

**PEDRO C. HERNAEZ AND ASUNCION DE LA RAMA VDA. DE ALUNAN,
IN HER OWN BEHALF AND AS ADMINISTRATRIX OF THE ESTATE OF
HER DECEASED HUSBAND, RAFAEL R. ALUNAN, PLAINTIFFS AND
APPELLEE...**

G.R. No. L-4044. July 09, 1952

Ponente: TUASON, J.

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TUASON, J.:

This was an action of ejectment and for damages commenced in the Court of First Instance of Manila by Pedro C. Hernaez and Asuncion de la Rama Vda. de Alunan, in her own behalf and as administratrix of the estate of her deceased husband, Rafael R. Alunan, against the Philippine Alien Property Administration.

It appears that Rafael R. Alunan and Pedro C. Hernaez formerly were the registered owners in equal shares of the land in question, eight contiguous parcels with a combined area of 4,533.34 square meters covered by transfer certificates of title Nos. 46872-46880 and situated on the corner of Cortabitarte and Devrey Boulevard, Manila. Eight residential houses were built on these lots but they were destroyed by war operations in the early part of 1945.

On February 20, 1943, a deed of sale, on which Alunanfs and Hernaez' names were signed as sellers and the Hakodate Dock Co., Ltd., a Japanese commercial firm, as buyer, in consideration of P170,000, was presented for registration in the office of register of deeds, and on March 3, transfer certificates of title Nos. 66832-66839 in the name of the purchaser were issued in lieu of the old certificates of title Nos. 53930-53938, which were totally cancelled. On the strength of this registration, and after investigation, the lots and all improvements still existing thereon were vested as property of an enemy national by the Philippine Alien Property Administration, a United States Government instrumentality, on April 20, 1947, under the authority of the United States Trading with the Enemy Act, as amended, the Philippine Property Act of 1946, and Executive Order No. 9818.

The Republic of the Philippines as the prospective transferee of the property in litigation came into the case as intervenor on the side of the defendant. Dr. Nicanor Jacinto also filed a complaint in intervention but in opposition to the defendant as well as the plaintiffs. It so happened that the questioned property had been mortgaged to this intervenor before the outbreak of the war to secure a promissory note for P160,000, and although the mortgage had been paid and cancelled in 1943, Dr. Jacinto alleged that he had accepted the payment and agreed to the cancellation in fear of Japanese reprisal.

After the trial the lower court gave judgment for the plaintiffs and dismissed the complaints in intervention. This appeal has been perfected by the defendant and intervenors.

For the sake of clearness and convenience, it is well to treat separately the contest between the plaintiffs and the defendant and the contest between Dr. Jacinto and the plaintiffs or the Philippine Alien Property Administration.

The authenticity of Alunan's and Hernaez' signatures on the above-mentioned deed is the basic issue between the

plaintiffs and the defendant, all other questions raised and discussed in the voluminous pleadings and briefs being incidental. This issue is in no small degree complicated by the theft after liberation from the office of the register of deeds, of the deed of sale, the transfer certificates of title issued by virtue thereof, and other papers pertaining to the last registration. The case became further involved by "the fact to quote from plaintiffs' brief—that this (plaintiffs') representation made determined and repeated efforts to block the attempts of appellants to present any oral evidence touching on the alleged contents of the document supposedly executed by Alunan and Hernaez in favor of the Hakodate"—efforts which were crowned with no small measure of success.

As matters stand, only one unsigned copy of the aforesaid deed, which had been secured from the file of the Hakodate home office in Hokaido, Japan, was introduced. Hakodate's signed copy is said to have been lost or destroyed in the bombing of Tokyo in 1945 along with the company's office in that city. And the copy or copies which had been kept by the notary public before whom the also document was acknowledged had been burned with his other papers during the fight for liberation of Manila. As a result, defendants proofs on the controverted execution of the lost deed are only the entries thereof in the registrar's office, collateral documents, and parol testimony, some direct, some circumstantial, but none precise or unequivocal in term.

Hernaez was the lone witness on his behalf and for his co-plaintiff on this feature of the case. The gist of Hernaez' testimony is that if any document was presented at the register of deeds' office purporting to have been executed by him and his co-owner, that document was a forgery.

Hernaez in part declared: "We were forced by the Japanese to vacate the houses. They told me they needed the property and I had to cooperate, collaborate with them and I had no other alternative but to sell my property. They detained me at the Port Area until midnight; it was midnight when they sent me back to my house but they retained the titles. I think there were eight titles. They told me that I had to sign the deed of sale. I had been expecting that they will appear there to make me sign the deed of sale in my house or in the office of the Navy at Legaspi Landing, but what happened is that they did not appear in my house, and afterwards I found out that Captain Tanabe (Watanabe, Hakodate's manager) was sent back to Tokyo." What, if any, Hernaez or Alunan did after that alleged incident is not stated.

The principal witnesses for the defendant on the disputed sale were Satoru Watanabe, Napoleon Garcia and Jose Ma. Recto.

Watanabe testifies that he was in the Philippines in the early part of the war as acting manager of the Manila Branch of the Hakodate Dock Co., Ltd.; that he knew Messrs. Pedro C. Hernaez and Rafael R. Alunan. He recalls the transaction between the Hakodate Dock Co., Ltd. on the one hand and Messrs. Pedro C. Hernaez and Rafael R. Alunan on the other, concerning the sale of the land and buildings located at the corner of Cortabitarte and Cavite (Dewey) Boulevard. He says that the deed of sale was prepared in Dr. Recto's office but he was not present having gone to that office only after he had been informed that the document was ready; that after he had been assured that the document was complete he affixed his signature thereto; that according to his memory he was asked to sign the document after the vendors, Rafael R. Alunan and Pedro C. Hernaez, had signed it; that as he left Manila for Japan shortly after he had signed the deed of sale, he does not know what happened to the copy of said document which was delivered to Hakodate Dock Co., Ltd.; that after he returned to Tokyo, the document was forwarded to the Tokyo office, at the beginning of the following year; that the duplicate original and the unsigned copies thereof were kept in the Tokyo office; that the duplicate original was burned when the Tokyo office was bombed by the United States Airforce in 1945, but that a copy (made by the Hakodate Manila office) of the duplicate original which was kept by the Manila Branch office was not destroyed and he brought it along when he came to the Philippines to testify; that he saw that copy for the first time in the Hokaido office of the Hakodate Dock Co. when he went there before coming to the Philippines.

Napoleon Garcia, an assistant in the office of Attorney Jose Ma. Recto, declares that he was a notary public and recalls that, as such, he ratified a document in which Alunan and Hernaea and the Hakodate Dock Co., Ltd. were the parties; that all the notarial copies were lost or destroyed; that he made at least five copies of which he retained two and handed over the rest and the original to the parties; that Hakodate at least received one copy. He says he does not remember to whom he delivered the original. On cross-examination by the attorney for Dr. Jacinto, Garcia says that he does not know who engaged his firm; he only knows that Jose Ma. Recto requested him to notarize the document. Nevertheless he recalls correctly that the vendors were Hernaez and Alunan and the vendee the Hakodate Dock Co., Ltd. He says that the documents were signed in his presence and that he must have given Alunan or Hernaez a copy. He further says he can not exactly tell where the document was ratified but that it must have been either in his office or in the office of the parties whither he went with his notarial equipment. He thinks, he says, that he went to the office of Secretary Alunan in the old legislative building.

Jose Ma. Recto testifies that during the Japanese occupation his law office was on the 3rd floor of the Soriano Building. He recalls a transaction between Alunan and Hernaez on the one hand and the Hakodate Dock Co., Ltd. on the other. He thinks that he drew a deed of sale and that the document was signed in his office; that he was in the same room. He was asked if he was one of the witnesses to the document but the question was objected to and the objection was sustained. He further declares that he took charge of registering the deed of sale and that after the registration he succeeded in getting the certificates of title in the name of the vendee and delivered them to the latter. He says he did not remember if his firm was the retained counsel for the Hakodate Dock Co., nor is he sure where the transaction took place. He would not be able to identify the document if only a copy thereof were shown to him. He states that he does not remember if the transaction was a sale; all he remembers is that it was a transaction between Hernaez and Alunan and the Hakodate Dock Co. Ltd., and the papers were signed at his office at the Soriano Building by Alunan and Hernaez, as far as he can recall. He recalls another transaction of Hakodate in which the preparation of the document was more or less entrusted to him by the Hakodate Dock Co. He says "I was informed by Messrs. Pedro C. Hernaez and Rafael Alunan regarding the transaction (in question) that there had been an agreement between them.

The trial Judge did not make express findings on Watanabe's credibility, and referring to Napoleon Garcia's and Jose Ma. Recto's testimony, His Honor noted that the same "is beclouded with the phrases 'it could have been', 'it must have been', 'must have been signed, in his presence.' " Of graver concern to the defendant's case, at least as far as the lower court went, is the fact that His Honor at least insinuated that Hakodate's signed copy existed at the time of the trial and had been suppressed, and acting on this belief, disregarded all parol evidence by which the defendant had attempted to establish the genuineness of the deal. Said the Court:

"There is no sufficient evidence on record to show the loss of all the signed copies of the questioned document. Loss of the original and the signed copies must be satisfactorily established before secondary evidence can be admitted. Specially when the signatures on the document is claimed to have been forged, it becomes absolutely necessary and indispensable the production of original or a signed copy of the document.

"The court having arrived at the foregoing conclusion, no secondary evidence can be entertained to prove the contents of the lost document, especially if the supposed document is contested to be falsified or forged." The court cited *Director of Lands vs. Abasolo*, 46 Phil., 283.

OPINION

No valid ground can be perceived for the insinuation that the defendant or the Hakodate Dock Co. concealed any of the signed copies of the disputed deed. It is highly inconceivable that the United States Government or the Philippine Government representatives would be capable of resorting to such dishonorable and shyster tactics in order to win this case and dispossess legitimate owners of their property. Much less can it be imagined that those

representatives had a hand in the loss of pertinent papers in the register of deeds' office. It would have been nonsensical on their part to steal the very documents on which they based their action in vesting the property.

As for Hakodate Dock Company, this firm had no interest in the result of the suit. It could not have entertained any hope of getting back the property under any circumstances. Furthermore, Watanabe was no longer connected with Hakodate when he testified at the trial.

Be that as it may, the court below was entirely mistaken in holding that parol evidence of the execution of the instrument was barred. The court confounded the execution and the contents of a document. It is the contents, which in this case are not in dispute, which may not be proved by secondary evidence when the instrument itself is accessible. Proofs of the execution are not dependent on the existence or non-existence of the document, and, as a matter of fact, such proofs precede proofs of the contents: due execution, besides the loss, has to be shown as foundation for the introduction of secondary evidence of the contents.

This principle may be easily gathered from a casual reading of sections 46 and 51 of Rule 123 of the Rules of Court.

Section 46 reads:

"There can be no evidence of a writing other than the writing itself the contents of which is the subject of inquiry, except in the following cases:

* * * * *

Section 51 provides:

"When the original writing has been lost or destroyed, upon proof of its execution and loss or destruction, its contents may be proved by a copy, or by a recital of its contents in some authentic document, or by the recollection of witnesses."

Evidence of the execution of a document is, in the last analysis, necessarily collateral or primary. It generally consists of parol testimony or extrinsic papers. Even when the document is actually produced, its authenticity is not necessarily, if at all, determined from its face or recital of its contents but by parol evidence. At the most, failure to produce the document, when available, to establish its execution may affect the weight of the evidence presented but not the admissibility of such evidence.

In spite of the defects which the trial court noted in Garcia's and Recto's testimony, the same and Watanabe's leave little or no room for doubt that Alunan and Hernaez did affix their signatures to the deed of sale. Hernaez' testimony which the trial court says it finds no reason to doubt actually has too many serious flaws to justify the court's faith. The testimony is highly improbable in many important respects and is directly or indirectly contradicted by evidence more trustworthy and by well-established facts. Without going into minute detail, the following considerations should suffice to illustrate the point.

Hernaez, in the course of his cross-examination, said:

"Q.

Is it not a fact that on the same date, February 20, 1943, you and Mr. Alunan signed, a deed of absolute sale in favor of Hakodate Dock pertaining to this property, which was duly registered in the Office of the Register of Deeds on the same date?

"A.

I would like to see that deed of sale.

"Q.

The question is, Is that not a fact? We ask for a categorical answer—yes or no.

"A.

I can not answer that question, because it includes dates and years and figures, and I don't like to commit myself, because they are difficult to remember."

These evasive answers cast serious reflection on the truth of the protestations that the stolen document was forged. Hernaez did not have to be shown the deed to be able to tell that he had not signed it—if that had been the case. The point sought by the questions was very specific and must have been uppermost in the witness' mind. It was the thesis of his complaint and had been the subject of a prolonged investigation before the suit was filed. "Dates and years and figures" "difficult to remember" had nothing to do with, and could not have obscured the right answer to the simple question whether Hernaez and Alunan had disposed of their property which they were trying to recover. In fact previously Hernaez had vehemently affirmed, "I never signed a deed of sale to anybody, much less to Hakodate Dock Co."

One other notable feature of Hernaez' testimony is the absence therefrom of any reference to Alunan in connection with the alleged seizure of their houses and certificates of title. Although there is no proof on the record relative to Alunan's official position at the time other than that he had an office in the legislative building, the court may take judicial notice of the fact that Alunan was a member of the Executive Commission and later cabinet minister in the Japanese sponsored government of the Philippines. (Sec. 5, Rule 123; III Moran's Commentaries on the Rules of Court, 2nd ed., and authorities cited, pp. 25, 26.) The point is that if what Hernaez says were correct, it does not seem probable that Alunan would not have known of the occurrence, and knowing it, taken steps to recover the seized titles or compensation for their property. It does not seem likely that he would not have at least complained to the Japanese higher authorities and secured some information about what became of their certificates.

Yet Hernaez would have the court believe, as we gather from his testimony, that neither he nor his partner learned of the whereabouts of their titles until after the Japanese had been driven away from the Philippines and that for two years they allowed themselves to be deprived of the use of their property without protest. Let it be remembered that the property had not been taken by the armed forces for war purposes but by a private concern if attached to and operating under the supervision of the Japanese Navy. Contrary to Hernaez' assertions, Watanabe did not hold any military rank or status, and the houses and lots were used as quarters for the firm's civilian employees and acquired in the firm's name with its own money.

The charge suggested by the line of plaintiff's evidence that the Hakodate Dock Co. resorted to frauds and coercion so as not to pay for the plaintiffs' land and houses is discredited by the fact that it settled the mortgage, paying an amount which was only P10,000 short of the purchase price. This payment bears witness to Hakodate's good faith and willingness to spend for what it got. At the same time, and this is more important to the immediate issue, it is mute testimony to the due execution of the sale by Alunan and Hernaez; for it is not logical to suppose that the Hakodate would have parted with a huge amount of cash, huge at the time, if the owners had not executed a valid deed of conveyance.

Another idea that suggests itself is that the officers of the Hakodate, if they had had a mind to commit frauds, would not have chosen Dr. Jacinto for the victim of its felony in preference to a senator-elect, which Mr. Hernaez was, and a member of the cabinet. To forge a deed of cancellation held by a private citizen who wielded no official influence would have been undoubtedly the easier and the risks of failure, not to say punishment, the lesser.

It will be said, of course, that the premise of this ratiocination is wrong in that Hernaez testified that he and not the Hakodate Dock Co. paid off the mortgage. However, the clear weight of the evidence both as to quality and the number of witnesses is against the plaintiffs.

Against the plaintiffs' evidence there is the testimony of Satoru Watanabe and Dr. Jacinto who said the payment was effected by the former, and of Attorneys Recto and Garcia who said that the cancellation was arranged and perfected in their law office at the instance of the Hakodate representatives.

In contrast, Hernaez said he did "not know who handled the cancellation," a matter which seemed too important not to be remembered, contenting himself with the statement that "The thing is that when we paid him (Jacinto) he gave us the release." And as to the place of cancellation, he said that it was somewhere on the Escolta, in the office of the law firm of Duran, Lim & Bausa, when, it is conclusively established, Attorney Lim, who was Dr. Jacinto's attorney, and whom Hernaez apparently had in mind, separated from that firm as early as the beginning of the Japanese occupation in 1942, and, as a matter of fact, the cancellation was executed, as above seen, in the Recto law office and not in the law office of Duran, Lim & Bausa. Note that the attesting witnesses to the cancellation were Napoleon Garcia and Jose Ma. Recto and the document was acknowledged before Garcia as notary public.

The fact that the deed of cancellation was made in the name of Alunan and Hernaez can not by any means be taken as evidence of plaintiffs' theory. The payment was in reality made in their name although the money came and was received by the payee from Watanabe. For the purpose of registration, the deed of cancellation had to be framed the way it was drawn.

The overwhelming preponderance of the evidence likewise discredits Hernaez' declaration that his and Alunan's certificates of title were in his possession. Dr. Jacinto said he had them, and it could not have been otherwise. It is the invariable and sensible practice of mortgagees to keep the title to the property mortgaged as a necessary measure of protection. In his testimony before the court (he had lengthily testified before the claim committee of the Philippine Alien Property Administration) Hernaez admitted that Dr. Jacinto did not depart from this practice. In answer to the court's question whether he turned over to Dr. Jacinto the said certificates when he executed the mortgage, he answered in the affirmative.

How then could Hernaez have those certificates when he was allegedly carried to the Legaspi Landing where, he said, they were taken away from him? He explained: "En las vistas practicadas ante el Comite" de la PAPA, yo he declarado las circunstancias, y son las siguientes: que los japoneses, dos altos empleados de la Hakodate Dock Company, uno de ellos, el captain Watanabe, un interprete y dos o tres oficiales o sargentos del Navy Police, fueron a casa y me sacaron los titulos y me llevaron al Legaspi Garden, que era una oficina del Japanese Navy." This explanation did not appear responsive to the question at all; but a leading question, "Y eso tuvo lugar despues de haber usted rescatado la hipoteca?" and an affirmative answer apparently saved the situation. Unfortunately they did not.

The deed of sale and the deed of cancellation were executed on the same date, February 20, and the genuineness of the latter deed is admitted. This being so, Hernaez could not have had the certificates of title and these could not have been taken away from him before that date. If it be asserted that the certificates might have been handed over to the Japanese on the same date the mortgage was cancelled and the cancellation was registered, the assertion would contradict Hernaez' testimony from which the clear inference is that he had the titles in his home for days or weeks before the Legaspi Landing incident. Besides, Watanabe and his attorneys and notary could not by any possibility have drawn and registered the deed of sale on the same date the certificates were returned to Hernaez by Dr. Jacinto.

In addition to these errors and discrepancies in the plaintiffs' evidence, there is an open, irreconcilable contradiction in Hernaez' testimony which, by its nature, is more significant than any of the mistakes above mentioned. In the hearing by the claim committee, Hernaez was asked, "At the time this property was mortgaged to Dr. Jacinto, he held the title certificates in his possession?" and he answered, "No, sir," adding, "We had the title certificates." Yet, as has been noted, at the court hearing, the same question was answered in the opposite sense. He was asked by the court, "Cuando Vd. hipoteco esa propiedad al Dr. Jacinto, usted le ha entregado los titulos?" and his answer was "Yes, sir." Whichever of these statements is wrong, the falsehood could not have been other than intentional.

One of the arguments advanced to drive home the point that the questioned sale was fake is that, it is said, Alunan and Hernaez did not have any need to sell this property. Moreover, it is alleged, the alleged purchase price was far below its actual value.

The first assertion is belied by Dr. Jacinto and Attorney Manuel Lim.

Dr. Jacinto testified that having heard that the property in question was being sold to the Japanese, he immediately gave instructions to his then attorney, Manuel Lim, to see Messrs. Alunan and Hernaez and offer in his behalf to buy it. And Atty. Manuel Lim, who was Solicitor General when he testified, corroborated his former client, stating that about the end of 1942 or the early part of 1943, he requested Alunan to let Doctor Jacinto buy the said property, and proposed easy terms. He said that he called on Alunan twice or three times in the latter's office in the Legislative Building; that in his first visit Alunan said that he would consult with his partner, Senator Hernaez, and in the second, that he and his partner were still undecided, but remarked that he had received an offer from a Japanese firm and that he (Alunan) and Hernaez would prefer to make the sale to the Japanese. We have no reason to suspect the veracity of these witnesses.

That Alunan and Hernaez were not averse to selling the property in question may be inferred from the plaintiffs' own evidence. Hernaez testified that he had sold to a Chinese in 1944 the land on Dewey Boulevard where the Riviera is now located, for P360,000 or P375,000, and a parcel, location not revealed, to Toyo Menka Kaisha for P40,000 "nearly the same time, March, 1943" lot by which, by the way, according to Hernaez, he was also claiming from the Philippine Alien Property Administration. He also disclosed that he had "sold many jewelries, watches and other things," which goes to show that they were not oversupplied with cash. Of equal significance is the statement indicating that Hernaez and Alunan were engaged in real estate business. Hernaez stated, "We used to have here some properties that we sold on ten years installment before the war and after the war."

In the matter of the value of the houses and lots registered by the Hakodate Dock Co., the trial court believed that the price stated in the deed was highly inadequate and regarded this alleged inadequacy as supporting the contention that the sale was forged.

The court seems to have overlooked the fact that the property sold to Hakodate Dock Co. was only eight parcels containing a total area of 4,533.34 square meters, whereas the property which the plaintiffs had bought from Dee C. Chuan & Sons for P185,000 and of which the property in question formed a part, measured 8,027.72 square meters. So that by selling the above portion for P170,000.00, they were able to recoup nearly all their investment, without counting the rents they had theretofore realized on the houses, and keep nearly one-half of their original acquisition as a clear profit. That was not a bad bargain. It is a matter of common knowledge that in February 1943 Japanese war notes were still about at par with the Commonwealth peso. The sale of the plaintiffs' other land on Dewey Boulevard for a much higher price in proportion to its size took place in 1944, or in the latter part of 1943 at the earliest, when the Japanese war notes had been slipping down fast. At any rate, the proceeds of sale were more than enough to liquidate their mortgage debt, the payment of which the purchaser took charge of

attending to. As Hernaez said, "the thing is that when we paid him (Jacinto) he gave us the release."

For another thing, it is a mistake to take the alleged Inadequacy of the price stated in the deed as evidence of forgery, for figures are easy to fabricate and a forger would endeavor to fix an amount in accord with the prevailing rates of real estate value precisely to forestall such suspicion as is put forward in this case.

The appealed decision says "another issue raised by the plaintiffs is the illegality of the alleged acquisition by the Hakodate Dock Co., Ltd. of the property under litigation, assuming that a contract was duly executed by Messrs. Alunan and Hernaez in favor of the said company." And citing *Krivenko vs. Register of Deeds, City of Manila*, 79 Phil. 461, His Honor concluded that the sale would be null and void any way.

As the appellants have noted, nowhere in the pleadings did the plaintiffs impeach the validity of the sale to Hakodate Dock Co., on constitutional grounds. And even if they had, the present case would not be controlled by the doctrine laid down in the *Krivenko* case. The Philippine Constitution was not in force during the Japanese occupation of the Philippines. (*Peralta vs. Director of Prisons*,[*] 42 Off. Gaz., 198; *Cabauatan et al. vs. Uy Hoo et al.*, 88 Phil. 103). The constitution was inoperative at least with reference to Japanese citizens. Military Ordinance No. 2, promulgated on March 14, 1942, expressly excluded "Japanese subjects from the operation of prohibitions and limitations on civil rights, benefits and privileges, which, by reason of their nationality, are denied them by laws, statutes, administrative orders or regulations of the Philippines." There is no doubt about the right under international law of the belligerent occupants to issue this decree.

The court would also invalidate the sale on the theory "that the Hakodate Dock Co. Ltd., a purely Japanese concern, as never registered as such in the Philippines nor was it authorized to transact business in accordance with existing Philippine Corporation Law." This question, like the one just discussed, has not been raised in the pleadings. What is more, know of no law or provision of the Corporation Law which prohibits a business concern not authorized to transact business from buying or owning real property. As to counsel's observation that "there was no proof that Satoru Watanabe, who was then Merely an acting Manila manager of the company, as duly authorized and vested with ample authority to represent said company," the defect—if there was a defect—was one which only the principal or the party for whom Watanabe purported to act could use to rescind the sale.

In summary, the plaintiffs have not made out a case. On the other hand, regardless of which side had the burden of proof, the probabilities of forgery are very remote and the direct evidence for the defendant has abundantly and convincingly established that the property was sold by its former owners for valuable consideration. The loss of the pertinent records in the office of the register of deeds can not be availed of to bolster the plaintiffs' case or weaken the defense. If this loss is to produce any effect, the effect should be the reverse, considering all circumstances surrounding the theft.

The foregoing conclusion obviates the necessity of passing upon the plaintiffs' claim for damages and the defendant's plea of immunity from suit for money.

Dr. Jacinto's case will not require extensive discussion to decide. The facts are not controverted. The sole issue is whether upon these facts the intervenor may repudiate the cancellation of his mortgage.

Dr. Jacinto testified: He was paid the amount of the mortgage by a Japanese, who said that he represented the Hakodate Dock Co. at the beginning of 1943, and he deposited the check, signed by a Japanese, in the Philippine Bank of Commerce. He executed a release of the mortgage because he was told by the Japanese, accompanied by a Filipino from the law firm of Mr. Recto, that the document of cancellation was already prepared. He was informed that they had purchased the property for the Hakodate Dock Co. He was reluctant to sign the deed of cancellation because, in the first place, the amount did not cover the whole balance, and, in the second place, it

was not the money which he had loaned. When they noticed his reluctance, they told him that he should be grateful because they could have taken the property without paying anything for it.

We can sympathize with the mortgagee and believe that at heart he was opposed to the payment of his credit in Japanese money and would have rejected or protested against the payment if it had been tendered by the debtor directly. One must agree with the mortgagee's counsel that the mere thought that his family, relatives and friends would suffer for his refusal to do the occupants' bidding, may cause a man to recoil and meekly submit."

Under the applicable law and uniform decisions of this Court, however, the payment was enforceable irrespective of the attitude of the creditor. The debtor or his successor-in-interest had the right to pay the mortgage in Japanese war notes, which were the authorized currency in circulation, not to say the only currency available. In other words, the payment would have released the mortgage even if it had been tendered by the mortgagor personally and had been turned down by the mortgagee. That was the unfortunate situation into which thousands of prewar creditors were thrust by the war, most of them being forced to accept Japanese military notes when these were little better than useless. Foursquare with this case is *Reyes vs. Zaballero* (89 Phil., 39), in which the debt was paid in December, 1944.

The disparity in value, if any, between Japanese war notes and the Philippine peso in February 1943 was not great, however. According to the Ballantyne conversion table, the exchange ratio between the two currencies in February 1943 was P1 to P1.10. It is to be kept in mind that this scale did not pretend to be exact. The ratio could have been still even. This belief is, perhaps, confirmed by the price of the absolute sale which was only P10,000 more than the mortgage debt.

In any event, the mortgagee, whatever his feelings, did accept the payment, deposit the cash in the bank in current account, and could have made use of it. At the then prevailing value of Japanese war notes, the amount could have been invested profitably in other real estate or business transactions. Under the circumstances, the principle of estoppel is not to be ruled out.

Upon the foregoing considerations, the judgment as to intervenor Dr. Jacinto is affirmed and as to the defendant reversed, the defendant being hereby absolved, with costs of both instances against the plaintiffs and appellees.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, and Labrador, JJ., concur.
Feria, and Pablo, JJ., concur in the result.

* 75 Phil., 285

CONCURRING AND DISSENTING

PADILLA, J.:

I concur in the reversal of the judgment appealed from and would also concur in the pronouncement that the mortgage was discharged or released upon the ground that the mortgagee accepted the payment of the mortgage loan. However, if the belief of the majority "that at heart he was opposed to the payment of his credit in Japanese money and would have rejected or protested against the payment if it had been tendered by the debtor directly" be finding of fact, then I would reiterate my dissent in the *La Orden de Padres Benedictinos vs. Philippine Trust Co.*, 47 Off. Gaz., 2894.

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