

LIM JULIAN, PLAINTIFF AND APPELLANT, VS. TIBURCIO LUTERO, ASUNCION MAGALONA, AND RAFAEL LUTERO, DEFENDANTS AND APPELLEES. “EL HOSPITAL DE SAN PABLO DE ILOILO,” INTERVENOR AND AP...

G. R. No. 25235. December 09, 1926

Ponente: JOHNSON, J.

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JOHNSON, J.:

The purpose of this action was to foreclose a certain mortgage given to secure future advancements for the sum of P12,000, interest, commissions, damages, and such other amounts as may be due at the time of maturity. It was executed and delivered to Lim Julian by Tiburcio Lutero and his wife Asuncion Magalona on the 15th day of April, 1920. It was duly registered in the office of the registrar of deeds of the Province of Iloilo on the 16th day of June, 1920. It was executed to secure future "advancements" to be made by Lim Julian to the mortgagors to cover expenses "incurred by the mortgagors in the cultivation and harvesting of the agricultural crops for the year 1920-1921." To be a little more specific concerning the purposes of the said "advancements," reference may be made to the mortgage itself. The mortgage recites "that said credit (for future advancements) is given to the mortgagors exclusively for the purpose of being employed in the cultivation and care of the sugar plantations and the milling and production of sugar from said sugar plantations and in the purchase of animals for the work in connection therewith and all expenses that may be necessary for the work concerning said sugar plantations."

The mortgage covered the following property:

- (a) Three parcels of land particularly described in paragraph 2 of the complaint, containing an area of 755,706 square meters more or less;
- (b) Twenty-four vacunos and twelve carabaos;
- (c) One steam engine;
- (d) One battery with two furnaces and eight tanks;
- (e) A house of strong material, with galvanized iron roof;
- (f) A storehouse for the stems of sugar cane, of light material;
- (g) A milling shed of mixed material, with nipa roof;
- (h) A number of houses for the laborers;
- (i) All the sugar cane estimated at 3,000 piculs for the crop of 1920-1921, to be produced upon said lands, which were known as the "Hacienda San Ramon" situated in the municipality of Janiuy.

The complaint alleged that there was still due and unpaid on said mortgage (a) the sum of P22,807.09 with interest at 12 per cent per annum from the 27th day of June, 1921, until paid; and (b) the sum of P2,000 as penalty for failure on the part of the defendants to comply with their contract. The plaintiff prayed for a judgment for said amounts, and that in case of a failure on their part to pay the same, that an order be issued for the sale of the mortgaged premises. Plaintiff also prayed for a judgment for costs.

The action was commenced in the Court of First Instance of the Province of Iloilo on the 8th day of March, 1922. On the 6th day of April, 1922, the defendants Tiburcio Lutero and Asuncion Magalona filed their answer, denying each and all of the allegations of the complaint.

On the 25th day of September, 1922, the "Hospital de San Pablo de Iloilo" presented a petition for intervention, which was granted.

The defendant Rafael Lutero was made a defendant in the action simply because he was a tenant occupying and cultivating the three parcels of land in question.

The "Hospital de San Pablo de Iloilo" was permitted to intervene, upon its allegation that it had a prior mortgage upon the property in question (Exhibit AA) for the sum of P22,400. Said alleged mortgage was executed on the 17th day of June, 1920. It was executed before a notary but was never registered in the registry of property. Said document cannot be considered a mortgage therefore. (Art. 1875, Civil Code.) It will be remembered that the mortgage in favor of the plaintiff herein was executed upon the 15th day of April, 1920, nearly two months before Exhibit AA was executed and delivered. The mortgage held by the plaintiff was actually registered in the office of the registrar of deeds on the 16th day of June, 1920, or one day before the alleged mortgage of the intervenor was executed. More will be said concerning the contention of the intervenor when we come to discuss the rights which they claim in the present action.

On the 25th day of March, 1925, or nearly four years after the present action was commenced, the defendants Tiburcio Lutero and his wife Asuncion Magalona filed another answer to the petition, in which they alleged, in addition to a general denial, and after admitting the execution and delivery of the mortgage in favor of the plaintiff, that said mortgage had been paid and that whatever indebtedness still existed against them and in favor of the plaintiff was an ordinary debt.

Upon the issue thus presented by the petition, the second answer of the defendants and the petition of the intervenor, the cause was brought on for trial. After hearing the evidence the Honorable Fernando Salas, judge, reached the following conclusions; (a) That the complaint against Tiburcio Lutero and Asuncion Magalona should be dismissed with costs against the plaintiff; (b) that Rafael Lutero, the tenant, should be absolved from all liability under the complaint with costs against the plaintiff; (c) that the registrar of deeds of the Province of Iloilo should cancel the mortgage lien in favor of the plaintiff, which fact should be noted upon the certificate of title No. 6667; (d) that the mortgage executed and delivered by Tiburcio Lutero and Asuncion Magalona on the 17th day of June, 1920, in favor of the "Hospital de San Pablo" should be registered in the registry of property of the Province of Iloilo as the first lien upon the real property in question; and (e) that the mortgage executed in favor of the "Hospital de San Pablo" on the 17th day of June, 1920, should take preference over the mortgage executed by said mortgagors to the plaintiff herein on the 15th day of April, 1920. From that judgment the plaintiff appealed.

In discussing the rights of the respective parties to the present action we are of the opinion that we should discuss the rights of the original parties first and then the rights of the intervenor.

The plaintiff-appellant alleged in his first assignment of error that the lower court committed an error (a) in holding that his mortgage was paid, (b) in ordering its cancellation and (c) in dismissing the complaint against Rafael Lutero., In order to fully understand that assignment of error a full statement of the entire transaction between the mortgagors and the plaintiff becomes necessary.

The defendants Tiburcio Lutero and Asuncion Magalona executed the mortgage in question covering the property described in the complaint, with the following pertinent provisions:

(1) That the said parcels of land were subject to a first mortgage in favor of the Philippine National Bank for the sum of P9,500, payable with interest at 8 per cent per annum for the period of ten years, payable by annual instalments ;

(2) That the said mortgagors have applied to and obtained from Lim Julian a credit of P12,000, Philippine currency, with interest at 12 per cent per annum upon the following conditions: (a) That said credit is given to the mortgagors exclusively for the purpose of being employed in the cultivation and care of the sugar plantations aforementioned, in the milling and production of sugar from said sugar plantations and in the purchase of animals for the work in connection therewith, and all expenses that may be necessary for the work concerning said sugar plantations; that said credit may be taken by the mortgagors little by little from the creditor or mortgagee at the rate of P1,500, Philippine currency, per month, until the sum is totally taken, and shall earn interest only from the date or dates when the amounts are taken, as shown by the vales or receipts which shall be executed in each case by the mortgagors, who must execute the same every time that they take the monthly amounts; (b) that the sugar to be produced from the sugar-cane plantations, and as it is produced by the mortgagors, shall be shipped by the latter for their account and risk to the mortgagee, to the city of Iloilo, in order that the latter may sell the same at the current price in the market or deposit the same in the warehouses of foreign firms in the City of Manila, or in his warehouses, that is, in the warehouses of the mortgagee in this city, Iloilo, as he may deem suitable to the interest of the mortgagors, and the quedans of which, in case of deposit, shall be issued in the name of the mortgagors, and the latter shall immediately indorse the same to the mortgagee; that the mortgagee shall receive said sugar cane and take care thereof with the diligence of a good father of a family, trying his best to obtain the best price in the market or at least the price in the Iloilo market; that said mortgagee is authorized to receive or collect the value of said sugar; that the mortgagee is authorized to purchase the sugar for himself with preference in case of equal price and conditions; that the mortgagee shall, on account of his work in receiving, taking care of, and trying to obtain a good price for, said sugar, receive as compensation for that work, whether the sugar is sold or purchased by him, 2 per cent of the gross value of said sugar. The mortgagee was also authorized to retain such part of the value of said sugar as may be deemed fit in order that he may make payment to himself of the 2 per cent compensation and of said credit and the interest therein.

Immediately upon the execution of said mortgage, with the foregoing conditions and even before its execution, the plaintiff began to make advancements for the purpose mentioned in said mortgage to the defendants, as appears from Exhibit B, of both money and effects or supplies. All of the parties agree that Exhibit B is a true and correct statement of all advancements of money, effects or merchandise paid and delivered by the plaintiff to the defendants between the 11th day of March, 1920 and the 19th day of May, 1921, including the interest on the various advancements during said period. They also agree that said Exhibit B, with some exceptions perhaps, shows the true and exact amount of sugar and cash delivered and paid by the defendants to the plaintiff between the 16th day of March, 1920, and the 27th day of June, 1921. By reference to Exhibit B it will be found that the plaintiff and the defendants have agreed that the advancements, merchandise and accrued interest account during the period amount to P36,964.27 while the sugar delivered and the payments made by the defendants to the plaintiff amounted to P14,157.18, leaving a balance due in favor of the plaintiff in the sum of P22,807.09. Said amount represents the amount claimed in the present action with 12 per cent from the 27th day of June, 1921, together with the sum of P2,000 as a penalty for the failure of the defendants to comply with their contract.

The mortgagors contend that the mortgage was for the sum of P12,000 with interest only; that inasmuch as they have paid more than P14,000, the mortgage debt has been paid and that they are therefore not liable for any other amount on said mortgage; that whatever other amount of indebtedness exists against them is an ordinary indebtedness and cannot be recovered in an action to foreclose the mortgage; that they are entitled to have said mortgage cancelled.

In making that contention the mortgagors have evidently overlooked paragraph 10 of their mortgage, which provides "that all the obligations of the mortgagors and all the conditions stipulated in this document must and shall be fulfilled on or before the 30th day of April, 1921, the date when said sugar plantations are to be harvested or converted into sugar and shipped to the mortgagee, and the credit and its interest aforementioned, and such other amounts as may be then due from the mortgagors to the mortgagee shall be totally paid by the mortgagors." By reference to paragraph 12 of the mortgage it will be seen that if the mortgagors, their heirs, assigns and successors in interest shall fail to fulfill all the conditions and obligations of said mortgage, that the same shall remain in full force and effect and may be enforceable in accordance with law.

If it had been the intention of the parties to said mortgage to make it a mortgage for the security of the payment of P12,000 given for "future advancements" only, and no more, with interest and damages, then what was the occasion or purpose of adding in said paragraph 10 "and such other amounts as may be then due?" If P12,000 was the limit of the obligation incurred by the obligors, and no more, then what did the parties to the contract have in mind when they said "and such other amounts as may be then due from the mortgagors to the mortgagee?" Is it not a reasonable presumption that the parties had in mind that, for some reason or other, the mortgagors might need more money during the year to be employed directly or indirectly in the cultivation and care of the sugar plantations covered by the mortgage, or that more money might be necessary for the proper milling and production of sugar from said sugar plantations and in the purchase of animals for work in connection with the cultivation of said plantations, or for expenses that might be necessary for the proper working and cultivation of said sugar plantations?

Contracts for future advancements (mortgages) like the present were known at Common Law. They are very common not only in the Philippine Islands but elsewhere in agricultural countries. Contracts for the advancement of money to assist agriculturists for the cultivation and harvesting of crops are well known in all agricultural countries. Under such contracts of "advancements" the agriculturist is permitted to take the money as it is needed and thus avoid the necessity of paying interest until the necessity for its use actually arises. It is not uncommon that said contracts are executed for a larger amount than is necessary and sometimes they are executed for a less amount than is found to be necessary for the economic and efficient cultivation of the land.

In the present case the mortgagors evidently believed that P1,500 per month would be sufficient to supply all of their demands for the efficient and economic cultivation of their hacienda for the year 1920-1921. They were to receive the money little by little until the P12,000 was taken. If some favorable condition had arisen during the year so that the sum of P1,500 was unnecessary, we cannot bring ourselves to believe that the mortgagee could have compelled them to have received during the year the full P12,000. In that event could the mortgagee have insisted upon a foreclosure of the mortgage for P12,000? Such a result would have been unconscionable. The courts would not have permitted the foreclosure of a mortgage for P12,000 when, for example, but P6,000 had been actually delivered to the mortgagors. Upon the other hand, it is well known that in contracts of "advancements" many conditions may arise during the agricultural year which would necessitate, for the efficient and economic cultivation of the crops, the use of more money than either of the parties to the contract had contemplated; such as floods, storm, disease among animals which might decimate them, all of which conditions would make it necessary to use more money than the parties had contemplated. Conditions might arise during the year which would render absolutely useless the expenditure of the amount of money mentioned in the contract of advancements unless additional amounts are expended.

The best proof in the present case, that the mortgagors needed more money for the efficient and economic cultivation of their hacienda than they had contemplated at the time of making said mortgage, is found in Exhibit B. Under Exhibit A they were only entitled to receive P1,500 per month. By reference to Exhibit B, it will be seen

that during the very first month after the execution of said contract, or between the 15th day of April, 1920 and 18th day of May, 1920, they received the sum of P2,500 in cash instead of P1,500. The same condition is shown in other months. It is admitted that during the year the mortgagors received in cash and effects the sum of P34,245.29. They admit that the plaintiff had no other security for the payment of the difference between the P34,245.29 plus the interest, and the P12,000 unless said difference was covered by the mortgage. The appellant contends that the phrase in paragraph 10 "and such other amounts as may be then due" (in addition to the P12,000) was inserted in said mortgage for the very purpose of covering any amount or amounts received by the mortgagors over and above the P12,000. It is also admitted that by Exhibit B there is still due the amount of P22,807.09. Whether or not that amount should be reduced by payments represented by Exhibits 1, 2, and 3 will be discussed later.

This action was not begun until nearly one year after the termination of the contract, and yet the mortgagors admit that they continued to receive advancements during that period. They admit that they never called the attention of the mortgagee to the fact that the advancements received by them, over and above the P12,000, were not covered by the mortgage. They admit that they did not ask for a cancellation of the mortgage at the time the amounts paid equalled P12,000. They admit that they made no claim nor representation to the mortgagee that the mortgage had been paid, until nearly four years after the action had been commenced. Their only excuse for not making that representation to the mortgagee was the fear that they would not receive more advancements.

In other words the mortgagors were trying to deceive the mortgagee and to increase their indebtedness to him believing that he had no security for advancements amounting to more than P22,000.

The rule, of course, is well settled that an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage. The exact amount, however, for which the mortgage is given need not always be specifically named. The amount for which the mortgage is given may be stated in definite or general terms, as is frequently the case in mortgages to secure future advancements. The amount named in the mortgage does not limit the amount for which it may stand as security, if, from the four corners of the document, the intent to secure future indebtedness or future advancements is apparent. Where the plain terms, of the mortgage, evidence such an intent, they will control as against a contention of the mortgagor that it was the understanding of the parties that the mortgage was security only for the specific amount named. (*Citizens' Savings Bank vs. Kock*, 117 Mich., 225.) In that case the amount mentioned in the mortgage was \$7,000.

The mortgage, however, contained a provision that "the mortgagors agree to pay said mortgagee any sum of money which they may now or hereafter owe said mortgagee." At the time the action of foreclosure was brought the mortgagors owed the mortgagee the sum of P21,522. The defendants contended that the amount to be recovered in an action to foreclose should be limited to the amount named in the mortgage. The court held that the amount named as consideration for the mortgage did not limit the amount for which the mortgage stood as security, if, from the whole instrument the intent to secure future indebtedness could be gathered. The court held that a mortgage to cover future advances is valid. (*Michigan Insurance Co. vs. Brown*, 11 Mich., 265; *Jones on Mortgages*, 1, sec. 373; *Keyes vs. Bump's Administrator*, 59 Vt., 391; *Fisher vs. Otis*, 3 Pin., 78; *Brown vs. Kiefer*, 71 N. Y., 610; *Douglas vs. Reynolds*, 7 Peters [U. S.], 113; *Shores vs. Doherty*, 65 Wis., 153.)

Literal accuracy in describing the amount due, secured by a mortgage, is not required, but the description of the debt must be correct and full enough to direct attention to the sources of correct information in regard to it, and be such as not to mislead or deceive as to the amount of it, by the language used. Reading the mortgage before us from its four corners, we find that the description of the debt is full enough to give information concerning the amount due. The mortgage recites that it is given to secure the sum of P12,000, interest, commissions, damages, and all other amounts which may be found to be due at maturity. The terms of the contract are sufficiently clear to

put all parties who may have occasion to deal with the property mortgaged upon inquiry. The parties themselves from the very terms of the mortgage could not be in ignorance at any time of the amount of their obligation and the security held to guarantee the payment.

When a mortgage is given for future advancements and the money is paid to the mortgagor "little by little" and repayments are made from time to time, the advancements and the repayments must be considered together for the purpose of ascertaining the amount due upon the mortgage at maturity. Courts of equity will not permit the consideration of the repayments only for the purpose of determining the balance due upon the mortgage. (*Luengo & Martinez vs. Moreno*, 26 Phil., 111.) The mere fact that in contract of advancements the repayments at any one time exceeds the specific amount mentioned in the mortgage, will not have the effect of discharging the mortgage when the advancements at that particular time are greatly in excess of the repayments; especially is this true when the contract of advancement or mortgage contains a specific provision that the mortgage shall cover all "such other amounts as may be then due." Such a provision is added to the contract of advancements or mortgage for the express purpose of covering advancements in excess of the amount mentioned in the mortgage. (*Luengo & Martinez vs. Moreno*, supra.)

The sum found to be owing by the debtor at the termination of the contract of advancements between him and the mortgagee, during continuing credit, is still secured by the mortgage on the debtor's property, and the mortgagee is entitled to bring the proper action for the collection of the amounts still due and to request the sale of the property covered by the mortgage. (*Luengo & Martinez vs. Moreno*, supra; *Russell vs. Davey*, 7 Grant Ch., 13; *Patterson First National Bank vs. Byard*, 26 N. J. Equity, 225.)

Under a mortgage to secure the payment of future advancements, the mere fact that the repayments on a particular day equal the amount of the mortgage will not discharge the mortgage before maturity so long as advancements may be demanded and are being received. (*Luengo & Martinez vs. Moreno*, supra.)

We now come to the questions (a) What was the real amount of the mortgage given to secure the "advancements" and (b) What amount or amounts have been paid and the balance due, if any? The appellant contends that the advancements including the interest secured by the mortgage amounts to P36,964.27. The mortgagors admit that the advancements including the interest was equal to that amount. They also admit that the payments amounted to P14,157.18. They admit that there is a balance due from them to the appellant in the sum of P22,807.09. They contend, however, that the mortgage only secures the repayment of the sum of P12,000 and interest and damages. They also contend that the payments already made have been more than sufficient to pay the full amount of the mortgage.

Contracts must be interpreted from their four corners. It will be observed from what has been said above, that the contract of advancements was given to secure the payment of (a) P12,000, interest, commissions and damages, etc., and (b) "such other amounts as may be then due" (at the termination of the contract), from the mortgagors to the mortgagee. In our judgment the contract of advancements (Exhibit A) therefore not only covers the P12,000, etc., but also all "such other amounts as may be then due" at the termination of the contract. It has been settled by a long line of decisions that mortgages given to secure future advancements are valid and legal contract; that the amounts named as consideration in said contracts of mortgage do not limit the amount for which the mortgage may stand as security, if, from the whole instrument, the intent to secure future and other indebtedness can be gathered. (*Michigan Insurance Co. vs. Brown*, 11 Mich., 265; *Keyes vs. Bump's Administrator*, 59 Vt., 391; *Citizens' Savings Bank vs. Kock*, 117 Mich., 225; *Jones on Mortgages*, sees. 364-378; 27 Cyc, pp. 1069-1073 and cases cited; *Fisher vs. Otis*, 3 Pin., 78; *Brown vs. Kiefer*, 71 N. Y., 610; *Hellyer vs. Briggs*, 55 Iowa, 185.)

It has been decided in many cases that the consideration named in a mortgage for future advancements does not

limit the amount for which such contract may stand as security, if, from the four corners of the document, the intent to secure future indebtedness is apparent. Where, by the plain terms of the contract, such an intent is evident, it will control as against the contention of the mortgagor that it was the intention of the parties that the mortgage was secured only for the consideration expressly named. (*Citizens' Savings Bank vs. Kock*, supra.)

And it has been held also that oral proof may be adduced for the purpose of showing the real intent of the parties in contracts of advancements. In the case of the *Citizens Savings Bank vs. Kock* the original contract for future advancements was for the sum of \$7,000. The contract, however, contained the provision "that said mortgagors agree to pay said mortgagee any sum of money which they may now or hereafter owe." An action was brought upon said contract. At the time the action was brought there had been advanced to the mortgagors more than \$21,000. The mortgagors contended that but \$7,000 could be collected. The court held that, by the terms of the mortgage, the mortgagors, were liable for the \$21,000 and rendered a judgment in accordance with that conclusion. (*Newkirk vs. Newkirk*, 56 Mich., 525; *Reed vs. Rochford*, 62 N. J. Equity, 186; *Bowen vs. Ratcliff*, 140 Ind., 393.)

A mortgage given to secure advancements is a continuing security and is not discharged by repayment of the amount named in the bond or mortgage until the full amount of the advancements are paid. (*Shores vs. Doherty*, 65 Wis., 153.)

From a full consideration of the terms of the contract or mortgage for advancements and the law applicable to such contracts, we must conclude that the said mortgage not only covers the P12,000 with interest, commissions and damages, but also all the advancements which had been made thereunder. From that conclusion it must follow from the admission of the parties themselves that there is still due and unpaid upon said mortgage, due to the advancements, the sum of P22,807.09. That amount, however, may be modified when we come to a consideration of Exhibits 1, 2, and 3. That conclusion disposes of the first assignment of error.

We now come to a discussion of the second assignment of error. The appellant contends that the lower court committed an error in giving priority to the mortgage executed and delivered in favor of the "Hospital de San Pablo de Iloilo." (Exhibit AA.) In the first place it may be noted that the alleged mortgage claimed by said hospital was not executed until long after the mortgage was executed in favor of the appellant and was never registered. It is not a mortgage at all and could not, by any possibility, therefore be given priority over a former mortgage legally executed and recorded. The contention of the hospital would, of course, therefore be given but little consideration except for the fact that it claims that it was given priority over the mortgage held by the appellant by virtue of an oral agreement or understanding.

The facts are not disputed that the plaintiff's mortgage was executed on the 15th day of April, 1920, and presented to the registrar of deeds on the 20th day of April, 1920, and actually registered on the 16th day of June, 1920, while the mortgage in favor of the Hospital was not executed until the 17th day of June, 1920. With reference to the alleged oral agreement between a representative of the appellant and the attorneys for the hospital, it may be said that the lower court committed an error in allowing oral evidence upon that question. But even though the evidence admitted may be considered, yet in our opinion it is too indefinite and uncertain to justify the conclusion that the appellant did consent to waive the priority of the lien which he held. We are of the opinion that, aside from the question of the admissibility of such proof, it is not sufficient to justify the conclusion that the appellant waived the priority of his lien. The proof is not sufficient to show that the alleged representative of the appellant was authorized to act for him in the month of June, 1920. What we have said in relation to the second assignment of error constitutes an answer to the third and fourth assignments of error.

Our conclusions upon this branch of the case are:

First. That the alleged oral agreement did not give the alleged second mortgage of the "Hospital de San Pablo de Iloilo" a priority over the mortgage of the plaintiff.

Second. That whatever may be the rule in other jurisdictions, in this jurisdiction it is an indispensable statutory requirement, in order that a mortgage may be validly constituted, that the instrument by which it is created be recorded in the registry of deeds. (Art. 1875 of the Civil Code; *Tobias vs. Enrico*, 22 Phil., 394, 396; *Lozano vs. Tan Suico*, 23 Phil., 16; *Borcelis vs. Golingo*, 27 Phil., 560.) In this case (*Borcelis vs. Golingo*) the late Chief Justice Arellano said: "This Supreme Court has repeatedly declared that to make a mortgage valid it is necessary that the document constituting it be inscribed in the property registry." Such documents, however, are valid subsisting obligations between the parties thereto and may be used as evidence or proof of such obligations. They do not, however, constitute a mortgage in this jurisdiction.

We now come to a discussion of the mortgage in favor of the Philippine National Bank for the sum of P9,500 for the purpose of determining whether or not said mortgage takes priority over the mortgage of the plaintiff. It will be remembered that the mortgage of the plaintiff was taken with the express understanding that it was subject to a first mortgage in favor of the Philippine National Bank for the sum of P9,500 with interest at 8 per cent per annum for the period of ten years, payable by annual installments. The plaintiff thus recognized the existence of said mortgage as a prior lien. The record shows that the said mortgage of the Philippine National Bank was paid by the intervenor, the "Hospital de San Pablo de Iloilo," with its money. The intervenor, the "Hospital de San Pablo de Iloilo" therefore stands in the shoes of the Philippine National Bank and has a right to be paid by the plaintiff out of the proceeds of the foreclosure whatever sum or sums it paid to the Philippine National Bank, with interest thereon at 8 per cent from the date of payment until paid.

We find upon an examination of the record three Exhibits (1, 2, and 3) representing payments amounting to P11,088.68 made by the defendant Tiburcio Lutero to the plaintiff Lim Julian. Exhibit 1 represents a payment of P6,306.64 for 709.07 picos of sugar. This payment was made on the 24th day of January, 1921, or more than a year before the commencement of the present action. Exhibit 2 represents a payment of P4,000 for 469.55 picos of sugar. This payment was made on the 20th day of August, 1924, during the pendency of the present action. Exhibit 3 represents a payment of P782.04 made by Lutero to the plaintiff to apply on his debt of a larger sum.

No reference is made to such exhibits in Exhibit B. The appellee Tiburcio Lutero and his wife made no claim either in the court below or in this court that the payments represented by Exhibits 1, 2, and 3 should be applied to the reduction of their total indebtedness in the sum of P22,807.09. The record furnishes no explanation for their failure to insist upon the application of said payments to the reduction of the total indebtedness. Their failure so to do cannot be understood, if in fact said exhibits do represent payments made in liquidation of their indebtedness in the sum of P11,088.68. If in fact said payments were made to apply on the indebtedness then they should be applied for the purpose of reducing the total amount due of principal, interest, commission and damages. The mortgagors make no point with reference to the said payments. In the interest of justice, however, and to the end that a final determination of the question between the parties hereto may be reached, we deem it necessary to take note of the payments represented by Exhibits 1, 2, and 3.

After a careful examination of the entire record and the issues presented we have arrived at the following conclusions :

First. That the mortgage (Exhibit A) executed by Tiburcio Lutero and Asuncion Magalona, his wife, to the plaintiff constitutes a lien upon the property mortgaged and is a prior lien over the alleged mortgage executed by the same parties to the "Hospital de San Pablo de Iloilo," provided, however, that the "Hospital de San Pablo de Iloilo" shall have a lien prior to that of the plaintiff in whatever sum or sums it paid, together with 8 per cent

interest on the mortgage held by the Philippine National Bank.

Second. That there is still due and unpaid on said mortgage the sum of P22,807.09, which amount perhaps may be reduced by the payments made and represented by Exhibits 1, 2, and 3.

Third. That the cause is remanded to the court whence it came for the purpose of having determined by the lower court whether or not such payments should be applied to the liquidation of the said sum of P22,807.09.

Fourth. That the cause be remanded to the lower court for the purpose of determining the amount paid by the "Hospital de San Pablo de Iloilo" for the mortgage held by the Philippine National Bank.

Subject to the conditions herein stated, it is hereby ordered and decreed (a) that the judgment of the lower court be and is hereby revoked; (b) that a judgment be rendered in favor of the plaintiff and against the defendants Tiburcio Lutero and Asuncion Magalona for the sum of P22,807.09, with interest until paid; (c) that the record be returned to the court whence it came for the purpose of having finally determined whether or not said sum (P22,807.09) should be reduced by the payments made by the defendants to the plaintiff, represented by Exhibits 1, 2, and 3. If the lower court shall find, upon such investigation, that said payments should be applied to said sum (P22,807.09) then and in that case it is hereby ordered that a judgment be rendered for whatever balance may be due; (d) that a judgment be entered in favor of the "Hospital de San Pablo de Iloilo," giving it a prior lien on the property in question over that held by the plaintiff for whatever sum or sums it paid for the mortgage held by the Philippine National Bank, with interest; (e) that the record be returned to the lower court for the purpose of determining the amount paid by the "Hospital de San Pablo de Iloilo" for said mortgage, and when that amount is determined, let a judgment be entered by the lower court for the sum as a prior lien upon the property in question to that held by the plaintiff; (f) that after the lower court has complied with the conditions herein imposed, that a judgment be entered requiring the defendants Tiburcio Lutero and Asuncion Magalona to deposit with the clerk of the Court of First Instance of the Province of Iloilo whatever sum or sums may be found to be still due the plaintiff within a period of 90 days, and in default of compliance therewith, that an order be issued, that the property mortgaged be sold, subject to the prior lien in favor of the "Hospital de San Pablo de Iloilo." In case, however, that the property is sold free from said lien then and in that case the "Hospital de San Pablo de Iloilo" shall receive whatever sum or sums with interest at 8 per cent which it paid or caused to be paid for the mortgage in favor of the Philippine National Bank, before any payments are made out of the proceeds to the plaintiff.

There being nothing in the record to show any liability on the part of Rafael Lutero, he is hereby absolved from all liability under the complaint. Let a judgment be entered in accordance herewith, without any finding as to costs. So ordered.

Villamor, Romualdez, and Villa-Real, JJ., concur.

Ostrand, J., concurs in the result.

JOHNS, J., dissenting in part:

There are two statements made in the carefully prepared and well written opinion of Justice Johnson, with which I cannot agree. First, on page 3 (p. 707, ante), it is said:

"It was executed before a notary but was never registered in the registry of property. Said document cannot be considered a mortgage therefore. (Art. 1875, Civil Code.)"

Again on pages 16 and 17 (p. 719, ante), it is said:

"In the first place it may be noted that the alleged mortgage claimed by said hospital was not executed until

long after the mortgage was executed in favor of the appellant and was never registered.. It is not a mortgage at all and could not, by any possibility, therefore be given priority over a former mortgage legally executed and recorded. The contention of the hospital would, of course, therefore be given but little consideration except for the fact that it claims that it was given priority over the mortgage held by the appellant by virtue of an oral agreement or understanding."

The record is conclusive that plaintiff's mortgage is prior in both time and right to the one in favor of the "hospital." Assuming and conceding that to be true, without being registered, the mortgage of the "hospital" is a legal and valid mortgage as between the mortgagor and the mortgagee, and third parties who have actual notice of the existence of the mortgage.

Article 1875 of the Civil Code is as follows:

"In addition to the requisites mentioned in article 1857, it shall be indispensable, in order that a mortgage may be validly constituted, that the instrument by which it is created be recorded in the registry of deeds."

Under this section, a number of decisions of this court are cited, the first of which is the *United States vs. Mendezona* (1 Phil, 696, 703), and the last *Legarda and Prieto vs. Saleeby* (31 Phil., 590, 601).

In the Preface to the Civil Code it is said that:

"In May, 1889, the Civil Code was promulgated in Spain. In July of the same year, by Royal Decree, it was extended to the Philippines. The Code was published in the Manila Gazette and took effect as a law on December 8, 1889."

With one exception, those decisions hold in legal effect that an unregistered mortgage is void as to third parties, and in the final analysis and upon the facts therein stated, that is all they do hold. That is good law, but in the instant case, we are dealing with the legal force and effect of an unregistered mortgage as between the mortgagor and the mortgagee, and third persons with actual notice of the mortgage.

This court has never held that an unregistered mortgage is void as between the mortgagor and the mortgagee, or third parties with actual notice.

In the case of *Obras Pias vs. Devera Ignacio* (17 Phil., 45), published on September 16, 1910, this court, speaking through Justice Johnson, in the syllabus of the opinion, says:

"The effect of actual notice of the existence of said mortgage is equivalent to the registration of the same under the provisions of the Mortgage Law."

And, on page 47 of the opinion, says:

"The purpose of registering an instrument relating to land, annuities, mortgages, liens, or any other class of real rights is to give notice to persons interested of the existence of these various liens against the property. If the parties interested have actual notice of the existence of such liens, then the necessity for registration does not exist. Neither can one who has actual notice of existing liens acquire any rights in such property free from such liens by the mere fact that such liens have not been recorded."

That is also good law, and it is sustained by all standard text writers and the unanimous decisions of at least all of American courts.

In the case of *Patterson vs. De la Ronde* (19 Law. ed., 417), the Supreme Court of the United States says:

"Besides, the object of all registry laws is to impart information to parties dealing with property respecting its transfers and incumbrances, and thus to protect them from the prior secret conveyances and liens. It is to the registry, therefore, that purchasers, or other desirous of ascertaining the condition of the property must look,

and if not otherwise informed, they can rely upon the knowledge there obtained. But if they have notice of the existence of unregistered conveyances and mortgages, they cannot, in truth, complain that they are, in any respect, prejudiced by the want of registry. In equity, and in this country generally at law, they are not permitted to defeat, under such circumstances, the rights of prior grantees or incumbrancers, but are required to take the title or security in subordination to their rights. The general doctrine is that knowledge of an existing conveyance or mortgage is, in legal effect, the equivalent to notice by the registry. And such is the law of Louisiana as expounded by the decisions of her highest court. Thus, in *Robinett vs. Compton*, 2 La. Ann., 854, that court said: The doctrine is now well settled, that the actual knowledge by a purchaser of an existing mortgage or title is equivalent to a notice resulting from the registry. The formality of recording is for the benefit of the public, and for the purpose of giving notice to individuals. But if a party have knowledge of that of which it is the purpose of the law to notify him by causing an act, instrument or lien to be recorded, the effect is the same, and he is as much bound by his personal knowledge as if his information was derived from an inspection of the record.' "

In the instant case, it is admitted that on the 17th of June, 1920, the "hospital" took its mortgage to the office of the register of deeds for the purpose of having it registered as a first mortgage on the property, and that it was not registered as such, because it appeared from the records in that office that plaintiff's mortgage was registered on the 16th of June, 1920. The register of deeds declined to register the "hospital" mortgage as a first mortgage, and the "hospital" declined to have it registered as a second mortgage, and it was for that reason only that the "hospital" mortgage was not registered. That is an undisputed fact.

During the trial of the case, Tiburcio Lutero admitted the execution of the mortgage to the "hospital," and that instrument is in the record. It is duly signed, witnessed and acknowledged before a notary public, and, as between the parties, recites, and shows upon its face that in both form and substance it is a real mortgage on the property in question. Lutero and his wife do not seek to have the mortgage as to them declared void for want of registration. In fact they admit that it is a good and valid mortgage without registration.

The only issue between the plaintiff and the "hospital" is as to the priority of the two mortgages, and upon that point this court holds that the mortgage of the plaintiff is prior in both time and right to the mortgage in favor of the "hospital." Assuming that to be true, the fact that the mortgage of the "hospital" was not registered becomes wholly immaterial as between the plaintiff and the "hospital." That is to say, the question of the validity of an unrecorded mortgage between the parties is not raised or presented by any pleading or by any assignment of error by any party to this action, and the real parties in interest admit the execution of the mortgage to the "hospital" and its validity without registration.

Hence, as to all of that portion of the opinion above quoted, we vigorously dissent.

Under all of the authorities, as between the mortgagor and the mortgagee and third parties with actual notice, an unrecorded mortgage is valid.

As the Supreme Court of the United States says:

"The general doctrine is that knowledge of an existing conveyance or mortgage is, in legal effect, the equivalent to notice by the registry."

In other words, that as between the mortgagor and the mortgagee, the mortgage is "validly constituted" within the meaning of article 1875 of the Civil Code, and the same thing is true as to third parties with actual notice.

When a person executes a mortgage, he has actual, personal knowledge of that fact, and is estopped to deny or assert that he signed the mortgage. As to him, the record of that mortgage would be notice only of a fact which he personally knew when he signed the mortgage.

Under all of the authorities, the same principle applies to third parties with actual notice, and as to all of such parties, the mortgage from Lutero and his wife to the "hospital" is a good and valid mortgage, and as such it ought to be recognized and enforced.

It will be noted that the present Civil Code took effect on December 8, 1889, and that the opinion of this court by Justice Johnson above quoted was rendered on September 16, 1910. That is to say at the time that opinion was written, article 1875 of the Civil Code had been a law for more than twenty years.

Within the meaning of that article, and upon the facts shown in the record, the mortgage from Lutero and his wife was a "validly constituted" mortgage as between them and the "hospital," and it was also a valid mortgage as to third parties with actual notice. In legal effect, that is the decision of this court in *Obras Pias vs. Devera Ignacio*.

For such reasons, we vigorously dissent from that portion of the opinion which says that the mortgage of the "hospital" "cannot be considered a mortgage," and that "it is not a mortgage at all and could not, by any possibility, therefore be given priority over a former mortgage legally executed and recorded." In all other respects, we agree with the opinion of the court as written.

[1] By P. C. Fisher.

AVANCEÑA, J., with whom concurs STREET, J., dissenting:

Even though the decision of the majority contains a detailed exposition of the facts, I shall refer, however, to those that are pertinent to my point of view.

The defendants spouses, Tiburcio Lutero and Asuncion Magalona, executed a first mortgage in favor of the National Bank, on the lands which are the subject of this action, in the sum of P9,500. On April 15, 1920, while this mortgage was still in force, the defendants applied and obtained a loan of P12,000 from the plaintiff Lim Julian, with a second mortgage on the same lands (Exhibit A). Subsequently, the defendants obtained another loan of P22,400 from the St. Paul's Hospital of Iloilo, with a first mortgage on the same lands. A part of this money loaned by the St. Paul's Hospital was used to pay the loan and cancel the mortgage in favor of the National Bank.. Before obtaining this loan from St. Paul's Hospital, the plaintiff, according to the defendants, consented to a first mortgage on the lands in favor of the hospital after the cancellation of the mortgage in favor of the National Bank. While the plaintiff denied having given such consent, yet, it is true, at least, that at that time he had knowledge of the mortgage in favor of the hospital. The plaintiff did not register the mortgage in his favor until after the mortgage in favor of the National Bank had been cancelled, that is, on June 16, 1920. The following day, the 17th, the mortgage deed was executed in favor of St. Paul's Hospital, and when this institution attempted to register it as a first mortgage, the register of deeds refused to do so in view of the fact that the mortgage in favor of the plaintiff had already been registered.

It also appears that prior to April 15, 1920, when the mortgage in favor of the plaintiff was executed, the defendants already owed him the sum of P5,008.04; that from April 15, 1920 to October 22d of the same year, the defendants received a loan of P12,000 from the plaintiff; that from October 22, 1920, to May 31, 1921, the defendants borrowed other sums from the plaintiff which, together with the sums previously received and the corresponding interest, amounted to P36,964.27. Up to June 21, 1921, the defendants paid the plaintiff, in cash and in sugar, the amount of P14,157.18, leaving a balance of P22,807.09.

I dissent from the majority opinion where it finds that, in accordance with the contract (Exhibit A) between the defendants and the plaintiff, the mortgage which the former executed on the lands in question, it includes all the

amounts borrowed by them from the plaintiff. In my opinion, this mortgage was made for the sum of only P12,000. As this question depends upon the interpretation of the contract entered into between the defendants and the plaintiff, I deem it wise to quote the same, which, eliminating paragraph 1 which refers to the statement of the ownership of the mortgage land, reads as follows:

* * * * *

"II. That said mortgagors have applied and obtained from the said Lim Julian a loan of twelve thousand pesos (P12,000), with interest at twelve per cent per annum (12%), under the following conditions: That said loan is to be used by the mortgagors in the cultivation and care of the sugar-cane plantations above mentioned, for the milling and production of sugar from said sugar-cane plantations, and for the purchase of work, animals and all expenses necessary for the activities of said sugar-cane plantations.

"III. That said mortgagors may draw upon the mortgagee at the rate of one thousand five hundred pesos (P1,500), Philippine currency, a month, until the total amount of the loan is received, and interest thereon shall be earned only from the date or dates that appear on the chit or receipt to be issued by the mortgagors in each case, said mortgagors being under the obligation to issue the same whenever they receive said monthly payment.

"IV. That the sugar produced by the mortgagors from said sugar-cane plantations must be shipped, as it is produced, for their account and risk to the mortgagee in the City of Iloilo, in order that the latter might sell it at the current market price, or store it in foreign warehouses in the City of Iloilo or in his own warehouses in said city, as he may deem best for the interests of the mortgagors, and the quedans, in case of storage, shall be issued in the name of the mortgagors who shall immediately endorse the same in favor of the mortgagee. The mortgagee shall receive said sugar and take care of it with the diligence of a good father of a family, endeavoring to obtain for it the best market price in each instance, or, at least the current market price of Iloilo, said mortgagee being further authorized to receive and collect the value of said sugar.

"V., The mortgagee is hereby authorized to purchase said sugar for himself, with preference, all things being equal.

"VI. The mortgagee, for his services of receiving, caring and procuring a good price for said sugar, shall receive, as compensation, whether the sugar is sold or bought by himself, two per cent (2%) of the gross value of said sugar.

"VII. The mortgagee is also hereby authorized to retain from the value of said sugar, such amount or amounts as he may deem proper in order to obtain the payment of the said two per cent (2%) compensation and of said loan and interest thereon.

"VIII. The mortgagors hereby bind themselves to keep, take care of and protect said sugar-cane plantations as good agriculturists, and to gather the cane in due season and without delay.

"IX. The mortgagors also bind themselves to pay the mortgagee a sum not less than two thousand pesos (P2,000) by way of damages and penalty, in case the mortgagors or any one of them should infringe any of the conditions hereof and compel the mortgagee to engage the services of a lawyer, or to apply to the courts of justice for the enforcement of said obligation."

* * * * *

According to the clauses just quoted, the loan applied for and granted the defendants by the plaintiff, was for P12,000 and no more, and as the lands in question were mortgaged only to secure the fulfillment of the obligation which the defendants contracted by virtue of said contract (Exhibit A), no liability can be enforced upon this mortgage in excess of the sum of P12,000. Any amount which the plaintiff might have given the defendants in

excess thereof was not within the terms of the contract and constitutes a mere ordinary loan which cannot be considered as secured by the mortgage.

But it is said that, according to the tenth clause which follows, the loan granted the defendants by the plaintiff was not only for the sum of P12,000, but for any other amount in excess thereof, and, consequently, all the amounts received by the defendants must be considered as secured by the mortgage. The tenth clause reads as follows:

"That all of the obligations of the mortgagors and the conditions herein stipulated must and shall be complied with on or before the thirtieth day of April, nineteen hundred and twenty-one, the date when said sugar-cane plantations must be harvested or milled into sugar and sent to the mortgagee, and the loan, together with the interest thereon above-mentioned and such other amount as the defendants might be owing to the mortgagee, must be fully paid."

It may be noted at a glance that this clause does not state that the defendants were granted an amount in excess of the P12,000. There is nothing in this clause which might be construed as creating an obligation on the part of the plaintiff to grant the defendants more than the P12,000. If, after having paid the defendants the loan of P12,000 the plaintiff should refuse to pay them any more, and the defendants should try to force him to do so, invoking this clause of the contract, I do not believe there is anyone who would contend that they had any reason for doing so. The tenth clause alone cannot be interpreted as evidencing a contract between the defendants and the plaintiff for a future loan of any amount in excess of the P12,000. If such had been their intention they would have expressed it instead of referring only and specifically to the P12,000. However general the terms of a contract may be, it shall not be construed as including things and cases different from those with respect to which the persons interested intended to contract. (Art. 1283, Civil Code.) If there was no such contract there can be no mortgage in regard to this excess. A mortgage is an accessory contract which cannot exist without the principal one (art. 1857, Civil Code). If the plaintiff, however, paid the defendants other amounts in excess of the loan of P12,000, -it was not done by virtue of the contract Exhibit A, and, consequently, said amounts cannot be considered as secured by the mortgage, which was executed by the defendants to assure only their obligation which they incurred in accordance with said contract.

Attention is called to the fact that mention is made in the tenth clause not only of the loan (P12,000) but also of such other amount as the defendants might be owing the plaintiff at the expiration of the contract; and it is said that this cannot be accounted for except by the fact that there was an understanding between the parties that the defendants could borrow more than the P12,000 from the plaintiff. This inference is not necessary if it is taken into consideration that, before the contract was entered into, the defendants already owed the plaintiff P5,008.04 which, at most, might be the amount referred to in the tenth clause, since the same might not be paid, but in no way any other amount in excess of the P12,000 which the parties, upon entering into the contract, did not think the defendants might borrow.,

This is not the only interpretation that the contract permits of, but is the very one given by the plaintiff, in his brief. The plaintiff does not claim that the mortgage secures the payment of more than P12,000. His only contention in this instance is that the defendants having received P36,964.27 in all, notwithstanding the payment of P14,157.18 made by them, and still owing P22,807.09, the mortgage must be considered as still subsisting as to P12,000 of the P22,807.09, because that payment must not necessarily be applied to the mortgage loan. That is why the plaintiff, in his brief, only prays for judgment against the defendants for the payment of the P12,000, as a mortgage debt, and for the balance of the P22,807.09, as an ordinary debt. The least that can be said about the tenth clause of the contract, to which reference is here made, is that it is very vaguely worded. Hence, it is the duty of the court to interpret it in accordance with the intention of the contracting parties. However, notwithstanding the fact that the parties, in their briefs, are agreed that the mortgage covers only the amount of

P12,000, the majority of this court insist that there was another intention in executing the contract, and that the mortgage includes all of the amounts borrowed. Plaintiff's brief says:

* * * * *

"If at the time the defendants made their advance, payments they had stated that the payments should be applied to the secured debt, this could would never have come into the courts. (P. 26.)

* * * * *

"He (the plaintiff) knew that his mortgage was for only P12,000, with interest, and that he would have to take a chance on the balance that was not secured. (P. 30.)

"While it is true that the mortgage, Exhibit A, does not contain any provision relative to a continuous loan, there can be no doubt that the parties, by their conduct, considered their agreement thus, and that Exhibit A must be considered as amended in this sense. (P. 31.)

* * * * *

"The judgment must be set aside and one entered in favor of the plaintiff in the foreclosure of the mortgage for the sum of P12,000, accumulated interest, penalty, and for the balance of the debt." (P. 48.)

At any rate, even supposing that the interpretation given to the contract by the majority is correct, in the sense that the defendants mortgaged the lands to secure the payment of not only the loan of P12,000 specifically granted them, but also any other indefinite amount that they might borrow in excess thereof, this mortgage is worthless and of no effect. A mortgage may secure a future obligation, but it cannot benefit or prejudice a third party until the obligation is in fact contracted. (Art. 1861, Civil Code and art. 142, Mortgage Law.) And it must be so inasmuch as the mortgage, as an accessory contract, cannot come into existence before the principal obligation, the fulfillment of which is secured by it, because then it would have no object.

This is clearer in a contract of loan, as the one now before us, which, being real in its nature, does not come into existence until the delivery of the thing, but, it is not enough that the obligation be in fact contracted, or that it is carried into effect, in order that the mortgage may be effective, but it is also necessary that it be noted in the registry. (Art. 143, Mortgage Law). This is likewise clear. If there can be no mortgage without a principal obligation (art. 1857, Civil Code) and registration being necessary, in accordance with the Mortgage Law, for the efficacy of the mortgage, the act that gives life and reality to the principal obligation must be recorded and noted. No notation was made in the registry that the defendants had borrowed any amount in excess of the P12,000 from the plaintiff, and, for this reason, the mortgage to secure the payment of this excess is not, by any means, effective.

My conclusion is that the lands in question can be considered mortgaged only to secure the amount of P12,000 owed by the defendants to the plaintiff and that any amount in excess thereof must be considered as an ordinary debt only.

This being so the only question would be that upon which the trial court based its finding, viz: To what part of the defendants' debt must the payment of P14,157.18 be applied?

The plaintiff's loan being partly a mortgage and partly an ordinary loan, and the application of this payment not having been stated, the same must be deemed to have been made on account of the most burdensome debt (art. 1174, Civil Code), that is, the mortgage loan. This payment being in excess of the mortgage loan of P12,000, the same should be cancelled, without prejudice to rendering judgment against the defendants for the balance of an ordinary debt.

After the mortgage in favor of the plaintiff is cancelled, the intervenor, St. Paul's Hospital, has the right to register the mortgage in its favor as a first mortgage.

According to the dissenting opinion of Mr. Justice Johns, the mortgage, though not registered, is valid between the parties and even as to third parties who have actual knowledge thereof. If this opinion is correct, the mortgage in favor of St. Paul's Hospital is valid even as to the plaintiff inasmuch as the latter had knowledge of it. I do not, however, base my dissent upon that. If Mr. Justice Johns, because, I believe, with all due respect to him, that it is erroneous. Article 1875 of the Civil Code clearly requires the registration of a mortgage in order to insure its validity. The doctrine enunciated by this court in the case of *Obras Pias vs. Devera Ignacio* (17 Phil., 45), to the effect that the actual knowledge of the existence of the mortgage is equivalent to its registration in accordance with the Mortgage Law, is not applicable to the present case. That case involved a mortgage made on August 16, 1861, before the Civil Code was in force, and which must be governed only by the Mortgage Law. But the Civil Code, which went into effect later, requires registration as an indispensable requisite for the validity of a mortgage. Commenting on this question, Manresa (vol. 12, p. 494, 1911 ed.) says:

"It is enough to compare this provision with that of article 146 of the Mortgage Law, to understand that a very great difference exists between the two. The Mortgage Law requires this requisite of registration in order that the mortgage may prejudice a third party. The Civil Code establishes it as an indispensable requisite for the validity of the act which goes a little farther, because, without the registration the mortgage is null, even as between the parties."

The contract in question must be governed by the Civil Code in this respect inasmuch as it was entered into when said Code was in force.

But, at any rate, even considering that the mortgage in favor of St. Paul's Hospital is not valid as such mortgage, it is, nevertheless, valid as a contract by which St. Paul's Hospital can compel the defendants to register the mortgage in order to make it valid.. (Art. 1279, Civil Code.)

In my opinion, the judgment appealed from must be affirmed.

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