

**JOSE MCMICKING, SHERIFF OF MANILA, PLAINTIFF AND APPELLEE,
VS. PEDRO MARTINEZ AND GO JUNA, DEFENDANTS. – GO
JUNA, APPELLANT.***G.R. No. 5219. February 15, 1910*

Ponente: MORELAND, J.

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The defendant, Pedro Martinez, some time during the year 1908 obtained judgment in the Court of First Instance of the city of Manila against one Maria Aniversario; that thereafter execution was issued upon said judgment and the sheriff levied upon a pailebot, Tomasa, alleged to be the property of said Maria Aniversario; that thereupon the said defendant Go Juna intervened and claimed a lien upon said boat by virtue of a pledge of the same to him by the said Maria Aniversario made on the 27th day of February, 1907, which said pledge was evidenced by a public instrument bearing that date.

This action was brought by the sheriff against Go Juna and Pedro Martinez to determine the rights of the parties to the funds in his hands. Maria Aniversario was not made a party.

The said Pedro Martinez alleged as a defense that the pledge which said document was intended to constitute had not been made effective by delivery of the property pledged, as required by article 1863 of the Civil Code, and that, therefore, there existed no preference in favor of said Go Juna.

The court below found with the contention of the said Pedro Martinez, declared a preference in his favor, and ordered the sheriff to pay over the said funds in consonance therewith. An appeal was taken from said judgment.

The conclusion of the court below that the property was not delivered in accordance with the provisions of article 1863 of the Civil Code is sustained by the proofs. His conclusion that the pledge was ineffective against Martinez is correct. It appears, however, that the document of pledge is a public document which contains an admission of indebtedness. In other words, while it is intended to be a pledge, it is also a credit which appears in a public document Article 1924, paragraph 3, letter a, is therefore applicable; and, said public document antedating the judgment of defendant Martinez, takes preference thereover. The validity of that document in so far as it shows an indebtedness against Maria Aniversario and its effectiveness against her have not, however, been determined. She is not a party to this action. No judgment can be rendered affecting her rights or liabilities under said instrument. If said instrument is invalid or for any other cause unenforceable against her, it would be wholly unjust, by declaring its preference over a debt acknowledged by and conclusive against her, to require that said funds be paid over to the holder of said document. That would be to require her to pay a debt which has not only not been shown to be enforceable against her but which, as a witness for the defendant Martinez on the trial of this cause, she expressly and vehemently repudiated as a valid claim against her.

The judgment is, therefore, reversed; and it is ordered that the cause be returned to the court below; that the plaintiff bring in Maria Aniversario as a party to this action, and that she be given an opportunity to make her defense, if she have any, to the document in question under proper procedure. No finding as to costs. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.

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