

THE DIRECTOR OF PUBLIC WORKS, PLAINTIFF AND APPELLEE, VS. SING JUCO ET AL., DEFENDANTS. SING JUCO, SING BENGCO AND PHILIPPINE NATIONAL BANK, APPELLANTS.*G.R. No. 30181. July 12, 1929*

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-30181/>**STREET, J.:**

From Torrens certificate of title No. 1359, relating to land in the municipality of Iloilo, it appears that on September 28, 1920, the title to the property described therein was owned, in undivided shares, by Mariano de la Rama, Gonzalo Mariano Tanboontien, Sing Juco and Sing Bengco. The interest vested by said certificate in Mariano de la Rama was subsequently transferred by sale to Enrique Echaus. It further appears that on November 23, 1920, the owners of the property covered by said certificate conveyed it by way of mortgage to the Philippine National Bank for the purpose of securing a credit in current account in an amount not in excess of P170,000, with interest at the rate of 12 per cent per annum. The indebtedness covered by this mortgage has not been satisfied, and upon the date of the decision of the court below it amounted to the sum of P170,000, plus interest at 12 per cent per annum from November 24, 1920.

The land above referred to contains an area of nearly 16 hectares, or to be exact, 158,589.44 square meters according to the certificate. It is located on "Point Llorente" at the mouth of Iloilo River, near the City of Iloilo, and it is of so low a level that, prior to the improvement to which reference is to be made, it was subject to frequent flooding. In 1921 the Government of the Philippine Islands was planning extensive harbor improvements in this vicinity, requiring extensive dredging by the Bureau of Public Works in the mouth of said river. " The conduct of these dredging operations made it necessary for the Director of Public Works to find a place of deposit for the dirt and mud taken from the place, or places, dredged. As the land already referred to was low and easily accessible to the spot where dredging was to be conducted, it was obviously to the interest both of the Government and the owners of said land that the material taken out by the dredges should be deposited on said property. Accordingly, after preliminary negotiations to this effect had been conducted, a contract was made between the Director of Public Works, representing the Government of the Philippine Islands, and the four owners, M. de la Rama, Sing Juco, G. M. Tanboontien and Sing Bengco, of which, as modified in some respects by subsequent agreement, the following features are noteworthy.

(1) The Bureau of Public Works agreed to deposit the material to be dredged by it from the Iloilo River, in connection with the contemplated improvement, upon the lot of land, already described as covered by certificate No. 1359, at a price to be determined by actual cost of the filling, with certain surcharges to be determined by the Bureau of Public Works. It was contemplated in the original draft of the contract that the bureau would be able to furnish some 250,000 cubic meters of dredged material for filling in the land, but in the course of the negotiations the liability of the bureau, with respect to the amount of dredged material to be placed upon the land, was limited to the material which should be dredged from the river as the result of the proposed improvement. To this stipulation the four owners of the property assented on March 14, 1921. (2) With respect to the compensation it

was agreed that the amount due should be determined by the Director of Public Works, under certain conditions mentioned in the contract, at an amount of not less than 20 nor more than 75 centavos per cubic meter. It was further agreed that, when the work should be finished, the cost thereof should be paid by the owners in five annual installments and that for failure to pay any such installment the whole of the amount thereafter to accrue should become at once due. This contract was noted on the Torrens certificate of title on January 8, 1924.

In connection with the making of the contract above-mentioned, the Director of Public Works required a bond to be supplied by the owners in the penal amount of P150,000, approximately twice the estimated cost of the filling, conditioned for the payment of the amount due from the owners. This bond was executed contemporaneously with the main contract; and in connection therewith it should be noted that one of the names appearing upon said contract was that of "Casa Viuda de Tan Toco," purporting to be signed by M. de la Rama.

The dredging operations were conducted by the Bureau of Public Works in substantial compliance, we find, with the terms of said agreement; and after the account with the owners had been liquidated and the amount due from them determined, demand was made upon them for the payment of the first installment. No such payment was, however, made, and as a consequence this action was instituted by the Director of Public Works on October 14, 1926, for the purpose of recovering the amount due the Government under the contract from the original owners of the property and from the sureties whose names were signed to the contract of suretyship, and to enforce the obligation as a real lien upon the property. In said action the Philippine National Bank was made a party defendant, as having an interest under its prior mortgage upon the property, while Enrique Echaus was made defendant as successor in interest of M. de la Rama, and Tan Ong Sze widow of Tan Toco, was also made a defendant by reason of her supposed liability derived from the act of De la Rama in signing the firm name "Casa Viuda de Tan Toco," as a surety on the bond. It is noteworthy that in the complaint it was asked that, in the enforcement of the Government's lien, the property should be sold "subject to the first mortgage in favor of the Philippine National Bank."

To this complaint different defenses were set up, as follows : On behalf of the owners of the property, it was contended that the Government had not complied with its contract, in that the dredged material deposited on the land had not been sufficient in quantity to raise the level of the land above high water, and that, as a consequence, the land had not been much benefited. It is therefore asserted that the owners of the property are not obligated to pay for the filling operation. These defendants further sought to recover damages by way of cross-complaint for the same supposed breach of contract on the part of the Government. On the part of Viuda de Tan Toco the defense was interposed that the name "Casa Viuda de Tan Toco," signed to the contract of suretyship by Mariano de la Rama, was signed without authority; while on the part of the Philippine National Bank it was asserted that the mortgage credit pertaining to the bank is superior to the Government's lien for improvement, and by way of counterclaim the bank asked that its mortgage be foreclosed for the amount of its mortgage credit, and that the four mortgagors, Sing Juco, Sing Bengco, M. de la Rama and G. M. Tanboontien, be required to pay the amount due the bank, and that in case of their failure to do so the mortgaged property should be sold and the proceeds paid preferentially to the bank upon its mortgage. Upon hearing the cause the trial court, ignoring that part of the original complaint wherein the Government seeks to enforce its lien in subordination to the first mortgage, made pronouncements:

"(1) Declaring Sing Juco, Sing Bengco, G. M. Tanboontien, and Mariano de la Rama indebted to the Government in the amount of P70,938, with interest from the date of the filing of the complaint, and requiring them to pay said sum to the plaintiff;

"(2) Declaring, in effect, that the lien of the Government for the filling improvement was superior to the mortgage of the Philippine National Bank; and finally

"(3) Declaring the defendant Tan Ong Sze, Viuda de Tan Toco, personally liable upon the contract of suretyship, in case the four principal obligors should not satisfy their indebtedness to the Government, or if the land should not sell for enough to satisfy the same."

From this judgment various parties defendant appealed, as follows: All of the defendants, except the Philippine National Bank, appealed from so much of the decision as held that the defendant owners and signatories to the contract of suretyship had not been released by non-performance of the contract on the part of the Bureau of Public Works, and from the refusal of the court to give to the defendant owners damages for breach of contract on the part of the Government. On the part of Tan Ong Sze, Viuda de Tan Toco, error is assigned to the action of the court in holding said defendant liable upon the contract of suretyship. Finally, the Philippine National Bank appealed from so much of the decision as gave the lien of the Government for improvements priority over the mortgage executed in favor of the bank.

Dealing with these contentions in the order indicated, we find that the contention of the appellants (except the Philippine National Bank), to the effect that the Director of Public Works has failed to comply with the obligations imposed upon the Government by the contract, is wholly untenable. By said contract the Government was not obligated to raise the land on which the dredged material was deposited to any specified level. The Government only obligated itself to place upon said land the material which should be dredged from the mouth of the Iloilo River in the course of the improvement undertaken by the Government in and near that place. Under the original contract as originally drafted, the Government agreed to furnish 250,000 cubic meters, more or less, of dredged material; but on March 14, 1921, the owners of the property indicated their acceptance of a modification of the contract, effected by the Director of Public Works and the Secretary of Commerce and Communications, in which it was made clear that the material to be supplied would be such only as should be dredged from the river as a result of the proposed improvement. In the indorsement of the Director of Public Works, thus accepted by the owners, it was made clear that the Bureau of Public Works did not undertake to furnish material to complete the filling of the land to any specified level. Proof submitted on the part of the owners tends to show that parts of the filled land are still subject to inundation in rainy weather; and it is contended that the owners have, for this reason, been unable to sell the property in lots to individual occupants. The sum of P15,000, which is claimed upon this account, as damages, by the owners, is the amount of interest alleged to have accrued upon their investment, owing to their inability to place the land advantageously upon the market. The claim is, as already suggested, untenable. There has been no breach on the part of the Government in fulfilling the contract. In fact it appears that the Government deposited in the period covered by the contract 236,460 cubic meters, and after the amount thus deposited had been reduced by 21,840 cubic meters, owing to the natural process of drying, the Bureau of Public Works further deposited 53,000 cubic meters on the same land. In this connection the district engineer testified that the filling which has been charged to the owners at P70,938 actually cost the Government the amount of P88,297.85. The charge made for the work was evidently computed on a very moderate basis; and the owners of the property have no just ground of complaint whatever.

The contention of Tan Ong Sze, widow of Tan Toco, to the effect that she was not, and is not, bound by the contract of suretyship, is, in our opinion, well founded. It will be remembered that said contract purports to have been signed by Mariano de la Rama, acting for this defendant under power of attorney. But the Government has exhibited no power of attorney which would authorize the creation, by the attorney-in-fact, of an obligation in the nature of suretyship binding upon his principal.

It is true that the Government introduced in evidence two documents exhibiting powers of attorney, conferred by Tan Ong Sze, upon Mariano de la Rama. In the first of these documents (Exhibit K, identical with Exhibit 6) Mariana de la Rama is given a power which reads as follows:

" * * * an(j) also for me an(j) in my name to sign, seal and execute, and as my act and deed deliver, any lease, any other deed for the conveying any real or personal property or other matter or thing wherein I am or may be personally interested or concerned. And I do hereby further authorize and empower my said attorney to substitute and appoint any other attorney or attorneys under him for the purposes aforesaid, and the same again and pleasure to revoke; and generally for me and in my name to do, perform and execute all and every other lawful and reasonable acts and things whatsoever as fully and effectually as I, the said Tan Ong Sze might or could do if personally present."

In another document (Exhibits L and M), executed in favor of the same Mariano de la Rama by his uncle Tan Lien Co, attorney-in-fact of Tan Ong Sze, with power of substitution, there appears the following:

"* * * and also for her and in her name to sign, seal and execute, and as her act and deed deliver, any lease, release, bargain, sale, assignment, conveyance or assurance, or any other deed for the conveying any real or personal property or other matter or thing wherein she or may be personally interested or concerned."

Neither of these powers specifically confers upon Mariano de la Rama the power to bind the principal by a contract of suretyship. The clauses quoted relate more specifically to the execution of contracts relating to property; and the more general words at the close of the quoted clauses should be interpreted, under the rule ejusdem generis, as referring to contracts of like character. Power to execute a contract of so exceptional a nature as a contract of suretyship or guaranty cannot be inferred from the general words contained in these powers.

In article 1827 of the Civil Code it is declared that guaranty shall not be presumed; it must be expressed and cannot be extended beyond its specified limits. By analogy a power of attorney to execute a contract of guaranty should not be inferred from vague or general words, especially when such words have their origin and explanation in particular powers of a wholly different nature. It results that the trial court was in error in giving personal judgment against Tan Ong Sze upon the bond upon which she was sued in this case.

We now proceed to consider the last important disputed question involved in the case, which is, whether the indebtedness owing to the Government under the contract for filling the parcel of land already mentioned is entitled to preference over the mortgage credit due to the Philippine National Bank, as the trial judge held, or whether, on the contrary, the latter claim is entitled to priority over the claim of the Government. Upon entering into the discussion of this feature of the case it is well to recall the fact that the bank's mortgage was registered in the office of the register of deeds of the Province of Iloilo on November 26, 1920, while the filling contract was registered on January 8, 1924, that is to say, there is a priority of more than three years, in point of time, in the inscription of the mortgage credit over the filling contract. It should also be noted that the Government's credit under the filling contract was made an express lien upon the property which was the subject of the improvement.

In the brief submitted in behalf of the bank it appears to be assumed that the Government's credit under the filling contract is a true refectory credit (*credito refaccionario*) under subsection 2 of article 1923 of the Civil Code. It may be observed, however, that in a precise and technical sense, this credit is not exactly of the nature of the refectory credit as known to the civil law. In the civil law the refectory credit is primarily an indebtedness incurred in the repair or reconstruction of something previously made, such repair or reconstruction being made necessary by the deterioration or destruction of the thing as it formerly existed. The conception does not ordinarily include an entirely new work, though Spanish jurisprudence appears to have sanctioned this broader conception in certain cases, as may be gathered from the discussion in *Enciclopedia Juridica Espanola* (vol. 26, pp. 888-890), s. v. *Refaccionario*. The question whether the credit we are considering falls precisely under the conception of refectory credit in the civil law is in this case academic rather than practical, for the reason that by the express terms of the filling contract the credit was constituted a lien upon the improved property. But assuming, as might be tenable in the state of the jurisprudence, that said credit is a refectory credit enjoying preference under

subsection 3 of article 1923 of the Civil Code, then the mortgage credit must be given priority under subsection 2 of article 1927 of the same Code, for the reason that the mortgage was registered first.

Possibly the simpler view of the situation is to consider the Government's right under the stipulation expressly making the credit a lien upon the property, for it was certainly lawful for the parties to the filling contract to declare the credit a lien upon the property to be improved—to the extent hereinafter defined—whether the credit precisely fulfills the conception of refectionary credit or not. In this aspect we have before us a competition between the real lien created by the registered mortgage and the real lien created by the filling contract, of later registration.

The true solution to this problem is, in our opinion, not open to doubt; and again the result is that priority must be conceded to the mortgage. The mortgage was created by the lawful owners at a time when no other competing interest existed in the property. The lien of the mortgage therefore attached to the fee, or unlimited interest of the owners in the property. On the other hand, the lien created by the filling contract was created after the mortgage had been made and registered, and, therefore, after the owners of the property had parted with the interest created by the mortgage. The Government's lien owes its origin to the contract, and derives its efficacy from the volition of the contracting parties. But no party can by contract create a right in another intrinsically greater than that which he himself possesses. The owners, at the time this contract was made, were owners of the equity of redemption only and not of the entire interest in the property, and the lien created by the contract could only operate upon the equity of redemption.

In this connection we observe that, as the new material was deposited from the Government dredges upon the property in question, it became an integral part of the soil and an irremovable fixture; and the deposit having been made under contract between the Government and the owners of the equity of redemption, without the concurrence of the mortgage creditor in said contract, the latter could not be prejudiced thereby. The trial court, in declaring that the Government's lien should have preference over the mortgage, seems to have proceeded upon the idea that, at the time the mortgage was created, the new soil had not yet been deposited under the filling contract and that as a consequence the mortgage lien should not be considered as attaching to the value added by deposit of the additional material. This proposition, however, overlooks the fact that the deposited material became an irremovable fixture, by the act and intention of the parties to the filling contract, and the lien of the mortgage undoubtedly attached to the increment thus spread over and affixed to the mortgaged land. If the idea which prevailed in the trial court should be accepted as law upon this point, the result would be that a mortgage creditor could, by the act of strangers, be entirely improved out of his property by the making of improvements to which he had not assented. This cannot be accepted as good law.

We may add that the case cannot, on this point, be resolved favorably to the contention of the Director of Public Works, upon the authority of *Unson vs. Urquijo, Zuloaga & Escubi* (50 Phil., 160), for the reason that upon the deposit of the dredged material on the land such material lost its identity. In the case cited the machinery in respect to which the vendor's preference was upheld by this court retained its separate existence and remained perfectly capable of identification at all times.

From what has been said it results that the appealed judgment must be affirmed, and the same is hereby affirmed, in dismissing, in effect, the cross-complaint filed by some of the defendants against the plaintiff, Director of Public Works. Said judgment is further affirmed in its findings, which are not in dispute, with respect to the amount of the Government's claim under the filling contract and the amount of the mortgage credit of the bank, as it is also affirmed in respect to the joint and several judgment entered in favor of the plaintiff against Sing Juco, Sing Bengco, Tanboontien and Mariano de la Rama Tanbunco, (alias Mariano de la Rama) for the amount found due to the Government.

Said judgment, however, must be reversed, and the same is hereby reversed, in so far as it holds that Tan Ong Sze, Viuda de Tan Toco, is liable upon the contract of suretyship, and she is hereby absolved from the complaint. The judgment must also be reversed in so far as it declares that the Government's lien under the filling contract is entitled to priority over the bank's mortgage. On the contrary it is hereby declared that the bank's credit is entitled to priority out of the proceeds of the foreclosure sale, the residue, if any, to be applied to the Government's lien created by the filling contract, and otherwise in accordance with law. For further proceedings an conformity with this opinion, the cause is hereby remanded to the court of origin, without pronouncement as to costs. So ordered.

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

Malcolm and Ostrand, JJ., also voted as indicated in the dispositive part of this decision, but their names are not signed to the opinion owing to their absence on leave at the time of promulgation.

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.