

**LUZON LUMBER AND HARDWARE COMPANY, INC., PLAINTIFF AND
APPELLEE, VS. MANUEL QUIAMBAO, VIRGINIA SANTIAGO, AND
REHABILITATION FINANCE CORPORATION, DEFENDANTS.
REHABILITATION FINAN...**

G.R. No. L-5638. March 30, 1954

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Manuel Quiambao and his wife Virginia Santiago, owners of three lots in the province of Tarlac covered by Certificates of Title Nos. 22607, 4217 and 4218, mortgaged the said lots on July 20, 1948, in favor of the Rehabilitation Finance Corporation (RFC) to secure the payment of a loan in the amount of P37,000 which sum was to be spent for the construction of two buildings,—one for a hotel and the other for residence. The mortgage was registered on September 13th of the same year. The two buildings were subsequently constructed on the lot covered by Certificate of Title No. 22607. Upon violation of the terms of the mortgage the RFC foreclosed the same and in the auction sale, said RFC as highest bidder was awarded the mortgaged properties for the total sum of P31,000 followed by the issuance of the corresponding Transfer Certificates of Title. The hotel and residence buildings were valued at P18,000 and P4,000, respectively.

In the edification of the two buildings the spouses bought on credit construction materials valued at about P7,000 from the plaintiff Luzon Lumber & Hardware Co. Said building materials were furnished by the lumber company between October 1948 and March 1949. Only P3,500 of this amount was paid, leaving an unpaid balance of P3,456.50. To recover this balance including interests and attorney's fees the lumber company filed this suit against the spouses, the complaint being later amended so as to include the RFC as party defendant. According to the RFC said amendment was made about a week after the auction sale of the foreclosed properties. After hearing, the Court of First Instance of Tarlac rendered judgment ordering the defendant spouses Manuel and Virginia to pay to the plaintiff lumber company the sum of P3,456.49 with legal interests and in default of such payment by them, the RFC was ordered to pay to plaintiff out of the proceeds of the sale of the hotel and the house, the said sum of P3,456.49 together with the corresponding legal interests thereon. The RFC is appealing from that decision with the following assignment of errors:

FIRST ERROR

The trial court erred in finding that the preference of plaintiff's credit is declared for the first time in the new Civil Code, and in consequently deciding that the order of preference therein should govern.

SECOND ERROR

The trial court erred in finding that while plaintiff's credit is declared for the first time in the new Civil Code and that it prejudices or impairs a "vested right", it should, nevertheless, prevail over appellant's because both rights are not "of same origin".

THIRD ERROR

The trial court erred in ordering the appellant, upon default of the defendants-spouses, to deliver to the appellee the sum the latter claims as the balance of the unpaid purchase price due from said spouses.

The theory of the plaintiff, which theory was upheld by the trial court is that its credit enjoyed preference over that of the mortgage credit of the RFC under articles 2242 and 2253 of the new Civil Code (Republic Act No. 386) which for purposes of reference we are reproducing below.

"ART. 2242. With reference to specific immovable property and real rights of the debtor, the following claims, mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right:

* * * * *

(4) Claims of furnishers of materials used in the construction, reconstruction, or repair of buildings, canal or other works, upon said buildings, canals or other works;

* * * * *

(5) Mortgage credits recorded in the Registry of Property, upon the real estate mortgaged;

"ART. 2253. The Civil Code of 1889 and other previous laws shall govern rights originating, under said laws, from acts done for events which took place under their regime, even though this Code may regulate them in a different manner, or may not recognize them. But if a right be declared for the first time in this Code, it shall be effective at once, even though the act or event which give rise thereto may have been done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin."

The trial court further held that the credit of the plaintiff enjoyed preference over the mortgage credit of the RFC in point of time, because the mortgage lien of the RFC vested only after the construction of the two buildings while the lien of the plaintiff vested immediately at the moment it furnished the materials. And as to the proviso found in the last part of article 2253 of the new Civil Code referring to vested rights of the same origin, said court ruled that the origins of the two credits were different and distinct, the origin of the credit of the plaintiff being that of purchase and sale while that of the RFC was a contract of mortgage.

After a careful study of the case we are constrained to. agree with the counsel of the appellant RFC that the two articles in the new Civil Code above reproduced may not be applied in the instant case for the reason that the credit of the plaintiff is not a new right or one declared for the first time, a condition required by Article 2253 of the new Civil Code for its enforcement and application, because said right was already provided for by article 1923 of the old Civil Code particularly paragraphs 3 and 5 which read as follows:

"3. Mortgage and refection credits entered and recorded in the Registry of Deeds, with respect to the property mortgaged, or which has been the subject-matter of the refection;"

"5. Refection credits not entered or recorded, with respect to the real estate upon which the refection was made, and only with respect to other credits different from those mentioned in the four next preceding paragraphs."

The question now to be decided is whether the furnishing of lumber and building materials by the plaintiff for the construction of the two buildings of the spouses falls under refection credit mentioned in paragraphs 3 and 5 above reproduced. The RFC contends and we agree to its contention that it is so included. In the case of Director of Public Works vs. Sing Juco, 53 Phil, 205, this Court thru Justice Street said that in a precise and technical sense, refectionary credit is primarily an indebtedness incurred in the repair or reconstruction of something and does not ordinarily include an entirely new work, but that Spanish jurisprudence appears to have sanctioned in

certain cases this broader view to include a new work or construction. The word "refaccionario" from which come the English translation of "refectionary" is derived from the Latin verb "refacio", "refacere", meaning "rehacer" which implies the idea of reconstruction or repair for reason of destruction or deterioration. As already said, that was the original idea of the word "refectionary". The liberal interpretation of the refectionary credit to include new construction is upheld in the Encyclopedia JURIDICA ESPAÑOLA, p. 890, from which we quote with favor the following:

"En el orden civil, los terminos de la cuestion son diferentes; el credito refaccionario, a pesar de su verdadera finalidad, de acuerdo con la significacion etimologica, esta permitido para obra nueva, pues la ley de Partida emplea las palabras "fazer" y "refazer", la jurisprudencia sanciona casos de obra nueva, y elCodigo civil, sin distinguir, otorga prelacion al credito de caracter refaccionario, y en consecuencia, sea por obra nueva o por reconstruccion de obra anterior."

And this view is shared by our Code Commission which prepared the new Civil Code. In its Report on the proposed Civil Code of the Philippines (now our new Civil Code) which went into effect in 1950, referring to article 2242 of the new Code, it said that the new encumbrances in said article are Nos. 2, 3, 6, 7 and 9, meaning to say that paragraph 4 referring to claims of furnishers of materials used in the construction, reconstruction or repair of building which as invoked by the plaintiff and applied by the trial court is not a new provision, clearly implying that it was already provided for in article 1923, paragraphs 3 and 5 under refectionary credits. This liberal view and interpretation of refectionary credit is in consonance with principles of justice and fairness, for there seems to be no valid reason why one furnishing material for purposes of repair or reconstruction should be given preference while another furnishing material on new construction is not given the same consideration.

With respect to the holding of the trial court that in point of time the credit of the plaintiff enjoys priority over that of the RFC for the reason that according to said court the lien of the plaintiff vested when the materials were furnished while the mortgage credit of the RFC vested only when the buildings were constructed, we must not forget that according to the facts of the case the loan of P37,000 was given to the spouses to construct the two buildings, and that under the terms of the deed of mortgage, not only the lots but also all the improvements now existing or which may hereafter be constructed on the mortgaged property are included. In other words, the mortgage in favor of the defendant RFC not only enjoyed the presumption provided by law (Art. 1877 of the old Civil Code, now article 2127 of the new Civil Code and articles 110 and 111 of the Spanish Mortgage Law) that a mortgage includes all improvements on the land mortgaged when the obligation falls due, but there was an express stipulation to include all buildings and improvements thereafter to be constructed on the mortgaged premises. This lien on all improvements vested on the day and hour the mortgage was registered—about one month before plaintiff began furnishing materials for construction. One of the purposes of the creation of the RFC was to finance the construction and reconstruction of buildings for purposes of rehabilitation. We may even take judicial notice of the fact that the security of the loans from the RFC is based mainly on the buildings and constructions themselves, and that to assure that the loans are spent for the said construction, the money is sometimes given on the installment basis, that is, so much money is released by the RFC as the construction progresses. This is to show the intimate relation between an RFC loan and the construction financed by it, for purposes of security.

In the discussion of this case among the members of this Tribunal, there was a suggestion, even a contention that the credit of the plaintiff herein might be made to fall under article 1922 of the old Civil Code which provides as follows:

"ART. 1922. With respect to determine personal property of the debtor, the following are preferred:

1. Credits for the construction, repair, preservation, or purchase price of personal property in the possession of the debtor, to the extent of the value of the same;"

* * * * *

But we believe that the two buildings in question constructed partly with building materials furnished by the plaintiff may not be considered as personal property under article 1922. Once said building materials were used in the construction and had become part of the building, they lost their classification as personal property and become real property. It is true that in the case of *Unson vs. Orquije, et al.*, 50 Phil., 160, this Tribunal applied the provision of article 1922, paragraph 1, referring to the purchase price of personal property in the possession of the debtor (machinery and grinder sold to the Capiz Central and installed in its building), the reason being that said machinery and grinder did not lose their form and substance and they preserved their identity. Besides, they could easily be removed from the building of the Central.

May the same thing be said in the present case as regards the building materials which went into the construction of the hotel and the house? The answer can be given only in the negative. Said materials had already become part of the two buildings either as posts, frames, floor, partition, roof, etc. They have lost their form and identity and had become part of the buildings which are real property.

Article 334, paragraph 3, old Civil Code, classifies as real property anything permanently annexed to any immovable property in such manner that it cannot be separated therefrom without breakage of material or injury to the object. Can the lumber used for the posts, frame, floor, partition, etc., be removed from the two buildings without injury to the said structures? They cannot. And it must be remembered that though the materials furnished by the plaintiff are valued at about P7,000, the present claim of the plaintiff for the balance of sales price of his building materials is only P3,456.49, less than one-sixth of the total value of the two buildings as bought by the RFC at the auction sale, namely, P22,000.

There is another circumstance in this case which greatly weakens plaintiff's claim. While as already stated, appellant RFC's mortgage which included the two buildings in question was recorded in September 1948, thus serving as notice to third parties including the plaintiff, the latter began furnishing building materials for the construction of the two buildings only in October 1948, that is the month following, and what is more, the evidence fails to show that it was ever recorded in the Registry of Deeds, so that said refection credit comes not under paragraph 3 of article 1923 of the old Civil Code, as does the RFC mortgage, but under paragraph 5 of the same article under unregistered and unrecorded refection credits. Still another aspect of the case to be considered is that in the foreclosure proceedings, inasmuch as of July 1950, the spouses had a total unpaid account of P41,732.16 with the RFC, and the latter bought the mortgaged properties for P31,000, there is still a balance of P10,732.16 owing to the RFC, an amount of almost three times the claims of the plaintiff against the same spouses.

In conclusion we hold that (1) under our jurisprudence, the term or phrase refection credits (*refaccionarios*) used or employed in article 1923 of the old Civil Code refers to and includes not only materials used for repair or reconstruction, but those used for new construction, as well; (2) the lien of one furnishing building materials used in a building or construction whether old or new, comes under article 1923 of the old Civil Code, and not under article 1922 of the same Code; (3) that being provided for and included in the old Civil Code of 1889, said lien (refection credit) is not a right granted for the first time under article 2242 (4) of the new Civil Code (Republic Act 386) so as to come under the contemplation of article 2253 in the sense that the provisions of the new Civil Code should govern it although the acts or events which gave rise thereto may have occurred under the old Civil Code; (4) that the deed of mortgage herein having been recorded in 1948 and the building materials having been furnished in 1948 and 1949, that is to say, before the promulgation of the new Civil Code in 1950, the preference of credits or liens has to be governed by the old Civil Code; and (5) when a mortgage is made to include new or future improvements on registered land, said lien attaches and vests not at the time said improvements are constructed but on the date of the recording and registration of the deed of mortgage.

In view of the foregoing, the decision appealed from is modified by dismissing the complaint as against the defendant-appellant Rehabilitation Finance Corporation, with costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

DISIDENTE

DIOKNO, M., :

Los hechos en este caso estan estipulados y son como sigue:

"That the true indebtedness of Manuel Quiambao and Virginia Santiago for lumber and materials taken from the Luzon Lumber and Hardware Co. Inc., Tarlac, used in building their hotel and residential house located in the barrio San Nicolas, Tarlac, Tarlac, on their property covered by Transfer Certificate of Title No. 22607 is P3,456.49 which was their outstanding balance;

"That Manuel Quiambao and Virginia Santiago Quiambao had not yet paid the above sum, even after repeated demands;

"That for the purpose of constructing the two buildings referred to in the amended complaint, the defendant Rehabilitation Finance Corporation granted a loan of P37,000 to the spouses, Manuel Quiambao and Virginia Santiago (Virginia Quiambao) on the security of a first mortgage on their property covered by Transfer Certificates of Title Nos. 22607, 4217 and 4218 of the land records of the province of Tarlac, including the two buildings to be constructed out of the proceeds of said loan;

"That said mortgage contract was duly registered in the Office of the Register of Deeds of Tarlac and noted on the certificates of title aforementioned;

"That the mortgagor spouses having violated the terms of said mortgage contract, the Rehabilitation Finance Corporation foreclosed the mortgage under Act No. 3135, as amended, and at the auction sale held at Tarlac, Tarlac, on July 17, 1950 the Provincial Sheriff awarded the mortgage property to the Rehabilitation Finance Corporation as the highest bidder for the total sum of P31,000;

"That the mortgagor spouses having violated the terms of said mortgage contract, the Rehabilitation Finance Corporation foreclosed the mortgage under Act No. 3135, as amended, and at the auction sale held at Tarlac, Tarlac, on July 17, 1950 the Provincial Sheriff awarded the mortgage property to the Rehabilitation Finance Corporation as the highest bidder for the total sum of P31,000; * * *" (Record on Appeal, pp. 11-13)

La sentencia apelada dispone lo que sigue:

" * * * the Court renders judgment ordering the defendant-spouses, Manuel Quiambao and Virginia Santiago, to pay to plaintiff, Luzon Lumber and Hardware Co., Inc., the sum of P3,456.49 together with legal interests thereon at the rate of 6 per cent per annum from the date of the commencement of this action until full payment of the indebtedness, and in defect of such payment by the defendants-spouses, Manuel Quiambao and Virginia Santiago, the defendant Rehabilitation Finance Corporation is hereby ordered to pay to plaintiff, Luzon Lumber and Hardware Co., Inc., out of the proceeds of P3,456.49, together with the corresponding legal interests thereon. Defendants-spouses Manuel Quiambao and Virginia Santiago, shall pay the costs of this action." * * * (Record on Appeal, pp. 23-24)

Y la mayoria de este Tribunal se propone enmendar la sentencia precedente—

"By dismissing the complaint as against the defendant-appellant Rehabilitation Finance Corporation, with cost."

Me veo obligado a disentir de esta decision porque me produce la sensacion de que se enriquece la RFC con materiales usados en la construction de los edificios que son de la demandante y no de los deudores de la RFC y que no estan pagados, lo cual me parece a mi contraria a la recta conciencia, y pernicioso al curso ordinario de los negocios.

Contraria a la recta conciencia porque se sabe que la RFC se lleva materiales que son de otros y no de sus deudores, lo cual es lucrarse a costa ajena.

Y pernicioso al curso ordinario de los negocios, porque mientras es de fomentar las construcciones de edificios por el beneficio que traen a los trabajadores y a la industria de los materiales de construction, y en el comercio no es lo corriente exigir pago adelantado o al contado, la RFC podia muy bien haberse protegido condicionando las entregas de efectivo a los esposos Quiambao a la prueba previa de haberse pagado los materiales y mano de obra anteriores, como acostumbran, y en cierto modo requiere la ley, los propietarios que edifican mediante contratistas. La doctrina que establece la decision:—que va contra lo que el antiguo y el nuevo Codigo Civil preceptuan como lo justo—producira en mi humilde opinion remora en la industria.

Dirigiendo ahora mi atencion a las fases legales de la cuestion, me causa extraneza que se atribuya al proveedor de materiales interes sobre el edificio. Su interes, desde el principio hasta el fin, es sobre el valor de los materiales que suministro, cuya aplicacion y cuantia estan estipuladas, y cuya identification esta establecida por las facturas

Exhs. A a A-52. El proveedor no reclama la devolucion de los materiales, para que se requiera una identification mas precisa dentro del edificio en que se emplearon; nadie duda que estan alli; tampoco duda nadie lo que valen. Se necesita algo mas, para que se pueda recuperar su valor? Responde a algun fin practico exigir una identification pieza por pieza? Si todo esto es sutileza de mal pagador, y no me parece que pueda honradamente caber duda de ello, entonces estamos llevando nuestro legalismo a un extremo peligroso a la existencia de la justicia misma.

El antiguo Codigo Civil, que era el vigente cuando tuvieron lugar las transacciones de que nos ocupamos, dice que "los creditos se clasificaran, para su graduacion y pago, por el orden que en este capitulo se establecen" (art. 1921). Y seguidamente dispone en el articulo 1922:

"ART. 1922. Con relacion a determinados bienes muebles del deudor, gozan de preferencia:

1.[o] Los creditos por construccion, reparacion conservacion o precio de venta de bienes muebles que estan en poder del deudor, hasta donde alcance el valor de los mismos."

Un credito es algo incorporeo, idea que se concibe y existe en nuestra mente y en nuestra conciencia, que si esta relacionada con algo que es o fue material no es, en si mismo, cosa material susceptible de identificacion, para que pueda decirse que la identificacion es cosa esencial para la preferencia en el cobro. Esto indica lo absurdo de requerir que la cosa conserve su identidad. Pero se me dira seguramente que el articulo trata de creditos por construccion de muebles determinados donde fueron empleados, y la identidad de estos debe constar; dandolo por supuesto, a los fines del argumento, entonces, en tal caso no es necesario, que el trozo de madera que se ha suministrado, digamoslo por via de ejemplo, convertido en tablas y pilaretes, y mezclados con otros del deudor y de otras personas, perdiendo asi identidad para que el proveedor siga gozando de la preferencia que por este articulo se establece. La que no debe perder su identidad es la cosa donde fueron empleados.

Hace diferencia que con los materiales que se suministraro se contribuyo a levantar, no un mueble, sino un inmueble? Han quedado por eso inmuebles los materiales de construccion que son bienes muebles por excelencia? El sentido de justicia de la humanidad cambia con ese detalle?

En el asunto de Urquijo contra Unson, 50 Jur. FiL, 168 se trataba de maquinarias vendidas que por su destino se

quedaron bienes inmuebles. A pesar de eso, esta Corte reconoció a los vendedores de las maquinarias derecho preferente con arreglo al artículo 1922, caso 1.º del Código Civil, y resolviendo la cuestión dispuso:

"For the foregoing, it is adjudged:

"(a) That the right of preference of the appellants Urquijo, Zuloaga and Escubi is only on the value (art. 1922, par. No. 1, of the Civil Code), which must first be proven, of the machinery sold by them to the Capiz Central which has not been paid for and which was included among other property of the Capiz Central in the sale of the same; and that in no case must the preference exceed the sum of thirty thousand pesos (P30,000), the only amount on which they claim a preference.

"(b) That the claim of the appellees Timoteo Unson and Clara Lacson, Jose Altavas and Antonio Belo, by reason of the fact that the attachments secured by them were declared valid and held to constitute liens, are also preferential in character and must be paid in full out of the available funds of the insolvent estate after the extinction and payment of the credit of the appellants Urquijo, Zuloaga and Escubi, and with preference over any and all other ordinary unpaid claims, following in the payment of the claims of the appellees, the order of the dates of the respective attachments."

"In virtue whereof the judgment appealed from is hereby affirmed in so far as it is in harmony herewith and reversed in so far as it is not, and it is ordered that the record be remanded to the court of origin for further proceedings in accordance herewith. So ordered." (Unson vs. Urquijo, Zuloaga & Escubi, 60 Phil., 160, 177.)

Obvio parece que la identidad de la cosa suministrada no era importante; lo que importaba era su valor no pagado. En el presente caso la identidad de la cosa suministrada y su valor no están disputados. Para que se vea mejor lo absurdo del argumento vamos a simplificar nuestro caso con un ejemplo. Supongamos que lo que el proveedor suministró fueron postes de molave, y que estos son los únicos postes que se usaron en los dos edificios. Los postes se convirtieron por su destino en inmuebles al incorporarse en los edificios, justamente como las maquinarias de Urquijo en la decisión citada. La identidad de los postes es cosa indisputable e indisputada. En el caso del ejemplo, se reconocerá el derecho preferente del proveedor sobre el valor de los postes? La contestación afirmativa echará por los suelos la decisión de la mayoría que aquí se propone, y esa contestación afirmativa es ineludible. Ahora, aplicando el ejemplo a nuestro caso, hay alguna duda que, si preciso fuese, el proveedor puede identificar por lo menos la gran parte de los materiales que suministró? Las facturas los identifican, nadie disputa que se usaron en los dos edificios de referencia, y hasta su valor está fuera de toda discusión. No se identificaron en autos con más exactitud, por la razón manifiesta que era perder tiempo, porque lo que importaba era su valor, y el convenio sobre el valor implica convenio sobre su identidad. Tengo para mí que la decisión del caso de Urquijo leída y entendida racionalmente, es decisiva para la justa resolución del caso que nos ocupa.

La decisión proyectada dice que lo que es aplicable en este caso es el artículo 1923 del antiguo Código Civil que dice:

"ART. 1923. Con relación a determinados bienes inmuebles y derechos reales del deudor, gozan de preferencia: * * *

"3.º Los créditos hipotecarios y refaccionarios, anotados e inscritos en el Registro de la Propiedad, sobre los bienes hipotecados o que hubiesen sido objeto de la refacción."

Al arguir sobre este artículo la decisión propuesta incurre, en mi humilde opinión, en un tremendo error. Cuando la ley habla de crédito anotado e inscrito en el registro supone que la cosa sobre que recae existe y pre-existe en el registro. Es absurdo pensar lo contrario. Pero en autos, cuando el 13 de Septiembre de 1948 se registró la hipoteca de la RFC no existían aun los edificios, y es por tanto absurdo suponer crédito hipotecario sobre cosa que aun estaba en el aire. La ficción legal no llega al extremo de dar vida a lo que no existe. Existirá la hipoteca cuando la

cosa tenga existencia en el registro. De igual modo, cuando la ley habla de anotacion e inscripcion de un credito refaccionario supone que la cosa sobre que recae ya existe registrada, pues de otro modo tendríamos el espectáculo de una ley exigiendo imposibles. Esto despierta en la mente la idea de que refaccion en este inciso significa lo que dice, esto es—

"Refaccionario, del verbo latino refacio refacere, rehacer, es un adjetivo que unido al sustantivo credito lo califica por su aplicacion a reconstruir o reparar lo que antes hecho, es necesario, por razon de destruccion o deterioro, rehacer.

"El credito puede provenir de prestamo metalico o ser el precio de servicios, trabajos o materiales empleados, siendo, en todo caso requisito necesario que se invierta aquel y estos en la obra, pues la característica de esa clase de credito es su confusion con la cosa en razon al mayor valor que por esa confusion debe adquirir. * * *

"El credito refaccionario se produce como yuxtaposicion de valor, y la plusvalia no esta afectada a creditos ni derechos anteriores que recayeron y afectaron al valor que la cosa antes tuviera, sin perjuicio de extenderse al valor que despues adquiere, salvando el interes causa de ese mayor valor, o sea, respetando como extrano, o si se quiere como preferente, el credito que produjo aquella plusvalia.

"Para mejor comprender el caracter juridico del derecho que entraña el credito refaccionario, puede asimilarse al del jus retentionis, porque si bien la cosa refaccionada esta en poder ajeno y la retencion para el cobro no tiene lugar, a tanto equivale el derecho preferente de cobro por concepto analogo al de retencion, pues el jus retentionis, en puridad, se basa en un privilegio por razon de un derecho o credito cuya inversion esta formando parte de la cosa que se retiene * * *"—26 Enciclopedia Juridica Espanola, pp. 888, 889, articulo de Carlos Lopez de Haro.

Al militar el significado del credito refaccionario a creditos por rehacer o reparar, no solamente se esta en el sentido ordinario de la palabra, sino tambien se guardan disposiciones pertinentes de la Ley Hipotecaria que aun sigue rigiendo en nuestro pais (Art. 1880,Codigo Civil). Dicen los articulos 110 y 111 de la Ley Hipotecaria:

ART. 110. La hipoteca se extiende a las acciones naturales, a las mejoras, a los frutos pendientes y rentas no percibidas al vencer la obligacion, y al importe de las indemnizaciones concedidas o debidas al propietario por los aseguradores de los bienes hipotecados o en virtud de expropiacion por causa de utilidad publica.

ART. 111. Conforms a lo dispuesto en el articulo anterior, se entenderan hipotecados juntamente con la finca, aunque no se mencionen en el contrato, siempre que corresponden al propietario; * * *

2.º Las mejoras que consisten en nuevas plantaciones, obras de riego o desagüe, obras de reparacion, seguridad, transformacion, comodidad, adorno o elevacion de los edificios, y cualesquiera otras semejantes que no consisten en agregacion de terrenos, excepto por accion natural, o en nueva construccion de edificios donde antes no los hubiere" * * *

El articulo 110 arriba transcrito concuerda con el articulo 1877 del antiguo Codigo Civil.

Observese la excepcion bien clara: "Las mejoras * * * que no consistan * * * en nueva construccion de edificios donde antes no los hubiere". Art. III, parr. 2.º)

Es por eso porque con razon dijo esta Corte en *Director of Public Works vs. Sing Juco*, 53 Phil., 205, 213-14:

" * * * It may be observed, however, that in a precise and technical sense, this credit is not exactly of the nature of the refectory credit as known to the civil law. In the civil law the refectory credit is primarily an indebtedness incurred in the repair or reconstruction of something previously made, such repair or reconstruction being made necessary by the deterioration or destruction of the thing as it formerly existed. The conception does not ordinarily include an entirely new work, * * * "

Y no cabe acoger la extension del significado a nuevas construcciones de que habla el articulo de la Enciclopedia Juridica Espanola arriba citado, no tan solo por su extrema generalidad, que no permite su comprobacion en la jurisprudencia que alude, sino sobre todo por la indisputable razon de que es inaceptable porque va contra un precepto claro y terminante de la Ley Hipotecaria que arriba se ha transcrito.

En la decision proyectada se admite que si el credito refaccionario de que habla el articulo 1933 no comprende el caso de autos, entonces es un derecho nuevo el que trae el articulo 2242, inciso (4), del nuevoCodigo Civil que debe beneficiar el proveedor de materiales conforme al articulo 2253 del mismo. Estoy conforme con este criterio, en el supuesto que el articulo 1922, inciso 1.º, no fuese aplicable.

Creo que en derecho y en equidad la sentencia apelada debe confirmarse en todas partes.

Pablo, M., conforme.

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