

PATRICIO CONTRERAS AND JERUSALEM GINGCO, PETITIONERS, VS. ALFONSO FELIX, JUDGE OF FIRST INSTANCE OF MANILA, AND THE CHINA BANKING CORPORATION, INC., RESPONDENTS.

G.R. No. L-884. June 30, 1947

Ponente: TUASON, J.

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TUASON, J.:

The case concerns a proposed modification of a final judgment. The earnestness with which the petition is maintained will be our excuse for making this decision more lengthy than the nature of the case in other circumstances would warrant.

Patricio Contreras and Jerusalem Gingco brought a suit against the China Banking Corporation, Inc., and Juan V. Molina and Teodora Arenas, husband and wife, to annul a mortgage executed by the spouses in favor of the Bank and to recover damages. The Court of First Instance of Manila, the Honorable Jose O. Vera presiding, absolved the Bank and condemned the other two defendants to pay various amounts in various concepts with certain deductions. The lower court's judgment in full is as follows:

"Por los hechos y razones expuestos, se dicta decision en esta causa, declarando:

"(1) Que la hipoteca otorgada a favor de The China Banking Corporation es valida, pues el banco obro de buena fe;

"(2) Condenando a Juan V. Molina y Teodora Arenas a pagar a Jerusalem Gingco en concepto de indemnizacion de daños y perjuicios la cantidad de P2,000;

"(3) Obligando a los conyuges Juan V. Molina y Teodora Arenas a pagar la deuda hipotecaria al banco The China Banking Corporation a fin de que las accesorias y las dos puertas adicionales no tengan gravamen alguno. Si no lo hacen dentro de treinta dias despues de quedar firme esta sentencia, Jerusalem Gingco puede hacer ese rescate, cargando la deuda hipotecaria a cuenta de Juan V. Molina y Teodora Arenas, pudiendo incluirse en la ejecucion que se expida en esta causa el cobro de lo que Jerusalem Gingco pague al banco por dicha hipoteca;

"(4) Del credito de Jerusalem Gingco contra Juan V. Molina y Teodora Arenas de P4,836.31 en la causa No. 44960, se debe deducir el exceso de lo pagado por Teodora Arenas en la subasta publica que hubo con motivo de la ejecucion expedida en la causa No. 36669. Dicho exceso es de P576.25, que se debe deducir de los P4,836.31.

"(5) Que los conyuges Juan V. Molina y Teodora Arenas paguen a Jerusalem Gingco P2,520 por los alquileres de las dos puertas adicionales a razon de P30 mensuales (P15 por puerta), correspondiente al periodo del 4 de Septiembre de 1934 al 4 de Septiembre de 1941. Desde esta ultima fecha, dichos demandados deberan pagar a Jerusalem Gingco P30 mensuales hasta que dichas puertas adicionales sean entregadas a su propietaria Jerusalem Gingco.

"(6) Los demandantes, tan pronto hayan cobrado algo de los demandados Juan V. Molina y Teodora Arenas,

deben pagar los derechos de escribania por esta causa.

"(7) Se condena a Juan V. Molina y a Teodora Arenas a pagar las costas del presente juicio."

From that judgment, the plaintiffs appealed, but not any of the defendants. The parts of the decision to which the plaintiffs took exception were thus specified in the notice of appeal:

"(a) En cuanto declara valida la hipoteca otorgada por los demandados Juan V. Molina y Teodora Arenas a favor de su codemandada The China Banking Corporation, y al no condenar a esta a pagar indemnizacion a los demandantes.

"(b) En cuanto declara que, si los demandados Molinas dejaren de pagar su deuda hipotecaria al Banco demandado a fin de que las accesorias en cuestion esten libres de toda carga y gravamen, la demandante Jerusalem Gingco puede hacer el rescate, pudiendo incluirse en la ejecucion que se expida en esta causa el cobro de lo que esta pague al Banco por dicha hipoteca y,

"(c) En cuanto declara que, el credito de Jerusalem Gingco contra los demandados Molinas a cuenta del importe de la sentencia en el asunto civil No. 44960 era solamente de P4,836.31 en vez de P6,951.31."

In due time this court rendered judgment couched in these words:

"For all the foregoing, the deed of mortgage dated November 8, 1930, is declared null and void as to the one-half of the mortgaged property belonging to Jerusalem Gingco and rescinded as to the remaining one-half belonging to the spouses Molina, and the appealed decision is modified by ordering all the defendants to pay Jerusalem Gingco the amount of P6,951.31, plus the additional amount of P30 monthly from September 4, 1934, to September 4, 1941, and to continue paying the same monthly amount thereafter until the two new doors of the accesorias in question are delivered to said Jerusalem Gingco. The defendants shall also pay the filing fees of the complaint in the lower court and the costs in both instances." (Contreras and Gingco vs. China Banking Corporation, 76 Phil., 709, 716, 717.)

After this judgment was entered, the case was sent back to the lower court and execution was issued. The sheriff at first undertook to collect from the China Banking Corporation one-half of the judgment, upon the indication, it is claimed, of the plaintiffs' attorney, but objection by the bank having been filed with the court, the Honorable Alfonso Felix, judge, one of the respondents herein, ordered that the portion of the judgment due from this defendant was only one-third. The latter amount was later paid by the bank and turned over to, and receipted for by, the plaintiffs' counsel. It so happened that the other defendants were insolvent, whereupon the execution creditors asked for an alias execution against the bank for the unpaid balance of the judgment. That motion was denied and the present petition for mandamus was the off-shoot.

It was contended below, and it is contended here, that the act of the bank was tortuous and falls under the provision of article 1902 of the Civil Code so that its liability is joint and several.

There is no dispute, and it can be said with confidence, that the China Banking Corporation's liability under the terms of the judgment of this court is merely joint, joint in the sense in which the word is understood in the civil law, "It is already a well-established doctrine in this jurisdiction that, when it is not provided in a judgment that the defendants are liable to pay jointly and severally a certain sum of money, none of them may be compelled to satisfy in full said judgments." (Oriental Commercial Co. vs. Abeto and Mabanag, 60 Phil., 723, citing De Leon vs. Nepomuceno and De Jesus, 37 Phil., 180, and Sharruf vs. Tayabas Land Co. and Ginainati, 37 Phil., 655.) That ruling is in entire harmony with articles 1137 and 1138 of the Civil Code.

Under that doctrine the lower court has no legal authority under any circumstances to make the change sought by the plaintiffs; and this court itself may not make the change after the judgment has become executory. According

to that decision a mistake such as that here alleged, if it be a mistake, is not clerical; it goes to the very substance of the controversy.

Only clerical errors, or mistakes or omissions plainly due to inadvertence or negligence may be corrected or supplied after the judgment has been entered. "The power of courts to correct clerical errors and misprisions and to make the record speak the truth by nunc pro tunc amendments after the term does not enable them to change their judgments in substance or in any material respect. Consequently it is well settled that, in the absence of statute permitting it; the law does not authorize the correction of judicial errors, however flagrant and glaring they may be, under the pretense of correcting clerical errors." (1 Freeman on Judgments, pp. 269-271.)

"The general power to correct clerical errors and omissions does not authorize the court to repair its own inaction, to make the record and judgment say what the court did not adjudge, although it had a clear right to do so. The court cannot under the guise of correcting its record put upon it an order or judgment it never made or rendered, or add something to either which was not originally included although it might and should have so ordered or adjudged in the first instance. It cannot thus repair its own lapses and omissions to do what it could legally and properly have done at the right time. A court's mistake in leaving out of its decision something which it ought to have put in, and something in issue of which it intended but failed to dispose, is a judicial error, not a mere clerical misprision, and cannot be corrected by adding to the entered judgment the omitted matter on the theory of making the entry conform to the actual judgment rendered." (Id., p. 273.)

Slight reflection will show the wisdom of this rule. The necessity of giving finality to judgments that are not void is self-evident. The interests of society impose it. The opposing view might make litigation "more unendurable than the wrongs it is intended to redress." It would create doubt, real or imaginary, and controversy would constantly arise as to what the judgment or order was. As this court has announced, "public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by the law. The very object for which courts were instituted was to put an end to controversies." (Layda vs. Legazpi, 39 Phil., 83; Dy Cay vs. Crossfield & O'Brien, 38 Phil., 521.)

We have no cause to depart from this rule. It is a rule that must be adhered to regardless of any possible injustice in a particular case. It is not a legal concept of the flexible kind, capable of being individualized to meet the needs of varying conditions. "We have to subordinate the equity of a particular situation to the overmastering need" of certainty and immutability of judicial pronouncements. The loss to the litigants in particular and to society in general "would in the long run be greater than the gain if judges were clothed with power to revise" their decisions at will. "Perhaps, with a higher conception" of the administration of justice and its needs, "the time will come when even revision will be permitted if revision is in consonance with established standards" of court functions, "but the time is not yet."

It would be tedious to give illustrations of clerical mistakes, errors and omissions, correction of which might be permitted. It suffices for the purpose of this decision to say that the mistake under consideration, if it be a mistake, is not of the apparent exceptions, at least in this jurisdiction.

In truth, there is no proper and sufficient showing here that the alleged mistake was due to inadvertence on the part of the court. We have been through with the decision and have not detected in it any clear purpose or intention to make the defendants jointly and severally liable. In all probability, the nature of defendants' liability (whether joint or joint and several) was not touched upon at all by the parties and was not even given thought by them or by the court. The point was involved in obscurity. As the judgment of the lower court plainly indicates, the case was very intricate, complicated by a multiplicity of claims and counterclaims arising from different juridical acts and sought from different parties who sustained diverse relationships to the plaintiffs and to each

other with reference to the separate items. It is not to be wondered at if the finer point of solidarity among the defendants was swallowed up and lost in the maze of these claims and counterclaims over the validity of which the three-cornered contest was centered and bitterly waged. The uncontroverted facts alone are so complex that more than one close reading of either decision is needed to get a comprehensive grasp of them.

The fact that the plaintiffs' attorney instructed the sheriff to levy execution on the bank for only one-half of the judgment, when it could have demanded the whole amount from that entity if its liability was joint and several, offers itself as possible proof that in the mind of the petitioners themselves this defendant was to bear only a pro-rata share of the indebtedness. In other words, if the bank's liability, in plaintiffs' opinion, was solidary, they had the option to exact the payment of the entire amount due from any of the defendants, subject to the right of the payor to collect from the others their proportionate shares of the obligation. It would seem that the plaintiffs became wise to the question of solidarity among the defendants only when the matter of whether the bank should pay one-half or one-third of the judgment came before the court below.

It is said that the judgment is at variance with the context of the decision. Granting this for the moment to be the case, yet the discrepancy pointed out is not of the nature that would justify modification of the judgment. The principles we have cited in the preceding paragraphs should put this matter at rest. More to the point is another well-recognized doctrine, that the final judgment as rendered is the judgment of the court irrespective of all seemingly contrary statements in the decision. "A judgment must be distinguished from an opinion. The latter is the informal expression of the views of the court and cannot prevail against its final order or decision. While the two may be combined in one instrument, the opinion forms no part of the judgment. So, * * * there is a distinction between the findings and conclusions of a court and its judgment. While they may constitute its decision and amount to the rendition of a judgment, they are not the judgment itself. They amount to nothing more than an order for judgment, which must, of course, be distinguished from the judgment." (1 Freeman on Judgments, p. 6.) At the root of the doctrine that the premises must yield to the conclusion is perhaps, side by side with the needs of writing finis to litigations, the recognition of the truth that "the trained intuition of the judge continually leads him to right results for which he is puzzled to give unimpeachable legal reasons." "It is an everyday experience of those who study judicial decisions that the results are usually sound, whether the reasoning from which the results purport to flow is sound or not." (The Theory of Judicial Decision, Pound, 36 Harv. Law Review, pp. 9, 51.) It is not infrequent that the grounds of a decision fail to reflect the exact views of the court, especially those of concurring justices in a collegiate court. We often encounter in judicial decisions, lapses, findings, loose statements and generalities which do not bear on the issues or are apparently opposed to the otherwise sound and considered result reached by the court as expressed in the dispositive part, so called, of the decision.

But is there really any conflict between the considerations or findings and the judgment of this court? It appears that the sole reliance of the petitioners is on the statement in the decision, viz.: that "the assignment of error is also well taken" and that "the China Banking Corporation must answer for the amounts above-mentioned as a consequence of our conclusion as to the nullity of the mortgage." That statement had reference to the second assignment of error which complained, in the words of this court, of the trial court's "failure to order the China Banking Corporation to indemnify Jerusalem Gingco in the amount of P6,951.31, which was adjudicated in her favor in Civil Case No. 44960 of the Court of First Instance of Manila, and which appellant failed to collect in view of the third-party claim filed by said bank, and the rents which said appellant failed to collect from accesorias Nos. 1635, 1630 (1637) and 1639 at the rate of P65 a month, beginning from September 4, 1934." That comment and the second assignment of error did not exhibit any intention, let alone plain intention, to hold the China Banking Corporation liable in solido. The idea of solidarity is no more manifest than the idea of mere joint liability among the co-obligors. If there was any intention to make the defendants' obligation under the judgment solidary, it is not apparent from the language employed. If there was inadvertence on the part of the court, the

omission was not so obvious as to justify rectification. Nowhere in the decision is there any reference to article 1902 of the Civil Code, or unequivocal declaration that each of the defendants was bound to the performance or payment of the entire judgment.

Even if the liability of the bank arose from tort and is in solido, it is now too late to enforce that liability in the manner specified in the applicable provisions. When a claim or demand has been put in suit and has passed on to final judgment, it is merged and swallowed up in the judgment and loses its vitality. All the particular qualities of the claim are merged in the judgment. And this rule applies to all claims or demand. (34 C. J., 752, 754.) In another connection this court has ruled: "It is of no consequence that * * * the obligation contracted by the sureties was joint and several in character. The final judgment, which superseded the action brought for the enforcement of said contract, declared the obligation to be merely joint, and the same cannot be executed otherwise." (Oriental Commercial Co. vs. Abeto and Mabanag, *supra*.) It is immaterial, therefore, whether the obligation of the defendants arose from law, contract or culpa. It is "the final judgment (that) determines and is the source of the rights and obligations of the parties * * *." (Oriental Commercial Co. vs. Abeto and Mabanag, *supra*.)

Emphasis is also laid on the fact that the spouses Molina and Arenas did not appeal. The petitioners advance the proposition that since these defendants did not appeal they were excluded from the appellate court's jurisdiction. They go so far as to insinuate or say that the China Banking Corporation alone is answerable for the judgment rendered by this court. The position thus taken by the petitioners is highly untenable and inconsistent with their main thesis.

If Molina and Arenas did not question the trial court's decision, the plaintiffs did appeal from the judgment, not as it affected the bank only but also the other defendants. The notice of appeal will show that the plaintiffs opened up, among other questions, that of the extent of Molina's and his wife's liability to the plaintiffs as well as the bank's. The bank did not appeal either, for that matter, but it was condemned nevertheless. That Molina and his wife did not appear and Ale a brief in this court did not operate to rule them out of the case. The best refutation of the petitioners' contention is the fact that the amounts which Molina and his wife were sentenced to pay by the court below were increased by this court.

The authorities cited by the petitioners do not shed any light on this issue. It can be seen at a glance that there is no analogy between this case and the cases relied upon by counsel.

There is one feature of the case affecting the question of practice and procedure which should not be allowed to escape our attention.

A motion for reconsideration styled "Motion for Clarification" was presented in this court before the present petition was docketed. That motion was denied on the grounds that clarification was unnecessary and that the judgment had become final. (This, by way of parenthesis, may be said to mirror the concept which this court had of the alleged error; namely, that the error, if it be error, was of judicial and not clerical character.) By the motion for an alias execution the petitioners were after exactly the same thing that we had refused to grant them. They simply turned around and took a circuitous and narrower path that led to the same goal. By appealing from the lower court's denial to issue an alias execution, the plaintiffs now try to obtain by indirection what they failed to get directly. The procedure is indeed anomalous and success of the petition would lead to anomalous consequences. How?

- "It is well settled that a decision concurred in by the entire bench cannot be modified, except on regular reconsideration." (5 C. J. S., 1485.) The change the petitioners would have us make would constitute modification of the judgment; they would have a new matter of substance inserted therein. This matter—that the bank's liability

is not joint but solidary—was not put in issue in the original case and there does not appear to have been any hearing or voting on this specific point. This matter goes to the merits, and hearing and voting thereon can properly be had only by going into the whole record of the main case. On the other hand, adequate study of the whole case can not be accomplished except on a regular motion for reconsideration such as the one we dismissed. In other words, for the purpose of modifying the judgment the proceeding must be direct and not, like the present proceeding, collateral. Direct proceeding on a regular motion for reconsideration would be all the more necessary, if the motion for amendment were to be entertained, because some of the justices who signed the decision have resigned and the new members who have taken their places did not have the benefit of hearing the arguments and going over the pleadings and evidence. The scope of our authority on a petition for mandamus, which is a special proceeding, is limited to an examination of the allegations therein and in the answer, and perhaps of the decision of this court, which was not attached to as part of the, petition. Under such petition the pleadings, the evidence and the briefs in the main cause are not legally brought before us. Quite apart from this technical barrier, the record of the case has actually been returned to the court of origin.

- Granting of the petition for mandamus would not be an amendment by this court of its decision. In form, it would be a command to the court below to do as the petitioners asked. In its implications, it would be a sanction for inferior courts, in the process of execution, to change judgments of courts of superior jurisdiction in the light of what they believe is the intention of the higher court as gathered from statements in the body of the decision. It would be taken as a green-light signal for inferior courts to probe into the decisions of superior courts to verify if the judgment conforms to the text. The result of such practice would be intolerable. That the lower court's decision might be appealable would not remedy the situation greatly. In the present case there would be the added paradox that we would reverse the lower court for refusing to allow precisely what this court itself—the author of the decision which was in the best position to say what the decision meant—denied because the judgment was clear and had acquired finality.

For the foregoing considerations, the petition is denied without costs.

Moran, C.J., Paras, Hilado, Bengzon, and Hontiveros, JJ., concur.

CONCURRING

PADILLA, J.:

I concur with reluctance in the opinion of the majority. I say with reluctance, because I am convinced that the liability of the respondent bank is several (solidaria). It was the bank, as mortgagee, that caused the failure of the petitioner Jerusalem Gingco to collect the money judgment in civil case No. 44960 of the Court of First Instance of Manila because of its third party claim filed with the sheriff. That liability is tortious and not contractual as far as the petitioner Jerusalem Gingco is concerned; and for that reason, the liability arising therefrom is exclusively of the bank. Even assuming that the mortgage was valid, a mere mortgagee is not entitled to file a third party claim, because it is only title to, or right to possession of, the property levied upon execution that gives a party the right to file such claim (section 451, Act No. 190; section 15 Rule 39), and because the real right of the mortgagee is always protected and secured, if validly executed and registered, against subsequent claims and levies upon execution. I am also persuaded that the responsibility of the spouses Juan B. Molina and Teodora Arenas is of one party and not of two, so that if by the terms of the judgment the liability is joint (mancomunada), the bank's share of the responsibility must be one-half and not one-third. Nevertheless, I cannot but give my assent to the principles enunciated in the opinion of the majority, for there must be an end to a litigation, and the respondent court, when executing a final judgment, must strictly adhere to its terms. The respondent court is not authorized to

construe a judgment by resorting to other parts of the decision upon which such judgment is premised. While I regret the unfortunate result for the petitioners, the benefits, however, to be derived from the observance of the sound rules set forth in the opinion of the majority more than offset the wrong intended to be remedied or redressed.

DISSENTING

PERFECTO, J.:

Many years ago, giving expression to a concept of profound wisdom, Mr. Justice Cardozo said:

"The law has outgrown its primitive stage of formalism when the precise word was the sovereign talisman, and every slip was fatal. It takes a broader view today." (Wood vs. Lucy, New York.)

The present case shows a backward overleaping on the new concept chiseled by Mr. Justice Cardozo with unsurpassed mastery. The decision of this case offers a conclusive evidence of the need of rediscovering the legal truth already revealed in the above quotation.

Only because the stringent and unyielding verbal formula of "jointly and severally" has not been used, the victim of a fraud is unjustly deprived of two-thirds of the indemnity due her for the damages suffered. Because the hieratic words of the exorcismal shibboleth were omitted in a decision, full responsibility cannot be exacted from the perpetrator of the fraud, who is to be relieved and exempted from paying two-thirds of the damages caused. Again we are under the magic spell of the sovereign talisman of the precise word. Under its restored regime, while the victim of a fraud is made to suffer, the scoundrel is happily rewarded. Verbal rigidity burkes right and enthrones wrong. The hierograph of exorcism sanctifies fraud and smothers the claims of fairness, justice and equity.

Emancipation from the shackles of empty formalism is an enterprise that imposes new duties to the judiciary. That enterprise should be undertaken if many failures of justice are to be avoided. The system of justice by mantras belongs to the past. Right or wrong should not be judged upon the charm of a syllable or a group of syllables, as the Hindus would synthesize the triple constitution of the cosmos, the Absolute, the Relative and the relation between them, in the single sound of om. Words are not geometrical figures by which right or wrong may be measured with mathematical inflexibility. They are manifestations of life, and life is never geometrical, algebraic or mathematical. The law rules human relations, and human relations are expressed and manifested with infinite variety incompatible with the fixity of ritualistic words.

In the case of Contreras and Gingco vs. China Banking Corporation, the Second Division of the Supreme Court rendered on May 25, 1946, a decision declaring without effect the deed of mortgage, dated November 8, 1930, executed by defendant spouses Juan B. Molina and Teodora Arenas, in favor of their co-defendant, the China Banking Corporation and ordering "all the defendants to pay Jerusalem Gingco the amount of P6,951.31, plus the additional amount of P30 monthly from September 4, 1934, to September 4, 1941, and to continue paying the same monthly amount thereafter until the two new doors of the accesorias in question are delivered to said Jerusalem Gingco." (76 Phil., 709, 716, 717.)

Spouses Arcadio Gingco and Dolores Contreras were the owners of two accesorias made of strong materials located at Sande St., Tondo, Manila. On June 23, 1928, Dolores Contreras died, leaving as her only heirs her husband and their daughter Jerusalem Gingco. On November 6, 1928, the widower sold the accesorias to defendants Juan B. Molina and Teodora Arenas. On June 24, 1930, action was instituted against the buyers for the

annulment of the sale, and on August 22, 1930, the Court of First Instance of Manila rendered decision declaring the sale null and void as to one-half of the accesorias which belong to Jerusalem Gingco.

Notwithstanding said decision, on November 8, 1930, defendants Juan B. Molina and Teodora Arenas mortgaged the two accesorias in favor of the China Banking Corporation to answer for a loan of P2,000. The deed of mortgage was drawn and executed in the law office of Attys. Feria and La O, who were the attorneys of the China Banking Corporation and at the same time were the attorneys who represented Juan B. Molina and Teodora Arenas in the case in which the Court of First Instance of Manila declared null and void the sale of one-half of the accesorias in question belonging to Jerusalem Gingco. At the time of the execution of the deed of mortgage, the decision was not yet final, because it was appealed, but it did soon become final and executory with the withdrawal of the appeals on December 29, 1930.

In another case, on February 28, 1934, Jerusalem Gingco secured from the Court of First Instance of Manila a decision ordering the spouses Molina to pay her the amount of P4,836.31, one-half of the rents of the accesorias pertaining to Jerusalem Gingco and collected by the spouses Molina, plus rents the defendants may continue collecting on the property from November, 1933. The decision was affirmed by the Supreme Court on May 10, 1935. To make said amounts effective, execution was issued and the sheriff announced a public auction of one-half of the accesorias belonging to the spouses Molina. The public auction was stopped because the China Banking Corporation, represented by Attys. Feria and La O, the same representing the spouses Molina, filed a third party claim, thus defeating the collection by Jerusalem Gingco of the several thousand pesos ordered by final decision to be paid to her by the spouses Molina.

One of the grounds for our decision, which was concurred in by Mr. Justice M. H. de Joya, Mr. Justice Emilio Y. Hilado, and Mr. Justice Cesar Bengzon, to declare null and void and rescind the deed of mortgage executed on November 8, 1930, by the spouses Molina in favor of the China Banking Corporation, was that the said mortgage was fraudulent, both parties in the contract of mortgage having been equally guilty of the fraud. Even Mr. Justice Ozaeta, who dissented from the rescission of the mortgage with respect to one-half of the property belonging to the spouses Molina, concurred with our conclusion that with respect to one-half of the property belonging to Jerusalem Gingco the mortgage has been executed "in bad faith." The China Banking Corporation cannot escape from this pronouncement because at the time the mortgage was negotiated and executed, the bank was represented by the same attorneys who were representing the spouses Molina and in the very case where the decision intended to be defeated by the mortgage was rendered, and it was in their law office where the fraudulent deed of mortgage was drafted and signed.

As Jerusalem Gingco was unable to collect from the spouses Molina the amount of P6,951.31 and other amounts mentioned in our decision, because of the third party claim filed by the China Banking Corporation on the strength of the fraudulent mortgage, there should not be any doubt that the China Banking Corporation is fully responsible for said amounts in favor of Jerusalem Gingco. The responsibility of said bank cannot be affected, increased or diminished, upon the character of the responsibility of the spouses Molina or their ability to pay said amounts. The responsibility of the bank is independent from the responsibility of the spouses Molina. Each one of the parties to a fraud is solidarity answerable for all the harms and damages caused by the fraud.

"A person who by an act or omission causes damage to another by his fault or negligence shall be answerable for the damage caused." (Article 1902, Civil Code.)

"Moreover, we are of the opinion that both the owner and agent (naviero) should be declared to be jointly and severally liable, since the obligation which is the subject of this action had its origin in a tortious act and did not arise from contract. Article 1137 of the Civil Code, declaring that joint obligations shall be apportionable unless otherwise provided, has no application to obligations arising from tort." (Verzosa and Ruiz, Rementeria

y Cia. vs. Lim and Siy Cong Bieng & Co., 45 Phil., 416, 423.)

After the case was remanded to the Court of First Instance of Manila for the execution of our decision, the respondent judge issued on July 23, 1946, an order for the execution of the decision, but with instructions to the sheriff that in carrying out the order of execution, the China Banking Corporation shall be made to pay only "one-third" of the total amount of the judgment of the Supreme Court.

Petitioners came to us to secure a mandamus against the lower court, to compel it to order the execution for the total amount of the judgment against the China Banking Corporation.

The pivotal question in this case, undisguised by technical trappings, is whether a party to a fraudulent transaction should be granted the benefits of an exemption from the payment of two-thirds (2/3) of the reparation and indemnification due to the victim of the fraud.

Presented in another form, the question we are called upon to answer is whether we are empowered to disregard article 1902 of the Civil Code, by reducing to one-third (1/3) the responsibility therein provided for damages caused by fault, in the present case aggravated by "bad faith."

The dispositive part of our decision in Contreras and Gingco vs. China Banking Corporation, supra, the execution of which against the China Banking Corporation is in issue, is as follows:

"For all the foregoing, the deed of mortgage dated November 8, 1930, is declared null and void as to the one-half of the mortgaged property belonging to Jerusalem Gingco and rescinded as to the remaining one-half belonging to the spouses Molina, and the appealed decision is modified by ordering all the defendants to pay Jerusalem Gingco the amount of P6,951.31, plus the additional amount of P30 monthly from September 4, 1934, to September 4, 1941, and to continue paying the same monthly amount thereafter until the two new doors of the accesorias in question are delivered to said Jerusalem Gingco. The defendants shall also pay the filing fees of the complaint in the lower court and the costs in both instances."

Respondents would like to have it interpreted to the effect that the China Banking Corporation shall have to pay only "one-third" of the amounts adjudicated, following the rules of interpretation set in articles 1137 and 1138 of the Civil Code, which read:

"Article 1137. The concurrence of two or more creditors, or of two or more debtors, in a single obligation does not imply that each of the former has a right to ask, or that each of the latter must give, in their entirety the things which are the object of such obligation. This shall obtain only when the obligation so expressly determines, by being constituted with the character of a solidary obligation.

"Article 1138. If from the context of the obligations referred to in the preceding article the contrary is not shown, the credit or the debt shall be presumed as divided into as many equal parts as there are creditors or debtors, each part to be considered as a distinct credit or debt from the others."

Respondents' position is based on the doctrine laid down in the case of Oriental Commercial Co. vs. Abeto and Mabanag (60 Phil., 723) decided on October 10, 1934, the said doctrine having been firstly enunciated in the case of De Leon vs. Nepomuceno and De Jesus (37 Phil., 180), decided about thirty years ago, on November 24, 1917.

An analysis of the decision in the case of De Leon vs. Nepomuceno, supra, will lead us to the conclusion that the doctrine was laid down on wrong foundations and, therefore, is liable to topple down at the slightest touch.

Three candidates ran for provincial governor of Tarlac: De Leon, Gardiner, and Torres. De Leon was declared elected. Gardiner protested, with notice to Torres, who was an unwilling party, having received a few complimentary votes and had no chance of being declared elected. Gardiner won the contest. Under sections 481 and 482 of the Administrative Code, the law then applicable, the costs shall be taxed "against the defeated party,"

which was De Leon. It happened, notwithstanding, that the Court of First Instance decided that the costs shall be paid "by the protestee and the intervenor." The decision was wrong, because, under the law, the costs shall be taxed only "against the defeated party" and it could not refer to anybody but De Leon. The wrong judgment was erroneously affirmed by the Supreme Court. Mr. Justice Malcolm then said: "The fixing of costs in election contests is therefore not a question of joint liability or joint and several liability, but is simply an application of the precise provisions of the law to the facts."

But the majority of the Supreme Court proceeded to set the doctrine that, unless the judgment should use the sacramental phrase "joint and several," the amount adjudged to be paid by two or more persons, shall be apportioned among them in equal parts, and each one shall pay only his quota and no more.

To lay down the doctrine, articles 1137 and 1138 of the Civil Code and the Law of Louisiana as stated in *Groves vs. Sentell* (14 Sup. Ct., 898-901; 153 U. S., 465; 38 Law ed., 785), were invoked.

It can be seen, therefore, that the doctrine is the result of the mental operation of disguising an error with the appearance of correctness by committing a second error tending to justify the first one. Refusal to admit or confess an error is very general human weakness. Even tribunals are not always free from that weakness. They are human institutions and it is natural that human virtues and weaknesses should be manifested in them.

In *Sharruf vs. Tayabas Land Co. and Ginainati* (37 Phil., 655) articles 1137 and 1138 of the Civil Code have been correctly applied, because the issue there referred to a promissory note, and that is the reason why the Supreme Court declared: "We agree with the appellant that this promissory note evidences a joint and not a joint and several obligation, but it appearing that the trial judge correctly rendered judgment holding the defendants 'jointly' liable, there is no necessity for any modification of the terms of the judgment in that regard."

Evidently, we are facing here a case of forgetfulness when respondents failed to remember that articles 1137 and 1138 of the Civil Code are circumscribed in their application only to contractual obligations, but never to quasi-contracts nor to tortious obligations. Manresa, the most weighty authority on Civil Code, invoking a decision of the Supreme Court of Spain, declared that articles 1137 and 1138 of the Civil Code are not applicable to obligations born from quasi-contracts which by their very nature, are solidary. (Vol. VIII, pp. 193, 194, 3d ed.) And this very Supreme Court had already decided that article 1137 of the Civil Code has no application to obligations arising from tort, such as the obligation of the China Banking Corporation to pay Jerusalem Gingco, the amounts adjudicated in our decision. (See *Verzosa and Ruiz, Rementaria y Cia. vs. Lim and Siy Cong Bieng & Co.*, 45 Phil., 416, 423, quoted elsewhere in this opinion.)

The obligation of the China Banking Corporation to pay the amounts in question have arisen from a tortious act, committed with evident bad faith, and not from a contract. It is evident that the bank cannot profit by the exemptions or deductions authorized by articles 1137 and 1138 of the Civil Code.

We do not see any reason why, in reading the plain words of the dispositive part of the decision in question, resort should be made to any unusual or abstruse means of interpretation, when the words of the decision are so clear to be understood by any common man. There is nothing so confusing, so irksome and distressing than when tribunals, pretending to voice the wisdom of the oracles, decide to reveal the riddle of a meaning which is beyond the ordinary understanding and shocks the sense of the common people. There is nothing to discredit so much the administration of justice.

The decision ordered "all the defendants to pay Jerusalem Gingco" the specified amounts. Is it not clear that each and every one of the defendants is responsible for the payment of all the amounts? Is there any word in the decision to support the idea that any one of the defendants, say the China Banking Corporation, is liable to pay but

"one-third" of the amounts? The suggestion is so preposterous and repugnant to common sense to merit the dignity of a judicial pronouncement. According to the best lexicographic authority, "all," as adjective, means "every member or individual component of; each one of;—used with a plural noun."

The fraudulent character of the transaction from which the obligation of the China Banking Corporation to pay the amounts in question has arisen appears in the body of the decision and before the last paragraph containing the dispositive part. It is suggested that the dispositive part should be singled out as if, in effect, embodying the whole decision, and that the preceding paragraphs should be considered as superfluous decorative appendix. Invoking the authority of Freeman, it is suggested that the findings and conclusions in the body of a decision should be distinguished from the judgment in the dispositive part to the extent of making it completely apart from the judgment. Thus, in this case, as the pronouncement of fraudulence is not embodied in the dispositive part of our decision, it should be completely ignored in reading and construing said dispositive part. The opinion, which may appear plausible under American statutes and jurisprudence, is completely out of place within the Philippine legal system.

Section 12 of Article VIII of our Constitution provides:

"No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based."

It is as clear as crystal that judicial decisions should not be read and construed piecemeal. The findings and conclusions of fact and law not inserted in the dispositive part are as part of the decision as the latter, and it is so by constitutional mandate. Severance cannot be made without violating the Constitution. Therefore, the pronouncement on fraudulence is as part of our decision as the last paragraph where we ordered the China Banking Corporation, with the other defendants, to pay the amounts in question.

There is much to deplore the fact that this case happens to be decided upon the assumption that petitioners are seeking a change in the dispositive part of our decision in question. There is nothing in the prayer at the bottom of the petition to support such an assumption. This initial error serves as a premise to reasonings that lead to mistaken conclusions.

To the majority it is not enough that this Court should have adjudged the China Banking Corporation guilty of bad faith in entering into a contract of mortgage with the spouses Molina. It is not enough that this Court should have rescinded and annulled the fraudulent mortgage. It is not enough that the victim, Jerusalem Gingco, should have been defrauded, thanks to the fraudulent mortgage and to the third party claim based on it, the amounts stated in the dispositive part of our decision. It is not enough that articles 1137 and 1138 of the Civil Code should only be made applicable to contracts. It is not enough that this very Supreme Court had already held that said articles are not applicable to obligations arising from tortious acts, such as the ones committed by the China Banking Corporation, in connivance with spouses Molina, and with the active help of the common lawyers of both parties. It is not enough that the wrongdoer is legally responsible to the full extent of the damages caused by his fraud. It is not enough that in the dispositive part of our decision we made it clear in plain and simple words, understandable to any body who can read English, that the China Banking Corporation, including the other defendants, the spouses Molina, should pay to Jerusalem Gingco all the amounts therein specified. Not even the combined presence and concurrence of all the above facts is sufficient, according to the majority, to entitle Jerusalem Gingco to collect all the amounts from the China Banking Corporation, because the spouses Molina are insolvent, and they became insolvent after the fraudulent mortgage had been executed and the China Banking Corporation filed the third party claim that frustrated the execution of the final judgment in favor of Jerusalem Gingco for the collection of the amounts in question. The majority would require, besides, as an essential element, a condition sine qua non, that in the dispositive part of our decision should also appear the ritualistic words:

"jointly and severally." This is the indispensable hierogram, without which the judicial grace cannot be obtained. Shall justice be administered by shibboleths? Shall the substance of justice be sacrificed for the sake of an empty technicality? Shall the rights of litigants be measured by rigid linguistic formulas, as if by algebraic equations? Are we to return to medieval darkness when judgments were rendered upon fire tests and stupid exorcismal ceremonies? How nonsensical it is.

With such an absurd way of thinking, the resulting decision cannot but be a revolting travesty of justice. How can we arrive at a fair conclusion upon a preposterous proposition, upon ideas that have no place in healthy reason, upon twisted logic? How can anyone accept that in our decision where we wrote that the China Banking Corporation should pay to Jerusalem Gingco the amounts therein stated, not only any portion of the amounts, there should be read as if we had written one-third (1/3) of the amounts? Can it be done without misrepresenting facts? Can it be done without choking the truth?

The majority decision cannot fail to produce trepidation. The injustice of depriving Jerusalem Gingco of two-thirds (2/3) of the amounts due her, to enrich correspondingly with them the China Banking Corporation, co-author of the fraud inflicted on her, is obvious. But it might not be so obvious to everybody that the decision, in effect, is a reward to fraud. Such a decision in the present incipient stage of our Republic, generally speaking, is demoralizing. The Augean state of affairs in some of our official agencies, the carrion smell in some social activities, shall make it so in superlative manner.

We vote for the annulment of the lower court's order, illegally reducing to one-third the amounts that, according to the decision of this Court, should be paid by the China Banking Corporation to Jerusalem Gingco and that a mandate be issued so that in the execution of our decision rendered in the case of Contreras and Gingco vs. China Banking Corporation (76 Phil., 709), the China Banking Corporation be required to pay all the amounts adjudicated to be paid to said Jerusalem Gingco.

DISIDENTE

BRIONES, M., con quien esta conforme PABLO, M.:

Tanto en la ponencia como en la disidencia del Magistrado Sr. Perfecto los hechos se hallan expuestos con todo detalle; así que me creo relevado de repetirlos en esta breve opinion disidente. Tiene razon el ponente cuando dice que se trata de hechos bastante complejos; pero, para los efectos de la resolucion del presente asunto, creo se puede reducirlos a una proposicion juridica harto sencilla, a saber: que la responsabilidad del Banco demandado no ha nacido de contrato, ni siquiera de cuasi-contrato, sino de un acto doloso, de culpa. Su responsabilidad es exigible bajo el articulo 1902 delCodigo Civil que reza: "El que por accion u omision causa daño a otro, interviniendo culpa o negligencia, esta obligado a reparar el daño causado". Y es elemental que esta clase de responsabilidad, cuando se comparte con otro, no es solo mancomunada sino solidaria. Por tanto, se equivoca la mayoria al declarar aplicables a este caso los articulos 1137 y 1138 delCodigo Civil, los cuales se refieren evidentemente a obligaciones contractuales. Así que en el asunto de Verzosa y Ruiz, Rementeria y Cia. contra Lim y Siy Cong Bieng & Co. (45 Jur. Fil., 437, 444, Nov. 15, 1923) hemos sentado categoricamente el siguiente pronunciamiento: "El articulo 1137 delCodigo Civil que declara que las obligaciones mancomunadas seran a prorrata, a menos que se disponga otra cosa, carece de aplicacion a las obligaciones nacidas de culpa."

Sin embargo, se arguye que no estamos autorizados para enmendar la parte dispositiva de una sentencia ya firme; que lo mas que se permite es la correccion de errores de forma (clerical error), citandose autoridades en apoyo de esta asercion; que, de otro modo, los litigios resultarian interminables y habria caos, confusion; que, por tanto, aun

a trueque de alguna que otra injusticia aislada resultante de error judicial, razones de politica, de orden publico aconsejan que se mantenga con todo rigor la regla clasica sobre la inmutabilidad de las sentencias firmes y definitivas.

Hasta cierto punto estoy conforme con esta manera de razonar. Pero es que en el presente caso no se trata de alterar o enmendar sustancialmente la sentencia: se trata solo de dar efectividad al espiritu, al sentido esencial embebido en la misma. Es indudable que en nuestra decision que es ahora objeto de controversia, se condena al Banco demandado a pagar una indemnizacion a la demandante Jerusalem Gingco, no como resultado de algun contrato que aquel hubiera tenido con esta—pues, no hay tal contrato—sino porque el Banco tuvo parte esencial en un acto doloso que causo daño a dicha Jerusalem Gingco en una suma mayor de P6,000; en otras palabras, el Banco presento un escrito de terceria en unos procedimientos de ejecucion en que Jerusalem era la ejecutante y ejecutados los esposos Molina, co-demandados del Banco, a sabiendas de que la terceria dimanaba de una hipoteca fraudulenta. Como resultado de esta terceria, la ejecucion se dejo sin efecto y consiguientemente Jerusalem dejo de cobrar los P6,000 que tenia derecho a recibir de los Molina. Todo esto aparece clarisimo en el texto de nuestra sentencia discutida, faltando solo en la parte dispositiva las palabras sacramentales "mancomunada y solidariamente". La pregunta ahora en orden es la siguiente: ¿es bastante esta omision para derrotar el objetivo esencial de la sentencia que no es otro sino el de que la demandante pueda cobrar de los demandados toda la cantidad que se le debe, a tenor de dicha sentencia? En otros terminos: ¿es dicha omision sustancial, o es solo de forma, es decir, inadvertencia de amanuense, clerical error?

Creo que es solo de forma. Creo que lo aqui debe regir, prevalecer, es el texto inconfundible, inequivoco de la sentencia. Creo que cuando hay vaguedad, deficiencia en la parte dispositiva (judgment) de la sentencia, ello se puede suplir con la lectura del texto. Hay que tener en cuenta que el "judgment" no es como el alma de Garibay suspendida en el aire, usando una locucion vulgar. El "judgment" es la conclusion de un silogismo, por decirlo asi; per tanto, presupone premisas, mayor y menor, y estas tienen que estar necesariamente en el texto de la sentencia. Lo que en todo caso no es parte de la sentencia es el obiter dictum. Estrictamente hablando todo lo que se pide en el presente recurso es que ampliemos la parte dispositiva de la sentencia con el concepto de la solidaridad, pero este concepto no es un elemento nuevo, extraño a la sentencia, sino que esta embebido en ella; en realidad, es el leit-motiff, es la ratio decidendi misma del asunto. Y lo es porque es la ley misma la que dice que cuando la obligacion nace de dolo o culpa, la responsabilidad es solidaria. Y esta clase de ampliacion la podemos hacer, la hemos hecho ya en otro asunto anterior, el de Rodriguez contra Caoibes (62 Jur. Fil., 152-159, Septiembre 24, 1935). En este asunto se dijo lo siguiente:

"La presente causa es de ejecucion de hipoteca. Fue tramitada como tal tanto en el Juzgado de Primera Instancia de Batangas como en esta Corte en apelacion. Al revocar la decision apelada, por omision involuntaria, no se ordeno la consignacion en la escribania del Juzgado de origen, dentro de un plazo no menor de tres meses, el importe de la sentencia, y, en su defecto, la venta de las propiedades hipotecadas para hacer efectivo el pago de la deuda hipotecaria y las costas. Esta omision involuntaria de un mandato imperativo del articulo 256 delCodigo de Procedimiento Civil, arriba transcrito, no puede alterar la naturaleza de la accion, y puede pedirse la enmienda de la decision para subsanar el defecto, puesto que tal provision es parte necesaria de ella.

"Sobre el particular, la jurisprudencia americana ha sentado la siguiente doctrina:

" 'A judgment or decree of foreclosure may be corrected after its rendition in respect of an error or ommission, so as to make it conform to the intention of the court or the facts of the case, * * *.' (42 Corpus Juris, 158.)

" 'If anything has been omitted from the judgment which is necesarrily or properly a part of it, and which was intended and understood to be a part to it, but failed to be incorporated in it through the negligence or

inadvertence of the court or counsel, or the clerk, the omission may be supplied by an amendment even after the term. * * *' (34 Corpus Juris, 235.)

* * * * *

"Aunque el auto del Juzgado de Primera Instancia de Batangas de fecha 12 de marzo de 1934, arriba transcrito, contiene una orden mas amplia que la parte dispositiva de la sentencia de esta Corte, y aunque lo mas procedente hubiera sido el que se hubiese presentado una mocion ante esta Corte pidiendo que se enmendara dicha parte dispositiva, supliendo la omision, no habiendose causado perjuicio alguno con tal ampliacion, no creemos necesario revocar la mencionada orden enmendatoria, bastando que hagamos nuestra la ampliacion, como lo hacemos por la presente." (Las cursivas son nuestras.)

Por la analogia se puede decir que en el asunto que nos ocupa la omision involuntaria puede subsanarse, puesto que la enmienda no añade nada nuevo a la sentencia. Derivandose de la misma ley el caracter solidario de la responsabilidad del Banco demandado, estrictamente hablando no habia por que declararlo en la parte dispositiva de la sentencia. Lo importante era establecer el hecho de la responsabilidad—la ley se aplica automaticamente. Se comprende que en las obligaciones contractuales sea absolutamente necesario el declarar la calidad de in solido, pues siendo la solidaridad mas onerosa que la simple mancomunidad no puede naturalmente presumirse sino que es preciso que haya habido previamente una manifestacion expresa de la voluntad al efecto.

Mucho me temo que con el fallo de la mayoria se este sacrificando la substancia, el fondo de la justicia, a la sombra de un formulismo. Es realmente deplorable que la demandante, despues de batallar por mas de 10 años para cobrar lo que se le debe en virtud de un acto doloso de los demandados, encuentre ahora que no puede cobrar mas que un tercio por una inadvertencia, una omision a todas luces involuntaria de esta Corte, usando las mismas palabras empleadas en el asunto de Rodriguez contra Caoibes, supra.

Se que hay casos en que la falibilidad humana puede causar injusticias irremediables, pero el presente no es indudablemente uno de ellos. Aqui podriamos reparar facilmente los efectos de nuestra falibilidad, de nuestra omision, sin causar injusticia contra nadie incluso el Banco demandado, y sin vulnerar ningun principio sano de politica publica. Todo lo mas que quedaria afectado seria un fetiche—el fetiche de una discutible inmutabilidad.

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