

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS.  
PHILIPPINE TRUST COMPANY AND UNION INSURANCE SOCIETY OF  
CANTON, LTD., DEFENDANTS AND APPELLEES.**

*G.R. No. 45427. May 12, 1939*

Ponente: DIAZ, J.

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**DIAZ, J.:**

This case was commenced by the plaintiff bank in the Court of First Instance whence it came to compel the two defendant entities to pay it, jointly and severally, an indemnity of P250,000 with legal interest on said sum from November 4, 1939, for damages which it alleges to have sustained by reason of their violation of certain contracts into which the three had entered on September 1, 1924, and January 5, 1923. (Exhibits J and C.)

The defendants answered, denying the facts set forth in the complaint, excepting those relating to the personality of the three as corporations organized in conformity with law, and alleging the three special defenses specified in their answer.

After trial, the lower court made the findings appearing in the decision and rendered judgment in the following terms:

"The court finds that defendants, far from benefiting at the cost or to prejudice of the plaintiff, suffered enormous and irreparable losses in their attempt to rehabilitate the Mindoro Sugar Company with the object of recovering the value of their first mortgage and also, if possible, that of the second mortgage of plaintiff.

"Plaintiffs action is wholly without merit.

"Wherefore, the complaint is dismissed, with costs against the plaintiff. So ordered."

The lower court decided the case in the manner above-indicated after considering the following stipulation of facts which the parties had submitted together with the documents" therein mentioned:

**"STIPULATION OF FACTS AND RECORD OF PRESENTATION OF DOCUMENTARY EVIDENCE  
AND OBJECTIONS THERETO**

"Come now the parties to the above-entitled case, by their undersigned attorneys, and hereby agree to the following facts:

"1. That the parties admit the allegations contained in paragraph 1 of the amended complaint of plaintiff referring to the residence, personality and capacity to sue and to be sued of the parties hereto.

"2. That on December 21, 1917, the Mindoro Sugar Company, a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, executed a deed of trust in favor of the Philippine Trust Company as trustee, a copy of which is attached as Exhibit 1 to the amended answer of defendants of May 31, 1935, and is hereby made a part of this stipulation of facts, as Exhibit A.

"3. That on April 14, 1921, the Mindoro Sugar Company executed a mortgage in favor of the Philippine

National Bank, a certified copy of which is hereto attached as Exhibit B and is made a part hereof.

"4. That on January 5, 1923, the parties hereto entered into an agreement, a copy of which is attached to the original complaint as Exhibit A and another copy of which is hereto attached as Exhibit C and made a part hereof.

"5. That the Mindoro Sugar Company having failed to pay the mortgage debt secured by the mortgage attached hereto as Exhibit B and having otherwise failed to comply with the conditions contained therein, and pursuant to the agreement contained in Exhibit C hereof, the Philippine National Bank brought a foreclosure suit in the Court of First Instance of Mindoro against the Mindoro Sugar Company in which the Philippine Trust Company as trustee was made a party defendant by reason of said deed of trust, said case being docketed as civil case No. 370; a certified copy of the complaint and decision therein rendered being hereto attached as Exhibits D and D-1, respectively, a certified copy of the excerpt from the minutes of the session of the Supreme Court of the Philippine Islands held on January 12, 1925, as Exhibit D-2, and a certified copy of the judgment rendered by the Supreme Court of the Philippine Islands in the said case, dated January 23, 1925, as Exhibit D-3.

"6. Plaintiff offers in evidence a memorandum signed by M. H. O'Malley on November 9, 1923, marked Exhibit E. The defendants admit the authenticity of the memorandum and the sending thereof to plaintiff; that M. H. O'Malley was the then President of the Philippine Trust Company and, with the observation that the terms of the agreements of January 5, 1923, and September 1, 1924, attached to the original complaint as Exhibits A and B and referred to in this stipulation as Exhibits C and J, respectively, are clear and require no evidence aliunde of their correct interpretation, make no objection thereto. Plaintiff observes, on the other hand, that the terms of the agreements of January 5, 1923 and September 1, 1924, are not so clear without evidence aliunde as defendants themselves raise the issue in their second amended answer as to the purpose and intent of the parties to said agreements; and plaintiff further makes similar observations in hereafter offering Exhibits F, G, H, I, I-1, K, K-2 and O-4.

"In reply to the foregoing observation of plaintiff upon the assumption that such observation as well as those of defendants will serve in lieu of objections and answers thereto, defendants contend that the allegations of their reamended answer as to the purposes and intent of the agreement of September 1, 1924, are in support of the literal and logical meaning of said agreement and in answer to the allegations of plaintiff's complaints to the effect that the purposes and intent of the parties were different from those expressed in said agreement.

"7. Plaintiff offers in evidence the joint letter of the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., under date July 16, 1924, to the Philippine National Bank which has been marked Exhibit F for identification. Defendants admit its authenticity and the sending of the same to plaintiff and, with the observation that the terms of said agreement of September 1, 1924, are clear and require no evidence aliunde as to their correct interpretation, make no objection thereto. In order to complete the sense of Exhibit F defendants offer defendants' Exhibit F-1 which is admitted to be a true copy of the letter of June 17, 1924, mentioned in Exhibit F and it is agreed that it shall be considered in connection therewith.

"8. Plaintiff offers in evidence an excerpt from the minutes of the board of directors of the Philippine National Bank of July 18, 1924, marked Exhibit G. Defendants admit the authenticity thereof and, with the observation that the terms of said agreement of September 1, 1924 are clear and require no evidence aliunde as to their meaning, make no objection thereto.

"9. Plaintiff offers in evidence the joint letter of the defendants to the plaintiff under date July 23, 1924, marked Exhibit H. Defendants admit its authenticity and the sending of the same to plaintiff and, with the observation that the terms of said agreement of September 1, 1924 are clear and require no evidence aliunde as to their meaning, make no objection to the admission of said letter.

"10. Plaintiff offers in evidence letters of the Philippine Trust Company to the Philippine National Bank

marked Exhibits I and I-1, respectively, and dated August 7 and 8, 1924. Defendants admit their authenticity and the sending thereof to plaintiff and, with the observation, that the terms of said agreement of September 1, 1924 are clear and require no evidence aliunde as to their meaning, make no objection to the admission of said letters.

"11. Plaintiff offers in evidence the agreement of September 1, 1924, which is attached to the original complaint as Exhibit B, is pleaded in defendants' answers and has been marked Exhibit J of this stipulation, and defendants join with plaintiff in the offer thereof as evidence in this case.

"12. Plaintiff offers in evidence Exhibit K, being a letter of May 6, 1925, of the defendant Philippine Trust Company to the plaintiff Philippine National Bank. Defendants admit its authenticity and the sending of the same to plaintiff and, with the same observation as to the clarity of the terms of said agreement of September 1, 1924, make no objection to the admission of such letter.

"It is stipulated that the language of the last paragraph of Exhibit K, 'whatever balance may be due your bank after liquidation of the crop just harvested' refers to loans of the Philippine National Bank made under the three-party financing agreement mentioned in the agreement of January 5, 1923 (Exhibit C of the stipulation) and has no reference to the second mortgage in question; that said three-party financing agreement began before the execution of the said agreement of January 5, 1923, and all advances thereunder were fully liquidated before the resignation of the Philippine Trust Company as trustee as shown by the statement marked Exhibit K-1 and made a part of this stipulation.

"Plaintiff also offers in evidence an excerpt from the minutes of the board of directors of the Philippine National Bank of May 8, 1925 marked Exhibit K-2. Defendants admit its authenticity and, with the same observation as to the clarity of the terms of said agreement of September 1, 1924, make no objection to the admission of said Exhibit K-2.

"13. Plaintiff offers in evidence the notices given by the Philippine National Bank to the defendants and to Mons. M. J. O'Doherty, successor of the defendant Philippine Trust Company as trustee under the deed of trust and which notices bear date April 17, 1929, and are marked Exhibits L, L-1 and L-2. Defendants admit their authenticity and the receipt thereof but object to that portion thereof assuming the liability of the defendants under the agreement of September 1, 1924 as self-serving and inadmissible to vary the terms of that agreement. In connection with Exhibits L, L-1 and L-2, it is stipulated that the properties and franchises of the Mindoro Sugar Company were first advertised on April 1, 1929 to be sold on May 1, 1929, by Mons. M. J. O'Doherty as trustee under the deed of trust in place of the Philippine Trust Company, resigned, as evidenced by the advertisements in the Free Press marked defendants' Exhibits L-3, L-4, L-5 and the affidavit of publication of April 20, 1929 marked defendants' Exhibit L-6 and all attached hereto and made a part hereof.

"14. Plaintiff offers in evidence the notices of sale of August 26, 1929, which is signed by Francisco Ortigas, Leopoldo Kahn, Wenceslao Trinidad, Joseph E. H. Stevenot and Fulgencio Borromeo constituting the board of trustees which succeeded Mons. M. J. O'Doherty as trustee under said deed of trust Exhibit A of the stipulation of facts. The defendants admit the authenticity of said notice which is marked Exhibit M for identification and join with the plaintiff in the introduction hereof as evidence.

"15. Plaintiff offers in evidence the deed of sale of November 5, 1930, executed by the justice of the peace of San Jose, Mindoro, in favor of the Roman Catholic Archbishop of Manila which has been marked Exhibit N, and defendants admit the authenticity thereof and join with the plaintiff in the introduction of said deed.

"16. It is stipulated that there was no provision made for the recognition or payment of the second mortgage in the sale of the properties of Mindoro Sugar Company by said board of trustees under the deed of trust as disclosed by Exhibits M and E hereof. "It is further stipulated that after the month of April, 1929, neither of the defendants further financed the crops or the operation of the Mindoro Sugar Estate.

"It is further stipulated that the defendants gave no notice to plaintiff of the cessation of the financing of the crops or operation of the Mindoro Sugar Estate, but it is the contention of the defendants that the plaintiff was, in the month of April, 1929, as shown by Exhibits L, L-1 and L-2 fully informed by the contents of the published notice of sale (Exhibit L-3) of the resignation of the defendant Philippine Trust Company as trustee under the deed of trust and of the proposed sale of the property and franchises of the Mindoro Sugar Company by the succeeding trustee under said deed of trust; that such resignation as trustee of the Philippine Trust Company and the proceedings to foreclose the deed of trust were inconsistent with the further financing of the operation of the Mindoro Sugar Company and were ample warning to the plaintiff to take whatever steps it believed necessary to protect its right if considered of any value under its second mortgage (Exhibit B) and under the decision of foreclosure thereof (Exhibit D-1 hereof).

"Plaintiff insists, however, that it also had rights under the agreements marked Exhibits C and J hereof.

"It is further stipulated that the plaintiff never executed the judgment of foreclosure (Exhibit D-1) by the sale of the properties of the Mindoro Sugar Company thereunder and never collected the amount of said second mortgage or any part thereof.

"It is further stipulated that if the Articles of Incorporation of the San Jose Development Co. mentioned in said agreement of January 5, 1923 (Exhibit C hereof) were ever drafted, that prospective corporation was never capitalized and never functioned.

"17. Plaintiff offers in evidence a letter of December 27, 1928, to the plaintiff bank which has been marked Exhibit O for identification. Defendants admit the authenticity of said letter and the sending thereof to plaintiff and make no objection thereto.

"The defendants offer the letters which are correlated to Exhibit O as follows:

"Letter of March 31, 1928, written by the Philippine Trust Company as trustee to the Philippine National Bank proposing to pay the latter a nominal sum for plaintiff's second mortgage and the judgment in foreclosure thereon and which letter is marked defendants' Exhibit O-1 for identification; letter of the Philippine National Bank dated April 11, 1928, in reply to Exhibit O-1 and which letter of April 11, 1928, is marked defendants' Exhibit O-2; letter of April 21, 1928, of the Philippine Trust Company as trustee to the plaintiff bank marked defendants' Exhibit O-3 for identification. Plaintiff admits the authenticity of defendants' Exhibits O-1, O-2 and O-3 and makes no objection to their introduction in connection with Exhibit O

"18. Plaintiff offers in evidence an excerpt from the minutes of the board of directors of the plaintiff bank of February 15, 1929, marked Exhibit O-4, in which the proposal of the Philippine Trust Company as trustee (Exhibit O) is rejected. Defendants admit the authenticity of the excerpt (Exhibit O-4) but object to that part thereof which assumes the liability of the Philippine Trust Company as trustee to the plaintiff bank for the full amount of its second mortgage as a self-serving statement and contend that the same is inadmissible to vary the terms of the agreement of September 1, 1924.

"19. In order to further clarify the record evidence offered by the plaintiff as Exhibits L, L-1 and L-2 and M and N, the defendants mark and present the following:

"Original letter of March 13, 1929, of Earl B. Schultz as Bank Commissioner to the Philippine Trust Company recommending its resignation as trustee, marked defendants' Exhibit P for identification;

"Proceedings of April, 1929 regarding the resignation of the Philippine Trust Company as trustee under the deed of trust of December 21, 1917, marked defendants' Exhibit Q for identification;

"Proceedings regarding the appointment on April 1, 1929 of Mons. M. J. O'Doherty as trustee under said deed of trust of December 21, 1917, in place of the Philippine Trust Company, marked defendants' Exhibit R for identification;

"Proceedings regarding the acceptance by Mons. M. J. O'Doherty on April 1, 1929 of his appointment as trustee under said deed of trust, marked defendants' Exhibit S for identification;

"Proceedings regarding the resignation of Mons. M. J. O'Doherty as such trustee and the appointment as a board of trustees of Francisco Ortigas, Leopoldo Kahn, Wenceslao Trinidad, Joseph E. H. Stovenot and Fulgencio Borromeo in place of Mons. M. J. O'Doherty on the 14th of June, 1929, marked defendants' Exhibit T for identification;

"Proceedings regarding acceptance of the said Francisco Ortigas, Leopoldo Kahn, Wenceslao Trinidad, Joseph E. H. Stevenot and Fulgencio Borromeo as a board of trustees in place of Mons. M. J. O'Doherty under date June 15, 1929, marked defendants' Exhibit U for identification;

"Signed duplicate of certificate of the justice of the peace of San Jose, Mindoro, as to the sale of the properties under the deed of trust of December 21, 1917, in conformity with the notice of sale of August 26, 1929, heretofore marked Exhibit M-8, and which certificate of sale is necessary to complete the record consisting of said Exhibits M and N, and which is marked defendants' Exhibit V for identification;

"Affidavit of the notice of sale of August 26, 1929, which is also necessary to complete the record of proceedings of foreclosure under the deed of trust, and which affidavit of publication is marked defendants' Exhibit W for identification. Plaintiff admits the authenticity of defendants' Exhibits P to W, inclusive, and makes no objection to their introduction as evidence

"20. It is stipulated that the sums due from the Mindoro Sugar Company and secured by said deed of trust at the time of its foreclosure were as recited in paragraph 4 of the reamended answer of the defendants, and that the sales price of three million pesos (P3,000,000) bid on the property of the Mindoro Sugar Company at the time of said sale on November 4, 1929 was applied on account of the indebtedness of five million, five hundred thirty-nine thousand three hundred forty and 84/100 pesos (P5,539,340.84) due to the Roman Catholic Archbishop of Manila, and that none of the other creditors mentioned in said paragraph 4 of the reamended answer received any part of the sales price of said properties.

"21. Defendants ask that clauses 3 and 4 of the first special defense of the reamended answer be treated as amended to conform to the agreed facts so as to read as follows:

"3. That on the 1st day of April, 1929, the Philippine Trust Company at the suggestion of the Bank Commissioner resigned as trustee for the bondholders of the Mindoro Sugar Company, and said bondholders appointed in its place Mons. M. J. O'Doherty, Archbishop of Manila, as trustee, and said Philippine Trust Company as such former trustee thereupon surrendered possession of the properties and franchises of the said Mindoro Sugar Company to the said Mons. M. J. O'Doherty; that thereupon the said Mons. M. J. O'Doherty as such trustee advertised the properties of said Mindoro Sugar Company for sale under said deed of trust at San Jose, Mindoro, on May 1, 1929, but desisted from making the sale at that time<sup>1</sup> in order to give the prospective sale more publicity and afford prospective buyers more time in which to prepare for the purchase; that on the 15th day of June, 1929, the said Mons. M. J. O'Doherty resigned as such trustee and Messrs. Francisco Ortigas, Leopoldo Kahn, Wenceslao Trinidad, Joseph E. H. Stevenot and Fulgencio Borromeo were appointed as a board of trustees under the terms of said deed of trust to take the place of Mons. M. J. O'Doherty who thereupon surrendered possession of the properties of the said Mindoro Sugar Company to said board of trustees.

"4. That on the 26th of August, 1929, the said board of trustees readvertised said properties of the Mindoro Sugar Company for sale at San Jose, Mindoro, on the 4th of November, 1929, and at that time and place caused the same to be duly sold at public auction by the justice of the peace of San Jose, Mindoro, in accordance with the provisions of the Deed of Trust to satisfy certain amounts due from the Mindoro Sugar Company under the said deed of trust, namely:

1. Roman Catholic Archbishop of Manila

P5,539,340.84

2. Installment and interest due Philippine Government on account of Friar Land sale, certificate No. 2

240,857.22

3. Philippine Trust Company for advances

777,126.26

4. Bondholders, principal and interest

3,303,739.20

Total

9,861,063.52'

Defendants ask that the third clause of second special defense of the reamended answer be treated as amended so as to read as follows:

" '3. That although Exhibit A of the original complaint was cancelled by Exhibit B of said original complaint as to plaintiff, and the defendants continued to finance the operation of the properties, rights and franchises of the Mindoro Sugar Company, until or about the month of April, 1929, when such financing ceased, the defendants never availed themselves of the privilege or option granted them under said Exhibit B of acquiring title to the properties covered by said deed of trust and by said second mortgage of the plaintiff and were, therefore, never in position to sell and never did sell said properties or have anything to do with the sale thereof; that the defendants, not having exercised their option under Exhibit B to acquire title to said properties and franchises, had no power to recognize or arrange with purchasers to recognize or pay said second mortgage of plaintiff; that the liens and rights of the plaintiff under said second mortgage and the foreclosure thereof, were never lost or affected as a result of said agreement Exhibit B and there was therefore no occasion or reason for the recognition of said second mortgage by the defendants; that the plaintiff voluntarily abandoned its lien and rights under said second mortgage by failing to redeem the property from said deed of trust and other prior liens and through no fault of the defendants.'

"Plaintiff makes no objection to the proposed amendments.

"22. The case is hereby submitted for decision upon the foregoing agreed facts and record without further evidence.

"Manila, P. I., Sept. 2, 1935."

From the decision and judgment of the lower court, plaintiff took an appeal, maintaining that it committed the errors set forth in the latter's brief, to wit:

"1. The trial court erred in construing Exhibit J, embodying the agreements contained in Exhibits F, G, I, and I-1.

"2. The trial court erred in not holding that the defendants violated their contracts with the plaintiff bank by disabling themselves or putting it out of their power to comply with their obligation to 'see that the purchaser makes satisfactory arrangements for the payment of the mortgage of the Philippine National Bank.'

"3. The trial court erred in denying the motion for new trial."

It appears from the stipulation and the documents above-mentioned that in order to be able to issue bonds with

which to pay its pending obligations and to enable it to transact business in the manner and for the purposes for which it was organized, which are set forth in Act No. 3055, the Mindoro Sugar Company had to execute on December 21, 1917, in favor of the defendant Philippine Trust Company, a trust deed, Exhibit A or Exhibit 1, which was later recorded in the registry of property of the Province of Mindoro, to guarantee not only the payment of the sum of \$1,500,000 United States money, equivalent to P3,000,000 Philippine currency, the total value of 1,500 bonds of \$1,000 each, which it would have to issue and sell and actually issued and sold thereafter, but also the interest on said sum at the rate of 8 per cent per annum. When the proceeds from the sale of said bonds were not enough to meet the demands of the business in which it was engaged, it obtained various loans from the plaintiff bank, and in April, 1921 said loans amounted to P250,000. To guarantee the payment of this sum, it executed in favor of said bank the deed of mortgage, Exhibit B, which was in turn recorded in the registry of property of Mindoro on the 21st of said month and year. By reason of the nature of said two documents, Exhibits A and B, and the dates of their respective execution and recording in the registry of property, the first is undoubtedly superior to the second, this being all the more true since among the clauses of Exhibit B the following is found:

"The lien of this indenture upon the properties above described is second and subordinate to that of a certain deed of trust executed by the mortgagor to the Philippine Trust Company, as trustee, on the 21st day of December, 1917, and duly recorded in the office of the registrar of deeds of the Province of Mindoro."

The loans thus obtained from the plaintiff bank were, however, not sufficient to place the Mindoro Sugar Company in circumstances to meet the situation, since its financial condition continued to become worse than ever; and for this reason it obtained a new loan of P1,281,719.48 on September 7, 1921, requesting the same from Welch, Fairchild & Co. On the same date, September 7, 1921, it was indebted to other creditors in the sum of P500,000 (Exhibit E). Plaintiff and defendants sharing the same de- sire and interest to save the Mindoro Sugar Company from total bankruptcy, agreed to execute and did enter into an agreement, Exhibit C, on January 5, 1923 under the terms of which they bound themselves to perform and comply with the acts set forth in the following clauses of said agreement:

"Now therefore, the parties hereto agree as follows:

"That a business association or corporation shall be formed under the laws of the Philippine Islands to be known as the 'San Jose Development Co.' with an agreed capital which is to be distributed equally between the three parties hereto.

"That the bank agrees to proceed immediately to the foreclosure of its mortgage and either bid the property in for the amount of the claim when sold, or to join with the other two parties in bidding it in, in the name of the San Jose Development Company. If the bank bids the property in, it agrees to transfer its title to the San Jose Development Company so organized for the sum so paid, and to take in payment a second mortgage of the property for said amount,

"The parties shall advance to the San Jose Development Company, peso, for peso, all sums required by said San Jose Development Company for the maintenance and operation of the property, rights and franchises acquired by it.

"The San Jose Development Company shall own, maintain and operate the said property, rights and franchises subject to the trust deed executed by the Mindoro Sugar Company in favor of the Philippine Trust Company under date of December 21, 1917. The income of the said Company, after providing for all interest due on the bonds covered by the trust deed aforesaid, shall be applied pro rata to the payment of the advances made by the parties hereto and thereafter.

"1. To the payment of interest and other obligation as they mature under the 3,000,000 bond mortgage.

"2. To the payment of the amount due the bank for the purchase price of the property.

"3. To the owners.

"No dividend shall be declared by the corporation until the payments as above have been made."

Acting in accordance with said agreement, plaintiff proceeded to foreclose the mortgage in its favor (Exhibit B) by commencing for that purpose civil case No. 370 of the Court of First Instance of Mindoro, entitled "Philippine National Bank, plaintiff, vs. Mindoro Sugar Company and Philippine Trust Company, defendants," which terminated in a judgment in its favor wherein the following pronouncements were made:

"Wherefore, the court sentences the Mindoro Sugar Company to pay the following sums:

"(a) P50,000 with interest thereon at 9 per cent per annum from June 29, 1921 until date of payment;

"(b) P50,000 with interest thereon at 9 per cent per annum from June 14, 1921 up to the date of payment;

"(c) P50,000 with interest thereon at 9 per cent per annum from July 27, 1921 until the same is fully paid;

"(d) P50,000 with interest thereon at 9 per cent from August 10, 1921 until payment;

"(e) P50,000 with interest thereon at 9 per cent from May 29, 1921 until payment;

"Plus 10 per cent on the amounts set forth in paragraphs (a), (c), (d) and (e) as attorney's fees and the costs of the suit.

"It is ordered that the payment of the amounts above-mentioned be made to this court on June 19, 1924 and in case said payment should not be made on the date afore-mentioned all rights, interest and participation which the Mindoro Sugar Company has or may have in the mortgaged lands shall be sold, subject to the first mortgage (trust deed) executed in favor of the Philippine Trust Company, to the end that with the proceeds of the sale said obligation may be paid. So ordered.

"Calapan, Mindoro, March 19, 1924.

(Sgd.) "CAYO Alzona

"Judge"

Nevertheless, after obtaining the foregoing judgment, the plaintiff bank did not want to take any other step to perform the remaining portions of the agreement; neither did it ask for the execution of the judgment referred to. On the contrary, it informed the defendants of its desire to withdraw from the agreement to form jointly with them the mercantile partnership San Jose Development Company, and advanced, through its representative, Beam, some propositions to which defendants answered on June 17, 1924 in the manner set forth in a letter of their respective representatives, which is of the following tenor:

"17th June, 1924

"Messrs. PHILIPPINE NATIONAL BANK

"Manila, P. I.

"DEAR SIRS:

"Referring to our conference with your Mr. Beam regarding Mindoro Sugar Company affairs, we are agreeable in principle to the proposition submitted by him as follows:

"1. That we and our associates take over all rights of the Philippine National Bank under the second mortgage executed in its favour by the Mindoro Sugar Co.;

"2. That we pay the Philippine National Bank the amount now due on said mortgage over a period of five or six years;

"3. That we relieve the Philippine National Bank of any obligation it has or may have to assist in the financing of Mindoro after the liquidation of the present crop. All advances made and which may be made by the National Bank on the present crop be repaid to said bank out of the proceeds of the sale of said crop;

"4. That the Philippine National Bank continue to assist in financing the crop now in the ground until it is harvested and milled.

"We will immediately submit said proposition to our principals and/or associates and will recommend its acceptance.

"Very truly yours,

(Sgd.) "W. D. C,

"Vice-President

"Philippine Trust Company

(Sgd.) "H. Hunter

"Branch Manager

"Union Insurance Society of  
Canton, Ltd.," (Exhibit F-1.)

This letter, Exhibit F-1, was submitted on July 18, 1924 (Exhibit G) to the board of directors of the plaintiff bank, which accepted the propositions it embodied except those contained in paragraphs 3 and 4 which, it desired, should be understood and read as follows:

"That if the share of said proceeds pertaining to the National Bank should not be sufficient to cover the advances made by said bank, we will pay to the National Bank the balance unpaid out of the 1925-1926 crop, and provided further that if the advances made for the 1923-1924 crop be not paid in full including interest, we will pay to the National Bank the balance unpaid out of the proceeds of 1924-1925 crop, and if it is not totally paid out of the crop that same be paid out of the 1925-1926 crop.

"That the foreclosure proceeding instituted by the Philippine National Bank shall remain in statu quo as long as the undersigned continue financing the crop and operation of the Mindoro Sugar Estate, with the understanding that if at any time we, or either of us, desire it the National Bank shall proceed to the sale of the properties under the judgment of foreclosure, or will assign the judgment to us or our nominee as we may desire." (Exhibit G.)

To the counter proposition above disclosed of the plaintiff bank, defendants answered, accepting the same through their respective managers, but subject to the final approval of their respective boards of directors. This was on July 23, 1924. (Exhibit H.) A few days later, or on August 7, 1924, the vice-president of the defendant Philippine Trust Company informed the plaintiff bank by letter of the impossibility of the arrival of the confirmation or disapproval by the board of directors in Hongkong, of the defendant Union Insurance Society of Canton, Ltd., before the next meeting of the board of directors of plaintiff, which was set for the following day, August 8, 1924; and suggested that the following be done in the meantime:

"Inasmuch as it will be impossible for us to receive this cable in time for the meeting of your Board, might I suggest that you request your Board to approve the proposition on condition that confirmation is received from Hongkong and that upon receipt of said confirmation you be authorized to advance the amounts now due. The Board of Directors of this company has (already confirmed the proposition." (Exhibit I.)

He likewise informed it, as the portion above-quoted of his letter referred to shows, that the board of directors of the defendant Philippine Trust Company had already approved the proposition presented to it, referring to that embodied in Exhibits G and H. (Exhibit I.)

On August 8, 1924, the day fixed for the meeting of the directors of the plaintiff bank, the vice-president of the defendant Philippine Trust Company informed said bank by letter that he had just then received by cable from Hongkong, from the defendant Union Insurance Society of Canton, Ltd., a notice stating that the proposition of the bank as contained in Exhibits G and H was accepted by the board of directors of said partnership. (Exhibit I-1.)

Twenty-eight days thereafter, or on September 1, 1924, plaintiff and defendants, the first of the latter, that is to say, the Philippine Trust Company, acting in two capacities, namely, as such entity and as trustee under the deed Exhibit A, executed an agreement appearing of record as Exhibit J, which copied literally says:

"Memorandum of agreement made by and between the Philippine Trust Company, as trustee for the Mindoro Sugar Company, hereinafter referred to as the party of the first part, the Philippine Trust Company, of Manila, P. I., hereinafter referred to as the party of the second part, the Union Insurance Society of Canton Limited, of Hongkong, hereinafter referred to as the party of the third part, and the Philippine National Bank of Manila, P. I., hereinafter referred to as the party of the fourth part.

"WITNESSETH:

"Whereas, by agreement made and entered into by and between the Philippine National Bank, the Union Insurance Society of Canton, Ltd., and the Philippine Trust Company under date of January 5, 1923, the said parties agreed to form a corporation for the purpose of taking over the property, rights and franchises of the Mindoro Sugar Company covered by a certain second mortgage executed by said Mindoro Sugar Company in favor of the Philippine National Bank, and to advance to said corporation peso for peso all sums required by said corporation for the maintenance and operation of said property, rights and franchises; and

"Whereas, the Philippine National Bank now desires to cancel said agreement, and

"Whereas, the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., have agreed with the Philippine National Bank to cancel said agreement under the following terms and conditions,

"Now it is hereby agreed and declared by and between all parties:

"1. The said agreement dated the 5th January 1923 shall be cancelled and the Philippine National Bank to be relieved of its obligation to assist in financing the operations of the Mindoro Sugar Estates after the present crop is harvested.

"2. The second mortgage of P250,000 of the Philippine National Bank to be recognized by the parties of the second and third parts in the event of a sale of the properties of the Mindoro Sugar Company by the said parties when provision will be made whereby the purchaser will make satisfactory arrangements for the payment of the amount of the mortgage of the Philippine National Bank.

"Provided:

"That the Philippine National Bank will continue to advance one-third of the expenses necessary for the carrying on and the operation of the Mindoro Sugar Estates until the crop at present in the field is harvested,

"SUBJECT AS AFORESAID:

"3. The proceeds derived from the sale of the sugar milled from the present crop shall be divided equally among the parties hereto of the second, third and fourth parts to the extent of their respective advances.

"4. If the share of the said proceeds pertaining to the bank should not be sufficient to cover the advances made by the said bank the balance unpaid shall be paid to the bank out of the proceeds of the 1925-1926 crop and further that if the advances already made for the 1923-1924 crop shall not have been fully paid, including interest, any balance unpaid shall be paid to the bank out of the proceeds of the said 1924-1925 crop, and if the same is not totally paid to the bank out of the proceeds of the said 1924-1925 crop the balance owing shall be paid out of the proceeds of the 1925-1926 crop. If the proceeds of the sale of said 1925-1926 crop are not sufficient to cover the unpaid balance, the Trust Company, as trustee, shall execute a chattel mortgage on the subsequent crops until the whole amount due, with interest, is paid.

"5. The foreclosure proceedings instituted by the bank shall remain in statu quo so long as the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., continue to finance the crop and the operation of the Mindoro Sugar Estates with the understanding that if at any time the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., or either one, desire it, the bank will proceed to the sale of the properties under the judgment of foreclosure or will assign the said judgment to the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., or to either, or their nominee as they or either one may desire.

"In witness whereof, the parties hereto have hereunto

set their hands at Manila, P. I., this 1st day of Sept. 1924.

"PHILIPPINE TRUST COMPANY

"Trustee, Mindoro Sugar Company

By: (Sgd.) "W. D. CLIFFORD

"Vice-President

"Philippine Trust Company

By: (Sgd.) "W. D. CLIFFORD

"Vice-President

"UNION INSURANCE SOCIETY OF CANTON, LTD.

By: (Sgd.) "H. HUNTER

"Branch Manager

"PHILIPPINE NATIONAL BANK

By: (Sgd.) "RAFAEL CORPUS

"President

"Signed in the presence of:

(Sgd.) "DOMINADOR J. ENDRIGA

"PRIMITIVO LOVINA" (Exhibit J.)

From a reading of the aforesaid document Exhibit J in connection with the documents mentioned above as Exhibits F, F-1, G, H, and I, it will be seen in the first place that it was at the instance of the plaintiff bank that Exhibit C, which is the agreement of May 5, 1923, was cancelled; and in the second place, that the propositions and counterpropositions appearing in Exhibits F, F-1, G, H, and I referred to were no more than preliminary steps, not contracts in themselves, towards an end, which was the execution of Exhibit J, which, to be sure, did not impose new obligations upon the plaintiff bank, but on the contrary improved its situation in the sense that it was freed from its obligation which it had bound itself to fulfill, that of continuing to give financial aid to the Mindoro

Sugar Company for an indefinite period by putting in capital equal in amount to that which defendants may have invested for the promotion of the partnership "San Jose Development Company," which the three were to organize jointly for the acquisition of rights and properties of said Mindoro Sugar Company, according to the terms of the agreement Exhibit C, this obligation being limited to only one agricultural year: that of 1924-25; since the following clause of Exhibit J, besides those designated as Nos. 3, 4 and 5 of said document, says:

"Provided:

"That the Philippine National Bank will continue to advance one-third of the expenses necessary for the carrying on and the operation of the Mindoro Sugar Estates until the crop at present in the field is harvested."

Hence, Exhibits F to I-1 above-referred to had and have to be necessarily taken into consideration to determine the real import and scope of Exhibit J. Although it is true that clause 2 of this agreement shows that defendants recognized the mortgage (Exhibit B) in favor of the bank in case the properties of the Mindoro Sugar Company should be sold by them and the obligation that in such case they should procure that the purchaser make a satisfactory arrangement to pay its (plaintiff bank's) mortgage credit, it is likewise true that they were unable to sell them or acquire them in the first place for that purpose; moreover, it does not show that it was the intention of defendants to buy said properties for the purpose of obtaining, in case they should sell the same, some profit in the resale, besides paying the mortgage credit aforementioned of the plaintiff bank. All that appears in the clause in question, as the lower court said, is a conditional recognition of the mortgage of the plaintiff bank and a similarly conditional promise or obligation, the fulfillment of which depended upon a certain event, which is the prior purchase of the properties involved by the defendants and their sale thereafter by them. In conditional obligations the acquisition of rights as well as the extinction or loss of those already acquired shall depend upon the event constituting the condition. (Art 1114, Civil Code.) It was optional for defendants to acquire or not the properties of the Mindoro Sugar Company; and however the terms of Exhibits F, G, and even Exhibit J may be scrutinized, nothing will be found therein which says that it was obligatory. From this it follows that if the acquisition was optional, the sale would necessarily be optional also because in no way could defendants have carried out the latter without first acquiring by purchase the properties that were to be sold. And it can not be said that the purchase or acquisition of said properties by defendants was a necessary condition precedent, in view of the stipulations appearing in the deed of trust (Exhibit A or 1) which allow the sale without making the acquisition or purchase a requisite because the defendant Philippine Trust Company, in intervening in the execution of Exhibit J, acted in two capacities, namely, as trustee, and as a corporation having its own purposes, powers and duties. It has been furthermore observed that clause 2 of Exhibit J does not bind said defendant in its capacity as trustee to perform the acts set forth therein, but in its other capacity, which is quite distinct.

The plaintiff effected the cancellation of the agreement of January 5, 1923 (Exhibit C) because it compelled it to give a loan to which it was not conformable, especially as defendants sent it a letter dated July 16, 1924 (Exhibit F) which, among other things, said:

"\* \* \* We are of the opinion, after receiving legal advice, that the agreement entered into on January 5, 1923, by and between the Philippine National Bank, the Union Insurance Society of Canton, Ltd., and the Philippine Trust Company regarding the financing of Mindoro is binding upon the National Bank and that it can not be relieved of its responsibility thereunder without consent of our respective companies. We are further of the opinion that the bondholders of Mindoro are under no obligation with respect to the mortgage held by the National Bank and we can not see our way clear to guarantee the payment of said mortgage at any particular time. \* \* \*"

And it did well in so doing because if the agreement referred to had not been cancelled, it would have been driven into incurring further losses.

After the cancellation of the agreement Exhibit C by means of the other agreement Exhibit J, the Philippine Trust Company, as trustee, incurred various other expenses amounting to several thousands of pesos, to keep the Mindoro Sugar Company a going concern; inasmuch as the entire outlay it had been making as such trustee from 1922 to January, 1929 totaled P9,977,357.31, while it obtained only P4,486,876.06 as proceeds from the sales of sugar of the Mindoro Sugar Company with a balance, therefore, of P5,490,481.25. it ceded its credit against the Mindoro Sugar Company amounting to P5,500,000 on February 1, 1929 to Mons. M. J. O'Doherty, Archbishop of Manila, and thereafter, or on April 1, 1929, upon suggestion and recommendation of the bank commissioner, it resigned as trustee, and in the place the bondholders of the Mindoro Sugar Company elected the aforementioned Mons. M. J. O'Doherty of Manila.

A little after having assumed office, the new trustee, making use of the right granted him by the deed of trust Exhibit A or 1, proceed to sell at public auction the properties of the Mindoro Sugar Company, subject to the encumbrance therein set forth, after the prescribed notices. Said sale should have taken place on May 1, 1929; but it was not effected on the date announced because greater publicity was desired to be given the same so as to invite and attract the greatest possible number of bidders. The Archbishop of Manila resigned as trustee on May 11, 1929, and the bondholders of the Mindoro Sugar Company, after accepting his resignation, elected Francisco Ortigas, Leopoldo Kahn, Wenceslao Trinidad, Joseph E. H. Stevenot and Fulgencio Borromeo to succeed him in office. Thereafter these new trustees agreed to sell the properties, subject to the encumbrance, in accordance with the aforesaid deed of trust, Exhibit A or 1, under the same conditions contained therein. After the prescribed notices of which the plaintiff bank was timely apprised for the reason that it had been formally notified, the sale was made on the date and place announced. As the Archbishop of Manila was the highest bidder on account of the fact that for all the properties referred to he offered P3,000,000, which were not even sufficient to answer for the obligations of the Mindoro Sugar Company that were assumed under the terms of the aforementioned deed of trust, Exhibit A or 1, said properties were adjudicated to him after all the legal formalities had been complied within the entire transaction.

In the light of the foregoing facts and considerations we find that the execution of Exhibit J has not placed plaintiff bank in a much better position than that when only its deed of mortgage, Exhibit B. was in existence, which, as regards priority, is, as has been said, second only in comparison with the security given the defendant Philippine Trust Company as embodied in the deed of trust, Exhibit A or 1; for it would be absurd to believe that it (the Philippine Trust Company) and its co-defendant, which is the owner and holder of the bonds of the Mindoro Sugar Company, would have bound themselves to guarantee, as sureties, the payment of the credit of the plaintiff bank because no reason existed for their doing so, inasmuch as it is and must be admitted that even before the execution of Exhibit J the right to sell the properties of the Mindoro Sugar Company over the right of the aforesaid plaintiff bank as mortgage creditor already pertained to the defendant Philippine Trust Company because the Mindoro Sugar Company had failed to comply with the conditions imposed on it in the deed of trust aforesaid, by virtue of the stipulations appearing therein, particularly section 3 of Article IV thereof, which says:

"SEC. 3. In case any of the defaults above set forth shall occur and shall continue beyond the prescribed period of grace, if any, as set forth in sections 1 and 2 of this article IV, then and in any such case the trustee may, with or without and before or after entry, personally or by agent or attorney, in its discretion either:

"(a) Sell to the highest and best bidder at public auction, all and singular the property conveyed and assigned hereunder or intended so to be, either as a whole or in lots and parcels and on such terms as to credit and security and otherwise, as the trustee may determine; which sale or sales shall be made after publication or notice thereof as hereinafter provided, and at such time or times and at such place or places and upon such terms as the trustee may fix and specify in the notice or notices of sale given, and as may be required by law."

It does not appear in a positive manner that they have bound themselves as such sureties, and it is the law that guaranty shall not be presumed, but must be express and cannot be extended beyond its specified limits (art. 1827, Civil Code).

Wherefore, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, Concepcion, and Moran, JJ., concur.

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