

**THE BACHRACH MOTOR CO., INC., PLAINTIFF AND APPELLANT, VS.
MARIANO LACSON LEDESMA, TALISAY-SILAY MILLING CO., INC.,
AND THE PHILIPPINE NATIONAL BANK, DEFENDANTS AND
APPELLEES.**

G. R. No. 42462. August 03, 1937

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an action brought by the plaintiff to recover the amount of the judgments obtained by it in civil cases Nos. 31597 and 31821 of the Court of First Instance of Manila, praying in its complaint: (a) That the transfer of certificate of stock dividends No. 772 of the Talisay-Silay Milling Co., Inc., made by Mariano Lacson Ledesma in favor of the Philippine National Bank, be declared null and void, as against the plaintiff; (b) that the Talisay-Silay Milling Co., Inc., be ordered to cancel the entry of the transfer of the 6,300 stock dividends covered by certificate No. 772, made by it on its books in favor of the Philippine National Bank; (c) that said stock dividends be sold to satisfy the judgments obtained by it in civil cases Nos. 31597 and 31821 of the Court of First Instance of Manila; (d) that the Talisay-Silay Milling Co., Inc., be ordered to pay to it the amount of P21,379.34, with interest on the sums and from the dates set forth in paragraph XV of the complaint, or any part thereof necessary to complete payment of said sums and interest thereon, in case the 6,300 stock dividends can not be sold or the proceeds of the sale thereof should be insufficient to cover the sums in question, and (e) that the defendants pay the costs of the suit. The plaintiff appealed from the judgment declaring the right of the Philippine National Bank to the 6,300 stock dividends a preferred one, and absolving the defendants from the complaint, with costs.

The parties submitted the case upon the following stipulation of facts, to wit:

"STIPULATION OF FACTS.—That the plaintiff, the Bachrach Motor Co., Inc., on June 30, 1927, obtained judgment in civil case No. 31597 of the Court of First Instance of Manila against the defendant Mariano Lacson Ledesma, in the sum of P3,442.75, with interest thereon from March 30, 1927, with costs. That a writ of execution of said judgment was issued on August 20, 1927, and Jose Y. Orosa was appointed special sheriff to execute it. That on October 4, 1927, said Jose Y. Orosa, as special sheriff, in compliance with the writ of execution in question, attached all right, title to and interest which the defendant Mariano Lacson Ledesma may have in 'Any bonus, dividend, shares of stock, money, or other property which that defendant is entitled to receive from the Talisay-Silay Milling Co., Inc., by virtue of the fact that such defendant has mortgaged his land in favor of the Philippine National Bank to guarantee the indebtedness of the Talisay-Silay Milling Co., Inc., or which such defendant is entitled to receive from the Talisay-Silay Milling Co., Inc., on account of being a stockholder in that corporation or which he is entitled to receive from that corporation for any other cause or pretext whatsoever.' That notice of said attachment was served not only upon the defendant Mariano Lacson Ledesma but also upon the herein defendant, the Talisay-Silay Milling Co., Inc., which received a copy of the notice of attachment, as evidenced by the Annex A attached to this stipulation of facts. That on October 3, 1927, the herein plaintiff, the Bachrach Motor Co., Inc., obtained judgment in case No. 31821 of the Court of First Instance of Manila against the defendant Mariano Lacson Ledesma, in the sum of four thousand four

hundred pesos and seventy-eight centavos with interest at 10 per cent per annum on the sum of P3,523.82 from April 30, 1927; in the sum of P14,171.52 with interest at 10 per cent per annum on the sum of P13,290.89 from April 30, 1927; and in the sum of P1,150.72 with the legal interest of 6 per cent per annum thereon from May 25, 1927, and the costs. A copy of said judgment is attached to this stipulation of facts and marked Annex B. That a writ of execution of said judgment was issued, thereby causing the attachment, sale and adjudication to the plaintiff the Bachrach Motor Co., Inc., for the sum of P100, Philippine currency, of the defendant Mariano Lacson Ledesma's right of redemption over the following properties, to wit: 'Original certificate of title No. 1929 (Lot No. 1473 of the Cadastral Survey of Bacolod) containing an area of 2,647 square meters, more or less. Original certificate of title No. 2978 (Lot No. 1475 of the Cadastral Survey of Bacolod) containing an area of 8,501 square meters, more or less. Original certificate of title No. 2624 (Lot No. 1474 of the Cadastral Survey of Bacolod) containing an area of 8,714 square meters, more or less. Original certificate of title No. 9443 (Lot No. 426 of the Cadastral Survey of Talisay) containing an area of 150,301 square meters more or less. Original certificate of title No. 1928 (Lot No. 1472 of the Cadastral Survey of Bacolod) containing an area of 36,818 square meters, more or less. Original certificate of title No. 2923 (Lot No. 1489 of the Cadastral Survey of Bacolod) containing an area of 286,879 square meters, more or less. Original certificate of title No. 356 (Lot No. 4-A of the Cadastral Survey of Bacolod) containing an area of 641,448 square meters, more or less. Original certificate of title No. 356 (Lot No. 4-B of the Cadastral Survey of Bacolod) containing an area of 280,556 square meters, more or less. Original certificate of title No. 356 (Lot No. 4-C of the Cadastral Survey of Bacolod) containing an area of 2,842,946 square meters, more or less.' The certificate of sale issued by the provincial sheriff of Occidental Negros in favor of the Bachrach Motor Co., Inc., on March 29, 1928, is attached to this stipulation of facts, and marked Annex C. That on the date of the issuance of the execution in case No. 31597 of the Court of First Instance of Manila as well as on that of the issuance of the execution and sale of the properties described in Exhibit C, in case No. 31821 of the same court, said real properties were mortgaged to the Philippine National Bank to secure the payment to said bank by Mariano Lacson Ledesma of the sum of P624,000, Philippine currency, by virtue of an instrument executed by the debtor Mariano Lacson Ledesma in favor of said bank on August 9, 1923. Said instrument of mortgage is copied on pages 18 to 32, both inclusive, of the bill of exceptions in case No. 8136 of the Court of First Instance of Iloilo (G. R. No. 35223), which is attached to this stipulation of facts and marked Annex D. That in the same instrument of mortgage (pages 18 to 32 of Annex D) said debtor Mariano Lacson Ledesma mortgaged in favor of the bank, as part of the securities to ensure compliance with his obligation, the following shares owned by him in the Talisay-Silay Milling Co., Inc./ to wit: 1,540 shares covered by Certificate No. 147; 520 shares covered by Certificate No. 146; 40 shares covered by Certificate No. 145; that in addition to the mortgage referred to in the preceding two paragraphs, there was another mortgage constituted on the above-described real properties in favor of the Philippine National Bank, to answer for the debts contracted by the Central Talisay-Silay Milling Co. with said bank. That on December 22, 1923, the defendant, Central Talisay-Silay Milling Co. resolved to grant a bonus or compensation to the owners of the real properties mortgaged to answer for the debts contracted by said central with the Philippine National Bank, for the risk incurred by said properties upon being subjected to said-mortgage lien, and under the resolution in question the defendant Mariano Lacson Ledesma was allotted the sum of P19,911.11, Philippine currency, which sum, however, would not be payable until the month of January, 1930. That on September 29, 1928, the Philippine National Bank brought an action against the defendant Mariano Lacson Ledesma and his wife Concepcion Diaz for the recovery of a mortgage credit which, together with interest thereon, amounted to P853,729.49 on said date. Sometime later, that is, on January 2, 1929, the Philippine National Bank amended its complaint by including the Bachrach Motor Co., Inc., as party defendant, among others, 'because they claim to have some right to certain properties which are the subject matter of this complaint.' Said case bears No. 4706 of the Court of First Instance of Occidental Negros. That on January 30, 1929, the defendant Bachrach Motor Co., Inc., filed a general denial. That after due hearing, the Court of First Instance of Bacolod, on September 3, 1930, rendered judgment in case No. 4706 of said court in favor of the Philippine National Bank and against the defendant Mariano Ickson Ledesma, sentencing the latter to pay the amount claimed by said bank and ordering, upon failure to satisfy said amount, the sale at public auction of the real properties mortgaged under the instrument of mortgage

appearing on pages 18 to 32 of Annex D. That the real estate and chattel mortgage deed in question (pages 18 to 32 of Annex D), marked as Exhibit G, was among the exhibits presented in said case No. 4706 of the Court of First Instance of Occidental Negros. That likewise, among the exhibits presented in said case No. 4706 of the Court of First Instance of Occidental Negros, was Exhibit H which was a deed of mortgage of certain carabaos belonging to the debtor Mariano Lacson Ledesma, executed by the latter in favor of the Philippine National Bank on January 21, 1925. That in the decision rendered by the Court of First Instance of Occidental Negros in case No. 4706 thereof, said court, referring to stock certificates Nos. 145, 146 and 147 of the Talisay-Silay Milling Co., Inc., which were pledged or mortgaged by virtue of Exhibit G of said case No. 4706, rendered the following ruling: ((e) With respect to the chattels mortgaged by Mariano Lacson Ledesma to the Philippine National Bank, which are described in Exhibits G and H, the Philippine National Bank, as soon as this judgment becomes final, shall have authority to sell them in accordance with the provisions of section 23 of Act No. 2938, immediately informing this court of whatever action it may take in the premises/ That during the pendency of case No. 4706 of the Court of First Instance of Bacolod referred to in the foregoing paragraphs, the plaintiff Bachrach Motor Co., Inc., on December 20, 1929, brought an action in the Court of First Instance of Iloilo against the Talisay-Silay Milling Co., Inc., to recover from it the sum of P13,850 against the bonus or dividend which, by virtue of the resolution of December 22, 1923, said Central Talisay-Silay Milling Co., Inc., had declared in favor of the defendant Mariano Lacson Ledesma as one of the owners of the hacienda which had been mortgaged to the Philippine National Bank to secure the obligation of the Talisay-Silay Milling Co., Inc. in favor of said bank. Copy of said complaint appears on pages 2 to 5 of the bill of exceptions in case No. 8136 of the Court of First Instance of Iloilo (G. R. No. 35223), Annex D of this stipulation of facts. That on January 30, 1930, the Philippine National Bank sought permission to intervene in said case No. 8136 of the Court of First Instance of Iloilo and after the permission had been granted, said bank, on February 13, 1930, filed a complaint in intervention alleging that it had a preferred right to said bonus granted by the central to the defendant Mariano Lacson Ledesma as one of the owners of the haciendas which had been mortgaged to said bank to answer for the obligations of the Central Talisay-Silay Milling Co., Inc., basing such allegation on the fact that, as said properties were mortgaged to it by the debtor Mariano Lacson Ledesma, not only by virtue of the deed to secure the obligations of the Talisay-Silay Milling Co., Inc., but also by virtue of the deed of August 9, 1923 (pages 18 to 32 of Annex D), and said bonus being a civil fruit of the mortgaged lands, said bank was entitled to it on the ground that the mortgage of August 9, 1923, had become due. That after the trial of civil case No. 8136 of the Court of First Instance of Iloilo, said court, on December 8, 1930, rendered judgment in favor of the plaintiff Bachrach Motor Co., Inc. Upon appeal, the Supreme Court, on September 17, 1931[1] affirmed the judgment of the lower court, holding that the bonus had no immediate relation to the lands in question but merely a remote and accidental one and, therefore, it was not a civil fruit of the real properties mortgaged to the Philippine National Bank to secure the obligation of the Talisay-Silay Milling Co., Inc., being a mere personal right of Mariano Lacson Ledesma. The decision of the Supreme Court published in Volume 30, No. 104, of the Official Gazette, on August 29, 1932, is attached to this stipulation of facts and marked Annex E. That on January 24, 1930, the Talisay-Silay Milling Co., Inc., issued stock certificate No. 772 for 3,600 shares, as stock dividend, to Mariano Lacson Ledesma, which certificate was ordered by Mariano Lacson Ledesma to be delivered to Roman Lacson, attorney for the Philippine National Bank, by virtue of the letter of February 27, 1930, Annex G of this stipulation of facts, and of the letter of the Philippine National Bank dated January 18, 1930, Annex G-I. Said 6,300 shares constituted the stock dividend allotted to Mariano Lacson Ledesma for his 2,100 original shares in the Talisay-Silay Milling Co., Inc., which were given as pledge to the Philippine National Bank under the deed of mortgage appearing on pages 18 to 32 of Annex D prior to the issuance of stock certificate No. 772, and were covered by Stock Certificates Nos. 145, 146 and 147 of the Talisay-Silay Milling Co. Inc. That stock certificate No. 772 was issued by virtue of resolution No. 4 of the general meeting of stockholders of the Talisay-Silay Milling Co., Inc., which resolution is quoted in paragraph 8 of the complaint in this case. That in a letter of March 25, 1930, addressed by the Philippine National Bank to the Talisay-Silay Milling Co., said bank informed the latter that the 6,300 shares represented by stock certificate No. 772" had been given by Mariano Lacson Ledesma as pledge to the Philippine National Bank. Said letter is attached to this stipulation of facts as Annex H. That said

stock certificate No. 772 has continuously been in the possession of the Philippine National Bank from February 27, 1930, to February 25, 1931, but, like stock certificates Nos. 145, 146 and 147, it was registered in the books of the Talisay-Silay Milling Co. in the name of Mariano Lacson Ledesma. That on August 11, 1930, the plaintiff Bachrach Motor Co., by virtue of an alias execution issued in case No. 31821 of the Court of First Instance of Manila, attached all right, title to and interest which the defendant Mariano Lacson Ledesma might have in 'Any bonus, dividend, shares of stock, money or other property specially on the sum of P19,911.11 which the defendant is entitled to receive from the Talisay-Silay Milling Co., Inc., by virtue of the fact that such defendant has mortgaged his lands in favor of the Philippine National Bank to guarantee the indebtedness of the Talisay-Silay Milling Co., Inc., or which such defendant is entitled to receive from the Talisay-Silay Milling Co., Inc., on account of being stockholder in that corporation, or which he is entitled to receive from that corporation for any other cause or pretext whatsoever.' In connection with the proceedings and attachment made, notice of garnishment was served on the Talisay-Silay Milling Co., Inc., as evidenced by Annexes I and J of this stipulation of facts. That on February 5, 1931, the provincial sheriff of Occidental Negros, by virtue of paragraph (e) of the dispositive part of the decision rendered in civil case No. 4706 of the Court of First Instance of Occidental Negros, copy of which is attached to this stipulation of facts as Annex I, sold at public auction not only the 2,100 shares specified in the deed of August 9, 1923, but also the 6,300 shares covered by stock certificate No. 772, the sale of said shares having been made by order and under the direction of the attachment creditor Philippine National Bank. A copy of the certificate of sale marked Exhibit K is attached hereto. That on February 25, 1931, the Talisay-Silay Milling Co., Inc., upon petition of the Philippine National Bank, as shown by the letter dated February 19, 1931, marked and attached to this stipulation as Annex L, which letter was accompanied by the certificate of sale Exhibit K, issued stock certificate No. 1155 representing 8,968 shares, which include the 6,300 shares formerly represented by stock certificate No. 772 and the 2,100 shares formerly represented by stock certificates Nos. 145, 146 and 147, the bank having acknowledged receipt of certificate No. 1155 in a letter of March 4, 1931, marked as Exhibit M. Attention is invited to the fact that of the 8,968 shares represented by stock certificate No. 1155, 568 shares formerly belonged to Concepcion Diaz de Lacson, wife of the defendant Mariano Lacson Ledesma, and of the 568 shares, 142 were mortgaged under the deed of August 9, 1923, and 426 were the stock dividend that had corresponded to said 142 shares. That on the same date, February 25, 1931, Mariano Lacson Ledesma endorsed the back of stock certificate No. 772 in favor of the Philippine National Bank. Said stock certificate with the endorsement in question is attached to this stipulation of facts and marked Annex N. That both on the date on which the garnishment was carried out by the Bachrach Motor Co., that is, on August 11, 1930, and on the date on which the 6,300 shares, covered by stock certificate No. 772, were sold, case No. 8136 of the Court of First Instance of Iloilo (G. K. No. 35223) was still pending. That the amount of the actual indebtedness of the defendant Mariano Lacson Ledesma to the plaintiff the Bachrach Motor Co. is P21,377.34 with the interest and other sums specified in paragraph XV of the complaint. That the real properties mortgaged to the Philippine National Bank were sold for P300,000 Philippine currency; the mortgaged carabaos for P2,000 Philippine currency, and all the shares, that is, the 8,968 shares for the sum of P90,000 Philippine currency, the bank having been the highest bidder in all these sales, there still remaining unpaid in civil case No. 4796 of the Court of First Instance of Occidental Negros the sum of P695,421.74, as stated in Annex 9. That the notices of garnishment issued by virtue of the executions in cases Nos. 31597 and 31821 of the Court of First Instance of Manila are the same notices of attachment and garnishment mentioned in the complaint in the case No. 8136 of the Court of First Instance of Iloilo and presented as evidence in said case, and are the same notices mentioned in this case now submitted to the court for decision. That on March 20, 1925, the Philippine National Bank served notice on the Talisay-Silay Milling Co., Inc., of the pledge made by Mariano Lacson Ledesma to said bank of the shares represented by stock certificates Nos. 145, 146 and 147, and on March 25th the Talisay-Silay Milling Co., Inc., acknowledged receipt thereof and considered itself notified of said pledge, as evidenced by Annexes P and Q of this stipulation of facts. That prior to the declaration of stock dividend by virtue of resolution No. 4 of the regular meeting of stockholders of the Talisay-Silay Milling Co., Inc., the shares of this corporation were quoted in private sales at P32 a share; and immediately after the declaration of stock dividend, the quotation of said shares dropped by P1 or P8 a share, the same having been P1 1.25 a share

on the date of their sale at public auction. Upon this stipulation of facts, the parties submit the case to the court for decision."

I. The plaintiff bases the preferred right invoked by it over the 6,300 stock dividends, certificate No. 772, on the garnishment made thereon by reason of the issuance of the alias execution in civil case No. 31821 of the Court of First Instance of Manila, which garnishment was carried out on August 11, 1930. The plaintiff contends in its first assignment of error that these stock dividends were in custodia legis by virtue of the garnishment, when certificate No. 772 thereof was delivered to the Philippine National Bank and when the Talisay-Silay Milling Co., Inc., entered them in its books in the name of said bank and issued certificate No. 1166 in favor of the latter. The contention is unfounded because it appears that the stock dividends in question were pledged to the bank prior to the garnishment and because certificate No. 772 was in the possession of said bank from February 27, 1930. The reasons upon which this court bases its opinion in declaring that the stock dividends were pledged beforehand to the Philippine National Bank will be stated in the discussion of the following assignment of error.

II. In the stipulation of facts, it appears stipulated by the parties that, by virtue of the letters of the Philippine National Bank and having been so asked by Mariano Lacson Ledesma, certificate No. 772 covering the 6,300 stock dividends was delivered as security to Attorney Roman Lacson, as representative of the bank, on February 27, 1930, in view of the fact that the original shares covered by certificates Nos. 145, 146 and 147 had been previously mortgaged to the same bank. On February 25, 1931, the Talisay-Silay Milling Co., Inc., in conformity with the letter of the Philippine National Bank of the 19th of said month, cancelled certificate No. 772 and in lieu thereof issued certificate No. 1155 in favor of said bank, which certificate includes the 6,300 stock dividends, among other shares. On the other hand, the garnishment obtained by the plaintiff, upon which it bases all its alleged preferred right, was notified to the parties and became effective on August 11, 1930, more than five months after the delivery of certificate No. 772. The plaintiff, in its second assignment of error, maintains that the pledge is ineffective as against it because evidence of its date was not made to appear in a public instrument and concludes that its right to the 6,300 stock dividends is superior and preferred. It is admitted that the delivery of the certificate in question and the pledge thereof were not made to appear in a public instrument.

It is true, according to article 1865 of the Civil Code, that in order that a pledge may be effective as against third persons, evidence of its date must appear in a public instrument in addition to the delivery of the thing pledged to the creditor. This provision has been interpreted in the sense that for the contract to affect third persons, it must appear in a public instrument in addition to delivery of the thing pledged (*Ocejo, Perez & Co. vs. International Banking Corporation*, 37 Phil., 631; *Tec Bi & Co. vs. Chartered Bank of India, Australia & China*, 41 Phil., 596; *Te Pate vs. Ingersoll*, 43 Phil., 394). It cannot be denied, however, that section 4 of Act No. 1508, otherwise known as the Chattel Mortgage Law, implicitly modified article 1865 of the Civil Code in the sense that a contract of pledge and that of chattel mortgage, to be effective as against third persons, need not appear in public instruments provided the thing, pledged or mortgaged be delivered or placed in the possession of the creditor. In the case of *Mahoney vs. Tuason* (39 Phil., 952, 958), where this doctrine was laid down, it was stated: "From the foregoing provisions of the abovesited Act, it is inferred that the same does not entirely repeal the provisions of the Civil Code, but only modify them in part and amplify them in another, as may be seen from an examination of, and comparison between, the provisions of the Civil Code regarding pledge and the above-quoted provisions of Act No. 1508. Article 1865 of the Civil Code provides that no pledge shall be effective against a third person unless evidence of its date appears in a public instrument. The provision of this article has, undoubtedly, been modified by section 4 of the Chattel Mortgage Law, in so far as it provides that a chattel mortgage shall not be valid against any, person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides. From the date the said Act No. 1508 was in

force, a contract of pledge or chattel mortgage should be deemed legally entered into and should produce all its effects and consequences, provided it appears to have been in some manner perfected and that the things pledged have been delivered, and in a contrary case, and even if the creditor has not received them or has not retained them in his custody, provided that the contract of pledge or chattel mortgage appears in a notarial document and is inscribed in the registry of deeds of the province." Therefore, this court holds that the pledge of the 6,300 stock dividends is valid against the plaintiff for the reason that the certificate was delivered to the creditor bank, notwithstanding the fact that the contract does not appear in a public instrument.

The plaintiff further contends that the pledge could not legally exist because the certificate was not the shares themselves, making it understood that a certificate of stock or of stock dividends can not be the subject matter of the contract of pledge or of chattel mortgage. Neither is this contention tenable. Certificates of stock or of stock dividends, under the Corporation Law, are quasi negotiable instruments in the sense that they may be given in pledge or mortgage to secure an obligation. The question is settled in this wise by the weight of American authorities and it is the modern doctrine of general acceptance by the courts.

"In view, however, of the fact that certificates of stock, while not negotiable in the sense of the law merchant, like bills and notes, are so framed and dealt with as to be transferable, when properly indorsed, by mere delivery, and as they frequently convey, by estoppel against the corporation or against prior holders, as good a title to the transferee as if they were negotiable, and, inasmuch as a large commercial use is made of such certificates as collateral security, and it is to the public interest that such use should be simplified and facilitated by placing them as nearly as possible on the plane of commercial paper, they are often spoken of and treated as quasi negotiable, that is, as having some of the attributes and partaking of the character of negotiable instruments, in passing from hand to hand, especially where they are accompanied by an assignment and power of attorney, executed in blank, to transfer them to anyone who may obtain possession as holders, even though such assignment and power are under seal." (14 C. J., 665, sec. 1034; *South Bend First Nat. Bank vs. Lanier*, 20 Law. ed., 172; *Weniger vs. Success Min. Co.*, 227 Fed., 548; *Scott vs. Pequonnock Nat. Bank*, 15 Fed., 494.)

III. In the third assignment of error, the plaintiff maintains that the court erred in holding that the stock dividends are civil fruits or an extension of the original shares. This court deems it unnecessary to determine whether or not the stock dividends are civil fruits or an extension of the original shares. This point becomes immaterial after the case has been decided in the manner stated in the discussion of the second assignment of error.

IV. In the fourth assignment of error, the plaintiff contends that the court erred in not declaring null and void the sale of the 6,300 stock dividends in execution of the judgment rendered in favor of the Philippine National Bank in civil case No. 4706 of the Court of First Instance of Occidental Negros. Inasmuch as this court has declared that the stock dividends in question were pledged to the bank, it follows that the sale thereof in execution of said judgment is legal and valid.

V. In the fifth assignment of error, the plaintiff argues that the court erred in declaring the Philippine National Bank's right to the stock dividends a preferred one. After it has been held that these stock dividends had been pledged to the Philippine National Bank and that this contract was prior to the garnishment of the plaintiff, it appears clear that the court violated no law in holding the right of the Philippine National Bank, as pledgee, a superior one.

VI. The plaintiff assigns as sixth and last error committed by the court the fact of its having absolved all the defendants. The case having been decided in favor of the Philippine National Bank, on the grounds stated in passing upon the second assignment of error, the absolution of the defendants is unavoidable, thereby making this last assignment of error likewise untenable.

For the foregoing considerations, the appealed judgment is affirmed, with the costs of this instance to the plaintiff-appellant. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diaz; Laurel, and Concepcion, JJ., concur.

[1] *Bachrach Motor Co. vs. Talisay-Silay Milling Co.*, 56 Phil., 117.

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