of 35 hectares. And what was the AIB's reaction to this proposition? The latter Bank did not require the posting of any further security for the loan which it reduced to P8,000, but imposed as one of the conditions of the mortgage that plaintiff spouses executed and signed:

“2. That this *additional loan be secured by a second mortgage on the same properties securing the original loan of F37,000 already granted.*”

Said in other words, plaintiff spouses - presumably taking into account the circumstances in which the alleged payment of P50,000 in Japanese money was made *to the Iloilo Branch* of the PNB, which the AIB did not receive or accept, or authorize the Iloilo Branch of the PNB to receive for it - agreed to leave standing and uncanceled the mortgage, assignment and securities given by them in connection with the first loan of P37,000, as otherwise the AIB would not have acceded to grant them the second loan of P8,000.

The juridical situation We are dealing with in the case at bar, involves a similar problem that

We resolved in the case of Chiu Chiong & Company, Inc. vs. National City Bank of New York, * G. R. No. L-7485, promulgated on August 23, 1956. In this cited case plaintiff was requested by the Japanese Military Administration to pay to the Japanese Bank of Taiwan, Ltd., its pre-war obligations to defendant National City Bank of New York, which on December 29, 1941, amounted to the total sum of P44,580.59, plus interest at the rate of 8 per cent per annum. The mortgage executed on certain properties furnished by the plaintiff to guarantee the payment of his obligation to the National City Bank of New York was cancelled and the certificates of title were returned to the plaintiff. After the surrender of Japan, plaintiff, first in 1945 and later in 1947, applied to defendant for additional credit facilities, but its request was denied in 1945 because plaintiff refused to make arrangements for the settlement of its pre-war obligation which was not paid to the defendant Bank. So, about the month of April, 1947, plaintiff's business being seriously threatened by paralyzation, endeavored to renew its previous application to the National City Bank of New York for credit facilities and this time plaintiff was ready to execute, as it did execute, a promissory note in favor of the defendant for the payment of its pre-war obligation at the rate of P1,000 a month with interest thereon at the rate of 5 per cent per annum (instead of, the original 8 per cent) from April 29, 1947, until fully paid. By reason of this change of attitude on the part of the plaintiff, defendant agreed in turn to grant, as it did grant, plaintiff additional credit facilities up to the sum of P60,000. In the cited case, there was no discussion about the validity of the payment of plaintiff's debt to the Bank of Taiwan, but as that payment was not received by the defendant, the latter insisted in its pretended right of collecting that unsatisfied account, and We held that for and in consideration of these additional credit facilities defendant granted to the plaintiff, the latter was in duty bound to pay again the debt incurred by him with the National City Bank of New York, though it had been already settled by his valid payment made to the Japanese Bank of Taiwan, Ltd., in accordance with Our decision in the case of Haw Pia vs. The China Banking Corporation, 80 Phil. 604.

In the case at bar, We maintain the same doctrine, i.e., that as plaintiffs herein accepted the second loan of P8,000 under the conditions imposed upon them by the defendant, We cannot liberate them from the payment of the first loan of P37,000 and of the interests due thereon.

Wherefore, and on the strength of the foregoing considerations, the decision appealed from is hereby reversed (1) dismissing the complaint; and (2) ordering the plaintiffs to pay the defendant in virtue of their first mortgage obligation of P37,000, the following sums (a) P37,000, with 6 per cent interest thereon from February 3, 1941, up to the date of payment

thereof; and (b) a sum equivalent to 10 per cent per annum of the total amount due the defendant on December 29, 1948, the date of defendant's answer, as attorney's fees agreed upon in the mortgage contract.

This decision does not affect the rights of the parties herein over the loan of P8,000 guaranteed by a second mortgage on the same properties given as security for the payment of the first loan, as this matter is not involved in the instant case. Without pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., and Endeneia, JJ., concur.

Padilla, J., concurs in the result.