

LA ORDEN DE PADRES BENEDICTINOS DE FILIPINAS, PETITIONER AND APPELLEE, VS. THE PHILIPPINE TRUST COMPANY, OPPOSITOR AND APPELLANT.

G.R. No. L-2020. December 29, 1949

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

On July 30, 1947, petitioner La Orden de Padres Benedictinos de Filipinas, filed a petition in the Court of First Instance of Manila alleging that on September 24, 1934, it executed a Deed of Second Mortgage over parcels of land covered by certificates of title Nos. 22560 and 22539 of the City of Manila, in favor of oppositor and appellant, the Philippine Trust Company; that on June 19, 1944, the Philippine Trust Company received full payment of the loan according to a deed of cancellation issued on that date; that said deed of cancellation, however, contained some errors, first, that instead of mentioning September 24, 1934 as the date of the second mortgage, it states September 26, 1934 as the said date, and second, that instead of reciting that the second mortgage encumbered the lands covered by the two certificates of title Nos. 22539 and 22560, it only mentions certificate of title No. 22539. Because of these errors, the Register of Deeds of Manila refused to record and register said deed of cancellation unless the Court of First Instance issued an order to the effect that the deed of cancellation presented for registration refers to the deed of second mortgage of September 24, 1934, and that said deed of mortgage covered the parcels of land included in certificates of title Nos. 22539 and 22560.

To this petition the Philippine Trust Company filed a written opposition stating that it admits the execution of a second mortgage by petitioner in favor of the oppositor over lands covered by certificates of title Nos. 22560 and 22539 of Manila, although, as far as it could ascertain, the mortgage was originally executed on January 21, 1928; that the oppositor denies having received the full payment of the mortgage debt, the fact being that the alleged payment on or about June 19, 1944, was made and accepted under duress, and, consequently, is null and void; that there was no error or omission made in the deed of cancellation of the second mortgage but that it was the intention of the oppositor in executing the same to protect itself in the future because of such invalid payment, and finally, that the court had no jurisdiction to entertain or grant the petition.

Acting upon the two pleadings, the lower court issued an order on August 26, 1947, wherein it found the petition well founded and overruled the opposition, and directed the Register of Deeds to proceed with the registration of the deed of cancellation of the second mortgage dated June 19, 1944, cancelling at the same time the annotation of the second mortgage which appears at the back of certificates of title Nos. 22560 and 22539, making of record the pertinent portion of the directives of the Department of Justice, and without prejudice to the right of the oppositor to question in an ordinary civil action the validity of the said deed of cancellation of the second mortgage.

In support of his first assignment of error, appellant cites the case of *Castillo vs. Ramos*,^[1] L-1031, decided by this Court in July, 1947 (45 Off. Gaz., 183), wherein it was held that the validity of payment with Japanese military notes during the war of a pre-war obligation in genuine Philippine currency, is such a transcendental

question that it is beyond the special and limited jurisdiction of a Court of First Instance acting as a Court of Land Registration. However, in view of the decision of this Court in the case of *Haw Pia vs. China Banking Corporation*, L-554[2] (45 Off. Gaz. [Supp. No. 9], 229), in which it was ruled that payments made with Japanese war notes during the occupation of obligations contracted before the war, to the creditors or his legal representatives, and accepted by them, are valid and release the said obligations, there no longer is any doubt as to the validity of similar payments. As was said in the case of *Castillo vs. Ramos*, supra, if there is no substantial controversy between the parties about the cancellation of any encumbrance noted in any certificate of title as there can be no serious controversy between petitioner and oppositor in the present case because the payment of the loan and the execution of the corresponding deed of cancellation of the second mortgage is not denied, then the lower court had jurisdiction to order the inscription of the deed of cancellation and the cancellation of the annotations on the back of the certificates of title.

We believe, however, that the lower court erred in ordering the Register of Deeds to make of record the pertinent portion of the directives of the Department of Justice. The court evidently referred to Circular No. 14, series of 1945 of the Department of Justice, directing Registers of Deeds to insert in all certificates of title involving cancellation of encumbrances effected during the Japanese occupation the following words "subject to such further dispositions as the Government may adopt regarding transactions consummated during the Japanese occupation."

In the case of *Lim vs. Register of Deeds of Rizal*,[2] L-1739 (46 Off. Gaz., 3665), this Court has decided that the Department of Justice had no right to issue said Circular No. 14, series of 1945. Consequently, in the present case, the insertion of that directive in the record of the Register of Deeds is unwarranted and illegal.

The oppositor contends that with the order of the lower court, it would be rendered without any remedy, and would lose its rights in the premises because if to protect itself, it brought an action for the foreclosure of the second mortgage, the petitioner may interpose the defense of the debt moratorium. But the oppositor need not bring an action to foreclose the mortgage. It may file an ordinary suit to question the validity of the payment of the obligation on the alleged ground of duress. With such action, its rights in the premises if any, in our opinion would be sufficiently protected.

In view of the foregoing, with the modification of the order appealed from, by eliminating therefrom the portion ordering the insertion in the Register's records, of the directive of the Department of Justice, said order is hereby affirmed, with costs.

Ozaeta, Paras, Pablo, and Reyes, JJ., concur.

[1] 78 Phil., 809.

[2] 80 Phil., 602.

[2] 82 Phil., 789.

CONCURRING

MORAN, C.J.:

I agree to the reasons stated in this decision and I wish to add that although the error and omission sought to be corrected had not been committed by the registrar of, deeds but by the mortgagee, Philippine Trust Company, and

generally the remedy would be an ordinary suit against the latter to compel the correction of the deed of cancellation; however, since there is no issue of fact as to the existence of said error and omission the Court, for the sake of speedy and substantial justice, may consider the deed of cancellation duly corrected, and compel the registrar of deeds to act accordingly.

CONCURRING AND DISSENTING

PADILLA, J.:

I do not agree to two parts of the majority opinion, to wit: (1) that which directs the cancellation of the second mortgage on the parcel of land described in certificate of title No. 22560 despite the mortgagee's objection based on the fact that in the mortgage release the parcel of land described in the certificate of title is not included; and (2) that which by implication validates the payment made on 19 June 1944 of a pre-war debt or obligation with Japanese military or war notes.

Section 112 of the Land Registration Act, under which the petitioner filed his motion, provides that what the land registration court may order and direct the registrar of deeds to do is to correct an "error, omission, or mistake * * * made in entering a certificate or any memorandum thereon or on any duplicate certificate; * * *." In the instant case, there is no error or mistake to be corrected or omission to be supplied by the registrar of deeds in and for the City of Manila. The court below, acting as land registration court, cannot take the place or substitute the mortgagee in his voluntary act of releasing or refusing to release a mortgage on a registered parcel of land. If the mortgagor has a right to compel the mortgagee to release the mortgage on such registered parcel of land, he may do so by means of an ordinary suit, but certainly not by means of a petition under section 112, Act 496. There is no evidence presented in the case. The court below decided the controversy between the petitioner and the opponent upon the pleadings only.

The objection to the second part of the majority opinion is based upon my concurrence in Mr. Justice Hilado's dissent in the case of *Haw Pia vs. The China Banking Corporation*, G. R. No. L-554, promulgated on 9 April 1948.[1] The opinion invokes as authority the rule laid down in that case. My position in said case, briefly stated, is that the alleged, simulated, or pretended liquidation and sequestration of assets to carry out the liquidation of the China Banking Corporation—an enemy bank—was nothing but a confiscation prohibited by the Hague Conventions of 1907 (article 46, sec. III, Chapter V, Regulations Respecting the Laws and Customs of War on Land); and that the power of an invading army to liquidate and sequester the assets to carry out the liquidation of enemy banks in an occupied territory (not granted by the Hague Conventions) , if it exists at all since the signing of the Hague Conventions of 1907, must be a corollary or an incident to military necessity, or to the duty of the invader to restore and insure public order and safety in the occupied territory (article 43, sec. III, Chapter V), or to the paramount right to weaken the enemy. This power, however, is not absolute but subject to the limitation that the invader is to respect private property, tangible and intangible, which includes contractual obligations or debts and credits of private parties or citizens or inhabitants of the occupied territory (article 46, sec. III, Chapter V). Terms or words used by the invader in his proclamations, orders, or decrees should not be taken at their face value and made to control in the determination as to whether certain steps taken by him constitute a liquidation or a confiscation, but the acts performed by him or by his officers and agents and the actual effects thereof should be taken into consideration. Japanese occupation of the Philippines from 2 January 1942 to 27 February 1945 may be said to be still contemporary history, and therefore the Court can take judicial notice of the same. Those who unfortunately lived under the Japanese occupation know that what the Imperial Japanese army of occupation did was not liquidation and sequestration but confiscation of the assets of the enemy

banks. It is naive, pure and simple, to suppose or presume or expect the Imperial Japanese army of occupation to call or describe as confiscation what it intended or planned to do with respect to the enemy banks and their assets. The Imperial Japanese army of occupation disguised it with the term liquidation by appointing the Bank of Taiwan, Ltd. as liquidator (Administrative Order No. 11 of the Director General of the Japanese Military Administration, Vol. 1, Off. Gaz., No. 7, July 1942, page 375). What the Japanese invader did during the occupation of the Philippines should be judged, determined, or classified not according to his standards but according to our own. For, if this Court should adjudge it by the standards of the invader, it would be applying the rules and principles of International Law that prevailed during that period of the world's history when the victor made slave of the vanquished and booty of his property. All along, the civilized nations of the world have felt and believed that they have improved and progressed in their dealings with each other in times of peace not only but in times of war as well. Now to sanction what the Imperial Japanese army of occupation did in the Philippines, which set at naught the rules and principles of International Law, is to convert such progress into an illusion.

But it is claimed and advanced that the Imperial Japanese army of occupation made its military or war notes legal tender. There is no foundation for such a claim. As there have been loose statements on the meaning of legal tender, I am constrained to state and set down what is meant by legal tender.

In the Philippines the unit of value is the gold peso, as provided for in section 1 of the Act of Congress of 2 March 1903. Gold coins of the United States at the rate of one dollar for two pesos "shall be legal tender for all debts, public and private." The Philippine silver peso authorized to be coined by section 3 of said Act of Congress "shall be legal tender in the Philippine Islands for all debts, public and private, unless otherwise specifically provided by contract." The fifty centavos, twenty centavos and ten centavos, authorized to be coined by section 77 of the Act of Congress of 1 July 1902, as amended by section 4 of the Act of Congress of 2 March 1903, "shall be legal tender in said Islands to the amount of ten dollars," as provided in section 5 of said Act of Congress of 2 March 1908.

Money as a unit or measure of value must have relative intrinsic worth. It must be less than the market value, for if it should be of equal or greater than the market value, it would be diverted or withdrawn from circulation and used to greater advantage or exported. By reason of scarcity, adaptability to diverse uses and stability in value, gold and silver have been adopted as a measure of value and means of exchange. Gold is used to pay favorable balance of trade among nations. Because of that relative intrinsic value, gold and silver currency are made legal tender. On the other hand, paper money or currency does not have intrinsic value. It does not have the value it represents. For that reason, it cannot be made legal tender. To warrant its use as legal tender, the government issuing or circulating it must provide and set aside a separate and trust fund in its vaults consisting of gold or silver coins of standard value to answer for such paper money or currency, unit for unit. To make it acceptable as legal tender, such paper money or currency must readily be convertible into gold or silver coins of standard value. Convertibility is one of the essential characteristics of a legal tender paper money or currency. Without such convertibility, the government is not justified in having it accepted as legal tender for payment of all debts, public and private. The Government of the Philippines has been slow in according paper money or currency the quality of legal tender. Thus, silver certificates in denominations of not less than two nor more than five hundred pesos authorized to be issued by the Treasurer of the Philippine Islands, after receiving deposits of not less than twenty pesos (P20) of the standard silver coin of one peso at the treasury, were "receivable for customs, taxes, and for all public dues." (Section 8, Act of Congress of 2 March 1903, as amended by section 10, Act of Congress of 6 February 1905 and section 2, Act of Congress of 23 June 1906.) Said silver certificates were backed up by an actual 100% deposit of standard silver coins of one peso, and yet they were not legal tender because they could not discharge private debts if the acceptance thereof be refused by the creditor. And when, in addition to the silver certificates already mentioned, treasury certificates were issued pursuant to section 1622, Act 2711 or the Revised

Administrative Code of 1917, as amended by Act 2776, also said treasury certificates were receivable for customs, taxes and all public dues only. Treasury certificates created by section 1626, Act 2711, as amended by Act 3058, were receivable for customs, taxes, and all public dues only. They were not legal tender and continued to be so until 16 March 1935, when Act 4199 was passed. The "Gold Standard Fund" created by Act 3058 was replaced by the "Exchange Standard Fund" under and pursuant to Act 4199, and the Philippine treasury certificates for the first time were made legal tender for all debts, public and private (sec. 1612, Act 2711, as amended by Act 4199). But these treasury certificates under Act 3058 and Philippine treasury certificates under Act 4199 had and have a backing of 100% deposit of standard silver coin pesos in the Philippine treasury known as the "Treasury Certificate Fund" (sec. 1626, Act 2711, as amended by Acts 3058 and 4199). If that is the correct meaning of legal tender, then the proclamation of the Commander in Chief of the Imperial Japanese Army dated 3 January 1942, which announced that those war-notes (military pass-money) were "indorsed and issued by the Imperial Japanese Government;" that said government "takes full responsibility for their usage having the correct amount to back them up;" and that "those who hold the war-notes will be able to use them in making payments of all kinds," could not make legal tender such war or military notes, because the Imperial Japanese Government did not have silver coin pesos to back them up peso for peso. And just as the Imperial Japanese Government or its army was bound to respect private property, tangible and intangible, because it was one of the signatories of the Hague Conventions of 1907; just as it could not make legal tender its military or war notes, because it did not have the reserve to back them up; so also it could not give validity and legal effect to payments made by debtors to creditors of pre-war debts or obligations by means of such military or war notes. It would be contrary not only to the spirit but also to the letter of the provisions of the regulations of the Hague Conventions of 1907.

The subject matter involved in this controversy is indeed a bagatelle, but the far-reaching effects of the rule laid down transcend the limits of human farsight. In deciding this case, in the same way as when it decided the case of *Haw Pia vs. China Banking Corporation*, supra, this Highest Court of the Republic sits as an international tribunal, because it construes and applies the rules or regulations of the Hague Conventions of 1907. I sincerely believe that the majority decision in this case, as well as in the case of *Haw Pia vs. China Banking Corporation*, supra, has laid down a dangerous rule or precedent—dangerous because it sanctions a violation of the rules or regulations of the Hague Conventions of 1907—a precedent which may be invoked in the future against the peaceful and law-abiding citizens and inhabitants of this Republic.

For these reasons, I dissent from those two parts of the majority opinion referred to above.

I agree to the reversal of that part of the order appealed from, which directs the Registrar of Deeds in and for the City of Manila to annotate on certificate of title No. 22539 the directive of the Department of Justice set forth in Circular No. 14, series of 1945, in accord with the rule laid down in the case of *Lim vs. Register of Deeds of Rizal*,^[1] G. R. No. L-1739, promulgated on 3 February 1949.

BENGZON, J.:

I concur in the first part of the above opinion.

TUASON, J.:

I concur.

TORRES, J.:

I concur in the first part of the above opinion of Mr. Justice Padilla.

[1] 80 Phil., 602.

[1] 82 Phil., 789.

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