

PHILIPPINE LAW JOURNAL

Vol., VIII

AUGUST, 1928

No. 2

SUGGESTED REFORMS ON THE PHILIPPINE CHATTEL MORTGAGE LAW

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One of the practices now in vogue in the Philippines in regard to the contract of purchase and sale where the vendee of personal property has not enough means to pay the purchase price in full, is for him to mortgage said personal property in favor of the vendor. This class of mortgage is called Chattel Mortgage. Chattel Mortgage is not limited to contracts of purchase and sale alone. It includes all activities whereby personal property is given to the obligee by the obligor as a security for a debt or for the performance of an obligation. Act No. 1508 as amended by Act 2496, now section 198 of the Administrative Code of 1917, governs the operation of this kind of transaction.

A question may well be asked, Does our present Chattel Mortgage Law give ample and real protection to all parties contracting under its provisions? Should the answer be in the affirmative, then let the law be as it is. Should it be in the negative, then it is high time for our legislators to make amendments thereto.

While in very many respects, our Chattel Mortgage Law is excellent, yet in the opinion of some persons there is still room for improvement. There are still loop holes in it which need to be filled up. The writer, therefore, attempts to point out in the pages that follow what he believes to be the defects of the law, and to offer suggestions which will remedy them to the end that justice and equity may be done to all parties contracting thereunder.

THE NEED FOR AN ENUMERATION OF PERSONAL PROPERTY WHICH MAY BE THE SUBJECT MATTER OF CHATTEL MORTGAGE

Preliminary Statement.—Section 2 of Act 1508 otherwise known as the Chattel Mortgage Law makes a general statement to the effect that “All personal property shall be subject to mortgage” which for the purposes of said act is termed chattel mortgage. At first blush, it would seem that said section is very simple in its operations. When it is remembered, however, that in certain cases there are things which partake of the nature of

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both personal and real property, the problem becomes at once a bit difficult. What is the criterion for calling a property real or personal? Our Civil Code defines real property in Article 334 to be the following:

“1. Land, buildings, roads, and constructions of all kinds adhering to the soil;

“2. Trees, plants, and ungathered products, while they are annexed to the land or form an integral part of any immovable property;

“3. Anything permanently annexed to any immovable property in such manner that it can not be separated therefrom without being broken or injured;

“4. Statues, reliefs, paintings or other useful or ornamental things placed in buildings or on lands by the owner thereof in such a manner as to indicate his intention of attaching them permanently to such building or land;

“5. Machinery, vessels, instruments, or implements intended by the owner of any building or land for use in connection with any industry or trade being carried on therein and which are expressly adapted to meet the requirements of such trade or industry;

“6. Vivaries for animals, pigeon-houses, beehives, fish-ponds, or similar breeding places, when built or placed on the land by the owner thereof with the intent that they shall be kept attached to the estate and form a permanent part thereof;

“7. Fertilizers to be used in the cultivation of an estate which are on the land for which they are intended;

“8. Mines, quarries, and slagdumps, while the matter forms part of the beds, and waters, either running or stagnant;

“9. Docks and other constructions which though floating, are intended to be kept in some fixed place in any river or lake or on any coast;

“10. Administrative concessions for public works, and easements and other rights appurtenant to real property.”

Article 335 of the same Code defines personal property to be those things which are generally susceptible of appropriation; which are not included in the enumerations in article 334; and which may be carried from place to place. Now, shall we follow the code in its designation of the character of property? Or is it not the better practice to have a list of personal property which may be the subject matter of chattel mortgage?

The Case of S.O.C.O.N.Y. vs. Jaramillo—The author quite agrees with the Philippine Supreme Court in its decision in the

case of *The Standard Oil Company of New York vs. Jaramillo* (44 Phil. 630) to the effect that articles 334 and 335 of the Civil Code by no means furnish an absolute demarcation line between real and personal property for "purposes of the application of the Chattel Mortgage Law." For instance, one would in the natural course of events, ascribe to things mentioned in subdivision 2, 5, 7, and 9 of article 334 of the Civil Code the character of personal property. He would naturally go to the chattel mortgage record rather than to the real estate mortgage record in order to find out whether those things are or are not encumbered by a mortgage. The writer, however, regrets to dissent from the further statement of the court in the same case when in the same case it asserts, "It is undeniable that the parties to a contract may by agreement treat as personal property that which by nature would be real property." Without discussing the merits and demerits of such a statement in its application to other contracts, the conclusion is inevitable that it works a great injustice in its application to chattel mortgage. In the first place, the agreement to give character to a certain specified property different from that given by the law is subversive of that law, and contrary to sound public policy because if such a practice is tolerated, the law is for all practical purposes nullified thereby. An open defiance shall have been hurled against its sanctity and that of sound public policy.

In the second place, it is and should be the purpose of the Chattel Mortgage Law to afford sufficient, real, and equal protection to all parties contracting under its provisions. Now, let us analyze whether such an agreement will promote this noble purpose of the law. Let us suppose that two persons agree to treat a piece of land as personal property. Steps are taken to record a chattel mortgage created thereon. The registration is effected according to law. Now the question is, Does the fact of registration convey title? Can the contract be enforced? It is true that registration operates as a constructive notice of the existence of the contract. But the intrinsic validity of said contract can be found and discovered only in the instrument creating such contract. If such instrument is defective because the subject-matter treated therein is not one of those allowed by law, the fact of registration can not cure it. Registration as a source of title, conveys nothing and affects nobody's rights. It is merely a notice. *Standard Oil Company of New York vs. Jaramillo* 21 O. G. 2075. In this case the contract is a nullity from the very beginning, unenforceable at law and in equity. Hence, such an agreement should not be countenanced.

Buildings.—Another thing which offers some difficulty is the case of a mortgage on buildings. A review of a few judicial decisions and legal opinions will prove to be instructive. In 6 Cyc. 1038 this is found, “a building erected by one person on the land of another, although *prima facie*, a part of the freehold, nevertheless, if erected under an agreement with the owner of the land that it may be moved, remains personalty and is the proper subject of chattel mortgage.”

11 C. J. 445 has this to say of buildings, “It is, however, no longer a proper subject of a chattel mortgage after the termination of the agreement permitting removal.” In re Rogers, 132 Fed. 560.

In 5 R. C. L. 402, it is stated that, “a chattel mortgage on bricks, timber, nails, etc. which have been incorporated into a building or upon other property of a similar nature is of no practical effect; for the courts do not recognize any possibility of the validity of a chattel mortgage against real estate mortgages.”

The Spanish Mortgage Law in force in the Philippines says in article 107: “The following are mortgageable, but with such restrictions as are hereinafter expressed:

1.—A building erected on the ground belonging to another, which if mortgaged by the person who constructed it, shall be without prejudice to the right of the owner of the ground, this encumbrance being only secured by the interest which the person who constructed the building has herein.”

“A factory building is real property, and the mere fact that it is mortgaged and sold, separate and apart from the land on which it stands, in no wise changes its character as real property.” *Leung Lee vs. Strong Machinery Co.*, 38 Phil. Rep. 644, 645.

But it seems as if our Supreme Court in a later decision recognizes a chattel mortgage on a cinematographic establishment (concededly real property), furniture and accessories. The mortgage, however, could not be enforced because there was a prior lien existing by virtue of a *pacto de retro*. *Lanuza vs. Wolfson et al.*, 39 Phil. Rep. 205.

Nature of Buildings Determined.—In view of these conflicting authorities and judicial decisions is it not advisable that the law should expressly give buildings their proper place? Is it not wise, therefore, that the law should not recognize any form of mortgage where buildings are the subject matter thereof when its express mandate is disregarded? The writer so believes. Considering the nature and character of buildings, the

law ought to consider them as real property under any and all circumstances.

The Need for Enumeration.—The foregoing discussion illustrates the imperative need for an enumeration of personal property which may be the subject matter of a chattel mortgage. If this suggestion is followed, it is certain that all difficulties and complexities arising from transactions of this kind will be greatly minimized if not completely avoided. It is not meant, however, by this suggestion that mortgages on personal property not enumerated in the law are absolutely void as to all parties. Between the immediate parties and those having actual notice of the mortgage, such mortgage shall be considered valid. As to other parties not included above, such mortgage shall not be deemed to prejudice them.

DEFINITION

Definition Studied.—A perusal of section 3 of Act No. 1508 would lead one to conclude that a chattel mortgage is a conditional sale subject to defeasance upon the performance of the condition. This is very evident from the words, “the condition being that the sale shall be void upon the seller paying to the purchaser a sum of money or doing some other act named.” Then going further the law reinforces itself by stating the “if the condition is performed according to its terms the mortgage and sale immediately become void, and the mortgagee is thereby divested of his title.”

What if the condition of the mortgage is not performed according to its terms? Will the mortgagee acquire an absolute title or dominion to the property encumbered? According to the definition of the law no other conclusion, but that the mortgagee *ipso facto* becomes owner of the mortgaged chattel upon breach of the condition, is possible. A conditional sale is like an absolute one in that both transfer title to the vendee; it is unlike the latter only in that in the former there is a condition upon the performance of which the transfer of title previously made is cancelled and the property reverts back to the seller. But if said condition is not performed, the sale at law vests the dominion of the property in the vendee. Now if a chattel mortgage is a conditional sale, as our law would lead us to believe, then their effects must be identical if not the same. Unfortunately, however, a chattel mortgage is not a sale but a security.

Our law is not alone in its definition of what a chattel mortgage is. Not a few authorities concur with it. A long line of these authorities hold that a chattel mortgage is something more

than a mere security. It is a sale vesting the legal title in the mortgagee subject to defeasance only upon the performance of the condition set forth in the mortgage instrument. Then, as if this definition is not yet sufficient to fulfill its purpose, something more is added. It is of the essence of the contract of chattel mortgage that it provides that the title SHALL VEST in the mortgagee upon the nonperformance of the agreement which the mortgage is made to secure. 5 R. C. L. 383; Merrill v. Ressler 6 L.R.A. 642; American and English Encyclopedia of Law, second edition, Vol. 5; Wright v. Ross 36 Cal. 414; Jones on Chattel Mortgages, fourth edition, sec. 1.

Former View of the Supreme Court.—In the case of Meyers v. Thein, 15 Phil. Rep. 303, 308, the Supreme Court speaking through its Chief Justice, the late Don Cayetano Arellano, observes: "From the language of the law it now appears: (2) that under Act No. 1508, a chattel mortgage is a sale with pacto de retro almost equivalent to that under the same name in the Civil Code (3) that as in a contract of sale with pacto de retro where the juridical dominion and possession of the thing sold passes to the purchaser as soon as the sale is consummated, so also in a chattel mortgage the dominion and possession of the mortgaged personal property pass to the creditor-pledgee, because, as the law provides it is nothing more than a conditional sale." It can thus be seen that our Supreme Court in this particular case has aligned itself with the authorities hereinbefore cited.

True Meaning of Chattel Mortgage.—The idea, however, of considering a chattel mortgage as a conditional sale is foreign to the conception of mortgage as entertained by our Civil Law. "A mortgage, directly and primarily subjects the property on which the fulfillment of the obligation for the security of which it was constituted." This does not mean that upon failure to perform the condition, the property becomes that of the mortgagee. Nor does it mean that the sale becomes void upon the performance of the condition. In mortgage, the idea of sale is totally discarded. It is only a security, a preferred lien on the property on which it is constructed. By its creation, no title passes. It does not create the relation of seller and buyer. The case of Hannah v. Richter Brewing Co., 12 L.R.A. 178, expresses what, in the opinion of the author, is the correct notion of the contract of chattel mortgage. That case holds that the true relation between the parties is that of debtor and creditor secured by a lien.

Later View of the Supreme Court.—The Supreme Court has in a recent decision stated the true conception of chattel mort-

gage. Speaking thru Mr. Justice Street, it says in the case of *Bachrach Motor Co. vs. Summers*, 42 Phil. Rep. 3, 8, 9, "Now, while the proposition which we have here formulated contains a true description of the external features of the chattel mortgage, it does not by any means embody a correct statement of its juridical effects. . . . Every person, however, superficially versed in American and English law, knows that in equity the mortgage, however drawn, is to be treated as a mere security. The contract in fact merely imposes on the mortgaged property a subsidiary obligation by which it is bound for the debt or other principal obligation of the mortgagor."

Two Views Compared.—Of these two lines of judicial pronouncements, the second that which considers chattel mortgage as a lien, is more in harmony with justice and equity. The first line of decisions is very unfair to the mortgagor. It places him at the mercy of the whims and caprices of the mortgagee. The mortgagee may, and often will, acquire property at a very much lower price than what the property is really worth. It is evident that such view does not very well protect the mortgagor's rights. Hence, between these two lines of decisions we would naturally select the second.

What Definition Should Provide.—This second view is the equitable interpretation of the law. It also expresses the correct meaning of chattel mortgage as entertained by the civil law. The law should therefore be so worded as to admit of no other interpretation than that a chattel mortgage is a contract primarily and ultimately intended as a security for a debt or for the performance of an obligation. It should be purged of all signs of unfairness and injustice to all parties contracting under its provisions. The use of the term "Conditional sale" in connection with chattel mortgage should be carefully avoided. It is apt to be misleading.

CLASSES OF CHATTEL MORTGAGE

Classes Stated.—Three classes of chattel mortgage are recognized in section 4 of Act No. 1508, viz:

- A. Where the possession of the property is delivered to and retained by the mortgagee;
- B. Where the mortgage is recorded; and
- C. Where there is neither registration of the mortgage nor delivery of the possession of the property to the mortgagee.

The force and effect of each of these classes may be gathered in the following discussion.

The First Class.—The law by its negative declaration recognizes the validity of this class of chattel mortgage not only as regards the immediate parties thereto but against the whole world. A person holding a personal property by virtue of an existing chattel mortgage can not be prejudiced in his rights by any other person holding claims against the mortgagor arising subsequent to the mortgage with the exception only of a case of fraudulent conveyance to defraud creditors. This is so because the mere fact of possession is a sufficient notice to the whole world that the possessor, *prima facie*, holds the property under a just and fair title. It is enough to put a person in inquiry whenever he attempts to contract with another person who says he is owner of the property in the possession of a third person. The assignees, or successors in interest of the mortgagee also get the benefits accorded by the law to the latter.

The Second Class.—The second kind in which the “mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides at the time of making the same, or if, he resides without the Philippine Islands, in the province in which the property is situated: provided, however, that if the property is situated in a different province from that in which the mortgagor resides, the mortgage shall be recorded in the office of the register of deeds of both the province in which the mortgagor resides and that in which the property is situated, and for the purposes of this Act, the city of Manila shall be deemed to be a province,”—is just as effective as the first. The law is indeed very wise in giving it this effect. Such record or registration is a notice to all the world of the existence of the contract. It is a notice to subsequent purchasers, mortgagees, or other lien holders. *Avery v. Popper* 92 Tex. 337; 5 R.C.L. 413. A record, though called constructive notice is equivalent to actual notice. (*Sowden v. Craig* 96 A. Dec. 125).

In the above kinds of mortgage the rights of the parties and their successors in interest and all other parties contracting under them are very well safeguarded. Possession of the property or its registration in the register of deeds accomplishes this salutary effect. Subsequent lien holders, purchasers, or mortgagees must, therefore, beware.

The Third Class.—No Record; No Delivery.—This brings us to the third form of chattel mortgage in which there is neither registration of the mortgage nor delivery of the possession of the property to the mortgagee. This form is fraught with many objectionable features. It puts the immediate parties thereto in a very precarious situation, “While the mortgage in question

was valid as between the defendant and the intervenor, it was invalid as to the plaintiff. The effect of section 4 (*supra*) is simply that as between the intervenor and the plaintiff the mortgage had no force or operation whatever, and the case must be decided as if the mortgage HAD NEVER EXISTED." Thus spoke the Supreme Court in the case of *McCullough v. Zoboli* 28 Phil. Rep. 301, 305, where the chattel mortgage was of the third class. It will thus be seen that while in this class of mortgage, the mortgagee has all the rights of a mortgagee as between himself and the mortgagor and his executors and administrators, yet the law does not cast any protection on him when his interests or rights come in conflict with those of third persons acquiring liens thereon either by attachment and seizure and sale under execution to satisfy a judgment subsequent in point of time to the date of the mortgage contract. In this case, it is always the mortgagee that suffers. The mortgagor may sell the property after it has been mortgaged. There is nothing that can prevent him from doing this. The property is his. It is in his possession. There is no record of the mortgage. To all appearances, he owns the property free from any and all encumbrances. Third parties are not put in inquiry.

In the opinion of the author a mortgage created in this manner is ineffective as against all third parties—parties with or without notice of the existence of the mortgage. The law says "a chattel mortgage shall not be valid against ANY person except the mortgagor, his executor or administrator" . . . Act No. 1508, sec. 4. While the law here is indeed very generous to a third party who with knowledge of a pre-existing mortgage, takes by way of purchase or mortgage an encumbered property, the same law is very inconsiderate to the rights of an innocent prior encumbrancer who merely fails to take possession of the property or to record his lien thereon. This is indeed an anomaly in the law. It constitutes a great weapon for committing an injustice within the section of the law itself. A law which permits the doing of an act without at the same time providing for a remedy in case of breach thereof, is no law. It is oppression and tyranny legalized.

Suggestion.—From what has been said above it may be deduced that this last form of chattel mortgage does not protect all parties who, trusting in the much boasted equal protection of the law, contract under its provisions. This form utterly fails to accomplish the benign purpose of the law to give sufficient and real protection to all parties contracting thereunder. The writer, therefore, honestly and earnestly thinks that the

law would be far better without this form of chattel mortgage than with it. Consequently it is suggested that this form be abolished leaving the first two forms intact.

REMOVAL OF PROPERTY FROM PROVINCE WHERE MORTGAGED

Act No. 1508, sec. 9.—“No personal property upon which a chattel mortgage is in force shall be removed from the province in which the same is located at the time of the execution of the mortgage without the written consent of the mortgagor or mortgagee, or their executor, administrators, or assigns.”

Id., sec. 12.—“If a mortgagor violates either of the three last preceding sections he shall be fined a sum double the value of the property so wrongfully removed from the province, sold, pledged, or mortgaged, one half to the use of the party injured and the other half to the use of the Treasury of the Philippine Islands, or he may be imprisoned for a period not exceeding six months, or punished by both such fine and imprisonment, in the discretion of the court.”

Effects of Removal.—From the above quotations, it can reasonably be inferred that there are two classes, of removal: one by the mortgagee, where the mortgaged property is delivered to and retained by him; and the other by the mortgagor, where a record of the mortgage has been made but where said mortgagor retains possession of the property. We shall discuss the effects of each of these removals separately.

Where Mortgagee Removes Property.—According to the statute, the mortgagee is enjoined from removing a mortgaged property from the province in which the same is located at the time of the execution of the mortgage, without the written consent of the mortgagor or his executor, administrator or assign. Suppose, nevertheless, the mortgagee completely disregarding the command of the law concerning permission of removal, removes a mortgaged chattel, what liabilities does he incur? The law nowhere in the sixteen sections comprising the same, specifies any liability for such violation. Section 12 of the statute makes such violation an offense when committed by either the mortgagor or the mortgagee but the same section provides a penalty only when the violation is done or caused to be done by the mortgagor and not when the guilty party is the mortgagee. In interpreting section 14 of Act No. 1508, the Supreme Court in the case of *Bachrach v. Go-Lingco*, 39 Phil. Rep. 138, among others says, “A mortgagee who, without the consent of the mortgagor, removes the mortgaged chattel to another province and there causes it to be sold, after publication

of notice in the municipality where the sale is effected, thereby in effect unlawfully converts the property and is liable to the mortgagor for its full value." It may be argued from this decision that section 14 supplies the missing link in section 12. Such argument, however, is untenable. Section 12 penalizes the mere removal of the mortgaged chattel even if such removal occurs before any default. The purpose of the removal treated of in section 12 in connection with section 9 is immaterial and may be anything. In section 14 the removal must be for the purpose of foreclosure sale.

For any removal, therefore, other than for the purpose of selling the mortgaged property, the mortgagee does not incur any liability. We have here an instance of *damnum absque injuria*—a wrong perpetrated by the mortgagee against the mortgagor without a corresponding remedy in favor of the latter.

When Mortgagor Removes Property.—A mere reading of the law will show that the mortgagor is placed in an entirely different situation. For any wrongful removal, he is penalized. And wrongful removal here means a removal without the written consent of the mortgagee. He incurs tremendous liabilities which the mortgagee does not even where the latter wantonly disregards the law.

The injustice to Mortgagor.—The injustice which the law itself inflicts upon the mortgagor is very apparent. For all we know, the removal may be fully justified. It may be occasioned by a transfer of residence. Permission to remove the mortgaged chattel may have been deliberately refused by the mortgagee.

The registration of the chattel mortgage is a notice to all the world of the existence of the contract. In the absence of any specific statutory provision regarding the removal of the mortgaged property, the record of a chattel mortgage in the town or county where it is required to be originally filed for record is held to be a constructive notice to all the world, and the mortgage is valid without refileing even though the property may be removed to another town, or country or even to another state (11 C. J. 530; Shephard v. Hynes, 104 Fed. 449; Barron v. Turner, 50 Me. 127). Section 4 of our law itself recognizes the validity of the chattel mortgage against all the world. The interest of all contracting parties are fully protected by the fact of registration. Why then should the law be hard on the mortgagor?

Section 12 in its relation with section 9 is unconstitutional.—In the opinion of the writer section 12 taken in connection

with section 9 contravenes the Organic Law of the Philippine Islands otherwise known as the Jones Law. Section 3 of the Jones Law, par. 1 places a ban upon any enactment calculated to deny to any person the equal protection of the laws. Par. 10 of the same section prohibits the exaction of excessive fines and cruel and unusual punishment.

The United States Supreme Court in the case of *Yick Wo vs. Hopkins*, 118 U. S. 356, has emphatically stated that the equal protection of the laws "is a pledge of the protection of equal laws." Class legislation favoring some and discriminating against others is prohibited (Malcolm, *Philippine Constitutional Law* p. 332.) A Kansas statute limiting the charges to be made by a corporation without limiting the charges to be made by other similar corporations doing smaller amount of business, and without any reference to the character or value of the services rendered, was held to be unconstitutional as denying the equal protection of the laws (*Cutting v. Kansas City Stock Yards Co.* 183 U. S. 79.) Again in the case of *Gulf, Colorado, and Santa Fé Railway Co. vs. Ellis* 165 U. S. 150, the court declared a statute imposing an attorney's fee not to exceed \$10 in addition to cost upon railway corporations omitting to pay certain claims within a certain time after presentation, which applies to no other corporations or individuals, unconstitutional as denying the equal protection of the laws.

Although the facts in the cases cited above may be different from those contemplated in sections 9 and 12 of Act No. 1508, yet the principle is the same. The statute by making the mortgagor liable for removing the mortgaged chattel without imposing the same or similar liability on the mortgagee for a similar act thereby favors the mortgagee and discriminates against the mortgagor. Such a statute violates one of the great constitutional safeguards of the equality and impartiality of the law.

The fine imposed by section 12 is rather excessive considering the nature of the violation of the law. All right-minded men will agree with the author that to forfeit double the sum of the value of the mortgaged chattel just for a removal thereof, justified or unjustified, is beyond the pale of reason. The law exacts a fine that exceeds the utmost limit of punishment which the vindication of that law demands. (*U. S. v. Valera* Ang Y 26 Phil. Rep. 589, 599.) It is cruel. It is even hardly to be thought of. It contravenes both the letter and the spirit of section 3 of the Jones Law, par. 10, regarding the prohibition of the exaction and the imposition of excessive fines and cruel and unusual

punishment. Consequently it is unconstitutional. Its unconstitutionality refers to its application in connection with section 9. In connection with sections 10 and 11, section 12 is, in the opinion of the writer, constitutional.

Remedy.—Section 12, therefore, should not be made to apply to cases contemplated in section 9. To give force and effect to said section 9, a provision must be added to the effect that where a mortgaged chattel is removed without first securing the written consent of either party, the guilty party must pay to the other all damages the latter may have suffered by reason of such unauthorized removal. Should such consent be withheld for no cause or for a fictitious one, the liability herein provided for shall not be paid. The suggestion just made does not contravene any provision of the Organic Law. It is fair and just in its application to both the mortgagor and the mortgagee. It protects one from the malicious and frivolous removal by the other of the mortgaged property. A designing or an evil-intentioned mortgagor or mortgagee can not take advantage over the other by withholding his consent to the removal of the mortgaged property.

ASSIGNMENT OF A CHATTEL MORTGAGE

Preliminary Statement.—Section 114 of the Code of Civil Procedure provides that an action by an assignee is subject to all defenses arising before notice of the assignment except in the single case of negotiable instruments. Article 1527 of the Civil Code reinforces this provision by stating that a debtor who pays his creditor, before having knowledge of the assignment, shall be released from the obligation. In view of said provisions of law, it is well to study the effects of an assignment of a chattel mortgage. Assignment may be made in two ways, either by recording it or not.

Assignment not Recorded.—In some jurisdictions, an unrecorded assignment of a mortgage, if possession of the note and the mortgage is transferred to the assignee, will protect him from molestations arising from subsequent claims made upon the mortgaged property in good faith and without notice of the assignment. Such assignment enjoys priority even over rights acquired in reliance of a recorded discharge of the mortgage by the mortgagee unless the assignee is required to record his assignment. 5 R.C.L. 442. Such doctrine, however, is not free from attacks in this jurisdiction. In the first place, we have express provisions of law circumscribing the effects of such assignment. Then in the second place it opens the ave-

nues for committing frauds on the part of the mortgagee. The author, however, opines in view of section 144 of the Code of Civil Procedure and article 1527 of the Civil Code, that if such unrecorded assignment is brought to the knowledge of the debtor, payment by him to the mortgagee will not relieve him from the obligation of paying to the assignee.

Recorded Assignment.—What is the effect of a recorded assignment of a chattel mortgage? This question has been answered by the Supreme Court in the case of Sison and Sison vs. Yap Tico and Avanceña 37 Phil. Rep. 584, 588. The court said, "The question whether or not the registration of the assignment operated as notice, ipso facto, to the mortgagors, we are inclined to answer in the negative, for the reason that the law does not require such assignments to be recorded. While such assignments may be recorded, the law is permissible and not mandatory. The filing and recording of an instrument in the office of the registrar, when the law does not require such filing and recording, does not constitute notice to the parties." It is very clear from the above-quoted decision that payment made by the mortgagor to the mortgagee in good faith and without knowledge of the registration of such assignment discharges the debt and consequently the mortgage. The writer quite agrees with the doctrine enunciated by the Supreme Court in the above-mentioned case. An act of persons has the force and effect which the law deems to give to it and no more. If the law does not give a certain effect to a certain act, that act does not have the desired effect. The registration of an assignment of a chattel mortgage not having been given the effect of notice to all the world by the law, the recording of an assignment, if made, does not constitute notice to the mortgagor who may get pay to the mortgagee. The assignee's rights of such assignment must, therefore, be subject to all defenses arising before knowledge of such assignment is brought home to the mortgagor.

Amendment Needed.—In justice, however, to the parties, the law should have recognized the validity and the desired effect of a registration of an assignment of a right in a chattel mortgage. The registration is deemed a public act and as such the law must recognize it. In view of its omission and in view of the ruling of the Supreme Court in the above-cited case, it is suggested that an amendment to the law be made. A provision must be inserted which will give to the registration of the assignment the effect of notice to all the world. It is but just, fair, and equitable that the law should give it this effect. Ac-

tual notice of an assignment to the mortgagor may be impossible. Hence the intention to assign must not and should not be permitted to be frustrated and the assignee's rights must not be prejudiced by a mere failure to notify actually the mortgagor. Where, however, actual notice is given to the mortgagor, no such registration is required. The general rules of law are applicable.

FORECLOSURE

Common Law Idea.—The Chattel Mortgage Law of the Philippines is a replica of the common law conception of mortgage. At common law, it is not deemed necessary to resort to judicial proceedings in order to cut off the rights of the mortgagor to a chattel by foreclosure. *Brown vs. Russell*, 105 Ind. 46; *O'Reilly vs. Hendricks* 10 Miss. 388; 11 C. J. 695. It is sufficient that after the breach of condition, the mortgagee might seize and sell the property in satisfaction of the debt secured. *Dupuy vs. Gibson* 36 Ill. 197. The right to foreclose is dependent upon the breach of any condition named in the instrument creating the mortgage, or where there is no instrument, upon the violation of the agreement between the parties. Section 14 of the Chattel Mortgage Law in unequivocal terms concurs with the above cited decisions and legal opinions. Under our law, there is no need for any judicial foreclosure. What is required only is compliance with the statutory requirements of notice of purpose, place, time and manner of the sale. Judicial foreclosure may be resorted to but it is not necessary. In the concurring opinion of Mr. Justice Moreland in the case of *McCullough vs. Zoboli*, 28 Phil. Rep. 301, 305, he made it clear once and for all that there is no necessity for a judicial action to foreclose. The case of *Bachrach Motor Co. vs. Summers*, 42 Phil. Rep. 3, 6, recognizes the right of a mortgagee to resort to either a judicial or an extrajudicial foreclosure.

Objection to its Application in the Philippines.—In a civil law country like the Philippines, the author believes that the common law conception of mortgage should receive but scanty consideration. To a great many civil law attorneys, the doctrines of the common law are hardly understood. When one takes into consideration the fact that a considerable amount of business transactions daily occurring in the Philippines are undertaken by laymen, the difficult features of the common law at once become manifest. Unlike the common law conception, in the Philippines title is not deemed to have passed to the mortgagee at the time of the constitution of the chattel mort-

gage. This has been clearly elucidated in Chapter II of this work.

Necessity for Judicial Determination.—The right of a mortgagee to cause the mortgaged chattel to be sold by a public officer is not an absolute one. The fact that he holds a mortgage on a personal property does not ipso facto give him the right to cause the sale thereof. His right is dependent upon the fact of default on the part of the mortgagor. This fact of default is necessarily a matter for judicial determination, unless of course the mortgagor confesses it. The mortgagee is not a judge to decide whether there is a default. Neither is the sheriff, who by laws is designated to conduct the sale, a judge. He is only an agent of the mortgagee. Both are incompetent to determine whether or not the right to public sale exists. For instance, the debtor may claim that the debt has been paid already, or, that an accord and satisfaction, a compromise, or, a remission of the debt secured by the mortgage has been made. *Bachrach Motor Co. vs. Summers* 42 Phil. Rep. 3, 6-7. Under any of these circumstances, is it not fair to protect the mortgagor from annoyance or from any possible exploitation of his property? In view of what has been said above, an opinion is hereby ventured that for the proper determination of the rights of all parties in interest, a judicial declaration of foreclosure is highly necessary and indispensable.

R E S U M É

In the foregoing pages, the writer has endeavored to expose what, in his conviction, are the defects of the Chattel Mortgage Law in the Philippines. Suggestions calculated to reform the law to the end that it may be rendered more just and more equitable, have been offered. To recapitulate we note the following points:

The need for an enumeration of personal property which may be subject to chattel mortgage.—It is not always easy to determine the class to which a given property belongs. The shade of difference between a personal property and a realty may be very slight. Then, too, there are things which are partly personal and partly real. If a chattel mortgage is to have its desired effect, the property covered must be personal property and none other. Registration of chattel mortgage does not cure a defective instrument. To avoid all doubts, uncertainties, and perhaps litigation, the law must specify all the personal property which may be proper subjects for chattel mortgage.

Definition.—The definition given by Act No. 1508 of chattel mortgage is a misnomer. It is far fetched. It does not by any means describe its juridical effects. Contrary to the vulgar and legal notion of a conditional sale, a chattel mortgage is only a security of a high order for the payment of a debt or for the performance of an obligation. Parties believe that a chattel mortgage is really a conditional sale and entertaining the hope of some day becoming owners of the mortgaged chattel, enter into this kind of contract only to find later that their belief is erroneous and that their fond hope is a vain hallucination. To prevent the possibility of this misfortune, the contract of chattel mortgage should be defined as a contract primarily and ultimately intended as a security for the payment of a debt or for the performance of an obligation.

Classes.—Of the three classes of chattel mortgage named in the law, the third in which there is no record of the mortgage and in which the encumbered chattel is retained by the mortgagor, is productive of bad results. Such kind of right has no force and effect beyond the immediate parties.

Removal.—While both the mortgagor and the mortgagee are enjoined from removing the mortgaged chattel from the province where it is located at the time of the constitution of the mortgage without the written consent of either party, and while the statute has been very careful in providing penalties for its violation by the mortgagor, the same statute has, by its omission, favored the mortgagee. The unconstitutionality of said part of the statute is therefore apparent. To conform to constitutional requirements, the law may provide for civil damages for each unauthorized removal to be given by the guilty party to the innocent one. Consent to the removal should not be refused unless for good and valid reason.

Assignment.—In order to prejudice the rights of the mortgagor by an assignment, knowledge of such assignment must be brought home to the mortgagor. The general rules of law must be observed. In case, however, the assignment is recorded, such fact is sufficient to protect the assignee. The record of such assignment must be given the effect of notice.

Foreclosure.—Fully cognizant of the many difficult questions that may arise in foreclosure proceedings, the author earnestly believes that it is the better practice to allow no extrajudicial foreclosure. No sale of a mortgaged chattel shall be allowed unless ordered by a competent tribunal.

It must be clearly borne in mind that it is only the objectionable features of the law that are sought to be amended, repealed, altered, or amplified in the foregoing discussion. The rest of the law is wholesome and satisfactory in its practical application and should therefore be suffered to remain intact.

PHILIPPINE LAW JOURNAL

Published monthly, July to March inclusive, during the academic year, by the
College of Law, University of the Philippines.

Subscription ₱5.00 per year.

Single number 60 centavos

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COMMENTS

THE BELO BILL FROM THE LEGAL POINT OF VIEW

The so-called Belo Bill, which was originally introduced in the Philippine Senate and ultimately passed by both houses as amended by the House of Representatives, has been the subject of considerable comment in respect to its political aspects. There is no doubt but that it introduces into our present governmental system a decided modification of administrative practice and procedure. Before discussing two legal features of this new law, it is desirable to produce it in full as signed by the Governor-General after its passage by the Legislature.

“No. 3431

“An Act Authorizing a Standing Appropriation of Two Hundred and Fifty Thousand Pesos per Annum for Technical Personnel and Civilian Assistants in the Office of the Governor-General, and for Other Purposes.

“Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

“*Section 1.* A standing appropriation of two hundred and fifty thousand pesos per annum is hereby made out of any funds in the Insular Treasury not otherwise appropriated for the payment of salaries, travel and other official expenses of such technical personnel and civilian assistants, as the Governor-General, or the Secretary of War on the recommendation of the Governor-General, may see fit to employ or call into service on contracts calling for whole time or part time service: Provided, That the amount herein appropriated cannot be expended to increase the salary of any officer or employee of the Government

