

THE BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. V. CONCEPCION E HIJOS, INC., AND VENANCIO CONCEPCION, DEFENDANTS AND APPELLANTS. HENRY W. ELSE, DEFENDANT AND A...

G.R. No. 27701. July 21, 1928

Ponente: OSTRAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-27701/>

OSTRAND, J.:

It appears from the record that on July 6, 1921, the defendants Coneeption executed a promissory note in favor of the plaintiff for the sum of P342,372.64, payable on demand, and as security for payment, deposited 700 shares of the Philippine National Bank as collateral with the plaintiff and gave it a mortgage on 5,680 square meters of land, with improvements, situated on R. Hidalgo Street in Manila. The defendants Concepcion defaulted in the payment of the note, and on February 3, 1922, the plaintiff bank instituted the present foreclosure proceedings.

Shortly afterwards, Henry W. Elser entered into negotiations with the Concepcions and offered to take over the mortgaged property and assume the mortgage debt. To this the Concepcions agreed on the condition that they be relieved of all liability for the debt.

On March 23, 1922, Elser wrote the plaintiff bank the following letter:

"DEAR SIR: Confirming our conversation of this morning, I take pleasure in advising you that I have made arrangements with Messrs. Puno & Concepcion to take over their property on Calle R. Hidalgo, consisting of 5,680 square meters, including all improvements thereon, and also 700 shares in the Philippine National Bank mortgaged to you in the total sum of P342,000, and by which arrangement I am to be substituted in the place and stead of Messrs. Puno & Concepcion in the obligation to your bank.

"I have present prospects of renting the entire property, and in consideration thereof I will undertake to pay to the bank on the obligation thus undertaken by me, the sum of not less than five thousand pesos (P5,000) monthly on the principal, together with interest every six months. I will also reduce the mortgage not less than 25 per cent during the first year, not less than 50 per cent during the second year, and the balance within the third year, without prejudice, however, to my right to mortgage the property to any bonding institution or to take up the mortgage myself at any time during the three years period mentioned above, which I expect that I may be in a position to do.

"Yours very truly,

(Sgd.) "H. W. Elser"

No answer to this letter was given by the bank, and it clearly appears from the allegations in its amended complaint, and from the evidence, that it was unwilling to release the Concepcions from their liability for the mortgage debt and insisted on their confessing a judgment in the foreclosure proceedings. This the Concepcions refused to do unless the bank would agree to bid in the mortgaged property for the full amount of the judgment.

After further conversation with the representatives of the plaintiff bank, Elser on April 21, 1922, wrote it the following letter:

"DEAR SIRS (Attention of Mr. Zaragoza): With reference to our recent conversation regarding the R. Hidalgo property belonging to Venancio Concepcion (Puno & Concepcion), I respectfully request that you confirm in writing your verbal agreement that should the property in question become the property of your bank, in the amount of P342,000 plus interest to date, that you will sell the same to me for the same amount.

"This information is desired by the Attorneys for Venancio Concepcion, Mr. R. M. Calvo, in order to satisfy himself that in case Messrs. Puno & Concepcion accept judgment, turning over the property to you, that you in return will sell the property to me for the above mentioned sum, and not less than that sum.

"Trusting you will see your way clear to furnish this confirmation, in accordance with our conversation, we are

"Very truly,

(Sgd.) "H. W. Elser"

It must be inferred from this letter that Elser had been led to understand that the bank would bid in the land at the foreclosure sale for the full amount of the judgment and sell it to him for the same price. It will be readily seen that this proposition is entirely different from that contained in the letter of March 23d.

The plaintiff made no direct reply to the letter of April 21st, but Calvo, testifying for the plaintiff, stated that on April 28, Elser invited him to a conference with Nolting, the president of the bank, in regard to the matter; that on meeting Nolting, Elser said: "Mr. Nolting, do you still adhere to your acceptance of the offer I have made you in writing?" to which Nolting answered that he did not think there was any reason for him to go back on his word. He thereupon referred Elser and Calvo to Zaragoza, who in some matters appears to have acted as counsel for the bank, for further conferences. The negotiations did not lead to any action on the part of the bank, but on May 5, 1922, Elser entered into an agreement, in the form of a bilateral deed of sale, with V. Concepcion & Hijos, Inc., and Venancio Concepcion which appears in the record as Exhibit C and reads as follows in translation from Spanish:

"DEED OF PURCHASE AND SALE

"This deed of purchase and sale executed in the City of Manila, P. I., this fifth day of May 1922 A. D., by and between V. Concepcion & Hijos, Inc., a domestic corporation duly organized under the laws of the Philippine Islands domiciled at No. 861 Calle R. Hidalgo, District of Quiapo, City of Manila, represented herein by its president, Mr. Venancio Concepcion, by virtue of the powers granted him by the Board of Directors of said corporation in a resolution dated May 2, 1922, a copy of which duly certified, is attached hereto and made a part hereof, and Mr. Venancio Concepcion, of age, married with Mrs. Rosario San Agustin and resident of the City of Manila, his place of residence being in the municipality of San Juan, Province of Rizal, P. I., as party of the first part, and Mr. Henry W. Elser, of age, married with Mrs. Elaine Childs Elser, and resident of the City of Manila, with her place of residence at No. 600 Calle M. H. del Pilar, District of Malate, as party of the second part.

"WITNESSETH:

"Whereas, V. Concepcion e Hijos, Inc., is at present indebted to the Bank of the Philippine Islands, in the sum of P342,372.64, Philippine currency with interest thereon at the rate of 9 per cent per annum from September 30, 1921, to secure the payment of which, the firm of V. Concepcion e Hijos, Inc., and Mr. Venancio Ooncepcion as joint and several obligors, have executed in favor of the creditor bank on the 6th of July, 1921, a deed of mortgage and one of pledge upon the following properties:

"A tract of land with the buildings of strong materials erected thereon, situated on Calle San Sebastian, District of Quiapo. Bounded on the N. by Calle San Sebastian; on the E. by property of Maximino Paterno and Manuel Zamora; on the S. by property of the City of Manila; and on the W. by the Estero de Curtidor; containing an area of 5,686.30 square meters, more or less, of which land, buildings and improvements, the aforesaid Venancio Concepcion is the registered owner in accordance with the Land Registration Act, according to transfer certificate of title No. 14019, issued by the registrar of deeds of the City of Manila.

"Seven hundred shares of stock of the Philippine National Bank, belonging to Mr. Venancio Concepcion, issued to him and indorsed in blank in favor of the Bank of the Philippine Islands, described as follows: (Here follows the numbers and amounts of the certificates of shares.)

"Whereas on January 20, 1922, Mr. Venancio Concepcion, owner of the property above described, in consideration of the fact that they were subject to the payment of the sum of P342,372.64 with interest thereon at the rate of 9 per cent per annum, which was owing from V. Concepcion e Hijos, Inc., to the Bank of the Philippine Islands, as per deeds of mortgage and of pledge executed on July 6, 1921, has sold, assigned, and transferred to said firm of V. Concepcion e Hijos, Inc., the aforesaid properties for the sum of P290,000 Philippine currency, the agreed and stipulated price of the urban property being P220,000, Philippine currency, and that of the 700 shares of stock of the Philippine National Bank, the sum of P70,000 Philippine currency, as per public document executed on said date before Mr. Recaredo Ma. Calvo, a notary public in and for the City of Manila.

"Whereas, on February 8, 1922 the Bank of the Philippine Islands, filed with the clerk's office of the Court of First Instance of Manila, under No. 21537, a complaint, against V. Concepcion e Hijos, Inc., and Venancio Concepcion for the recovery of its mortgage credit evidenced by the deeds of mortgage and of pledge executed on July 6, 1921, notwithstanding the offer made by V. Concepcion e Hijos, Inc., to assign absolutely and forever to said creditor entity the properties which are the subject matter of the mortgage and pledge in full and total payment of their obligation.

"Whereas, Mr. Henry W. Elser is willing to subrogate himself to the obligation of V. Concepcion e Hijos, Inc., and Venancio Concepcion in favor of the Bank of the Philippine Islands and release them from the total of said obligation contracted by them on July 6, 1921, as per deeds of mortgage and of pledge executed on said date, in consideration of the sale, assignment and transfer in his favor of all the rights, interests, action, or share that they have or may have upon the properties described in said deeds of mortgage and pledge;

"Now therefore, we, V. Concepcion e Hijos, Inc., and Venancio Concepcion, in consideration of the sum of one peso (P1) Philippine currency, which we have this day received and which we declare was paid to us to our complete satisfaction, and of other important considerations, especially the subrogation into our joint and several obligations in favor of the Bank of the Philippine Islands, amounting to P342,372.64, Philippine currency, with interest thereon at the rate of 9 per cent per annum from September 30, 1921, which said Mr. Henry W. Elser hereby makes, binding himself, moreover, to release us from our obligation contracted in favor of the Bank of the Philippine Islands on July 6, 1921, do hereby sell, assign and transfer absolutely and forever to said Mr. Henry W. Elser, his heirs and successors in interest the properties described herein with the incumbrances created and existing in favor of the Bank of the Philippine Islands.

"That I, Henry W. Elser, accept this contract upon the precise terms in which it is executed.

"In testimony whereof, we sign these presents in the place and on the date above-mentioned.

"V. CONCEPCION E HIJOS, INC.

(Sgd.) "V. CONCEPCION

(Sgd.) "V. Concepcion

(Sgd.) "H. W. ELSER

"Signed in the presence of:

(Sgd.) "ERNESTO Ma. CALVO

"GREGORIO BUHAY "

The bank never gave notice of its conformity with the agreement above quoted but on June 15, 1922, it petitioned the court to include Henry W. Elser as a defendant in the complaint, on the strength of the obligations assumed by him in said agreement.

On June 23, 1922, the defendants Concepcion answered said petition praying that instead of merely being included, said Elser be substituted in their place as defendants, on the ground that the plaintiff had accepted the substitution of Elser in their place as its debtor.

On June 27, 1922, the trial court entered an order including Henry W. Elser as defendant and one month later, the plaintiff filed an amended complaint against the defendants Concepcion and Elser asking for a joint and several judgment against them in the amount prayed for in the original complaint and for the foreclosure of the mortgage securing the same.

On July 18, 1922, the defendants Concepcion filed a supplemental answer alleging the consent of the plaintiff to the subrogation of Elser in their place with respect to the obligations sued upon and asking for the dismissal of the case as to them on that ground.

On October 16, 1922, the defendant Elser demurred to the amended complaint on the ground that it failed to allege that the plaintiff had consented to the substitution of Elser in place of the Concepcions so as to render Elser personally liable to the plaintiff. This demurrer was sustained by the court and due exception was taken by the plaintiff.

On November 1, 1922, the plaintiff presented a second amended complaint, in which it was alleged that the sale from the Concepcions to Elser was with the knowledge and consent of the plaintiff but without waiver of its right of action against the Concepcions. The defendant Elser demurred on the ground that it did not appear from the amended complaint that the plaintiff had accepted Elser as a debtor and on the further ground that there was no showing therein as to the disposition of the collateral security held by plaintiff for the same debt. This demurrer was sustained on both grounds, on December 1, 1922.

On December 6, 1922, the plaintiff presented its third amended complaint, without material change in the averments of the second amended complaint, and a third demurrer thereto was sustained on December 28, 1922.

The plaintiff thereupon filed a fourth amended complaint, reiterating the allegations of the third amended complaint, alleging that the defendant Elser entered into possession of the mortgaged premises with plaintiff's Consent; that plaintiff had not sold the shares of the Philippine National Bank held by it as collateral, and asking for judgment decreeing that said shares and the mortgaged property be sold under order of the court, and that the defendants Concepcion and Elser be condemned to pay the deficiency, if any there should be. A demurrer to this complaint was sustained, on the ground that it failed to show a contractual relationship between the plaintiff and the defendant Elser.

On March 2, 1923, the plaintiff presented a fifth amended complaint, similar to the foregoing, but containing the additional allegation that the plaintiff accepted the assumption of the mortgage by the defendant Elser "without releasing the liability of the defendants" Concepcion. This complaint was demurred to on the ground that it did not sufficiently state that the plaintiff had accepted the substitution of Elser in place of the Concepcions, as the contract between them provided. The demurrer was overruled and the defendant Elser excepted.

On April 2, 1923, the defendant Elser answered, denying generally and specifically the allegations of the plaintiff's complaint. On the same date, C. W. Rosenstock, as guardian of the defendant, Henry W. Elser, filed a cross-complaint alleging that at the time Elser is alleged to have assumed the obligations of the Concepcions to the plaintiff, he was of unsound mind and that he had been induced to sign the same by false representations on the part of the Concepcions to the effect that the plaintiff had agreed that he be substituted in place of the Concepcions with respect to the obligations set up in the plaintiff's complaint and that the plaintiff would accept payment of the same in monthly installments on account of the principal of not less than P5,000, with interest payable every six months, and that the mortgage would be reduced not less than 25 per cent the first year, not less than 50 per cent the second year, and the balance within the third year, when, as a matter of fact, the plaintiff had not agreed thereto or accepted said terms of payment, as the Concepcions well knew, and had never accepted Elser's offer to the plaintiff made pursuant to said representations, and praying for the reasons stated, that the deed from the Concepcions to Elser, wherein he assumed the obligations of the former to the plaintiff, be cancelled. These allegations were denied by the plaintiff and the defendants Concepcion in their replies.

Elser died on June 18, 1923, and on January 4, 1924, the plaintiff suggested the death of the defendant Elser, and asked that the administrator of the estate, C. W. Rosenstock, be substituted in his place as defendant, and that the action be continued against Rosenstock in that capacity, on the ground that this action is for the foreclosure of a mortgage.

On January 11, 1924, the attorneys of record for the defendant Elser filed an opposition to the application to have the action continued against Rosenstock, in substitution of Elser, on the ground that, as to Elser, this is not a foreclosure action, and hence this action, as to him, abated by reason of his death, and any claim of the plaintiff against him should be presented to the committee on claims and appraisals of his estate.

This objection was overruled and Rosenstock, as Elser's administrator, was substituted in his place as defendant, by order of the court dated January 14, 1924, and exception thereto was duly taken. Subsequently, Rosenstock became the executor of Elser's estate, and as such, filed various amended answers and cross-complaints.

The last amended cross-complaint was filed by him on August 9, 1924, in case No. 24485 of the Court of First Instance of Manila, in which the estate of the deceased Elser was being administered. He repeated therein the allegations and prayer of his cross-complaint as guardian filed on April 2, 1923, and referred to above. The last amended answer was filed by him on August 21, 1925. It consisted of a denial of the allegations of the complaint and of the authenticity of the document whereby Elser is alleged to have assumed the obligations of the defendants Concepcion to the plaintiff; an allegation that at the time of the execution thereof, Elser was of unsound mind; and a statement of willingness to relinquish and abandon any rights Elser might have acquired under said document in favor of the plaintiff.

After a lengthy trial, the court below, on January 22, 1927, rendered its decision absolving the Elser estate from the complaint, ordering the Concepcions to pay the plaintiff the sum of P342,372.64, with interest at 9 per cent and costs, and providing for the sale of the mortgaged property, in case of non-payment of the judgment.

Both the plaintiff and the defendants Concepcion excepted to this judgment and moved for a new trial on the usual statutory grounds. The motions were denied and exceptions noted.

The case is now before this court on a joint bill of exceptions presented by the plaintiff and the defendants Concepcion pursuant to stipulation. No briefs have been filed by the Concepcions.

From the facts stated and from the pleadings it will be readily seen that as far as the defendant Elser is concerned, the plaintiff's alleged cause of action rests exclusively on the deed of contract Exhibit C. The well-known general

rule is that a contract affects only the parties and privies thereto. But there are exceptions to this rule and the plaintiff contends that though it is neither a party nor a privy to the contract here in question, the subrogation of Elser to the obligations of the Concepcions in favor of the plaintiff, as provided for in the contract, is a stipulation pour autrui upon which the plaintiff may maintain its action.

The nature and reach of the doctrine of stipulations pour autrui is so thoroughly discussed in the case of *Uy Tarn and Uy Yet vs. Leonard* (30 Phil., 471), that no further discussion thereof is here necessary. We wish, however, to emphasize the fact that it was there held that in order to constitute a valid stipulation pour autrui it must be the purpose and intent of the stipulating parties to benefit the third person and that it is not sufficient that the third person may be incidentally benefited by the stipulation. This conclusion is supported by numerous authorities and is in complete harmony with the second paragraph of article 1257 of the Civil Code, which reads as follows:

"Should the contract contain any stipulation in favor of a third person, he may demand its fulfillment, provided he has given notice of his acceptance to the person bound before the stipulation has been revoked."

Applying this test, it seems clear that neither Exhibit C nor any other agreement between the Concepcions and Elser contained any stipulation pour autrui in favor of the plaintiff. As stated in the appellee's brief:

"The Concepcions owed the plaintiff a large sum of money and wanted to be relieved of that obligation. Elser wanted the property which had been mortgaged to secure that obligation, and had to assume the obligation and agree to secure the discharge of the Concepcions therefrom, in order to get the property. Neither of them had any desire to confer any benefit to the bank. Neither of them entered into the contract for the sake of the bank. It is obvious that each entered into the contract impelled by the advantage accruing to him personally as a result thereof."

We may add that the stipulation here in question is not merely for the assumption of the mortgage debt by Elser, but is a provision for the subrogation of Elser to the Concepcions obligation to the plaintiff. Inasmuch as the mere assumption of the mortgage debt by the purchaser of mortgaged land does not relieve the mortgagor from his liability, it might be said with some show of reason that by such an arrangement the mortgagee will have two debtors for the same debt instead of only one and that this furnishes additional security and is to the creditor's advantage and for his benefit. But such is not the case where, as here, the stipulation is for the subrogation of the purchaser to the obligation of the original debtor; if such a stipulation is duly accepted by the creditor, it works a novation of the original agreement and releases the original debtor from further liability. Such subrogation is rarely for the benefit of the creditor and that, in the present case, it was not believed to be of any advantage to the bank is well shown by the fact that the parties were unable to obtain its written consent to the stipulation.

But assuming that the stipulation is for the benefit of a third person, the plaintiff is nevertheless not in position to maintain its action against Elser. In order to be enforceable, such stipulations must be accepted by the third person and that has not been done here. The plaintiff asserts that it accepted the stipulation in part, but that is not a sufficient acceptance. The ordinary rules of offer and acceptance are applicable, and it is a cardinal rule of the law of contracts that in order to create a binding agreement, the acceptance must be absolute, unconditional, and identical with the terms of the offer; otherwise there is no meeting of the minds or an expression of one and the same common intention, one of the essential elements of a valid contract (Civil Code, art. 1257; Page on Contracts, sec. 1308, and authorities there cited).

But the plaintiff argues that in American jurisprudence, the purchaser of mortgaged property who assumes the payment of the mortgage debt, may for that reason alone be sued for the debt by the creditor and that that rule is applicable in this jurisdiction. Aside from the fact we are not here dealing with a mere assumption of the debt, but with a subrogation, it may be noted that this court has already held that the American doctrine in this respect is not in harmony with the spirit of our legislation and has not been adopted in this country. In the case of *E. C.*

McCullough & Co. vs. Veloso and Serna (46 Phil., 1), the court, speaking through its present Chief Justice, said:

"The effects of a transfer of a mortgaged property to a third person are well determined by the Civil Code. According to article 1879 of this Code, the creditor may demand of the third person in possession of the property mortgaged payment of such part of the debt, as is secured by the property in his possession, in the manner and form established by the law. The Mortgage Law in force at the promulgation of the Civil Code and referred to in the latter, exacted, among other conditions, also the circumstance that after judicial or notarial demand, the original debtor had failed to make payment of the debt at maturity. (Art 135 of the Mortgage Law of the Philippines of 1889.) According to this, the obligation of the new possessor to pay the debt originated only from the right of the creditor to demand payment of him, it being necessary that a demand for payment should have previously been made upon the debtor and the latter should have failed to pay. And even if these requirements were complied with, still the third possessor might abandon the property mortgaged, and in that case it is considered to be in the possession of the debtor. (Art. 136 of the same law.) This clearly shows that the spirit of the Civil Code is to let the obligation of the debtor to pay the debt stand although the property mortgaged to secure the payment of said debt may have been transferred to a third person. While the Mortgage Law of 1893 eliminated these provisions, it contained nothing indicating any change in the spirit of the law in this respect. Article 129 of this law, which provides for the substitution of the debtor by the third person in possession of the property, for the purposes of the giving of notice, does not show this change and has reference to a case where the action is directed only against the property burdened with the mortgage. (Art. 168 of the Regulation.)"

From what we have said it follows that the plaintiff can have no cause of action against Elser, or rather against his estate. Assuming that Elser was of sound mind at the time of the execution of Exhibit C—and that is a much debated question—the Concepcions, and not the plaintiff, might have maintained an action against the Elser estate; but that action is now barred through their failure to present their claim in time to the committee of claims and appraisal in the probate proceedings, and the plaintiff can therefore, not successfully invoke article 1111 of the Civil Code, which in effect provides that after exhausting the property of which the debtor may be in possession, the creditor may have recourse to the debtor's credits and choses in action for the collection of the unpaid portion of the debt.

Counsel for the appellee also argue, that the bank, having failed to present its claim to the committee on claims and appraisal, it must be regarded as having elected to rely on its mortgage alone and therefore can have no personal judgment against the Elser estate. That is good law. Section 708 of the Code of Civil Procedure provides as follows:

"SEC. 708. Mortgage debt due from estate.—A creditor holding a claim against the deceased, secured by mortgage or other collateral security, may abandon the security and prosecute his claim before the committee, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by ordinary action in court, making the executor or administrator a party defendant; and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may prove his deficiency judgment before the committee against the estate of the deceased; or he may rely upon his mortgage or other security alone, and foreclose the same at any time, within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; * * * "

As will be seen, the mortgagee has the election of one out of three courses: (1) He may abandon his security and share in the general distribution of the assets of the estate, or (2) he may foreclose, secure a deficiency judgment and prove his deficiency judgment before the committee, or (3) he may rely upon his security alone, in which case he can receive no share in the distribution of the assets of the estate.

In this case the bank did not abandon the security and took no steps of any sort before the committee within the

time limit provided for by sections 689 and 690 of the Code of Civil Procedure. The committee ceased to function long ago, and the bank has now nothing to rely on except the mortgage. Intentionally or not, it has brought itself within the third course provided for in section 708; it has no alternative.

But counsel for the plaintiff say that the amount of the deficiency, if any, could not be proved before the foreclosure sale had been effected; that section 708 expressly provides for the proof of the deficiency judgment before the committee after the sale of the mortgaged property; that these provisions must be construed to mean that the presentation and prosecution of the claim for the deficiency must be made after, and not before, the sale; and that if the mortgagee presents his claim for the deficiency before a deficiency judgment has been rendered, he will lose his rights under the mortgage and be regarded as having abandoned his security.

This is clearly a misconception of the statute, and the cases cited by the appellant in support of its contention are not in point. Until the foreclosure sale is made, the demand for the payment of the deficiency is a contingent claim within the meaning of sections 746, 747, and 748 of the Code of Civil Procedure, which sections read as follows:

"SEC. 746. Claims may be presented to committee.—If a person is liable as surety for the deceased, or has other contingent claims against his estate which cannot be proved as a debt before the committee, the same may be presented with the proof, to the committee, who shall state in their report that such claim was presented to them.

"SEC. 747. Estate to be retained to meet claims.—If the court is satisfied from the report of the committee, or from proofs exhibited to it, that such contingent claim is valid, it may order the executor or administrator to retain in his hands sufficient estate to pay such contingent claim, when the same becomes absolute, or, if the estate is insolvent, sufficient to pay a portion equal to the dividend of the other creditors.

"SEC. 748. Claim becoming absolute in two years, how allowed.—If such contingent claim becomes absolute and is presented to the court, or to the executor or administrator, within two years from the time limited for other creditors to present their claims, it may be allowed by the court if not disputed by the executor or administrator, and, if disputed, it may be proved before the committee already appointed, or before others to be appointed, for that purpose, as if presented for allowance before the committee had made its report."

These sections are in entire harmony with section 708; the amount of the deficiency cannot be ascertained or proven until the foreclosure proceedings have terminated, but the claim for the deficiency must be presented to the committee within the period fixed by sections 689 and 690 of the Code. The committee does not then pass upon the validity of the claim but reports it to the court. If the court "from the report of the committee" or from "the proofs exhibited to it" is satisfied that the contingent claim is valid, the executor or administrator may be required to retain in his possession sufficient assets to pay the claim when it becomes absolute, or enough to pay the creditor his proportionate share if the assets of the estate are insufficient to pay the debts. When the contingent claim has become absolute, its amount may be ascertained and established in the manner indicated by sections 748 and 749. As will be seen, the bank both could and should have presented its claim to the committee within the time prescribed by the law. The concurring opinion of Justices Malcolm and Fisher in the case of *Jaucian vs. Querol* (38 Phil., 707), contains a very lucid exposition of the law on the subject and further comment is therefore unnecessary.

The appeal is without merit and the judgment of the court below is affirmed with the costs against the plaintiff-appellant. So ordered.

Johnson, Street, Malcolm, Johns, Romualdez, and Villa-Real, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.