

**FELIX L. LAZO, MERCEDES CASTRO DE LAZO AND JOSE ROBLES,
PLAINTIFFS-APPELLEES, VS. REPUBLIC SURETY & INSURANCE
CO., INC. REPRESENTED BY ANTONIO M. KOH, GENERAL MANAGER
AND AS ATT...**

G.R. No. L-27365. January 30, 1970

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4d20283ba554/>

MAKALINTAL, J.:

This case is before us on appeal by the defendants from the decision of the Court of First Instance of Manila (Branch I, Judge Francisco Area, presiding) rendered on December 7, 1966, in its Civil Case No. 55734.

The original complaint was filed on December 12, 1963, and subsequently amended on November 9, 1964. The plaintiffs are the spouses Felix L. Lazo and Mercedes Castro de Lazo, and Jose Robles; the defendants are Republic Surety & Insurance Co., Inc. its general manager Antonio M. Koh, the sheriff of Manila and the Register of Deeds, also of Manila. The pertinent allegations which make up the plaintiffs' cause of action are: that the spouses Lazo, acting as guarantors for Jose Robles in connection with a loan of P12,000.00 obtained by the latter from the Philippine Bank of Commerce, executed on August 18, 1953 a real estate mortgage in favor of the defendant Republic Surety & Insurance Co., Inc. in consideration of its having consented to act as principal co-debtor for the loan aforesaid; that the mortgage was foreclosed extra-judicially on July 1, 1958 and sold to the mortgagee, as purchaser at such sale, for P18,627.00, the corresponding sheriff's certificate of sale being formalized on August 2, 1958; that defendant Antonio M. Koh, pursuant to the power granted to him in the instrument of mortgage, executed on March 20, 1963 (for purposes of registration) a deed of absolute sale of the foreclosed property to the mortgagee - purchaser, which sale was registered on March 28, 1963; that by virtue of such registration the certificate of title in the name of the spouses Lazo was cancelled and a new one issued in the name of the defendant company; that the foreclosure of the mortgage was invalid because plaintiff Jose Robles had paid on the mortgage loan the sum of P13,466.36 from August 20, 1953 to May 24, 1958; and that thereafter, from July 8, 1958 to August 23, 1963, he continued to make other payments, aggregating P17,250.00.

The principal prayer of the plaintiffs was for the defendant company to render, an accounting of the payments thus made, so that if it should appear that the original loan of P12,000.00, together with the stipulated interest, had been paid in full then the real estate mortgage should be cancelled; otherwise, the plaintiffs should be allowed to pay, by way of legal redemption, whatever balance still remained. An additional prayer was for compensatory and moral damages as well as for attorney's fees.

In a motion to dismiss filed by all the defendants with respect to the original complaint, they raised two issues, namely: that Or , complaint did not state a cause of action and that the claim or demand set forth therein had already prescribed. On this second point the defendants pointed out that under the Rules of Court (Rule 39 Section 34) an accounting such as that prayed for by the plaintiffs could be demanded only in cases where real property is sold on execution by virtue of a final judgment and not where it is sold on extrajudicial foreclosure of mortgage;

and if the rule is applicable at all in the latter case, it is available only to a mortgage debtor who exercises his right of redemption within the period provided therefor. In the present case, the defendants maintained, the redemption period had already expired when the action was commenced.

The trial court did not resolve the motion to dismiss categorically, but in an order dated September 22, 1964, set the case for trial, with the advertence that "evidence on whether or not the action has prescribed shall first be presented . . . (and) then the court will consider the same ... as part of the evidence on the merits."

After the plaintiffs filed their amended complaint on November 9, 1964 the defendants answered the same, alleging inter alia that all the payments made by the plaintiffs after the foreclosure sale on July 1, 1958 were made in the concept of rents, for which the defendant company was under no obligation to render an accounting.

The issue thus made out by the pleadings was whether or not the plaintiffs were entitled to the accounting sought by them. A corollary issue - indeed the one on which the first depends - was whether or not the right of redemption with respect to the foreclosed property was still available. These issues were spelled out before the court a quo by the plaintiffs themselves in their answer to the defendants' memorandum below, where it was stated:

"... The complaint at bar for accounting and liquidation is fully sanctioned ... by Section 34, of Rule 39, of the Rules of Court . .

"It is not disputed by the parties, that the mortgage was executed by the plaintiffs, the spouses Felix L. Lazo and Mrs. Mercedes Castro de Lazo, to secure a loan of P12,000.00 which plaintiff Jose Robles obtained from the defendant Republic Surety & Insurance Co., Inc. (sic) and neither is

it disputed, that the mortgage was extrajudicially foreclosed. Two vital issues or causes of action, therefore, are presented before this Hon. Court by the case at bar, to wit:

a) - Can the plaintiffs demand an accounting and liquidation of accounts from the defendant Republic Surety & Insurance Co., Inc. in the legal capacity of said plaintiffs as redemptioners; and,

b) - Is the legal right of redemption of said plaintiffs still subsisting, in the light of their indubitable causes of action in the case at bar.

The trial court, however, went entirely out of the issues submitted to it and chose to decide the case on a point which was not at all litigated. It said: "The key, as it appears to this Court, lies in the validity or invalidity of the extrajudicial foreclosure over the real estate mortgage, Exh.-A. If valid, then in the ordinary course of things, all subsequent transactions by defendants dependent thereon can be taken to be valid also. If not, then they of necessity must fall as a nullity."

In this connection it should be stated that the loan with the Philippine Bank of Commerce was on a sixty-day note, which was renewed several times, until the said bank refused to grant any further renewal. To accommodate the plaintiffs, on August 14, 1954 the loan was transferred to the Republic Investment Co., Inc. as the new creditor, on a note payable on December 12, 1954; and when after three renewals the plaintiffs again defaulted the defendant Republic Surety & Insurance Co., Inc. paid the account, and thereafter foreclosed the mortgage in its favor on July 1, 1958. The trial court, after having stated what it believed to be the "key" to the problem, ruled that the transfer of the loan to the Republic Investment Co., Inc. constituted a novation of the obligation, and that the defendant company was released from its liability debtor because it does not appear to have signed the new promissory note executed by "the plaintiffs. Consequently, the court concluded, the real estate mortgage in favor of said defendant was extinguished, and the foreclosure thereof was a nullity.

The Actuation of the trial court was not legally permissible, because the theory on which it proceeded involved

factual considerations neither touched upon the pleadings nor made the subject of evidence at the trial. Rule 6, Section 1, is quite explicit in providing that "pleadings are the written allegations of the parties of their respective claims and defenses submitted to the court for trial and judgment." This rule has been consistently applied and adhered to by the courts.

"The subject matter of any given case is determined ... by the nature and character of the pleadings submitted by the parties to the court for trial and judgment." *Belandres vs. Lopez Sugar Central Mill Co., Inc.* 97 Phil. 100, 103.

"It is a fundamental principle that judgments must conform to both the pleadings and the proof, and must be in accordance with the theory of the action upon which the pleadings were framed and the case was tried; that a party can no more succeed upon a case proved, but not alleged, than upon one alleged but not proved." (*Ramos v. Ortuzar* 89 Phil. 730, 742)

"It is a well known principle in procedure that courts of justice have no jurisdiction or power to decide a question not in issue." (*Lim Toco vs. Go Fay*, 80 Phil. 166)

"A judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard, is not merely irregular, but extrajudicial and invalid." (*Salvante v. Cruz*, 88 Phil. 236, 244.)

The parties here went to court and presented their respective sides on the premise, admitted by both, that the mortgage was valid and subsisting. Evidence, therefore, to establish such premise was unnecessary and uncalled for. Indeed, it was for that reason and because in any event the record of this case, particularly with respect to the actuations of the parties after the mortgage was foreclosed, shows with overwhelming preponderance that the said mortgage had not been extinguished, that this Court did not consider favorably the defendant company's petitions to submit a photostat of the first promissory note, and signed duplicates of the three renewal notes, executed by the plaintiffs in favor of Republic Investment Co., Inc. bearing not only their signatures as debtors but also the signatures of the defendant company as solidary co-debtor—all these being evidence which the said defendant could have submitted at the trial if the validity and existence of the mortgage had been a contentious issue raised the pleadings. That the copy of the note in the hands of the plaintiffs does not bear the signature of the defendant company is not decisive of the latter's liability, the primary evidence thereof being the original of the said note in the hands of the creditor, to whom, after all, the right to recover exclusively belonged.

With particular reference to the first promissory note above mentioned, dated August 14, 1954, the trial court's conclusion that defendant company never became obligated thereunder in favor of the Republic Investment Co., Inc. is belied by the plaintiffs' own Exhibit N, which is the indemnity agreement, also dated August 14, 1954, executed by the plaintiffs in favor of the defendant company precisely to indemnify the latter for acting as solidary co-debtor, said indemnity agreement being identical in terms with the one previously executed when the loan was originally contracted with the Philippine Bank of Commerce (Exh. G). And it was precisely because the plaintiffs defaulted on the note of August 14, 1954 and on the renewals thereof that the defendant company had to pay the Republic Investment Co., Inc. and to foreclose, in turn, the mortgage on the plaintiffs' property. It would have, been absurd for the plaintiffs to execute the indemnity agreement, and to agree to pay the premium thereunder as well as interest in the contingencies envisaged, if it were true that the said company had assumed no liability at all in favor of the creditor.

We now come to the real issues as defined by the parties. The plaintiffs rely on Rule 39, Section 34.[1] In this connection Section 9 of Act No. 3135, as amended, may also be cited.[2]

Implicit in the application of these provisions is the premise that the period for redemption of the property sold on execution (on extrajudicial foreclosure of mortgage in the present case) has not yet expired. For if the right to

redeem has been lost it stands to reason that there is no redemption price to speak of, to which the rents received by the purchaser are to be applied or credited.[3]

The plaintiffs' position is that since the sheriff's certificate of sale was recorded in the office of the Register of Deeds for Manila on March 28, 1963, the one-year period of legal redemption had not yet expired when the present action was commenced on December 12 of the same year.

There are, however, certain circumstances peculiar to this case which take it out of the operation of the rule concerning registration in this regard. There is, to begin with, the categorical statement in the certificate of sale that "the period of redemption of the said property sold will expire on the 2nd day of July, 1959." Then there is the fact that no lien or encumbrance, right or claim of any person, other than the mortgage in question, appeared on the transfer certificate of title of the plaintiff spouses covering the mortgaged property, such that when the defendant company obtained a new transfer certificate in its name on March 28, 1963, the same was entirely clean. In other words, no third parties who might have an interest in the property, either as possible redemptioners or otherwise, had to be protected by due notice of the sale through its registration.[4] As far as the plaintiffs themselves were concerned, not only were they duly notified of the sale but the same was postponed twice, first upon their request and then upon written agreement of both parties. These circumstances, in our opinion, have relevance in the consideration of the equities, as distinguished from the purely legal technicalities, of this case.

But the more decisive developments ensued later: Beginning July 1958, immediately after the foreclosure sale, the plaintiffs - in some instances in the joint names of Jose Robles and Felix Lazo and in other instances in the name of Jose Robles alone - started paying rents on the property to the defendant company, indicating that the former owners, while remaining in occupancy, did so in the concept of tenants. The receipts for such payments, until May 1961, invariably referred to "rents" on the "foreclosed property of Felix Lazo et al." Thereafter the receipts merely stated "rents for the Nadelco property." The receipt dated June 30, 1959 (presented by the plaintiffs as their Exhibit J-16) is significantly worded as follows:

"At the insistent request of Messrs. Felix Lazo and Jose Robles, we acknowledge receipt of the sum of FIVE HUNDRED (P500.00) PESOS, Philippine Currency, as rental corresponding to the months of July and August, 1959 for premises No. 32-A/B Callejon Nadelco, Manila, with the condition that the redemption period provided by law for the property of he spouses Felix L. Lazo and Mercedes Castro is thereby extended to the last time up to August 31, 1959.

It is further provided that on or before August 31, 1959, the full Option price of P18.627 . . . together with unpaid post insurance premium be fully paid as promised.

The foregoing was the first extension of the redemption period granted at the request of the plaintiffs. It was an acknowledgment that the original period was expiring, and a conventional stipulation on a new period. This new period passed, but the defendant company did not consolidate its title. Instead it sent a letter to the Lazo spouses on March 30, 1960, as follows (Exh. 1):

"On July 1, 1959. this company purchased the property . . . at an auction sale conducted by the Sheriff of Manila for the amount of P18.627.00. The redemption period of said sale has expired on the 2nd day of July 1959.

"However . . . we have deferred the consolidation of title to our name. This is last call for you to act before it is too late. If you wish to redeem the property above described, kindly call at this office on or before April 30, 1960 to arrange for a settlement of your obligation."

The foregoing letter elicited a reply from plaintiff Felix L. Lazo on April 8, 1960, wherein he said (Exh. 2):

"We wish to acknowledge receipt, with thanks, of your letter of March 30, 1960, regarding our property involved in the transaction of Mr. Jose Robles. I feel really grateful to you and your old man for having given us time to redeem it. It is really unfortunate that Mr. Jose Robles, to whom we loaned the property as security for his mortgage, has kept the matter dragging along for so many years. I have urged him to settle the matter before April 30, 1960 and he promised earnestly to do so. He says he is trying to raise the necessary funds, and will see you before the target date.

We are very much worried about this matter."

Thus was a second extension granted - up to April 30, 1960. Still no payment was tendered.

On May 30, 1960 it was plaintiff Jose Robles who wrote another letter to the defendant company, making reference to the Plaintiffs' "commitment to pay the redemption price of the foreclosed property at the end of this month, May 1960," and pleading for a last extension of the redemption period. The letter continued (Exh. 7):

"In spite of our several failures to secure the expected fund for payment to your goodselves, we assure you that we have not overlooked, nor forgotten, our said obligation. However, this time, considering the fact that our said loan application only requires the necessary inspection by our Ban" before it is finally approved, we are again constrained to request your kindness to grant us another period of one month (June) within which to remit to you the amount of redemption for the said foreclosed property of Mr. Lazo, and this would be the last extension that we will beg of you to consider. Please be assured that should we be able to get our funds much earlier than expected during the period of extension herein requested, we shall tender to you our payment without further delay. At the moment, we are tendering you the amount of P250.00 as rental corresponding to the month of June, 1960.

Trusting for your usual kind consideration on the above request, we are"

Felix L. Lazo himself confirmed the above request for extension by another letter dated May 31, 1960 (Exh. 8) thus:

"I am awfully embarrassed for the failure of Mr. Jose Robles to settle the amount . . .

"Out of equity, I am forced to consent to his extension for another 30 days by paying the advanced rental. He expects the loan to be released in 15 days from now, and he promised to settle our case. May I ask again your kind indulgence on the matter."

The extension asked for was once more granted, this time up to June 30, 1960, with the same negative result. Then again, on August 31, 1962 Felix L. Lazo wrote still another letter (Exh. 9), as follows:

"Here we come again about the house. I am really feeling ashamed to you. But Mr. Robles said he failed to obtain the amount of about P6,000 : was going to pay as down payment for the repurchase - even without contract yet. He expected to get the sum in a week time or until the 10th of September.

If you could still hold the property until that time, kindly give your consideration. May be this is the last chance."

The plaintiffs having reneged on all their repeated promises, the defendant company finally consolidated its title to the property as purchaser at the foreclosure sale on March 28, 1963, and obtained the corresponding transfer certificate of title. That was almost five years after the said sale.

It is clear, in the light of the facts and circumstances above set forth, that the parties had abandoned entirely the concept of legal redemption in this case and converted it into one of conventional redemption, in which the only governing factor was the agreement between them.

The registration of the certificate of sale on March 28, 1963 was entirely unnecessary and irrelevant to the question of when the period of redemption agreed upon expired. The record shows that the last request for extension approved by the defendant is that contained in the letter of Jose Robles dated May 30, 1960 (Exh. 7), at the bottom of which appears the handwritten notation: "OK for last extension one month. Please attach note of Mr. Lazo," this last evidently referring to the latter's confirmatory letter of May 31, 1960 (Exh. 8). Consequently, the period to redeem expired on June 30, 1960.

There is no evidence that Felix L. Lazo's next "last" request for extension, until September 10, 1962, contained in his letter of August 31, 1962 (Exh. 9), was acted upon or approved by the defendant company; but even if it was, then after September 10, 1962 the right to redeem had become irretrievably lost.

The plaintiffs' repeated requests for time within which to redeem, each with a definite date of expiration, generated binding contracts when approved by the defendant company. A contract, needless to say, has the force of law between the parties. In any event, the principle of estoppel would step in to prevent the plaintiffs from going back upon their own acts and representations to the prejudice of the other party who relied upon them. This is a principle of equity and natural justice, expressly adopted in our Civil Code (Arts. 1431 et seq.) and articulated as one of the conclusive presumptions in Rule 131 Sec. 3(a), of our Rules of Court as follows:

"(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it."

In considering the equities of the case it may be pertinent to note that the property in question consists of a small lot of 270 square meters and the house situated thereon, yielding a monthly rent of only P250.00, and that its fair value therefore, especially in 1958, could not be widely disparate from the sale price of P18,627.00.

In the defendants' answer there is a counterclaim for attorney's fees in the amount of P6,000, aside from moral damages. We do not find this second item sufficiently justified, but with respect to attorney's fees there is a stipulation in the mortgage contract, Exh. A, for "15% of the total indebtedness then unpaid." Under this stipulation the sum of P2,700 is recoverable.

In view of all the foregoing considerations the decision appealed from is reversed and the complaint dismissed; and on the counterclaim the plaintiffs-appellees are sentenced to pay, jointly and severally, defendant company the sum of P2,700.00 by way of attorney's fees plus costs.

Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Fernando and Barredo, JJ., concur.

Ruiz Castro, J., did not take part.

Teehankee, J., dissents in separate opinion.

Concepcion, C.J., concurs with the view of Mr. Justice Teehankee.

[1] SEC. 34. Rents and profits pending redemption. Statement thereof and credit on redemption.- The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive the rents of the property sold or the value of the use and occupation and thereof when such Property is in the possession of a tenant. But when any such rents and profits have been received by the judgment creditor or purchaser, or by a redemptioner, or by the assignee of either of them, from property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and, if a later redemptioner or the judgment debtor, before the expiration of the time allowed for such redemption demands in writing of such creditor, purchaser, or prior redemptioner, or his assigns, a written and verified statement of the amounts of the rents and profits thus received, the period of redemption is

extended five (5) days after such demand is complied with and such sworn statement given to such later redemptioner or debtor. If such statement is not so given within one (1) month from and after such demand, such redemptioner or debtor may bring an action to compel an accounting and disclosure of such rents debtor profits, and until fifteen (15) days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

[2] "SEC. 9. When the property is redeemed after the purchaser has been given possession, the redeemer shall be entitled to deduct from the price of redemption any rentals that said purchaser may have collected in case the property or any part thereof was rented; if the purchaser occupied the property as his own dwelling, it being town property, or used it gainfully, it being rural property, the redeemer may deduct from the price the interest of one per centum per month provided for in section four hundred and sixty-five of the Code of Civil Procedure.

[3] Valera vs. Velasco. 51 Phil. 695, 700-701.

[4]"Redemption is not the concern merely of the auction-vendee and the mortgagor, but also of the latter's successor in interest in or any judicial creditor or judgment creditor of said mortgagor, or any person having a lien on the property subsequent to the mortgage under which the property has been sold. It is precisely for this reason that the certificate of sale should be registered, for only upon such registration may it legally be said that proper notice, though constructive, has been served unto possible redemptioners contemplated in the law." Reyes vs. Noblejas, G.R. No. L-23691, November 25, 1967.

DISSENTING OPINION

TEEHANKEE, J.,

I vote for the affirmance of the appealed judgment.

I do so on the basis of the issues squarely raised by the parties in the case below, i.e. whether or not the right of redemption with respect to the foreclosed property was still available to Plaintiffs-appellees, and corollarily, whether or not plaintiffs were herefore entitled to the accounting of rents and profits, pending demption, sought by them under Rule 39, Section 34 of the Rules of Court.

It being undisputed that the sheriff's certificate of sale, upon extra-judicial foreclosure, .was registered in the Office of the poster of Deeds of Manila only on March 28, 1963, the present action for accounting and redemption filed on December 12 of the same year was timely filed within the one-year period of legal redemption. Actual knowledge by plaintiffs-morgagors of the auction sale held on July 1, 1958 is not equivalent to registration and does not derogate from the doctrine "explicitly and emphatically" enunciated by the Court in Rosario vs. Tayug Rural Bank and a long line of cases[1] and most recently reiterated on October 4, 1969 in Reyes vs. Manas,[2] "that the redemption period should be reckoned from the date of registration of the certificate of sale and not from the date of the auction sale."

Plaintiffs' payment of rents to defendant-appellant beginning July, 1958 immediately after the extra-judicial foreclosure sale - (which was provided for in the mortgage), and their several requests for extensions of time to redeem their property should not be taken as an abandonment of the concept of legal redemption and its conversion into one or conventional redemption. Such conversion into conventional redemption, which entails a waiver of the mandatory requirement of registration of the sheriff's certificate of sale and a voluntary agreement on the mortgagors' part to reckon the period for redemption from the date of the auction sale, rather than from the date of registration of the certificate of sale, thus cutting drastically their period to effect redemption, assuming

that such waiver and agreement would not be void as being against public policy, should be shown indubitably.

This is not the case here. The record evinces that plaintiffs, in making their requests for extension, were laboring under the mistaken notion that defendant had duly registered the sheriff's sale and that their period to redeem their property had expired on July 2, 1959. And defendant nurtured their mistaken impression, as shown in its letter of March 30, 1960, giving plaintiffs a "last call" and categorically stating that "the redemption period has expired on the 2nd day of July, 1959." (Exhibit "1").

Plaintiffs, thus mistaken, cannot be deemed to have opted for conventional redemption and to have freely waived the legal period for redemption, which had not even commenced in law, due to defendants' failure to comply with the mandatory requirement of registration. In point of fact, the first indication of plaintiffs' learning that the sale had been registered only on March 28, 1963, is in their letter to defendant of October 25, 1963, (Exhibit "K"), wherein they asked for an accounting and forthwith asserted their counsel's "theory" that the one-year period for redemption of the foreclosed property available to the mortgagor is one year from the date the title was registered in the Register of Deeds—that is - March 28, 1963. So, he maintains that Robles and myself have still a period up to March 28, 1964, to exercise this right of redemption."^[3]

I find the equities of the case in favor of plaintiffs. They were but guarantors for the P12,000.00 loan secured by Jose Robles. No prejudice would be incurred by defendant under the appealed judgment-, for it would not be receiving a centavo less than what plaintiffs had undertaken to pay it in accordance with its usual business. The payments made by them on account of interests and various expenditures before foreclosure amounted to P13,561.37 and after foreclosure for rents amounted to P17,250.00 or a total of P30,811.37 during the 10-year period. The differential between 12% interest or P1,440.00 per annum that they should pay defendant on account of the loan discharged by defendant and the P250.00 monthly rental or P3,000.00 annually that they were paying for occupancy of their property was quite substantial, 'd such rents received by defendant should be "a credit upon redemption money to be paid" under Rule 39, Section 34 of the Rules of Court.

Even conceding that defendant co-signed the promissory note August 14, 1954 (Exhibit "M") in favor of Republic Investment Co., Inc (although technically defendant is barred from questioning the trial court's contrary finding of fact since it is its appeal here, and raises only questions of law in its did not ask the Court to remand the appeal to the Court of Appeals for review of the trial Court's adverse findings of fact), the undisputed fact remains and it is so borne out by the record, that the only mortgage executed by plaintiffs in favor of the defendant, was that of August 18, 1953, Exhibit "A", in consideration of the P12,000.00 loan obtained from the Philippine Bank of Commerce, with defendant as co-signer therefor. The mortgage was expressly executed as security for defendant-mortgagee against any liability by virtue of the loan granted by the Philippine Bank of Commerce. When the defendant transferred the loan to its sister company, Republic Investment Co. Inc. on August 14, 1954, i.e. an entirely new loan for P12,000.00 was obtained from the latter creditor and the previous creditor, the Philippine Bank of Commerce, was paid off obviously from the proceeds, no new or separate mortgage in favor of defendant in consideration of its co-signing the new note and as security against any liability by virtue of this new loan granted by the Republic Investment Co. Inc. was executed.

The trial court was correct, I believe, in holding that the mortgage, Exhibit "A", was extinguished by the payment of the loan secured from the Philippine Bank of Commerce. The effect of such payment was to extinguish the obligation of both plaintiffs and defendant as co-signers of the promissory note. The extinction of such obligation carried with it the extinction of the mortgage as an accessory obligation, which was subordinate to and dependent upon the principal obligation thus extinguished. "Being merely an accessory contract, a mortgage cannot exist without the principal obligation it seeks to guarantee (Article 2085, Civil Code)."^[4]

The Mortgage deed, Exhibit "A", executed on August 18, 1953 in favor of the old creditor, the bank, could not be considered as executed to secure defendant as surety against the eventuality of its liability under the new note co-signed by it with plaintiff one year later on August 14, 1954, in favor of the new creditor, the Republic Investment Co. Inc., for at the time of the execution of the mortgage, such new obligation had not yet come into existence. The mortgage that defendant sought to foreclose had in law ceased to exist; so much so that when defendant's counsel wrote the sheriff to foreclose the same, it was stated therein, contrary to the content of the deed itself, that the same was "in favor of the REPUBLIC INVESTMENT CO., INC." (Exhibit "S")

But since the parties both submitted their case on the premise that the mortgage was valid and subsisting, I view the fact that the mortgage had been extinguished by payment and that defendant therefore had no mortgage to foreclose, as a further equitable ground to uphold the substance of the appealed judgment. On the issue explicitly joined by the parties, I would hold that plaintiffs had timely filed their action for accounting and redemption within the one-year period of legal redemption. Defendant could not due to its own failing, belatedly cause only on March 28, 1963 the registration of the sheriff's certificate of sale and then one day later claim consolidation of title and cut off plaintiffs' one-year period of legal redemption. Such simultaneous registration and consolidation of title in extra-judicial foreclosure proceedings were squarely ruled out by the Court's established doctrine (see *Reyes vs. Noblejas*, supra), and the Register of Deeds grossly erred in instantly giving due course thereto and causing the cancellation of plaintiff's title and issuing a new title in the name of defendant.

[1] L-26538, March 21, 1968, citing *Reyes vs. Noblejas*, L-23691, Nov. 25, 1967; *Garcia vs. Ocampo*, H3029, June 30, 1959; *Agbulos vs. Alberto*, L-17483, July 31, 1962; and *Salazar vs. Flor de Lis Meneses*, L-15378, July 31, 1963.

[2] L-27755, 29 SCRA 736.

[3] Italics supplied.

[4] *Abustan vs. Ferrer*, L-19519, Nov. 28, 1964. See *Zabaljaurregui vs. Luzon Surety Co., Inc.* L-16251, Aug. 31, 1963; 8 *Manresa* 441.

SEPARATE CONCURRING OPINION

CONCEPCION, C.J.,

I concur in the view of Mr. Justice Teehankee to the effect that plaintiffs had not intended to waive their right to redeem within the period set forth in Sec. 34 of Rule 39 of the Rules of Court, as consistently construed by Us in the cases cited in the foregoing dissent, and that, accordingly, the present action has been seasonably filed.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.