W. S. PRICE, PLAINTIFF AND APPELLEE, VS. YU BIAO SONTUA ET AL., DEFENDANTS. ENRIQUE T. YU CHENGCO AND THE YEK TONG LIN FIRE & MARINE INSURANCE CO., LTD., APPELLANTS.

G, R. No. 40766. August 29, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendants Enrique T. Yu Chengco and the Yek Tong Lin Fire & Marine Insurance Co., Ltd., from an order of the Court of First Instance of Manila, the dispositive part of which reads as follows:

> "Wherefore, said former plaintiff W. S. Price is relieved from all subsequent liability arising from the administration of the vessel Y. Sontwi, and the bond of P100,000 filed by him for the attachment of said vessel is cancelled. So ordered."

In support of their appeal, the appellants assign the following alleged errors as committed by the trial court in its said order, to wit:

> "1. The court a quo erred in denying the motion of the defendant Enrique T. Yu Chengco on the ground that he was not a party to the action and therefore had no right to a notice of the motion dated October 18, 1928, of W. S. Price, nor of the order of the court of October 22, 1928.
>
> "2. The court a quo erred in denying the motion of the defendant the Yek Tong Lin Fire & Marine Insurance Co., Ltd., on the ground that the said Yek Tong Lin Fire & Marine Insurance Co., Ltd., does not appear to be a party to this proceeding.
>
> "3. The court a quo erred in not holding that the order of October 22, 1928, is void and of no effect, and in not declaring the bond filed by W. S. Price as still subsisting."

The following pertinent facts are necessary for the resolution of the questions raised in this appeal:

The vessel Y. Sontua, belonging to Yu Biao Sontua y Cia., was mortgaged by its owner to Enrique T. Yu Chengco in a deed of May 18, 1927, for the sum of P50,000.

On June 17, 1927, said commercial firm Yu Biao Sontua y Cia. again mortgaged the vessel for the sum of P50,000 to the herein plaintiff-appellee W. S. Price, with the consent of said first mortgage creditor Enrique T. Yu Chengco, who agreed to have the mortgage in favor of said plaintiff-appellee W. S. Price registered as a first mortgage.

Inasmuch as the mortgage debtor Yu Biao Sontua y Cia. had failed to comply with the conditions of the mortgage, the mortgage creditor W. S. Price, on October 10, 1927, filed against Yu Biao Sontua y Cia. and others the complaint which gave rise to this case, praying for the attachment of the mortgaged vessel, filing a bond in the sum of P100,000 to answer for the "prosecution of the action, for the return of the property to the defendant, if the return thereof be adjudged, and for the payment to him of such sum as may in the cause be recovered against the

plaintiff (W. S. Price) and the costs of the action." (Bill of Exceptions, pages 14, 15.)

On November 8, 1927, hardly a month after the filing of said complaint, the defendant Enrique T. Yu Chengco assigned and transferred to Pelagio Yu Singco all his rights, interest and participation in the second mortgage constituted in his favor on said vessel Y. Sontua. (Exhibit H.) No notice of this assignment of mortgage rights was served upon the interested parties in the mortgaged vessel. Neither was the assignee Pelagio Yu Singco substituted as defendant in the case in lieu of the assignor Enrique T. Yu Chengco.

On December 2, 1927, the plaintiff W. S. Price also assigned absolutely all his rights as a first mortgage creditor to said Pelagio Yu Singco, who was substituted as plaintiff in lieu of the former not only for having acquired the rights of said W. S. Price as a first mortgage creditor, but also those of the defendant Enrique T. Yu Chengco as a second mortgage creditor.

On June 7, 1928, the trial court entered a judgment in favor of Pelagio Yu Singco and against Yu Biao Sontua y Cia., the dispositive part of which reads as follows:

> "In view of the foregoing consideration, judgment is entered in favor of the plaintiff Pelagio Yu Singco, and the defendant Yu Biao Sontua y Cia. is ordered to pay him the following sums: one hundred thousand pesos (P100,000) with interest thereon at twelve per cent (12%) per annum from September 17, 1927, until fully paid, plus ten per cent (10%) thereof as penalty; and two thousand fifty pesos (P2,050) with legal interest thereon from the date of the filing of the complaint, with costs.
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> "It appearing from the record that the vessel Y. Sontua, which was mortgaged by the defendant, was operated and administered by W. S. Price and the herein plaintiff Pelagio Yu Singco during the pendency of the suit, it is ordered that both render, within the period of ten (10) days from the date of their receipt of a notice of this judgment, a detailed accounting of their respective administration, and after their account has been examined and approved, the court will determine if said vessel should still be sold in order to satisfy the amount of the judgment with the proceeds thereof. So ordered."

On June 15, 1928, that is, eight days after the above judgment had been entered, the original plaintiff W. S. Price filed a motion praying that he be relieved from the obligation of rendering an accounting of the administration of said vessel F. Sontua and all liability arising thereunder from the date of its attachment, on the ground that Yu Smgco Hermanos y Cia., the shipping agents thereof, who had been appointed special sheriff, had, by virtue of said appointment, continued to administer it in its custody and control and had purchased all his rights, interest and participation in the vessel in question, assuming all responsibility that might arise from the administration of said vessel from the date of its attachment.

On June 18, 1928, Pelagio Yu Singco, who had been substituted for the plaintiff W. S. Price, rendered a detailed accounting his administration of the vessel Y. Sontua from October 18, 1927, the date on which he had received it from the sheriff by virtue of the writ of attachment, to June 15, 1928. Pelagio Yu Singco's accounting showed a profit of P22,277.99, less his remuneration for the administration of said vessel, for which he asked P500 monthly. Pending the approval of said account, said plaintiff Pelagio Yu Singco, on August 14, 1928, filed with the court a petition praying for the sale of said vessel Y, Sontua at public auction and the application of the proceeds thereof to the amount of the judgment rendered in his favor.

Acting upon said petition, the lower court, on August 16, 1928, entered an order the dispositive part of which reads as follows:

> "Wherefore, it is ordered that, after the plaintiff has filed a personal bond in the sum of thirty thousand pesos (P30,000) to answer to the assignee and to Enrique T. Yu Chengco for such balance as may result from the account of administration, the sheriff of this city sell at public auction the vessel Y. Sontua to the highest

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> bidder for a cash price of not less than eighty-five thousand pesos (P85,000), said sale to be subject to the condition that it will not be valid unless approved and confirmed by the court.
>
> "The sheriff shall post notices of said sale at three public places within this city for twenty consecutive days and shall furthermore publish the same once a week for the same period in the newspapers 'The Philippines Herald' and 'La Vanguardia' which are edited in English and Spanish, respectively, and with a general circulation in this city and in the entire archipelago, and, within thirty (30) days from the date of this order, shall inform the court of the result of said sale."

In pursuance of the above order, Pelagio Yu Singco, as principal obligor, and the appellant the Yek Tong Lin Fire & Marine Insurance Co., as surety, filed a bond for the sum of P30,000 to answer for "such balance as might result against the plaintiff (Pelagio Yu Singco) from the account of administration of the vessel Y. Sontua after the same has been examined by the court, provided it does not exceed the above sum."

On September 5, 1928, the lower court entered an order granting the petition of the plaintiff W. S. Price but declaring his bond as still subsisting for the reason that the administration of the vessel Y. Sontua by Pelagio Yu Singco who had been substituted for said W. S. Price as plaintiff, was without judicial authority.

On October 18, 1928, the original plaintiff W. S. Price filed another motion of the same tenor as that of June 15, 1928, praying, for the reasons stated therein that he be relieved from all further liability in connection with the administration of the vessel F. Sontua and that his bond in the sum of P100,000 for the issuance of the writ of attachment of said vessel be cancelled, of which motion only the plaintiff Pelagio Yu Singco and the assignee of the insolvency of Yu Biao Sontua y Cia., through their respective counsel, were notified.

On October 20, 1928, Pelagio Yu Singco rendered an accounting of his administration of the vessel Y. Sontiui from June 16, 1928, to September 12th of the same year.

On October 22, 1928, the court, granting W. S. Price's motion dated October 18, 1928, entered an order the dispositive part of which reads as follows:

> "Wherefore, said former plaintiff W. S. Price is relieved from all further liability arising from the administration of the vessel Y. Sontua,, and his bond for P100,000 for the attachment of said vessel is cancelled. So ordered."

On March 29,1933, the defendant Enrique T. Yu Chengco filed a motion praying for the reconsideration of the above order dated October 22, 1928, and that the bond filed by W. S. Price be declared as subsisting and in force.

The principal obligor W. S. Price and his surety the Philippine Guaranty Co., Inc., opposed the motion and the trial court, in an order of May 31, 1933, denied said motion for reconsideration filed by the defendant Enrique T. Yu Chengco.

On June 21, 1933, the defendant the Yek Tong Lin Fire & Marine Insurance Co., Ltd., as surety of the plaintiff by substitution Pelagio Yu Singco, in turn, filed a motion praying the court to set aside its order of October 22, 1928; declare the bond filed by W. S. Price in force, and apportion pro rata the liability of Pelagio Yu Singco between the bond filed by him and that of W. S. Price.

On June 24, 1933, the trial court denied all the motions.

The first question to be decided is whether or not the trial court erred in declaring that the defendant-appellant Enrique T. Yu Chengco had no right to be notified of the motion of W. S. Price dated October 18, 1928, praying for the cancellation of his bond, or of the order of October 22, 1928, granting said motion on the ground that said defendant had already ceased to be an interested party in said action.

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The appellants contend that inasmuch as it did not appear in the record that the defendant Enrique T. Yu Chengco had transferred his mortgage rights to the plaintiff Pelagio Yu Singco in substitution, before the original plaintiff assigned his to the latter, who had been substituted for him, the trial court had no authority to consider said transfer. If it was an error for the trial court to consider that the defendant Enrique T. Yu Chengco already had no right or interest in the suit, having assigned his rights therein to Pelagio Yu Singco, for the reason that said assignment does not appear in the record, such error is purely procedural and, therefore, technical. Said assignment being true, the consideration thereof did not in the least prejudice said defendant, inasmuch as the purpose of the bond filed by W. S. Price was only to answer for the prosecution of the action, for the return of the attached property to Yu Biao Sontua Hermanos y Cia. and for the payment to it of such sum as may be adjudicated in its favor and against the plaintiff W. S. Price, and the costs.

As said procedural error is technical and has not caused any prejudice, it cannot serve as a ground for the reversal of the judgment.

With respect to the alleged ordinary credit of Enrique T. Yu Chengco against Yu Biao Sontua, inasmuch as the latter has been declared insolvent and an assignee of his insolvency was appointed, said assignee became the legal representative of each and every one of the insolvent's creditors, including said Enrique T. Yu Chengco (section 32, Act No. 1956) and, the attorney for said assignee having been notified of the motion for the cancellation of the bond filed by the plaintiff-appellee, W. S. Price, the creditor Enrique T. Yu Chengco, whom he represents, was also notified by operation of law. (Unson vs. Smith, Bell & Co., 50 Phil., 654.)

In its appeal, the third party claimant the Yek long Lin Fire & Marine Insurance Co., Ltd., claims that it is interested in the bond of Pl00,000 filed by the Philippine Guaranty Co. to secure the obligation of the plaintiff-appellee W. S. Price, inasmuch as it filed the bond of P30,000 to secure the obligation of Pelagio Yu Singco, as administrator of the vessel Y. Sontua, arising from the sale of said vessel at public auction, with the understanding that said bond of P30,000 was supplementary to that of P100,000 filed by said plaintiff-appellee W. S. Price.

The conditions of the bond filed by said plaintiff-appellee W. S. Price are as follows:

> "And whereas the plaintiff has commenced an action in this court praying for the recovery of the possession of the above described property, and has asked that a warrant be issued to the sheriff of Manila for the seizure of same, we, the principal, and the undersigned sureties, jointly and severally bind ourselves in the sum of one hundred thousand pesos (P100,000) for the prosecution of the action, for the return of the property to the defendant, if the return thereof be adjudged and for the payment to him of such sum as may in the cause be recovered against the plaintiff, and the costs of the action."

The obligation contracted by the defendant-appellant the Yek Tong Lin Fire & Marine Insurance Co., Ltd., under the bond filed by it in favor of the assignee of the insolvency of Yu Biao Sontua Hermanos y Cia. is as follows:

> "Wherefore, we, Pelagio Yu Singco, as principal obligor, and the Yek Tong Lin Fire & Marine Insurance Co., Ltd., in consideration of the foregoing, hereby jointly and severally bind ourselves in the sum of thirty thousand pesos (P30,000) Philippine currency, under the condition that we and the plaintiff shall pay to the assignee of the insolvency of Yu Biao Sontua Hermanos y Cia. and the creditor Enrique T. Yu Chengco such balance as may result against the plaintiff by reason of the account of the administration of the vessel Y. Sontua, after the same is examined by the court, provided it does not exceed the above stated sum."

The bond filed by W. S. Price, as principal obligor, and the Philippine Guaranty Co., as surety, answers for the prosecution of the action brought by said principal W. S. Price against Yu Biao Sontua et al., for the return of the attached vessel to the defendants, if the return thereof be adjudged, and for the payment to them of such sum as

may be recovered against the plaintiff, and the costs. The bond filed by the plaintiff in substitution, Pelagio Yu Singco as principal obligor, and the Yek Tong Lin Fire & Marine Insurance Co., Ltd., as surety, in favor of the assignee of the insolvency of Yu Biao Sontua Hermanos y Cia. and Enrique T. Yu Chengco, answers for the payment to the latter of such balance as may result against said plaintiff by reason of the account of the administration of the vessel Y. Sontua, after the same has been examined by the court, provided it does not exceed the sum of P30,000. It will be seen, therefore, that the liability of the former bond is different and distinct from that of the latter, so that if one were not sufficient, the deficiency could not be supplied by the other. Guaranty cannot be extended beyond its specific limits. (Article 1827, Civil Code.) Therefore, inasmuch as the third party claimant the Yek Tong Lin Fire & Marine Insurance Co., Ltd., has no interest whatsoever, whether adverse or favorable, direct or indirect, in the bond filed by W. S. Price, as principal obligor, and the Philippine Guaranty Co., as surety, it was not entitled to any notice of the motion for the cancellation of said bond filed by the plaintiff-appellee W. S. Price, and the trial court committed no error in denying its motion for reconsideration of the order canceling said bond.

In view of the foregoing considerations, we are of the opinion and so hold: (1) That failure to serve notice of a motion upon a defendant, whose right and interest has been transferred to the plaintiff without making such transfer appear in the record, is a purely technical error and cannot serve as a ground for the revocation of an order; and (2) that neither can failure to serve notice of a motion to cancel a bond upon a surety of a principal obligor, who has been substituted, as plaintiff, in lieu of another, who had furnished for a different obligation another bond, the cancellation of which is sought, be a ground for the revocation of an order.

Wherefore, and finding no error in the appealed order, the same is affirmed in all its part, with costs against the appellants. So ordered.

Malcolm, Hull, Butte, and Goddard, JJ., concur.

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