

**THE BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE,
VS. MAY MCCOY, AS EXECUTRIX OF THE ESTATE OF H. B. MCCOY,
ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 30111. February 23, 1929*

Ponente: STREET, J.

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This action was originally instituted by the Bank of the Philippine Islands against May McCoy, executrix of the estate of H. B. McCoy, deceased, for the purpose of recovering upon a claim against the deceased in excess of P16,000 which had been disallowed by the committee upon claims, the plaintiff having appealed from the committee's action. In the amended complaint, by requirement of the court, the names of six individuals, namely, C. H. Sleeper, A. G. Moody, Milton E. Springer, John B. McCord, George E. Brown, and B. A. Green, were introduced as co-defendants with the executrix. After the case was about ready for hearing, the executrix entered into a compromise with the plaintiff and paid the sum of P12,000 in satisfaction of the entire claim, after which the action proceeded with the executrix substituted as plaintiff against her former co-defendants, for the purpose of compelling them to make contribution, to the extent of their proportionate shares, for her reimbursement. Upon hearing the cause the trial court gave judgment against the said six defendants, requiring each of them to pay to their former co-defendant, but now plaintiff, the sum of P1,714.28, being the proportional share of each in the P2,000 aforesaid, with the additional provision that each of the six should pay the proportional part of any share or part of any share which could not be made out of either of the six, with legal interest from August 21, 1924. From this judgment the six defendants have brought the present appeal.

Exception is taken by the appellants to the action of the court in permitting May McCoy, executrix, to assume the role of plaintiff, after she had first answered and denied the liability of her intestate for the claim sued upon. But this suggestion is untenable. By paying off the claim which was originally the subject of litigation, the executrix was subrogated to the rights of the original plaintiff, and if the situation was one involving a joint and several liability on the part of all of the original defendants, the executrix, upon paying off the claim, necessarily acquired the right to prosecute the action for contribution against her co-defendants. But it is said that the amendment by which the executrix was permitted to substitute the original plaintiff had the effect of changing the cause of action entirely, since the original action was founded upon a debt supposedly owing to the bank from the seven defendants, whereas after the instant the debt was paid, the only right of action vested in the executrix was the right to obtain contribution. It must be remembered, however, that if the original action had proceeded to its end against all the defendants, the court, in giving judgment, would have taken account of the obligation of each to contribute his proportionate share to the payment of the judgment, and what has been finally done, as the case shaped itself here, is to give effect to the same obligation. It was in our opinion a proper case for substitution of parties resulting from the subrogation of one of the defendants to the right of action of the plaintiff.

The facts of the case, so far as affects the merits of the controversy, are substantially these: On and prior to June 19, 1919, H. B. McCoy, deceased, and the present six appellants, with three others, were interested in a domestic

corporation known as the Cooperative Coconut Products Co., Inc., and became jointly and severally liable with it to the Bank of the Philippine Islands for money advanced by the bank to said corporation, to the extent of P235,000. In order further to secure this indebtedness said corporation, on June 19, 1919, executed in favor of the bank a mortgage upon certain buildings and improvements belonging to it, and on June 30, 1919, the corporation executed still another mortgage upon its interest in a contract of lease upon lands and properties in San Pablo, Laguna. The company apparently did not prosper; and the present six appellants (with H. B. McCoy), foreseeing that the aforesaid mortgages would soon be foreclosed, addressed to the bank the following letter, upon occasion of the receipt of a demand from the bank for the payment of the debt:

"MANILA, August 16, 1922

"MR. WILLIAM T. NOLTING, President,

"Bank of the Philippine Islands,

"Manila, P. I.

"DEAR SIR:

Referring to your letter of the 16th ultimo, addressed to us and to the Cooperative Coconut Products Company, demanding payment of the indebtedness of that concern, which indebtedness is guaranteed by us, we, the undersigned guarantors of the Cooperative Coconut Products Company, make the following proposition to you:

"That you are to proceed to foreclose the mortgage you hold on the properties mortgaged to you and that you are to bid in the same at the auction sale to be held for this purpose, for the amount due on said mortgage. If your bid is successful, you are to sell the properties to us for the sum of P65,114.99, plus interest from August 1st, 1922, at the rate of 9 per cent per annum, insurance and other expenses incurred and or to be incurred on the mortgaged properties until the same is transferred to us, and the total cost of sale (including costs, fees and other expenses), which we agree to pay in the following manner:

"(a) Fifteen thousand pesos on the purchase by you, at public auction of the properties mortgaged to you.

"(b) The remainder, after deducting the first payment of P15,000, we oblige ourselves to pay in three equal installments, we to sign, jointly and severally, three promissory notes as follows: The first for one-third of the remainder at six months date, the second for the other third of the remainder at twelve months date, and the last for the balance at eighteen months date. All these notes are to be signed when the purchased properties are in your possession and said notes are to bear interest at the rate of 9 per cent per annum. It is understood that on payment of the last note, you are to transfer to us the properties purchased by you.

"(c) It is also specifically understood that your actual rights to take any action against the Cooperative Coconut Products Company and against us as joint guarantors of their indebtedness, by virtue of certain documents signed by us and said concern, are to continue in force notwithstanding the above further agreement.

"If the above conditions are agreeable to you, kindly confirm same by signing the duplicate of this letter and returning to us.

"Yours very truly,

(Sgd.) "C. H. SLEEPER

"B. A. GREEN

"A. G. MOODY

"J. D. MCCORD

"H. B. MCCOY

"GEORGE E. BROWN

"MILTON E. SPRINGER"

Replying to this proposition under date of August 21, 1922, the President of the Bank, in a communication addressed to one of the appellants, said:

"We beg to acknowledge receipt of your letter of this date together with proposal signed by Messrs. J. D. McCord, H. B. McCoy, A. G. Moody, George E. Brown, Milton E. Springer, C. H. Sleeper and B. A. Green, regarding the indebtedness of the Cooperative Coconut Products Company to this bank.

"You are advised that your proposition is acceptable to us under the terms and conditions stated therein.

"It is necessary, however, to invite your attention to the fact that if someone else bids more than our claim (which amounts to approximately P68,500) you should protect yourself in the bidding."

In conformity with the understanding indicated in this correspondence, the plaintiff bank instituted an action to foreclose its mortgages, and on or about April 20, 1923, the Court of First Instance found that the amount of the secured indebtedness was P67,377.77, plus interest and costs. Thereafter, in due course, the mortgaged property was sold by the sheriff and bought in by the bank for the full amount of its claim, or P75,590. The bank then made demand upon the appellants and their associate McCoy to comply with their agreement to take the property off the hands of the bank, by making the initial payment of P15,000 and delivering to the bank the three joint and several promissory notes mentioned in subsection (6) of the letter of August 16, 1922. The subscribers to the letter, however, failed to comply with this demand; and for its own protection the bank, on April 15, 1924, sold the property to the Philippine Food Company, a domestic corporation, for the sum of P65,000. This was the best price then obtainable for the property and, under the conditions, & fair valuation for it. By this step the bank was loser to the extent of about P16,000, and for the recovery of this amount the present action was originally begun.

Upon the facts sketched above we can discover no sufficient reason to doubt the liability of all the individuals who signed the letter of August 16, 1922, to answer for the loss which has fallen upon the bank by reason of their failure to comply with the terms of said letter; and as the executrix of the estate of H. B. McCoy has settled the whole claim, she is in our opinion entitled to contribution from the defendants. The letter of August 21, 1922, from the president of the bank to the appellants constituted in our opinion a sufficient notification of acceptance by the bank of the proposition made by the appellants; and when the bank acted pursuant to that offer, the appellants and McCoy became obligated according to the terms of the letter. The word "acceptable" in the letter of the president of the bank was evidently used in the sense of "accepted;" and the final paragraph in the same letter, containing the suggestion that if the property should not be awarded to the bank at the sale, the signatory parties to the letter of August 16, 1922, should be prepared to protect themselves in the bidding, did not constitute any additional condition varying the terms of the offer. Again, we are of the opinion that the bank's acceptance, by separate note, was valid, notwithstanding the fact that in the final paragraph of the offer the bank was requested, if the proposition should be "agreeable," to indicate its conformity by signing the duplicate of the letter and returning it to the appellants. It was not necessary that acceptance should be in the precise form indicated, which could not have been considered material to the writers of the letter.

There was therefore no error on the part of the trial court in finding that the appellants are bound to contribute to the estate of H. B. McCoy, in the proportion of their respective shares in the principal obligation, in accordance with article 1145 of the Civil Code. But in order to prevent a possible misunderstanding of the dispositive part of the appealed decision, we may be permitted to point out that, in case the proportional share of any of the appellants should not be paid and cannot be made effective by execution, the solvent appellants will be liable only for such portion of said share as the number of the solvent appellants bears to such number plus one; for it must

not be overlooked that the executrix herself must share with the solvent appellants in bearing the burden arising from the insolvency of any of the appellants.

The judgment appealed from will be affirmed, and it is so ordered, with costs against the appellants.

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

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