

5 Phil. 147

[ G.R. No. 2238. October 19, 1905 ]

**LEONCIA LIUANAG, PLAINTIFF AND APPELLEE, VS. YU-SONQUIAN, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**WILLARD, J.:**

Yu-Chingco left Manila for China on the 23d day of August, 1901, and died there on the 30th of October of the same year. After his death Yu-Chiocco entered into a lease with the owner thereof, of certain land on Calle Lemery, in Tondo, and erected certain buildings thereon. The lease of the land was taken by Yu-Chiocco in his own name. He erected the buildings under a license issued to him by the city of Manila, and he carried on the business of a carpenter shop therein under an industrial license issued to him. In none of these papers was any mention made of Yu-Chingco, or of his administratrix or heirs.

This action was brought in the court below by the plaintiff as administratrix of Yu-Chingco, and she alleged in her complaint that the property in Tondo, hereinbefore described, belonged to the estate of Yu-Chingco. Yu-Chiocco died in August, 1902, and the action was brought against his executor. The court below, in its decision, found as a fact that Yu-Chiocco performed all the necessary labor in erecting these buildings, and that the material necessary for and used in their construction belonged to the estate of Yu-Chingco. Upon these facts he decided that the plaintiff, as administratrix of Yu-Chingco, was the owner of one-half of the buildings. We do not think that this judgment can be sustained. What the facts are in regard to the use in the buildings of material belonging to the estate of Yu-Chingco, and the amount and value thereof, we do not determine. It is enough to say

that, if such material was used therein, it does not follow, as a conclusion of law, that the owner of the material thereby became the owner of any part of the buildings.

Article 360 of the Civil Code is as follows:

“The owner of the soil who shall make thereon, in person or through another, plantings, constructions, or works with material belonging to another person, is obliged to pay their value; and should he have acted in bad faith he shall, furthermore, be obliged to indemnify for loss and damage. The owner of the material shall have the right to remove it only in case he can do so without injury to the work constructed, or without destroying the plantings, constructions, and work done.”

We think that this article is applicable to a leasehold in real estate. Upon the most favorable view of the case for the plaintiff she has a claim for the value of the material which belonged to the estate of Yu-Chingco, and which was actually used in the construction of the building.

The judgment of the court below in this case, No. 1517 in that court, is reversed, and after the expiration of twenty days the case should be remanded, with directions to enter judgment in favor of the defendant, with costs, and without prejudice to the right of plaintiff to present her aforesaid claim against the person or estate bound to pay it, and without costs in this appeal.

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

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