

ASIA BANKING CORPORATION, PLAINTIFF AND APPELLEE, VS. LACSON COMPANY, INC., DEFENDANT AND APPELLANT.

G.R. No. 24047. December 17, 1925

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Lacson Company, Inc., from the judgment of the Court of First Instance of Manila sentencing it to pay the Asia Banking Corporation the sum of P45,489.83, with the costs.

The transcript of the stenographic notes of the oral testimony taken during the trial was not forwarded to this court. In view of this omission on the part of the appellant company we are compelled to abide by the findings of fact made by the trial court in its judgment. And to the conclusions of law derived from the findings of fact which we find correct, we have to add only that in the case of Bank of the Philippine Islands vs. Herridge (47 Phil., 57), this court, speaking through Mr. Justice Ostrand, said:

"CLAIMS OF THE BANK OF THE PHILIPPINE ISLANDS AND THE
GUARANTY TRUST COMPANY OF NEW YORK

* * * * *

"On November 16, 1920, De Poli executed and delivered to said bank a chattel mortgage on the same property described in the receipts, in which chattel mortgage no mention was made of the warehouse receipts. This mortgage was registered in the Office of the Register of Deeds of Manila on November 18, 1920.

"The appellants argue that the obligations created by the warehouse receipts were extinguished by the chattel mortgage and that the validity of the claim must be determined by the provisions of the Chattel Mortgage Law and not by those of the Warehouse Receipts Act, or, in other words, that the chattel mortgage constituted a novation of the contract between the parties.

"Novations are never presumed and must be clearly proven. There is no evidence whatever in the record to show that a novation was intended, The chattel mortgage was evidently taken as additional security for the funds advanced by the bank and the transaction was probably brought about through a misconception of the relative values of warehouse receipts and chattel mortgages. As the warehouse receipts transferred the title to the goods to the bank, the chattel mortgage was both unnecessary and inefficacious and may be properly disregarded."

In that case all the warehouse receipts were endorsed to the bank. Later on, De Poli mortgaged the merchandise covered by said receipts to secure the debt for which said receipts were endorsed, without making any mention of the aforesaid receipts.

In the instant case the merchandise mortgaged is almost all the merchandise covered by the eleven drafts, in the amount of which the defendant company is indebted. So that the merchandise mortgaged to the plaintiff corporation belongs to itself, and not to the defendant company. If the merchandise belonging to the debtor which

was mortgaged to the creditor, as in the U. de Poli case, cannot constitute novation, much less can a chattel mortgage of the merchandise belonging to the same creditor constitute a novation, because the chattel mortgage in question did not secure the payment of a debt, but the payment of the value of the merchandise mortgaged in case of sale, and the integrity thereof while the sale was not effected.

For the foregoing reasons, and not finding any error in the judgment appealed from, the same is hereby affirmed in all its parts with the costs against the appellant. So ordered.

Street, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.

Avanceña, C. J., and Johnson, J., did not take part.

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