

IN RE LIQUIDATION OF THE MERCANTILE BANK OF CHINA. YU PING KUN, CLAIMANT AND APPELLANT.

G. R. No. 43680. March 31, 1938

Ponente: VILLA-REAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-43680/>

VILLA-REAL, J.:

This is an appeal taken by the claimant Yu Ping Kun from a judgment of the Court of First Instance of Manila, approving the recommendation of Commissioner Fulgencio Borromeo, made in his report of April 30, 1933, which reads as follows: "RECOMMENDATION. In view of the authority cited, which is very applicable to the present case the undersigned Commissioner recommends that the claim of Yu Ping Kun be denied."

In support of his appeal, the appellant assigns the following alleged errors as committed by the lower court in its decision:

"1. The lower court erred in denying the claim of Yu Ping Kun for the sum of P15,000, together with legal interest thereon from September 15, 1931, until paid, as a preferred claim.

"2. The lower court erred in denying claimant's motion for new trial."

According to the brief of Yu Ping Kun, his claim for P15,000 plus the corresponding interest from September 15, 1931 until paid, as preferred credit, is like the claim of Cu Yeg Keng in the case of *In re Liquidation of Mercantile Bank of China*, Cu Year Keng, claimant and appellant (G. R. No. 43662, March 31, 1938).

In that case Commissioner Fulgencio Borromeo stated in his report:

"Cu Yeg Keng.

"This gentleman claims the sum of P14,521.55.

"At the hearing of this claim, the claimant himself appeared and testified under oath, through Mr. Ty Cham, the interpreter of the court, that his claim against the Mercantile Bank of China represents the amount of a surety deposit therein when said bank found itself in difficulty and there was a withdrawal of funds by depositors; that the original amount of said deposit was P15,000 from which was deducted his then indebtedness to the bank amounting to P478.45; that it was noted in the corresponding pass-book that such deposit was by way of security made in August 1931; that when he deposited said P15,000, he was given only a receipt stating that the amount was a surety deposit, but before the liquidation of the bank, he was asked to surrender said receipt, which he did; that when the receipt was returned to the bank, it was noted in its books that the said amount was credited to the current account of the claimant; that he has in his possession the pass-book in which said annotation was made, accepting said book under the conditions stipulated therein; that it was his understanding that the money deposited in the bank still remained as a surety deposit as when it was made in August, 1931; that the first receipt issued was returned to the bank, in exchange for a pass-book bearing the annotation that the said amount was converted from a surety deposit into a current account; that he presented said receipt to the bank to ask for the return of his deposit, but instead, he was given the pass-book above referred to."

If it is true that Yu Ping Kun owes the Mercantile Bank of China the amount of said promissory note, it makes no difference whether the deposit be considered a surety or a current account deposit, inasmuch as the depositor has the right to set off the amount of his deposit in a bank against his indebtedness thereto, whatever be the nature of such deposit. In the cases of *Mercantile Bank of China vs. Ty Hoan Chay and Cu Yeg Keng* (G. R. No. 44877, March 31, 1938), and *In re Liquidation of Mercantile Bank of China. Cu Yeg Keng, claimant and appellant* (G. R. No. 43662, March 31, 1938), this court stated:

"No valid reason exists why the counterclaim set up by the defendant Cu Yeg Keng should not be allowed. His right to a set-off is clear. (Civil Code, art. 1195; Code of Civil Procedure, sec. 95.) 'If a depositor is indebted to the bank, he may, according to the weight of authority, set-off his deposit against the indebtedness, and this is true though the bank becomes insolvent and its assets are placed in the hands of a receiver or commissioner for liquidation. Such a set-off does not result in a preference. The general theory of the cases is that the assignee, receiver, or trustee in insolvency stands in the position of the insolvent bank and is therefore subject to the same rights and equities to which the bank would have been subject.' (7 Am. Jur., 339, 340.) In *Scott vs. Armstrong* (146 U. S., 499, 510; 36 Law. ed., 1059, 1063), the Supreme Court of the United States held that the allowance of a valid set-off cannot be considered a preference, and that only the balance, after deduction of the set-off, constitutes part of the assets of the insolvent. 'The requirement', the court said, 'as to ratable dividends, is to make them from what belongs to the bank, and that which at the time of insolvency belongs of right to the debtor does not belong to the bank.' "

As to the interest claimed by Yu Ping Kun on his deposit, it has been held that current account deposits do not earn interest from the time the bank is in a state of liquidation. The same can be said, and with more reason, with regard to surety deposits. (*Tan Tiong Tick vs. American Apothecaries Co.*, G. R. No. 43682, March 31, 1938.)

In view of the foregoing, the appealed judgment is reversed in so far as it approves the recommendation contained in the report of Commissioner Fulgencio Borromeo of April 30, 1933, that the claim of the herein claimant and appellant Yu Ping Kung be denied, and it is held that such claim should be set off by any indebtedness which the claimant may have with the said Mercantile Bank of China, without special pronouncement as to the costs. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, and Horrilleno, 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.