

**OBRAS PIAS DE LA SAGRADA MITRA DEL ARZOBISPADO DE MANILA,
PLAINTIFF AND APPELLEE, VS. FELIZARDA DEVERA IGNACIO ET
AL., DEFENDANTS. – EUGENIA LICHAUCO, APPELLANT.***G. R. No. 5052. September 16, 1910*

Ponente: JOHNSON, J.

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On the 23d day of December, 1905, the plaintiff commenced an action in the Court of First Instance of the city of Manila to foreclose a certain mortgage, for the sum of P5,000, with interest, alleged to have been executed on the 16th day of August, 1861, by one Antonio Enriquez to the plaintiff. The execution of the mortgage in 1861 by the person indicated and its nonpayment are admitted facts. The principal defense made by the defendant is that the plaintiff failed to comply with the provisions of the Mortgage Law relative to the registration of the said mortgage in the new registration. The mortgage was originally recorded in the Contaduria, Anotaduria, or Receptoria of mortgages in accordance with the law in force before the Mortgage Law was put into operation in the Philippine Islands. Paragraph 2 of article 397 of the new Mortgage Law requires in part that "Records of annuities, mortgages, Hens, or any other class of real rights, contained in said books existing in the 'Contadurias,' 'Anotadurias,' or 'Receptorias' of mortgages must be transferred to the books of the new registry within a period of one year from the time of the promulgation of this law. This transfer must be made at the request of an interested party."

Paragraph 3 of said article provides that " * * * If the request is filed at a subsequent date it can not prejudice third persons."

Article 29 of the said Mortgage Law provides that "The ownership of any other property right which is expressly mentioned in the record or cautionary notice, although it does not appear in the registry as a separate and special entry, shall be effectual against third persons from the date of the entry of presentation of the respective instruments."

In the present case the property covered by the said mortgage was transferred by Antonio Enriquez and by his transferee several times, by deeds of transfer. Each deed of transfer contained the statement that there existed against such property a mortgage in favor of the plaintiff. The deed of transfer of the present defendant also contains the statement which is found in all the other transfers, which is, "It appears to be encumbered with a mortgage for the sum of 5,000 pesos in favor of the funds of the Sagrada Mitra of this city, according to the above-mentioned registration."

Exhibit B, the very document under which the defendant claims title, appears to have been recorded on the 25th day of May, 1902, at page 148, volume 5, of the new registry. This registration also mentions the property right in question, gives the amount of the property, the rate of interest and the name of the mortgagee, and a description of the property mortgaged. The registration seems to contain practically all of the important particulars required by the new Mortgage Law.

The deed of transfer of the property in question to the defendant having contained a statement of the fact that there existed against the land a mortgage in favor of the plaintiff for the sum of P5,000 and practically all of the facts relating to the said mortgage, he certainly is not in a position to claim ignorance of the existence of said mortgage, even though the same was not registered under the new registration in conformity with the Mortgage Law. The purpose of registering an instrument relating to land, annuities, mortgages, liens, or any other class of real rights is to give notice to persons interested of the existence of these various liens against the property. If the parties interested have actual notice of the existence of such liens, then the necessity for registration does not exist. Neither can one who has actual notice of existing liens acquire any rights in such property free from such, liens by the mere fact that such liens have not been recorded.

It is our conclusion, therefore, that the defendant having had actual notice of the existence of the mortgage in question against the property can not take advantage of the failure of the plaintiff to have the same transferred to the new registry under the Mortgage Law. The effect of his actual notice is equivalent to the registration of said mortgage under the Mortgage Law.

The defendant makes the further objection that the said cause of action is prescribed. It is admitted that the interest was paid on the said mortgage until the year 1881. The existence of the debt having been recognized until 1881, the prescription did not begin to run until that date. The period of prescription commenced prior to the enactment of the Civil Code. Article 1939 of the Civil Code provides: "Prescription, which began to run before the publication of this code, shall be governed by the prior laws; but if, after this code became operative, all the time required in the same for prescription has elapsed, it shall be effectual, even if according to said prior laws a longer period of time may be required."

The law covering prescription in cases like the present is law 5, book 11, title 8 of the Novisima Recopilacion (Law 63 of Toro). Under this law the period of prescription for actions like the present was thirty years. The present action was commenced on the 23d day of December, 1905. It will be seen, therefore, that the period of prescription of thirty years has not yet expired. The defense of prescription is therefore not tenable and the cause of action is not barred by prescription.

The plaintiff asked for a judgment for the sum of P5,000, the amount of said mortgage, with interest at the rate of 6 per cent from the 30th of May, 1881. The defendants contend that under articles 114 and 145 of the Mortgage Law the plaintiff can not recover interest for more than the two years immediately preceding the judgment. The plaintiff admits that by virtue of said sections of the Mortgage Law it is only entitled to recover interest for the two years last past, immediately preceding the date of the judgment.

Article 114 provides that "A mortgage created in favor of an interest-paying debt shall secure to the prejudice of third persons, besides the capital, only the interest for the two years last past and such part as is due for the current year."

Article 145 provides that "The interest on a loan shall not be considered secured with the mortgage in the manner prescribed by article 114, unless the stipulation and amount of said interest appear in the same record."

By virtue of all of the foregoing, it is hereby ordered and decreed that the plaintiff have and recover from the defendants the sum of P5,000, with interest from the 14th of August, 1906, at the rate of 6 per cent, with costs, and in default of the payment of said sum, the property described in the complaint may be sold for the purpose of satisfying the amount of this judgment and costs; provided, however, that by virtue of the fact that the defendants in the purchase of the property in question did not assume, so far as the record shows, the payment of the said mortgage, they (the defendants) are not responsible in any way for the payment of any sum which may remain due after the sale of said land. The defendants are not responsible for the payment of any deficiency which may result

from the sale of the property in question.

The judgment of the lower court, as herein modified, is hereby affirmed with costs.

Arellano, C. J., Torres, Moreland, and Trent, JJ., concur.

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