

**FIDELITY AND SURETY COMPANY OF THE PHILIPPINES,
PETITIONER, VS. THE COURT OF APPEALS AND SIXTO A. CARLOS,
RESPONDENTS.***G.R. No. L-1508. February 16, 1950*

Ponente: PARAS, J.

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In a foreclosure proceeding instituted before the war by the Monte de Piedad y Caja de Ahorros vs. Angela Aguilar de Guzman and Fortunato A. Guzman, Case No. 57776 of the Court of First Instance of Manila, the herein respondent Sixto A. Carlos was the purchaser at public auction of the mortgaged property. The sale was confirmed by the Court of First Instance of Manila on December 4, 1941, subject only to the right of redemption of the herein petitioner, Fidelity and Surety Company of the Philippines, as holder of a second mortgage on said property. This reservation was made because the petitioner, as second mortgagee, had not been included in the foreclosure proceeding filed by the Monte de Piedad y Caja de Ahorros, as first mortgagee. The herein petitioner instituted a separate foreclosure proceeding against the Guzman spouses (Civil Case No. 59593 of the Court of First Instance of Manila), in which judgment of foreclosure was rendered on August 18, 1941. This judgment was appealed by the Guzman spouses to the Court of Appeals wherein the case was pending until August, 1943, when the Guzman spouses paid their obligation to the petitioner in Japanese military notes and the parties moved for the dismissal of the appeal in view of an amicable settlement. On August 11, 1945, the herein respondent filed a petition in the Court of First Instance of Manila in G. L. R. O. Cad. Record No. 392, praying that the Register of Deeds of Manila be ordered to cancel in the certificate of title the annotation covering the right of redemption in favor of petitioner. After hearing, the Court of First Instance of Manila issued an order granting the petition. Upon appeal by the petitioner, the Court of Appeals affirmed the order of the Court of First Instance of Manila. The petitioner has come to us by way of certiorari, seeking the reversal of the decision of the Court of Appeals.

The Court of First Instance of Manila predicated its order granting the petition of herein respondent on ground that the right of redemption of the petitioner expired. The Court of Appeals, in affirming the order of the Court of First Instance of Manila, premised conclusion on the ruling that the payment made by Angela Aguilar de Guzman and Fortunato R. Guzman to the petitioner in Japanese military notes was valid and therefore wiped out the second mortgage in favor of the petitioner.

The main contention of the herein petitioner is that the Court of First Instance of Manila, as a court of land registration, and the Court of Appeals on appeal, had no jurisdiction of the case if their decision necessarily involves the validity or invalidity of the payment in question.

In G.R. No. L-2020, *La Orden de Padres Benedictinos de Filipinas vs. The Philippine Trust Company*,^[1] decided on December 29, 1949, we made the following pronouncement: "In support of first assignment of error, appellant cites the case of *Castillo vs. Ramos*,^[2] G. R. No. L-1031, decided by this Court in July, 1947, 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*, G. R. No. L-554 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 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 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."

As payment by the Guzman spouses in Japanese military notes to the petitioner is admitted herein, the ruling above quoted is perfectly applicable. This result makes it unnecessary for us to pass upon petitioner's contention that its right of redemption has not yet expired.

Wherefore, the appealed decision of the Court of Appeals is hereby affirmed, with costs against the petitioner.

So ordered.

Moran, C. J., Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

Padilla, J., see concurring opinion.

Tuason, J., joins Justice Padilla in his opinion.

Feria and Torres, JJ., took no part.

[1] 85 Phil., 217,

[2] 78 Phil., 809.

[3] 85 Phil., 217.

CONCURRING OPINION

PADILLA, J.:

I concur in the result. There seems to be no need of invoking the rule laid down in the case of *"La Orden d«i Padres Benedictinos de Filipinas vs. The Philippine Trust Co.*[3]"G. R. No. L-2020, 29 December 1949, because, according to the majority opinion, the debtors paid to the petitioner the debt the payment of which was secured by a second mortgage on the property "and the parties moved for the dismissal of the appeal (then pending in the Court of Appeals) in view of an amicable settlement," and because the right of redemption had already expired, as found by the trial court. But if the ground for affirming the order of cancellation of the right of redemption in favor of the petitioner appealed from is the rule laid down in the case referred to, then I dissent from such ground for the same reasons stated in my opinion in said case.

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