

THE BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. WALTER A. SMITH & CO., INC., DEFENDANT AND APPELLANT. HOA HIN & CO., INC., ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 32945. December 29, 1930

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-32945/>

STREET, J.:

This action was instituted in the Court of First Instance of the Province of Iloilo by the Bank of the Philippine Islands against Walter A. Smith & Co., Inc., and others, for the purpose of foreclosing a mortgage on certain machinery and personal property and to annul a sale that had been made of the launch Mohawk in favor of the defendant Uy Godinez, and for other purposes. The defendant Walter A. Smith & Co., Inc., hereafter referred to as Smith & Co., answered with a general denial and cross-complaint in which it asserted that the mortgage debt had been more than paid and, in turn, sought to recover a balance of nearly P50,000 from the plaintiff with interest. The defendant Hoa Hin & Co., Inc., and others, who are concerned only with the claim to the launch, answered with a general denial and special defense, alleging that said launch had been sold in a judicial proceeding to satisfy certain repairs made thereon by Hoa Hin & Co., Inc., and that at said sale the defendant Uy Godinez had become the purchaser. Upon hearing the cause the trial court held that the mortgage for the foreclosure of which the action was filed was valid and that the balance due thereon to the plaintiff as of October 16, 1928, was the sum of P50,579.45, upon which the plaintiff was entitled to interest from said date at the rate of 9 per centum per annum. The court further held that Smith & Co. was indebted to the plaintiff in the amount of P2,949.88 for cost of certain insurance policies on the mortgaged property paid by the plaintiff. It was accordingly ordered that, if all the aforesaid indebtedness should not be paid within ninety days from the date of the finality of the sentence, the mortgaged property should be sold, with the exception of the launch Mohawk. All the other defendants were absolved from the complaint, and the plaintiff was similarly absolved from the cross-complaint of the defendant Smith & Co. From this judgment the plaintiff appealed with respect to the denial of its claim to the launch Mohawk, as also with respect to the denial of certain interest under the contract and the attorney's fee stipulated for therein, while Smith & Co. appealed from so much of the sentence as is adverse to it.

To begin with the assignments of error of the defendant as appellant, we are of the opinion that the trial court committed no error in holding that the mortgage upon which this action is based is valid, that the contract was made in good faith, upon a sufficient consideration, and that it was signed by the mortgagor, Smith & Co., without having been induced thereto by fraud or false representation on the part of the plaintiff. So far as concerns this feature of the case, the controversy arises out of paragraph 2 of a letter written by W. T. Nolting, as president of the Bank of the Philippine Islands, under date of July 13, 1922, in which it was promised that the bank would sell these mortgaged properties to the Smith Company for the amount of the indebtedness shown upon its books then owing to it by the Olutanga Lumber Company, against which a foreclosure proceeding under an earlier mortgage was then pending. In this letter the bank said that it 'would bid in the properties at the mortgage sale for the

amount due thereon and that if it were successful it would sell the property to the defendant. It subsequently happened that the bank got the property at the foreclosure sale for the much smaller amount of P11,000. But it nevertheless sold the property to Smith & Co. for the amount of its indebtedness, which was something over P80,000. The defense on the part of Smith & Co. proceeds on the idea that, inasmuch as the property was bought in for P11,000, the bank ought to have sold it to Smith & Co. for the amount for which the property was purchased. This contention is clearly untenable, as when the mortgage with which we are here concerned was executed, Smith knew that it had been bid in for the sum of P11,000 and yet he made the contract for the full amount of the indebtedness for which the prior mortgage had been foreclosed against the Olutanga Lumber Company. Smith asserts that he signed the contract with the understanding that the bank would raise its bid to the amount of its indebtedness, which was never done. If any such promise was made, it was not material to this contract, and we are of the opinion that the trial court committed no error in sustaining its validity. The assignments of error interposed by the defendant-appellant are without merit and are therefore overruled.

The assignments of error of the plaintiff raise a question as to the disposition made by the trial court with respect to the launch Mohawk. In this connection it appears that after this vessel had been mortgaged to the plaintiff bank, with the other properties mentioned in the mortgage, repairs were made thereon, at the instance of the mortgagor, by Hoa Hin & Co., Inc., and for the non-payment of this claim the launch was sold in a judicial proceeding and purchased by Uy Godinez. In that proceeding the plaintiff intervened as a third party and claimed the launch, but the sale was proceeded with, with the result already stated.

It is our opinion that, where a mortgagor is left in the possession of a mortgaged chattel, for his use, a person who makes repairs thereon which are reasonably necessary to the proper use of the chattel has a claim for compensation superior to the right of the mortgagee. That the repairs made in this case upon the Mohawk were of the character mentioned appears reasonably evident from the proof, and the judgment of the trial court in sustaining the right of Uy Godinez must be affirmed. (Art. 1600, Civil Code; Bachrach Motor Co. vs. Mendoza, 43 Phil., 410.)

In one of the assignments of error of the plaintiff exception is taken to the action of the trial court in failing to award interest to the plaintiff upon the capital of the mortgage debt at the rate of 9 per centum per annum from November 25, 1924, until October 16, 1928, the date of the filing of the complaint. This exception is well taken. The mortgage (Exhibit A) clearly stipulates for interest on the capital at the rate of 9 per centum per annum, and the court having found that the mortgage was valid, the right to interest at the rate stated and for the period mentioned is undeniable.

The plaintiff also assigns error to the action of the trial court in refusing to allow an attorney's fee in the amount of 10 per centum of the capital of the debt, under one of the clauses of the contract. The fee in question is stipulated for, and the right of the plaintiff thereto is undeniable. In the exercise of our judgment we fix this fee in the amount of P5,000.

The judgment will therefore be in the main affirmed, but it must be modified so as to allow interest on the capital of P50,579.45, at the rate of 9 per centum per annum, from November 25, 1924, to October 16, 1928, and an attorney's fee of P5,000. As thus modified, the judgment will be affirmed, and the cause remanded for further proceedings in conformity with this opinion, without pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Malcolm, Ostrand, Johns and Villa-Real, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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