

**ASIA BANKING CORPORATION, PLAINTIFF AND APPELLANT, VS.
ASUNCION NABLE JOSE AND LICHAUCO & CO., INC.,
DEFENDANTS AND APPELLEES.**

G.R. No. 28495. March 31, 1928

Ponente: STATEMENT At all the times alleged, the plaintiff was and is now a foreign banking corporation organized and existing under the laws of the State of New York of the United States, and duly licensed to transact business in the Philippine Islands, with its branch office in the City of Manila, and, for brevity, it will be named and styled as the Bank. The defendant, Asuncion Nable Jose, is of legal age, unmarried, and a resident of the City of Manila, and will be known as Nable Jose. The defendant, Lichauco & Co., Inc., is a domestic corporation, with its principal office also in the City of Manila, and, for brevity, will be hereinafter referred to as the Lichauco Corporation. Plaintiff alleges that on December 17, 1921, the Lichauco Corporation was the registered owner of the haciendas known as "Sevitanan" and "Sapangbalen," specifically described in the complaint. That upon that date, the Lichauco Corporation was indebted to the Bank in the sum of P146,242.11, to which it made and executed a public document marked Exhibit A, which is attached to, and made a part of, the complaint, in and by which, and to secure the payment of that amount, it agreed to deliver to the Bank 37 1/2 per cent of all sugar coming from the said haciendas until the whole amount of the debt was fully paid, and that the contract was well known to the defendant Nable Jose. That at the time of the execution of Exhibit A, the Lichauco Corporation was under the exclusive management and control of Faustino Lichauco, whose brother, Zacarias Lichauco, is married to the sister of the defendant, Asuncion Nable Jose, and that the stockholders of the corporation were Faustino Lichauco, Luisa Fernandez, his wife, Cornelia B. Lichauco, Tomas Lichauco, his son, and Jose Barbaza, the bookkeeper, the last of whom held one share only to qualify him as a director. That upon the date in question, the Lichauco Corporation was indebted in large amounts to various firms, persons and corporations. That on January 16, 1922, said Faustino Lichauco, Luisa Fernandez, Cornelia B. Lichauco, Tomas Lichauco and Jose Barbaza illegally attempting to act for and on account of the Lichauco Corporation, and conspiring with the defendant Nable Jose, her sister Amparo Nable Jose, and Maria Corcuera, the widow of Galo Lichauco, deceased brother of said Faustino Lichauco, and for the purpose of defrauding the plaintiff and hindering and delaying it in the collection of its claim against the Lichauco Corporation, executed and caused to be recorded a simulated and fictitious deed to the defendant Nable Jose of that portion of the property described in clauses 1, 2 and 3 of paragraph II of the complaint, known as the "Sevitanan" and "Sapangbalen" haciendas. A copy of the deed is attached to, and made a part of the complaint marked Exhibit B. That it is falsely recited therein that it was executed in consideration of P70,000 which was delivered to the Lichauco Corporation on August 2, 1920, as and from the proceeds of a loan for that amount obtained by the defendant Nable Jose from the Philippine Sugar Estates Development Co., Ltd., and which the Lichauco Corporation agreed to repay in installments of the same amounts and at the same time as those which she agreed to pay to the Philippine Sugar Estates Development Co., Ltd. That the Lichauco Corporation has no other property from which the plaintiff can satisfy its claim. That the P70,000 was never delivered to the Lichauco Corporation, and that there was no consideration for Exhibit B. That at the time of the conveyance, the lands therein described were of the value of at least P300,000, and that the purchase price was and is grossly inadequate even if it had been paid by the defendant Nable Jose to the Lichauco Corporation. That Exhibit B was never executed by the Lichauco Corporation, and that it never sold and conveyed the property in question to the defendant Nable Jose. That on August 11, 1922, Nable Jose caused the deed in question to be registered with the register of property of the Province of Pampanga, and a certificate of title was issued in her favor No. 454. That on October 26, 1922, the Lichauco Corporation having refused to deliver the sugar in accord with the terms and provisions of Exhibit A, plaintiff filed a complaint against the Lichauco Corporation in the Court of First Instance of Manila for the recovery of the

P146,242.11 due and owing it from the Lichauco Corporation. That on January 24, 1923, it obtained a corresponding judgment for that amount against that corporation, with interest thereon at the rate of 10 per cent per annum, but that execution was suspended for a period of three months. That on July 24, 1923, execution was issued against the property of the Lichauco Corporation, and plaintiff caused all of the right, title and interest of that corporation in and to the property described, to be levied upon and sold by the sheriff of the Province of Pampanga, at which sale the Bank bid in the property for P 70,000, but it was unable to register its deed in the registry of property of the Province of Pampanga, by reason of the fraudulent and illegal and simulated deed of conveyance to the defendant Nable Jose, which was previously recorded. That the conveyance to her constitutes a cloud upon plaintiff's title. That at the time of the sheriff's sale to the defendant, there was still due and unpaid on the judgment, the sum of P113,251.69, and that no part of it will be satisfied, unless the deed to the defendant Nable Jose is annulled and set aside, and the sheriff's deed to the Bank is recorded, for all of which the plaintiff prays for a corresponding judgment. The Lichauco Corporation filed an answer in the nature of a general and specific denial. October 11, 1923, the defendant Nable Jose filed her answer which was amended on April 30, 1926, in which she made a general and specific denial, and, as a special defense, alleges that the judgment obtained by the Bank against the Lichauco Corporation was obtained by collusion and a conspiracy between the Bank and the Lichauco Corporation, and that the actual debt is about P70,000, and, as a cross-complaint, alleges that for a valid consideration, Nable Jose acquired an undivided share equivalent to 23/25 of the rural estate described in the complaint and in the transfer certificate of title No. 454, issued in her name by the register of deeds of Pampanga. That the Bank does not have any right, title or interest in that land, and, as a counterclaim, she alleges the securing of the judgment by the Bank against the Lichauco Corporation, as alleged, the issuance of the writ of execution, in and by which the sheriff of Pampanga levied upon the state of Nable Jose in and to the real property in question, upon the pretext of attaching it as the property of the Lichauco Corporation. That by reason thereof, she filed a third-party claim to the property, and that the Bank, to secure the sale of the property, indemnified the sheriff whereby the property was sold to the Bank "on account of the writ of execution of the judgment in civil case No. 23110 of the Court of First Instance of Pampanga against Lichauco & Co., Inc." That at the time of the sale and purchase, the Bank well knew that Nable Jose was the sole and exclusive owner of the property. "7. Asuncion Nable Jose had a contract for the sale of her share in this realty for the sum of four hundred and forty thousand pesos (P440,000), Philippine currency, which was about to be consummated, she receiving the P440,000, Philippine currency, and selling her share when the sale of her said share by the sheriff of the Province of Pampanga at public auction took place under the writ of execution of the judgment against Lichauco & Co., Inc., in civil case No. 23110 of the Court of First Instance of Manila. "8. The purchaser, who was ready to purchase the share of Asuncion Nable Jose and pay its price in the manner agreed upon, learned that her said share had been sold by the sheriff of the Province of Pampanga, as aforesaid, and had been acquired by the Asia Banking Corporation, and, for that reason, desisted entirely from his purchase, alleging that he wanted to buy properties not in litigation and did not want any litigation. "9. Notwithstanding that Asuncion Nable Jose, through her attorney in fact, Amparo Nable Jose, told this purchaser that the Asia Banking Corporation had no title, interest or share in her undivided property, and that said bank has not acquired anything through the sale at public auction, because the same was her exclusive property and not that of Lichauco & Co., Inc., said purchaser answered that he had everything ready for the consummation of the purchase, and that he was ready to carry out the same upon the terms stipulated, but he withdrew because he did not want to buy a litigation, nor properties in litigation. "10. This attitude of the Asia Banking Corporation injuring Asuncion Nable Jose and acting with fault, for the deliberate purpose of causing her a damage, has in fact caused an irreparable damage to Asuncion Nable Jose in the sum of three hundred and seventy thousand pesos (P370,000), Philippine currency." She prays that she be absolved from the complaint and have a decree on her cross-complaint, that she is the sole and exclusive owner of the property in question, and that she have judgment on her counterclaim against the plaintiff for P370,000 as damages. After the taking of the evidence upon such issues, the lower court rendered judgment denying plaintiff any relief, and absolved the defendant Nable Jose from all of the allegations made in the complaint, and quieting her title to the lands in question, and denying her any damages on her cross-complaint. On appeal the Bank assigns the following errors: "I. The trial court erred in failing to find that under the by-laws of Lichauco & Co., Inc., neither its board of directors nor other officers had any power to hypothecate or convey or to ratify the hypothecation or conveyance of the real

estate in question to the defendant Asuncion Nable Jose. "II. The trial court erred in finding that the deed of the 16th of January, 1922, by the alleged shareholders of the defendant Lichauco & Co., Inc., in favor of its codefendant Asuncion Nable Jose (Exhibit B, complaint), even though executed in good faith validly conveyed the haciendas therein described as against the creditors of Lichauco & Co., Inc. "III. The trial court erred in failing to find that the delivery to Lichauco & Co., Inc., of the check representing the loan of P70,000 by the Philippine Sugar Estates Development Co. to the defendant Asuncion Nable Jose on the 2d day of August, 1920, the subsequent execution on November 21, 1921, of an unrecorded instrument of mortgage by Lichauco & Co., Inc., to its codefendant Asuncion Nable Jose (Exhibits EE and 5) to secure the payment of the P70,000 and the final execution of the deed to Asuncion Nable Jose by the shareholders of Lichauco & Co., Inc., on January 16, 1922 (Exhibit B, complaint), of the same haciendas described in the mortgage were fraudulent, simulated and fictitious transactions consummated in pursuance of a conspiracy between members and relatives of the Lichauco family consisting of the defendant Asuncion Nable Jose and the shareholders and directors of Lichauco & Co., Inc., to cheat and defraud the appellant and other creditors of the said corporation. "IV. The court erred in failing to find that the alleged consideration for the conveyance even though genuine was grossly inadequate and therefore fraudulent as to creditors. "V. The trial court erred in rendering judgment in favor of the defendant and against the plaintiff." JOHNS, J.

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STATEMENT

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Plaintiff alleges that on December 17, 1921, the Lichauco Corporation was the registered owner of the haciendas known as "Sevitanan" and "Sapangbalen," specifically described in the complaint. That upon that date, the Lichauco Corporation was indebted to the Bank in the sum of P146,242.11, to which it made and executed a public document marked Exhibit A, which is attached to, and made a part of, the complaint, in and by which, and to secure the payment of that amount, it agreed to deliver to the Bank 37 1/2 per cent of all sugar coming from the said haciendas until the whole amount of the debt was fully paid, and that the contract was well known to the defendant Nable Jose. That at the time of the execution of Exhibit A, the Lichauco Corporation was under the exclusive management and control of Faustino Lichauco, whose brother, Zacarias Lichauco, is married to the sister of the defendant, Asuncion Nable Jose, and that the stockholders of the corporation were Faustino Lichauco, Luisa Fernandez, his wife, Cornelia B. Lichauco, Tomas Lichauco, his son, and Jose Barbaza, the bookkeeper, the last of whom held one share only to qualify him as a director. That upon the date in question, the Lichauco Corporation was indebted in large amounts to various firms, persons and corporations. That on January 16, 1922, said Faustino Lichauco, Luisa Fernandez, Cornelia B. Lichauco, Tomas Lichauco and Jose Barbaza illegally attempting to act for and on account of the Lichauco Corporation, and conspiring with the defendant Nable Jose, her sister Amparo Nable Jose, and Maria Corcuera, the widow of Galo Lichauco, deceased brother of said Faustino Lichauco, and for the purpose of defrauding the plaintiff and hindering and delaying it in the collection of its claim against the Lichauco Corporation, executed and caused to be recorded a simulated and fictitious deed to the defendant Nable Jose of that portion of the property described in clauses 1, 2 and 3 of paragraph II of the complaint, known as the "Sevitanan" and "Sapangbalen" haciendas. A copy of the deed is attached to, and made a part of the complaint marked Exhibit B.

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October 11, 1923, the defendant Nable Jose filed her answer which was amended on April 30, 1926, in which she made a general and specific denial, and, as a special defense, alleges that the judgment obtained by the Bank against the Lichauco Corporation was obtained by collusion and a conspiracy between the Bank and the Lichauco Corporation, and that the actual debt is about P70,000, and, as a cross-complaint, alleges that for a valid consideration, Nable Jose acquired an undivided share equivalent to 23/25 of the rural estate described in the complaint and in the transfer certificate of title No. 454, issued in her name by the register of deeds of Pampanga. That the Bank does not have any right, title or interest in that land, and, as a counterclaim, she alleges the securing of the judgment by the Bank against the Lichauco Corporation, as alleged, the issuance of the writ of execution, in and by which the sheriff of Pampanga levied upon the state of Nable Jose in and to the real property in question, upon the pretext of attaching it as the property of the Lichauco Corporation. That by reason thereof, she filed a third-party claim to the property, and that the Bank, to secure the sale of the property, indemnified the sheriff whereby the property was sold to the Bank "on account of the writ of execution of the judgment in civil case No. 23110 of the Court of First Instance of Pampanga against Lichauco & Co., Inc." That at the time of the sale and purchase, the Bank well knew that Nable Jose was the sole and exclusive owner of the property.

"7. Asuncion Nable Jose had a contract for the sale of her share in this realty for the sum of four hundred and forty thousand pesos (P440,000), Philippine currency, which was about to be consummated, she receiving the P440,000, Philippine currency, and selling her share when the sale of her said share by the sheriff of the

Province of Pampanga at public auction took place under the writ of execution of the judgment against Lichauco & Co., Inc., in civil case No. 23110 of the Court of First Instance of Manila.

"8. The purchaser, who was ready to purchase the share of Asuncion Nable Jose and pay its price in the manner agreed upon, learned that her said share had been sold by the sheriff of the Province of Pampanga, as aforesaid, and had been acquired by the Asia Banking Corporation, and, for that reason, desisted entirely from his purchase, alleging that he wanted to buy properties not in litigation and did not want any litigation.

"9. Notwithstanding that Asuncion Nable Jose, through her attorney in fact, Amparo Nable Jose, told this purchaser that the Asia Banking Corporation had no title, interest or share in her undivided property, and that said bank has not acquired anything through the sale at public auction, because the same was her exclusive property and not that of Lichauco & Co., Inc., said purchaser answered that he had everything ready for the consummation of the purchase, and that he was ready to carry out the same upon the terms stipulated, but he withdrew because he did not want to buy a litigation, nor properties in litigation.

"10. This attitude of the Asia Banking Corporation injuring Asuncion Nable Jose and acting with fault, for the deliberate purpose of causing her a damage, has in fact caused an irreparable damage to Asuncion Nable Jose in the sum of three hundred and seventy thousand pesos (P370,000), Philippine currency."

She prays that she be absolved from the complaint and have a decree on her cross-complaint, that she is the sole and exclusive owner of the property in question, and that she have judgment on her counterclaim against the plaintiff for P370,000 as damages.

After the taking of the evidence upon such issues, the lower court rendered judgment denying plaintiff any relief, and absolved the defendant Nable Jose from all of the allegations made in the complaint, and quieting her title to the lands in question, and denying her any damages on her cross-complaint.

On appeal the Bank assigns the following errors:

"I. The trial court erred in failing to find that under the by-laws of Lichauco & Co., Inc., neither its board of directors nor other officers had any power to hypothecate or convey or to ratify the hypothecation or conveyance of the real estate in question to the defendant Asuncion Nable Jose.

"II. The trial court erred in finding that the deed of the 16th of January, 1922, by the alleged shareholders of the defendant Lichauco & Co., Inc., in favor of its codefendant Asuncion Nable Jose (Exhibit B, complaint), even though executed in good faith validly conveyed the haciendas therein described as against the creditors of Lichauco & Co., Inc.

"III. The trial court erred in failing to find that the delivery to Lichauco & Co., Inc., of the check representing the loan of P70,000 by the Philippine Sugar Estates Development Co. to the defendant Asuncion Nable Jose on the 2d day of August, 1920, the subsequent execution on November 21, 1921, of an unrecorded instrument of mortgage by Lichauco & Co., Inc., to its codefendant Asuncion Nable Jose (Exhibits EE and 5) to secure the payment of the P70,000 and the final execution of the deed to Asuncion Nable Jose by the shareholders of Lichauco & Co., Inc., on January 16, 1922 (Exhibit B, complaint), of the same haciendas described in the mortgage were fraudulent, simulated and fictitious transactions consummated in pursuance of a conspiracy between members and relatives of the Lichauco family consisting of the defendant Asuncion Nable Jose and the shareholders and directors of Lichauco & Co., Inc., to cheat and defraud the appellant and other creditors of the said corporation.

"IV. The court erred in failing to find that the alleged consideration for the conveyance even though genuine was grossly inadequate and therefore fraudulent as to creditors.

"V. The trial court erred in rendering judgment in favor of the defendant and against the plaintiff."

JOHNS, J.:

The records in this and its companion cases are voluminous, yet under the view which we have taken, only a very small portion of them is material. Nearly all of the important facts are admitted, and there is no serious dispute over those which are contested.

It appears that the Lichauco Corporation was organized in the year 1914, and to all intents and purposes, it was a typical family corporation, and that at the time of its organization, the defendant Nable Jose was the subscriber and owner of about 40 per cent of its capital stock.

At the trial the following stipulation was made:

"That the parties to the deed Exhibit B hereinbelow mentioned bear ties of kinship as follows: Luisa Fernandez is the wife of Faustino Lichauco, sr. he being the same Faustino Lichauco who signed the document Exhibit C; Cornelia B. Lichauco is a daughter of Luisa Fernandez and the same Faustino Lichauco; Tomas Lichauco is a son of the same Luisa Fernandez and Faustino Lichauco; that Asuncion Nable Jose, one of the defendants in this case, is a sister of Amparo Nable Jose, and the latter is the wife of Zacarias Lichauco, Zacarias Lichauco being the brother of Faustino Lichauco, sr." (P. 4, s. n., case G. R. No. 28495. To the same effect is the stipulation found on p. 4, 8. n.t., G. R. No. 26882).[1]

It also appears that on the same day and before the same notary and signed in the same manner, other deeds and transfers of the corporate property were made to different members of the Lichauco family.

The following stipulation was also made;

"It is stipulated between the parties that in the book of inventories of Lichauco & Co., Inc., commencing February 28, 1915, it appears that Asuncion Nable Jose was indebted to the corporation in the sum of P70,662.31, and that on February 29, 1916, she was indebted to the corporation Lichauco & Co., Inc., in the sum of P110,971.83; and on February 28, 1917, she was indebted to the corporation Lichauco & Co., Inc., in the sum of P163,881.46; that in the inventory of February 28, 1918, the name of Asuncion Nable Jose does not appear as a debtor of the corporation; and that none of the books of account of Lichauco & Co., Inc.—the ledger, journals, or cash book from which it might be ascertained in what manner she paid if she ever paid anything exist." (G. R. No. 28495, s. n., 462-464.)

Based upon this stipulation, and for the want of evidence tending to show when and how and in what manner Nable Jose paid the P163,881.46 due and owing from her to the Lichauco Corporation on February 28, 1917, the appellant vigorously contends that this amount has never been paid.

It is admitted that on August 2, 1920, Nable Jose executed a mortgage to the Philippine Sugar Estates Development Company, Ltd., a domestic corporation, to secure a loan from it of P70,000, "which I promise to return within the period of one (1) year extendible for another year from this date," with interest at the rate of 11 per cent per annum, payable monthly in advance, and that to secure the payment of that amount, she duly executed a mortgage on some of her real property in the City of Manila. It is also admitted that Nable Jose received P70,000 from the Sugar Estates Development Company at the time the mortgage was executed, and that concurrent therewith, she paid over and delivered that amount to the Lichauco Corporation. It is also admitted that on the 12th day of November, 1921, Faustino Lichauco and Luisa F. de Lichauco in person and claiming to act for and on behalf of the Lichauco Corporation, executed a mortgage to the defendant Nable Jose upon the real property now in question, to secure her in the payment of the P70,000, which among other things recites that on August 2, 1920, Nable Jose acknowledged herself "to be in debt to the Philippine Sugar Estates Development Company, Ltd., in the sum of seventy thousand pesos (P70,000) by way of loan, payable in one year, extendible to another year, with interest at eleven per centum (11%) per annum, interest to be paid monthly in advance." That

to secure its payment, she executed a mortgage on two pieces of real property in the City of Manila in which it was said that Luisa Fernandez de Lichauco, as president of the Board of Directors of Lichauco & Co., Inc., "hereby declare and acknowledge that all of the said sum of seventy thousand! pesos (P70,000) received from the Philippine Sugar Estates Development Company, Ltd., by the said Asuncion Nable Jose was delivered by her to Lichauco & Co., Inc., for whose interest and benefit, in reality, said loan was contracted, with the express condition that said Lichauco & Co., Inc., should deliver in due time to Asuncion Nable Jose all the amounts which she, by virtue of the deed of August 2, 1920, is obliged to deliver to the Philippine Sugar Estates Development Company, Ltd., to realize the payment of the interest and the capital of said loan, upon the termination of the terms stipulated in the said deed." And it further recites that Luisa Fernandez de Lichauco "hereby create a mortgage in favor of the aforementioned Asuncion Nable Jose, over the share of Lichauco & Co., Inc., in the properties hereinbelow described with their improvements, to secure the payment by Lichauco & Co., Inc., to said Asuncion Nable Jose of the above-mentioned sum of seventy thousand pesos (P70,000) and its interest." And, further, "7th. I, the declarant, Luisa Fernandez de Lichauco, further declare that Lichauco & Co., Inc., had to contribute to the capital stock of the Pampanga Sugar Development Co. the sum of thirty-six thousand pesos (P36,000) and in consideration of the contribution of this sum, of the assignment of one half of the annual crop of the lands above-described and the authorization granted to be able to encumber or mortgage the share of Lichauco & Co. in the same, the said Pampanga Sugar Development Co. has obliged itself to assign, and within a short time will issue in favor of Lichauco & Co., Inc., a certain number of shares of said company, the Pampanga Sugar Development Co., the number and amount of which will be fixed in proportion to the contribution and the importance of the lands of the persons who also entered into a contract with the said Pampanga Sugar Development Co., identical with that celebrated by it with Lichauco & Co., Inc." It was also therein recited that "to deliver to the said Asuncion Nable Jose by way of pledge, all of said shares in said company, the Pampanga Sugar Development Company, as soon as said shares are issued in favor of, and received by, Lichauco & Co., Inc. Provided, That without the need of the execution of a special contract, the mere delivery, under receipt of said shares to the said Asuncion Nable Jose will produce the effect of constituting automatically the pledge over said shares in favor of Asuncion Nable Jose to insure the payment of said loan of seventy thousand pesos (P70,000) and its interest." And "that the shares of the Pampanga Sugar Development Co., mentioned in the foregoing paragraph, at the time of executing this deed, are free from all charges, encumbrances and responsibility and said Lichauco & Co., Inc., obliges itself not to alienate them or encumber them until the whole of said loan of seventy thousand pesos (P70,000) have been paid, together with its interest, contracted by Asuncion Nable Jose with the Philippine Sugar Estates Development Co."

It will be noted that, although Nable Jose executed her mortgage to secure the payment of the P70,000 on August 2, 1920, the above mortgage, to secure her, was not executed until November 12, 1921, or about sixteen months later, and that during that period she did not have any security for the P70,000. It is also admitted that on January 12, 1922, another instrument was signed by Luisa F. de Lichauco, Cornelia B. Lichauco, Tomas Lichauco, Jose Barbaza, Faustino Lichauco and Asuncion Nable Jose and duly acknowledged before a notary public and duly registered, which purports to convey the real property in question to the defendant Nable Jose, in which it is recited:

"That said sum of P70,000, given by way of loan by the Philippine Sugar Estates Development Co., Ltd., to Asuncion Nable Jose, was delivered by the latter to Lichauco & Co., Inc., this company, on its part, obligating itself to deliver to said Asuncion Nable Jose, within the periods fixed in said deed of August 2, 1920, the amounts necessary to settle and pay said sum of P70,000 and its interest."

And that:

"The aforementioned Asuncion Nable Jose having assumed the obligation to pay to the Philippine Sugar

Estates Development Co., Ltd., said sum of P63,000 and its interest, relieving Lichauco & Co., Inc., from the obligation of paying said sum of P63,000 and its interest, the parties of the first part, as president and members of the Board of Directors of Lichauco & Co., Inc., and as the only shareholders of said company, by these presents, sell, cede and convey, absolutely and forever, to said Asuncion Nable Jose the full ownership, with all its improvements, of the twentythree twenty-fifths parts of the rural estates, belonging to Lichauco & Co., Inc."

Then follows a description of the real property involved in this suit.

It further recites:

"And considering further that Lichauco & Co., Inc., contributed to the capital of the Pampanga Sugar Development Co. in cash the sum of thirty-six thousand pesos (P36,000), the Pampanga Sugar Development Co. has obligated itself to cede to Lichauco & Co., Inc., a certain number of shares of said company, in proportion to its contribution to the capital of the same. It is well understood between the parties that all these shares are hereby conveyed in fee simple from now to the purchaser Asuncion Nable Jose, together with the ownership of the three (3) estates described in clause 3 for the above-mentioned sum of P63,000 and its interest which said Asuncion Nable Jose obliges herself to pay personally by these presents, to the Philippine Sugar Estates Development Co., Ltd."

And that by reason thereof, "both parties hereby declare that said deed of mortgage and pledge of November 12, 1921 is totally cancelled."

The amount of land thus conveyed is 410 hectares, and the consideration specified in the deed is P70,000. But it will also be noted that in addition to the land, the deed also conveys to the defendant Nable Jose the amount of P36,000 which the Lichauco Corporation contributed in cash "to the capital of the Pampanga Sugar Development Co.," and for which that company had obligated itself to cede to the Lichauco Corporation "a certain number of shares of said company, in proportion to its contribution to the capital of the same." At the argument it was conceded that such shares of stock then had a valuation of P36,000, and it was claimed that they now have a valuation of something near P100,000. That is to say, by this conveyance Nable Jose also received shares of stock in the Pampanga Sugar Development Company which were then of the value of P36,000, and the consideration for the deed was P70,000; hence, it must follow that the true consideration for the 410 hectares of land would be only P34,000.

It appears from the record of the Lichauco Corporation that the land in question had a book value of P250,000, and Faustino Lichauco, its president and manager, testified that it had a reasonable value of P600,000. In addition to all of which, in her verified answer, the defendant under oath said that she had given an option on the property at a price of P440,000, and that the parties were ready and willing to make the purchase, and that the deal would have been consummated, had it not been for the action of the bank in prosecuting this suit.

Hence, in the final analysis, the deed in question to Nable Jose purports to convey to her 410 hectares of land for an actual consideration of P36,000, the real value of which, as shown by the evidence, ranges from P250,000 to P600,000.

After the rendition of the judgment in the lower court, the Bank filed a motion for reconsideration in which specific attention was called to this inadequacy of consideration, pointing out that the land involved was about 410 hectares, in which motion it was stated:

"We submit that this Honorable Court should have found that the consideration of P70,000 for the sale of said haciendas is inadequate and that as a matter of equity and justice plaintiff herein, being one of the creditors of Lichauco & Co., Inc., is entitled to said haciendas upon payment of P70,000 to the defendant Asuncion Nable

Jose, for there is no reason why Asuncion Nable Jose should be allowed to have said haciendas for the meager sum of P70,000 when the same are reasonably worth P400,000, to the prejudice of the other creditors and especially the plaintiff herein."

That motion was also denied.

The rule upon that question is well stated in Ruling Case Law, volume 12, as follows:

Pages 477-479.

"* * * If a debtor be actually insolvent, he may still dispose of his property for a valuable consideration in good faith, but it seems to be well settled that he will not be permitted to alienate his property and place it in a position where it is not subject to process in behalf of his creditors, unless there has been received a full and fair consideration for the property transferred, and the same has been made in good faith, and any transfer made in contemplation of insolvency is invalid under the same circumstances as if made by the debtor where actually insolvent. * * *

"11. Disparity between Consideration and Real Value.—Gross disparity between the consideration and the actual value of the property conveyed is a badge of fraud, and this even in the case of an execution sale. Under such circumstances it is generally held that equity will in any event subject the property conveyed to the claims of creditors to the extent that the real value exceeds the consideration, for such a conveyance is partially voluntary. If the disparity of consideration is deliberate, with intent to defraud creditors, the transaction is utterly void as to creditors, and gross disparity may under some circumstances of itself justify the inference that there was actual fraud, especially where the disparity is occasioned not by the absence, but by the illegality of the consideration. A man must be just before he is generous, and consequently he will not be permitted to prejudice his creditors by giving away his property for little or nothing. The courts will not weigh the value of the goods sold and the price received in very nice scales, but all circumstances considered, there should be a reasonable and fair proportion between the one and the other. Inadequacy of price does not mean an honest difference of opinion as to price, but a consideration so far short of the real value of the property as to startle a correct mind. * * *"

That is good law.

The evidence in the instant case is conclusive that the consideration for the deed to Nable Jose was grossly inadequate. It is also conclusive that at the time of the execution of the deed and even before that, the Lichauco Corporation was insolvent. That it did not have any liquid assets, and that all of its other assets were pledged or mortgaged, some of which were for far more than their actual value.

It also appears that the undisputed facts bring this case squarely within the terms and provisions of article 1292 of the Civil Code, which is as follows:

"Payments made by a debtor while in a state of insolvency on account of obligations which were not enforceable at the time the payment was made may also be rescinded."

As stated, on August 2, 1920, Nable Jose borrowed the P70,000 in question, to secure the payment of which she executed a mortgage on her Manila property, and by its terms and provisions, she expressly had one year in which to pay the debt, and was also given another year at her own option. That is to say, by the express terms and conditions of her mortgage, the principal debt would not become due and payable until the 2nd of August, 1922. This specific debt was for the first time secured by the mortgage of the Lichauco Corporation on the property in question executed on November 12, 1921, in which it is specifically recited that the Lichauco Corporation should and agreed to pay the P70,000 at the same time and manner and on the same terms and conditions specified and defined in the mortgage which Nable Jose executed on her Manila property. That is to say, that the deed of the

property in question was executed on January 16, 1922, and that by the express terms and provisions of the two different mort and payable until August 2, 1922. Hence, it must follow that, if the deed in question is treated as a sale and purchase, the payment of the P70,000 was made while the Lichauco Corporation was "in a state of insolvency," and it was made January 16, 1922, on account of the obligation of the Lichauco Corporation which was "not enforcible at the time the payment was made," or at any time prior to August 2, 1922.

Plaintiff's Exhibit A was executed on December 17, 1921, one month and five days after the Lichauco Corporation executed its mortgage to Nable Jose. By the express provisions of Exhibit A, the Lichauco Corporation transferred and assigned to the Bank 37 1/2 per cent of all of its interest in the sugar produced on the haciendas in question, and in which it is said: "It being the intention hereby to assign and transfer all free sugar derived by the debtor from said haciendas until such time as said indebtedness as shown by the books of the Bank may be satisfied."

The deed of Nable Jose of January 16, 1922, expressly recites:

"The parties of the first part declare that this sale is made with the depress condition that the crops of sugar and palay corresponding to the agricultural year 1921-1922 are not understood as included, whether harvested or about to be harvested in said lands sold, crops which belong to the vendor Lichauco & Co., Inc."

It will thus be seen that on December 17, 1921, the Lichauco Corporation transferred and assigned to the Bank 37 1/2 per cent of all of the sugar received from the haciendas until such time as its indebtedness to the Bank should be satisfied, and yet on January 16, 1922, it executed the deed in question to Nable Jose, in which it is recited that the crops for the agricultural year 1921-1922 are not included, and that such crops "belong to the vendor Lichauco & Co., Inc." The legal effect of which, if any, was to nullify the sale and assignment to the Bank of the sugar crops from the haciendas until such time as its debt was paid.

There is much force in the contention of the Bank that the debt of Nable Jose to the Lichauco Corporation on February 28, 1917, admitted to be P163,881.46 has not been paid, and that the proof of its payment is not clear and convincing. Be that as it may, it does appear from the corporate record that the old debt no longer existed, and that on August 2, 1920, a new account was opened in which Nable Jose had a credit on the books of the corporation for P70,000, which later was wiped out by the execution of the deed now in question, and it is admitted that on August 2, 1920, Nable Jose paid the P70,000 to the Lichauco Corporation, and there is other evidence tending to show that the old original debt for P163,881.46 was paid.

While the question is not free from doubt, yet all things considered, we hold that the Lichauco Corporation on August 2, 1920, was indebted to Nable Jose in the sum of P70,000.

The mortgage of November 12, 1921, was executed to secure a preexisting debt, and it was intended that the deed of January 16, 1922, should be a payment of that debt.

We deem it fair to say that Nable Jose never saw the haciendas described in her deed, and that she did not have any personal knowledge of the questions involved in this litigation, and that in all of such matters, she acted through, and was represented by, her attorney in fact, Amparo Nable Jose.

Also, that the court is not in the least interested in the personal attacks made on the attorneys for the plaintiff in the brief of the Lichauco Corporation, which have nothing to do with the merits of the case. Suffice it to say that they are wholly unwarranted and are not in any manner justified or sustained by anything in the record.

We have given this case the careful consideration which its importance demands, in which we have had the use and benefit of the able and exhaustive briefs of opposing counsel. In the final analysis, we are clearly of the opinion that the consideration for the deed of the Lichauco Corporation to the defendant Nable Jose, executed on

January 16, 1922, is grossly inadequate, and that at the time of its execution and even before, the Lichauco Corporation was insolvent, and that the alleged payment of the debt of P70,000 by the Lichauco Corporation to Nable Jose was made while the corporation was in the state of insolvency, and that it was made on account of an obligation which was not due and enforceable at the time of its alleged payment within the meaning of article 1292 of the Civil Code.

The title to the shares of stock evidenced by the P36,000 paid by the Lichauco Corporation to the Pampanga Sugar Development Company is hereby confirmed in the defendant Nable Jose as her sole, separate and exclusive property, and we find that the true and only remaining consideration for the deed of the two haciendas involved in this litigation was P34,000, for and on account of which, Nable Jose has a prior and equitable lien, with interest from January 16, 1922, at the rate of 11 per cent per annum. That should plaintiff Bank pay or cause to be paid to her that amount with such interest on or before July 1, 1928, that the Bank shall then be and become the sole and exclusive owner of the haciendas described in plaintiff's complaint, free and clear of any charge, lien or encumbrance, and that in the event such payment is made, the defendant Nable Jose shall convey to the Bank by a good and sufficient deed, all of her right, title and interest to the land in question, and that for the failure to make such conveyance, the decree of this court shall legally operate as a deed. It is further decreed that on the making of such payment, the sheriff's deed as to this particular property in favor of the Bank be ordered registered in the registry of property for the Province of Pampanga, and that the deed to Nable Jose be set aside, cancelled and held for naught. Neither party to recover costs. So ordered.

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

Villamor, J., dissents.

[1] Nable Jose vs. Asia Banking Corporation, March 31, 1928, not reported.

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