

**MARIANO B. ARROYO, PROVINCIAL SHERIFF OF ILOILO, PLAINTIFF
AND APPELLEE, VS. MARIA CORAZON YU DE SANE, JOSE M. PO
PAUCO, AND PO SUY LIONG, DEFENDANTS AND APPELLANTS.
PHILIPPINE ...**

G. R. No. 31865. February 28, 1930

Ponente: MALCOLM, J.

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MALCOLM, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

In the Court of First Instance of Iloilo, the sheriff of that province instituted an action to compel the various persons and entities with claims to the lorchas China and Cuylim to interplead with one another to determine their conflicting rights. As a result, Po Suy Liong, Ti Liong & Co., J. M. Po Pauco, Maria Corazon Yu de Sane, and the Philippine National Bank presented their respective answers and complaints. Thereafter, it is probable that a hearing was had and evidence taken, although no such evidence has been transcribed and elevated to this court, which means that we must perforce accept the findings of fact made by the trial judge. His decision concluded with the following pronouncements:

"In view of these proven facts, the court holds that the mortgage of the lorchas China and Cuylim executed in favor of J. M. Po Pauco through notarial deed Exhibit 2, and the transfer of said mortgage by J. M. Po Pauco, the mortgagee, to the Philippine National Bank through notarial deed Exhibit 1, duly recorded in the registry of deeds of the Province of Iloilo on November 29, 1919, are valid and legal.

"The fact that this mortgage was not registered in the Bureau of Customs of the port of Iloilo until March 5th of this year does not invalidate it; since it was proved at the trial of this case that such deferred registration was due to certain doubts entertained by the collector of customs of the port of Iloilo touching the applicability of Act No. 3324, amending section 1176 of the Administrative Code; and that said collector only decided to admit and register said mortgage upon lorchas China and Cuylim in March of this year after receipt of advice from Manila regarding the applicability of Act No. 3324, which was approved on December 4, 1926, to a mortgage executed on November 6, 1918, in favor of a Chinese subject—a prohibition not found in the original section 1176 of the Administrative Code, but which went into effect when the aforementioned Act No. 3324, approved on December 4, 1926, took effect.

"But the lorchas China and Cuylim do not, by the mere fact of being mortgaged, cease to pertain to the Lim Ponzo Navigation Co., as evidenced by certificates of ownership Exhibits A and B; and being property appertaining to the Lim Ponzo Navigation Co., they were validly attached, as shown by Exhibits E, F, G and H, and levied upon by virtue of the writ of execution Exhibit I, issued December 6, 1928, upon petition of plaintiff Maria Corazon Yu

de Sane filed in civil case No. 7688, Exhibit C. It was on December 6, 1928, that by virtue of said writ of execution the sheriff levied upon the lorchas China and Cuylim, which, according to Exhibit F, had been attached on December 4, 1928; it being understood that both attachment and execution were subject to all liens existing upon said lorchas on the date of the attachment, which liens were the mortgages in favor of J. M. Po Pauco transferred by the same to the Philippine National Bank, according to Exhibits 1 and 2.

"The aforementioned writ of execution Exhibit I was not carried out by the sheriff because the Philippine National Bank filed a third-party claim, Exhibit 12, and according to Exhibit 14, Maria Corazon Yu de Sane, the judgment creditor, failed to give indemnity bond as required by the sheriff.

"But the court also holds that the provincial sheriff of Iloilo did not act legally when, after giving notice, Exhibit 15, on December 28 or 29, 1928, he dissolved the attachment levied upon the lorchas China and Cuylim, and delivered them to J. M. Po Pauco, as was proved at the trial of this case, for on December 28, 1928, those lorchas were under the control of this court in the instant case, wherein, on December 17, 1928, the complaint of interpleading filed by the sheriff was entered in the docket, and, without authority of the court in the instant case, said sheriff should not have assumed to dispose of the lorchas China and Cuylim as he did. The complaint of interpleading filed on December 17, 1928, was presented by the provincial sheriff of Iloilo, according to paragraph 11 thereof, for the purpose of protecting himself from any claim that might arise from the sale of said lorchas; and this protection thus invoked covered not only the person of the sheriff, but also the lorchas in his possession which were the object of contradictory claims filed by several persons. But the sheriff, by his own authority, and without the knowledge and authority of this court, disposed of said lorchas, as stated in Exhibit 15, and in so acting he assumed full responsibility for all his acts.

"The court holds that the now defendant Maria Corazon Yu de Sane may, if she so desires, ask for another order of execution in civil case No. 7688, and may by virtue thereof attach the lorchas China and Cuylim, and order their sale by public auction subject to the mortgage executed thereon by the owner, the Lim Ponzo Navigation Co., in favor of the Philippine National Bank, which is hereby declared valid.

"The court holds that the damages at the rate of P100 a day claimed by defendants Po Suy Liong, Ti Liong & Co., and J. M. Po Pauco through the counterclaim contained in their answer filed on December 18, 1928, have not been proved.

"As to the cross-complaint filed by the Philippine National Bank against J. M. Po Pauco, Maria Corazon Yu de Sane, Po Suy Liong, and Ti Liong & Co., the court finds that the basic facts thereof have been established, as hereto-fore stated in paragraphs numbered 2, 3, 4, 5, and 6, holding J. M. Po Pauco in debt to the Philippine National Bank for the sum of P131,994.95, including interest up to March 31, 1928, and the interest mentioned in Exhibit 10, from April 1, 1928, until payment, to which is added the stipulated 10 per cent of the sum total by way of attorney's fees, which the court hereby reduces to 5 per cent of the whole.

"This debt of J. M. Po Pauco is secured by a mortgage of the property described in Exhibits 1 and 3, already due and demandable when the cross-complaint was filed by the Philippine National Bank.

"Let judgment be entered for the Philippine National Bank, ordering J. M. Po Pauco to pay to it the sum of P131,994.95, plus the interest mentioned in Exhibit 10, from April 1, 1928, until payment, plus 5 per cent of the debt as attorney's fees and costs of collection.

"If said J. M. Po Pauco fails to pay the amount of this judgment within three months from the date hereof, the court will decree the sale of the mortgaged property, as prayed for by the Philippine National Bank in its cross-complaint; and should the proceeds of the sale thereof fall short of the amount of this judgment, a writ of

execution shall issue against whatsoever unexempted property said J. M. Po Pauco holds, until the whole balance remaining is satisfied.

"Maria Corazon de Sane, and Po Suy Liong & Co. are hereby absolved from the cross-complaint interposed by the Philippine National Bank against them. "The Philippine National Bank, J. M. Po Pauco, Po Suy Liong, and Ti Liong & Co., are hereby absolved from the cross-complaint interposed against them by Maria Corazon Yu de Sane."

From the aforementioned decision and judgment, two appeals have been taken, one by Maria Corazon Yu de Sane, and the other by J. M. Po Pauco and Po Suy Liong. These appeals will be disposed of in order.

I. The appeal of Maria Corazon Yu de Sane relates to the preferences to the two lorchas as between herself and the Philippine National Bank. Among the facts found by the trial judge, it is gleaned that the lorchas China and Cuylim were owned by the Lim Ponzo Navigation Co. On November 6, 1918, the two lorchas were mortgaged to J. M. Po Pauco to guarantee a loan of P20,000. Two days later, the mortgage was duly registered in the office of the register of deeds of Iloilo. On November 28, 1919, J. M. Po Pauco executed a mortgage in favor of the Philippine National Bank to protect a loan of P50,000, and covering, among other things, the titles, rights, and interests which Po Pauco had in the lorchas China and Cuylim. One day later, this mortgage was registered in the office of the register of deeds of Iloilo. Subsequently, the credit of Po Pauco with the Philippine National Bank was increased to P90,000 which, with accrued interest, is alleged to now reach the sum of P131,994.95. To return again to the chattel mortgage, it was only recorded in the office of the collector of customs of Iloilo on March 5, 1929.

Maria Corazon Yu de Sane secured a judgment against the Lim Ponzo Navigation Co. for P7,179.65. In due course, a writ of attachment and an execution were secured, the date of the latter being December 6, 1928. The notice of seizure was recorded by the collector of customs of Iloilo on December 4, 1928, on which date the records of that office disclosed the vessels as free from encumbrances.

The registration of vessels is now governed by the Administrative Code. Section 1171 thereof provides:

"Record of documents affecting title.—In the record of transfers and incumbrances of vessels, to be kept at each principal port of entry, shall be recorded at length all transfers, bills of sale, mortgages, liens, or other documents which evidence ownership or directly or indirectly affect the title of registered vessels, and therein shall be recorded all receipts, certificates, or acknowledgments canceling or satisfying, in whole or in part, any such obligation. No other record of any such document or paper shall be required than such as is affected hereunder."

It is clear that section 1171 of the Administrative Code has modified the provisions of the Chattel Mortgage Law, Act No. 1508, particularly section 4 thereof. It is now not necessary for a chattel mortgage of a vessel to be noted in the registry of the register of deeds. On the other hand, it is essential that a record of documents affecting the title of a vessel be entered in the office of the collector of customs at a port of entry (Rubiso and Gelito i>s. Rivera [1917], 37 Phil., 72; 2 Araneta, Administrative Code, note to section 1171). The law as now existing is designed to protect persons who deal with a vessel on the strength of the record title. Mortgages on vessels, although not recorded, are good as between the parties. But as against creditors of the mortgagor, an unrecorded mortgage is invalid (37 Cyc, 54).

Consolidating the facts, we find the mortgage of the Philippine National Bank dated November 28, 1919, but not recorded in the office of the collector of customs until March 5, 1929. The execution sued out by Maria Corazon Yu de Sane was dated December 6, 1928, and noted at the port of entry two days prior thereto. Under these facts, the execution holder would have a prior right over the un» recorded mortgage. However, in the decision of the

trial court, we find an explanation of the delay which appears to have been proved at the trial, and which we must accept since there is nothing in the record to the contrary. His Honor states that the fact that the mortgage was not registered in the office of the collector of customs of Iloilo until March, 5, 1929, was because of the doubts entertained by the collector relative to the applicability of Act No. 3324 to a mortgage executed in 1918 in favor of a Chinese subject. This uncontradicted fact must be taken as curing the bank's defective title. That the collector of customs did not perform his duty was no fault of the bank. Constructive registration of the mortgage must, therefore, be accepted.

We rule that as between the appellant, Maria Corazon Yu de Sane, and the appellee, the Philippine National Bank, the latter has a superior claim in the amount of P20,000, the amount of the mortgage of Po Pauco which was transferred to the Philippine National Bank.

II. The remaining appeal concerns the respective rights of Jose M. Po Pauco and Po Suy Liong on the one hand and the Philippine National Bank on the other. There is no particular merit in the arguments offered on behalf of Po Suy Liong, for his mortgage was not on the boats themselves, and moreover his mortgage, so far as the record discloses, has never been recorded in the office of the collector of customs. But the appeal of Po Pauco does present a rather anomalous condition of affairs.

It will be recalled that the action was begun by the several parties interpleading. On these pleadings, the trial judge was led to order the foreclosure of the mortgage of the Philippine National Bank against Po Pauco. But the record does not disclose that any one other than the attorney for Po Pauco was notified, that any summons was issued, or that an opportunity was afforded Po Pauco to interpose his defense, if he had any. Obviously, the procedure provided by law for the foreclosure of a mortgage must be substantially carried out. It is no answer for the appellee to state that no objection was interposed in the lower court. The question is one which goes to the jurisdiction of the court, and a question of this nature may be raised for the first time on appeal.

With the foregoing pronouncements which, except as they relate to the judgment of the Philippine National Bank against J. M. Po Pauco, in the main coincide with the pronouncements of the trial judge, the judgment appealed from will in part be affirmed and in part set aside, and the record remanded to the court of origin for further proceedings. It will be so ordered, without special pronouncement as to costs in this instance.

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

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