

**THE BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE,  
VS. OLUTANGA LUMBER COMPANY, DEFENDANT AND APPELLANT.***G.R. No. 27045. December 07, 1927*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-27045/>**STATEMENT**

Plaintiff alleges that both plaintiff and defendant are domestic corporation with principal offices in Manila, and that the defendant has a branch office at Zamboanga; that the defendant company was formerly indebted to plaintiff, through its branch office, in the sum of more than P85,000, secured by two chattel mortgages executed by the defendant to the plaintiff, one on March 19, 1918, and the other on June 1, 1918; that both of said mortgages have been foreclosed and the property therein described sold at a public auction by the sheriff; that after the foreclosure of the mortgages, the defendant is still indebted to the plaintiff in the sum of P78,765.81, which is now due and owing, for which demand has been made.

For answer the defendant, made a general and specific denial of all of the material allegations of the complaint, and as a special defense alleges that the plaintiff fraudulently and illegally caused the sheriff of Zamboanga in the month of September, 1922, to sell the property described in the mortgages in a municipality which was neither the residence of the defendant corporation nor the place where the mortgaged property was situated; that the property was sold to the plaintiff by means of fraud; and that before the sale, plaintiff had entered into a secret and fraudulent agreement with Walter A. Smith, as president and general manager of Walter A. Smith Co., Inc., of Iloilo, as evidenced by the following writing:

"The Bank of the Philippine Islands  
"Manila

"July 18, 1922

"Walter A. Smith Co., Inc.

"Iloilo

"Gentlemen : Confirming our oral agreement in connection with your offer to purchase the properties of the Olutanga Lumber Company now mortgaged to us, we beg to state our understanding of the proposition as follows:

"We will proceed to foreclose our mortgage on the said properties and bid in the same for the amount due on the mortgage. If our bid is successful we will sell the said properties to you for the sum of P88,667.21 plus interest now due, as appears in the books of our Zamboanga Branch, which you agree to pay in the following manner:

"During the first year following the date of said sale you will pay the interest only on the purchase price at the rate of 9 per cent per annum; during the second year you will pay one-third of the said purchase price and interest in equal monthly installments; during the third year you will pay another one-third of the said purchase price and interest in equal monthly installments; the balance of said purchase price with interest, to be paid

during the fourth year, in equal monthly installments. As security for the payment of said purchase price and interest you will mortgage to us the properties sold to you and will also mortgage to us the motor schooner Mohawk.

"That you will pay to the Bureau of Forestry the fees due by the Olutanga Lumber Company, amounting to about P20,000 inside of four years, pursuant to the oral agreement entered into between the Bureau of Forestry and yourselves.

"It being understood that no payments are to be made during the first year. Payments will be made at the beginning of the second year and made monthly, one-thirty-sixth of the amount due on the straight tax, said payments to extend over a period of three years.

"While the mill is operating we will guarantee the payment of one-thirty-sixth of the past due obligations of the old Olutanga Lumber Company to the Government, less amount realized on guarantee bonds. Our guarantee not to exceed one-thirty-sixth of the balance, or approximately six hundred pesos (P600), in case you fail to make payment.

"That in consideration of the above, the Bureau of Forestry will grant you a timber license for the term of four years covering the same area as the former Olutanga Lumber Corporation.

"If the above is your understanding of the agreement will you confirm the same by signing the duplicate of this letter and returning the same to us.

"Very respectfully,

"William T. Nolting

"President "

Accepted and agreed to:

"Walter A. Smith Co., Inc.

"By: Walter A. Smith

"President and General Manager

"Approved:

"Director of Forestry"

That pursuant to such fraudulent agreement and before the sale of the property mortgaged, plaintiff caused the forest permit issued to the defendant to be cancelled, and one to be issued in the name of Walter A. Smith, as president and general manager of Walter A. Smith Co., Inc., for the same period as that formerly granted and issued to the defendant, by reason of which the mortgaged property, consisting of a saw mill and machinery for the sawing of timber, was rendered practically useless for any other bidder than the plaintiff; that when the property was sold, it was sold for about P11,000; that pursuant to such fraudulent agreement and on the very day it was sold by the sheriff to the plaintiff, the plaintiff sold it to Walter A. Smith, as president and general manager of Walter A. Smith Co., Inc., for P80,000; and that the sale to Smith included property which was not mentioned or described in the mortgages, thus leaving the defendant in complete ruin and to the great damage of its interests. As a counter-claim the defendant alleges that the making of such secret and fraudulent agreement, and the including of property therein which was not covered by the mortgages, and the levying of the attachment in this case against the property of the defendant, it was damaged to the amount of P250,828.44; that according to the terms of the mortgage of March 19, 1918, specified in the complaint, the defendant should have credit from the plaintiff for the sum of P12,700, if it should win the litigation then pending between the Government and the plaintiff in civil case No. 620 of the Court of First Instance of Zamboanga; that plaintiff won that case, but it did

not credit the defendant with that amount; that on account of such fraud and illegality, the defendant was deprived of all profits and benefits that its business would have earned in the month of July, 1922, until this date. Defendant prays for judgment absolving it from the amount of plaintiff's claim and requiring it to pay the defendant P250,828.44 and the further sum of P12,700, with legal interest from this date, together with costs.

After hearing the testimony and based upon such issues, the lower court rendered the following judgment:

"AMOUNT CLAIMED IN THE COMPLAINT

"The plaintiff bank claims the sum of P78,765.81. It alleges that this sum is the debit balance of the obligation secured by the mortgages Exhibits A and B. Its evidence shows, however, that what the defendant owes it is P67,615.43. Exhibit 3 of the defendant and the declaration of Vicente Guanzon, bookkeeper of the bank, shows that on January 1, 1921, the defendant owing P72,650.22 (p. 32, s. n.). According to the contract (Exhibits A and B) the interest by this sum is 6 per cent per annum. The debt of the Olutanga on June 7, 1922, with the interest thereon, amounted to P78,896.16.

"The plaintiff bank is bound to credit the same with the sum of P12,700 as stipulated in Exhibit A, but it only credited it on June 7th of said year with P10,668. Its debt, therefore, on said date must have been P66,196.14, with the interest stipulated. From this amount there must be deducted the sum of P11,100 obtained at the sales at public auction, leaving a debit balance of P56,021.07, which is the sum which the defendant owes to the bank, with the interest stipulated at the rate of 6 per cent per annum.

"For the foregoing, judgment is rendered, sentencing the Olutanga Lumber Co., Inc., the herein defendant, to pay to the plaintiff Bank of the Philippine Islands the sum of P56,081.08, with interest at the rate of 6 per cent per annum from September 1, 1922, until paid, and to pay the costs of the action.

"Defendant's counterclaim is dismissed.

"So ordered."

On appeal from that judgment, the defendant assigns the following errors:

"The lower court erred:

"I. In not finding that the sales, made by the sheriff, of the properties contained in the two chattel mortgages were illegal, null and void, due to the fact that these sales, at the plaintiff's request, were made in the municipality of Zamboanga, and not at Olutanga, municipal district of Margosatubig, the place where the mortgaged properties were then situated, or in the City of Manila, wherein the mortgagor resided.

"II. In not finding that said sales, made by the sheriff, were fraudulent and illegal, and, therefore, were null and void, for the reasons that, before plaintiff demanded the foreclosure of the said mortgages, and previous to aforesaid sales:

"(a) The plaintiff entered into a secret agreement with Walter A. Smith, to have him appointed receiver of the properties,

"(b) The plaintiff, after secretly agreeing to secure the appointment of Walter A. Smith as receiver of said properties, did then and there enter into a secret and fraudulent agreement with Walter A. Smith Company, Incorporated, of which Walter A. Smith was president and majority stockholder, to sell to that corporation the identical same properties of which Walter A. Smith was to be appointed receiver,

"(c) The plaintiff aided Walter A. Smith Company, Inc., to secure a forestry license covering the identical same cutting area previously held by the defendant, and on which its properties were situated, thereby making the said properties useless, and worth merely their salvage value to any third party when offered for sale by the sheriff. "III. In holding that the plaintiff sold these same properties to Walter A. Smith Co., Inc., a corporation

of which the receiver, Walter A. Smith was the president and biggest stockholder, after the plaintiff purchased these properties at the sheriff's sales; when, as a matter of fact, the sale of these properties by the plaintiff to Walter A. Smith Co., Inc., was prearranged and agreed upon previous to the foreclosure of the two mortgages and sales by the sheriff, by virtue of the secret and fraudulent agreement of July 13, 1922.

"IV. In not finding that the flagrant sacrifice of the aforesaid properties, at the sheriff's sales, for the inadequate and ridiculous amount of P11,100, was due to the previous illegal and fraudulent agreement made by the plaintiff with Walter A. Smith Co., Inc., the plaintiff itself having stated, under oath, in its petition asking for the appointment of said receiver, that the value of the properties included in the first aforesaid mortgage was P00,000,

"V. In not finding that the sale made by the plaintiff to Walter A. Smith Co., Inc., for more than P80,000, plus the further sum of P20,000 to be paid to the Bureau of Forestry by said purchaser, making a total of more than P100,000, for the same identical properties obtained by the plaintiff for the insignificant amount of P11,100, was fraudulent, and prejudicial to the defendant.

"VI. In finding that no insinuation whatsoever was made in civil case No. 1077, which is the case for the appointment of the receiver, of bad faith, fraud or dishonesty on the part of the receiver, Walter A. Smith.

"VII. In riot finding that by plaintiff's failure to comply with the terms of his secret and fraudulent agreement of July 13, 1922, with Walter A. Smith Co., Inc., to bid the full amount due the plaintiff by the defendant at the time of the sale, the defendant has sustained damages.

"VIII. In sustaining the objection of the plaintiff's attorney, and in not allowing the defendant to prove that there was another party who would have bid up to thirty thousand pesos more than the plaintiff had agreed to bid, in aforesaid fraudulent agreement, if necessary, to prevent the properties from being acquired Tby any party other than the plaintiff.

"IX. In not rendering judgment compelling the plaintiff to account for and pay to the defendant, the full value of the properties owned by the defendant and not included in the two chattel mortgages, which plaintiff illegally and fraudulently converted and sold to Walter A. Smith Co., Inc.

"X. In not finding that the attachment secured by the plaintiff on the unencumbered properties of the defendant, under the false allegation, made by the plaintiff under oath, that the defendant was about to dispose of its properties for the purpose of defrauding its creditors, was procured wrongfully and without sufficient cause, and simply to prevent the defendant from recovering the properties which the plaintiff had already fraudulently sold to Walter A. Smith Co., Inc.

"XI. In finding in his decision that one month before the cancellation of the forestry concession of defendant company, the work at its sawmill had been paralyzed through lack of funds, when as a matter of fact the work at the sawmill was stopped only when the forestry concession was canceled by the Director of Forestry.

"XII. In finding that the balance of the debt of the defendant to the plaintiff is P56,081.08, instead of P48,875.47, as shown by the evidence in this case.

"XIII. In dismissing the counterclaim of the defendant, and in not rendering judgment against the plaintiff and in favor of the defendant, for the full value of the properties owned by the defendant, both those included in the two aforesaid mortgages, and those unencumbered, which were fraudulently sold by the plaintiff to Walter A. Smith Co., Inc., for more than P100,000, while Walter A. Smith was receiver, and for the damages sustained by the defendant through the illegal acts of the plaintiff in depriving the defendant of the use and ownership of all its properties."

**JOHNS, J.:**

Prior to March 19, 1918, the plaintiff was the original and former owner of a sawmill, machinery, equipment and forestry license on the Island of Olutanga, municipal district of Margosatubig, in the Province of Zamboanga, which the defendant purchased from it on March 19, 1918, evidenced by a bill of sale known as the "memorandum of agreement," Exhibit A of plaintiff's proof. The purchase price was P141,866.95, of which P30,000 was then paid in cash, and the balance of P111,866.95 was to be paid in installments. The agreement also included a stipulation that P12,700 then in litigation should be credited to the defendant company, in the event that the plaintiff should prevail in that action. It further provided that within eighteen months from the date of the sale, through the purchase of additional machinery, the defendant should double the capacity of the sawmill. That part of the agreement was carried out, and for which the plaintiff invested the further sum of about P140,000. To secure the payment of the balance of the purchase price of P111,866.95, the defendant executed to the plaintiff a chattel mortgage on all of the properties described in Exhibit A. It also appears that on June 19, 1922, the defendant executed another chattel mortgage, Exhibit B, as additional security to the one known as Exhibit A. It appears from the instrument that the value of the properties in the second chattel mortgage was P46,462.71. It contained a provision which was not in the first: to wit, that in case of default by the defendant in the performance of any of the conditions of the mortgage by it to be kept and performed, the plaintiff on its own motion could have a receiver appointed of the mortgaged properties. On July 17, 1922, or less than one month after the execution of the second mortgage, the plaintiff instituted in the Court of First Instance of Zamboanga a proceeding in which it asked that Walter A. Smith should be appointed receiver, for the reason that the plaintiff desired to and was about to foreclose its mortgages.

In its petition the plaintiff stated under oath that the value of the properties described in the first mortgage was approximately P100,000. The evidence is conclusive that prior to the application for the appointment of a receiver and on July 11, 1922, or twenty-two days after the execution of the second chattel mortgage, the plaintiff entered into a secret agreement with Walter A. Smith to have him appointed receiver, and on July 13th, two days later, it entered into a secret written agreement with Walter A. Smith & Co., Inc., through Walter A. Smith, who was the president and general manager and majority stockholder of that corporation, to sell and convey to it the identical properties for which Walter A. Smith should be appointed receiver, and that the sale should be made by the plaintiff, who was to purchase the properties at the sheriff's sale, because Walter A. Smith as receiver could not legally purchase the properties. It further appears that pursuant to that agreement, the plaintiff aided Smith & Company to obtain from the Bureau of Forestry a license granting to it for the period of four years the sole and exclusive right to cut timber on the Island of Olutanga, which was the identical land formerly ceded to the defendant, and that on July 19, 1922, such permit was formally issued to Smith & Company. The evidence is also conclusive that the plaintiff agreed and undertook to sell and convey the properties described in the two chattel mortgages when it had acquired them through the sheriff's sale for and at the agreed price of P88,667.21, in addition to which Smith & Company should pay the further sum of P20,000 to the Bureau of Forestry the amount of the back charges alleged to be due and owing from the defendant. Pursuant to such agreement and under its terms and provisions, Walter A. Smith was appointed receiver and took possession of all of the properties of the defendant in the latter part of July, 1922, during which time the plaintiff, as it had agreed to do, took steps to foreclose its chattel mortgages, and notified the defendant that it had requested the sheriff to sell the properties therein described in front of the municipal building of Zamboanga, and that the sheriff proceeded to and did sell said properties there on the first and the 25th of September, 1922. That for such properties which the plaintiff had agreed to sell to Walter A. Smith for about P90,000, plus the P20,000 as back forest charges, the plaintiff bid the sum of P11,000 for the properties which it had sold to the defendant in 1918 for P141,866.95, and for the property described in the second chattel mortgage, which was therein valued at P46,462.71, it bid the sum of P100. That

pursuant to, and in conformity with, its original agreement with Smith, the plaintiff then sold and on March 19, 1923, executed a bill of sale to Walter A. Smith & Co., Inc., of all the properties described in the two chattel mortgages, which company in turn executed a chattel mortgage to the plaintiff on all of such properties, including its motor schooner Mohawk. That in and by such instruments, the properties were sold and purchased at and for the agreed price of P80,425.68, which Smith & Company agreed to pay the plaintiff in addition to the P20,000. That is to say the verbal agreement of July 11, 1922, and later the written agreement of July 13, 1922, by and between the plaintiff and Walter A. Smith at or about the time he was appointed receiver was fully consummated and carried out in all of its details on March 19, 1923, except as to the price.

The old chattel mortgage had been in force and effect for four years, and the second was executed on June 19, 1922. The agreement was initiated on July 11, 1922, and on July 17, 1922, at the instance of the plaintiff, Walter A. Smith was appointed receiver and took possession of the properties described in the chattel mortgages. During this receivership and at the instance of the plaintiff, the properties were sold by the sheriff to the plaintiff for P11,000 on September 25, 1922, and on March 19, 1923, the agreement for the sale of the properties was in all things and respects fully consummated, and the properties sold to Walter A. Smith & Company for P80,425.68, near the amount specified in the agreement with Smith of July 19, 1922. To say the least, that transaction upon its face was a constructive fraud upon the defendant's legal rights. At the time the original agreement with Smith was made, the defendant was the owner and in possession of the properties, and at that time plaintiff had no legal right to enter into a contract for the sale of defendant's properties, and in the light of subsequent events, any contract which it then made, when carried out, would enure to the use and benefit of the defendant. At that time plaintiff had no legal right to enter into a contract for the sale of properties which it did not own for about P90,000, and to carry out that contract to have a receiver appointed and then to sell and purchase the properties at the sale for P11,100.

It must be conceded that in the absence of any prior contract of sale, the plaintiff would have the legal right to foreclose its mortgages and to have the properties therein described sold and to purchase them at the sale, and to thereafter sell the properties to a third person for and on its own account. But, here, the plaintiff made its contract with Smith for the sale of the properties before it had any legal right to make the contract or to purchase or sell the properties. In that situation, equity and good conscience require that the plaintiff should at least account to the defendant for the proceeds of the sale which it made to Smith & Company. The plaintiff having purchased and sold the properties to Smith & Company and having taken the chattel mortgages on the properties sold to secure the payment of the purchase price, and the mortgage upon its motor schooner Mohawk, as additional security, we have a legal right to assume, in the absence of evidence otherwise, that the plaintiff has received or that it will receive the full amount of the purchase price of the properties which it sold to Smith & Company. That is to say, if the plaintiff has received or will receive the full amount of the purchase price from Smith & Company, it would not have any legal right to complain, for the simple reason that its original debt or claim against the defendant would be wiped out and paid in full. That is to say, upon the facts disclosed in the record, we have the legal right to assume that the property described in the chattel mortgages was worth at least the amount for which plaintiff sold it to Smith & Company, and that in the ordinary course of business, the plaintiff would receive and collect the full amount of the purchase price from that company. It also appears that at and prior to the sale, the plaintiff, if forced to do so, was ready and willing to bid for the property at the sheriff's sale P30,000 more than the amount for which it sold the property to Smith & Company. That fact is strong evidence that the property was worth at least the amount for which plaintiff sold it to Smith & Company.

We are clearly of the opinion that the plaintiff should account to the defendant for the full amount of that purchase price as and of the date of that sale. Under any other construction, the plaintiff could collect from Smith & Company the full amount of its claim against the defendant and then obtain a judgment for substantially the whole

amount of its original debt against the defendant, and in legal effect that is what the plaintiff is attempting to do. The facts shown in the record amount to at least constructive fraud, and there is no legal principle upon which they can be sustained. Equity and good conscience will not permit the plaintiff to do what it seeks to do.

In its letter of July 13, 1922, the bank says:

"We will proceed to foreclose our mortgage on the said properties and bid in the same for the amount due on the mortgage. If our bid is successful we will sell the said properties to you for the sum of P88,667.21 plus interest now due, as appears in the books of our Zamboanga Branch, which you agree to pay in the following manner."

That is to say, in legal effect, on the 13th of July, 1922, the plaintiff agreed to sell to Smith & Company the properties in question for P88,667.21 with accrued interest.

It also appears that the plaintiff was to have and receive interest at the rate of 9 per cent per annum on the purchase price from the date of the sale. That is to say, the legal effect of the sale of the properties by the plaintiff to Smith & Company operated as a discharge and release of plaintiff's claim against the defendant as of the date of the sale.

Vicente Guanzon, the accountant of the plaintiff in Zamboanga and who kept the books between it and the defendant, was brought in court as witness for the defense by a subpoena duces tecum, and testified that he prepared defendant's Exhibit 3 from the books of the company, from which it appears that on January 1, 1921, the defendant owed the plaintiff P62,007.47, and that its total debt on March 1, 1923, was P80,425.68 which includes the items of interest from January 1, 1921, to December 1, 1921, and interest from January 1, 1922, to December 1, 1922, and "the payment of its balance on different accounts," and interest upon interest, and with interest from January 1, to February 28, 1923, as shown by the exhibit. Be that as it may, the defendant should not be charged with any interest after September 25, 1922, at which time Smith & Company assumed and agreed to pay P80,425.68, with interest from September 25, 1922. This same witness testified that on the 7th of June, 1922, the debt of the defendant was P72,650.22, from which was then deducted P10,668, leaving a balance due of P62,007.47. That was error. After the making of such deduction, the correct amount left would be P61,982.22. Be that as it may, as the trial court found, the true and correct amount for which defendant should have credit under its original contract with the plaintiff was P12,700. Deducting this amount from P72,650.22 would leave only a balance due and owing from the defendant to the plaintiff on June 7, 1922, of P59,950.22 only. The interest on that amount from that date to September 25, 1922, is P2,153.10, to which should be added the further sum of P2,094.15 as the "payment of its balance on different accounts," as that item appears on defendant's Exhibit 3, which would make a gross amount of P64,197.47, which would be the whole amount due and owing from the defendant to the plaintiff on September 25, 1922. Although the price specified in the original contract of July 13, 1922, was P88,667.21 plus interest now due, for some unknown reason not apparent on the face of the record, the amount of the purchase price specified in the bill of sale on March 19, 1923, is P80,425.68 which by the terms of the sale is to draw interest from September 25, 1922, at the rate of 9 per cent per annum. Accepting that as the true amount of the purchase price which Smith & Company was to pay the plaintiff, it should be charged with that amount with interest thereon at 9 per cent from September 25, 1922, and credited with P64,197.47, thus leaving a balance due and owing from the plaintiff to the defendant upon that transaction of P16,228.21, with interest thereon from September 25, 1922, at the rate of 9 per cent per annum, which is the same rate that Smith and Company pays the plaintiff. It further appears that under its original contract with Smith, the properties which plaintiff agreed to sell were those only described in the chattel mortgages. That the defendant had and owned some properties which were not covered by either of the chattel mortgages. Even so, the plaintiff took those properties from the defendant and delivered them to Smith and Company. An itemized list of them is found in

Exhibit C, in which they are invoiced and valued at P5,520.11, all of which, over the protest of the defendant which at once made a demand for their return, were taken by the plaintiff from the defendant at or about the time of the sheriff's sale on September 25, 1922. Accepting the amount shown in Exhibit C as their value, the plaintiff should account to the defendant for the further sum of P5,520.11, with interest at 6 per cent per annum from September 25, 1922.

Much time and space has been devoted by opposing counsel to the legality of the sales of the properties by the sheriff, the defendant claiming that such sales were void, and the bank claiming that they were valid, and that by them the title in and to the properties sold passed from the defendant to the plaintiff. In view of what we have said and the conclusion which we have reached, the decision of that question is not necessary to this opinion. Taking into consideration the time of the execution of the original contract between the plaintiff and Walter A. Smith, its terms and provisions,' the manner in which it was carried out, and the sale which was consummated under it, we are clearly of the opinion that the plaintiff should account to the defendant for the full amount of the purchase price of the property which it was to receive from Smith & Company, and we are equally clear that it should pay the defendant the value of its property not covered by the chattel mortgages.

The judgment of the lower court is reversed, and one will be entered here against the plaintiff in favor of the defendant for P16,228.21, with interest thereon from September 25, 1922, at the rate of 9 per. cent per annum, and for the further sum of P5,520.11, with interest thereon from the same date at the rate of 6 per cent per annum, and for costs. So ordered.

Avanceña, C.J., Malcolm, Ostrand, and Villa-Real, JJ., concur.

Johnson, J., reserves his vote.

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VILLAMOR, J., dissenting:

With all due respect to the majority opinion, I believe the judgment appealed from should be affirmed, with the modification that the sum of P5,520.11, the value of the defendant's property included in the sale, which was not covered by the mortgages Exhibits A and B, should be deducted from the sum of P56,081.08, with interest at the rate of 6 per cent per annum, which the defendant must pay the Bank of the Philippine Islands.

The majority opinion does not discuss the validity of the sale which was one of the errors assigned by the appellant. In my opinion, the fraud, on which the revocatory judgment by this court is based, does not appear to have been duly proven in the record. For this reason, I regret to have to dissent from the majority opinion. Judgment reversed.

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