

THE LAW OF LIENS IN THE PHILIPPINE ISLANDS AS COMPARED WITH THAT PREVAILING IN THE UNITED STATES

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(Awarded the Lawyers Cooperative Publishing Co. Prize of United States Supreme Court Digest, Extra Annotated, 7 volumes, for the best thesis presented for graduation from the College of Law, University of the Philippines.)

(Continued from November number)

MATERIALS

LIEN OF MATERIAL-MEN

For necessary repairs or supplies furnished to a vessel in a foreign port, a lien is given by the general maritime law, following the civil law, and may be enforced in admiralty.

The General Smith, 4 Wheaton 438, 4 L. Ed. 609;
The St. Jago de Cuba, 9 Wheaton 409;
The Virgin, 6 Pet. 538;
The Laura, 18 How. 22;
The Grapheshot, 9 Wall. 129;
The Lulu, 10 Wall. 192;
The Kalorama, 10 Wall. 204.

For repairs or supplies in the home port of the vessel, no lien exists, or can be enforced in admiralty, under the general law, independently of local statute.

The General Smith, *supra*;
The St. Jago de Cuba, *supra*;
The Lottawanna, 21 Wall. 558;
The Edith, 94 U. S. 518.

In the Philippines Islands, in awarding the lien no distinction is made as to whether the repairs were made as to home port or in a foreign country; in either case the lien exists.

PREREQUISITES TO THE EXISTENCE OF THE LIEN.

Loans (refactionary credits) contracted by the captain during his last voyage for the purpose of repairing the vessel shall have preference over the marine mortgage if they embrace the following circumstances:

1. That the repairs to the vessel should have been made only in the cases provided in rule 6 of article 610 of the Code of Commerce and with the resolution established in the said rule.

2. That in making the repairs and in contracting the refractionary credits requires thereof the provisions of article 583 of the said Code were observed.
3. That the temporary memorandum required in the said article 583 was made.

The temporary memorandum shall have all its effects with regard to the preference during the time the vessel does not return to the port of departure, all the provisions contained in article 33 of the Marine Mortgage Law in its third and fourth paragraphs being applicable.

Refractionary credits not included in this article shall be regulated by the rules established in articles 20, 21, 22, 23 and 36 of this law.

The refractionary credit contracted by the captain during the last voyage shall neither have the preference we are discussing except only when the repairs to the vessel are made in urgent cases, while on the voyages, the repairs being absolutely necessary to continue the trip to the end and should it arrive at a port where the vessel has a consignee the captain shall act in accordance with the desire of the latter. (Ayllon, *El Comercio y la Hipoteca Naval*, 201).

In order that the refractionary credit may be entered in the registry with all the effects provided by article 18, it shall be necessary that the creditor file in the registry of vessels the written contract that, in any form, he may have executed with the debtor by which he advanced the necessary amount of money, at one time or at several times, for the construction or repair of the vessel subjected to the lien.

This memorandum shall have all the effects of a mortgage (Art. 20).

It shall not be necessary that the titles, by virtue of which the registration of a refractionary credit is requested, should exactly determine the amount of money or goods of which the credit consists, it being sufficient that they contain sufficient data to enable its liquidation at the termination of the work done. (Art. 21).

Should the vessel which is the object of the lien be subject to a marine mortgage previously registered, the memorandum of the later lien cannot be made unless it be by a unanimous agreement contained in a public instrument or in a policy of exchange brokers, or of commercial brokers, or of licensed ship-broking interpreters between the holder of the former lien and the person or persons in whose favor the mortgage is constituted on account of the loan and the value of the vessel before beginning the repairs, or in the absence of an agreement, by virtue of a judicial decree issued in a proceeding for the purpose of ascertaining the said value, after a summary summoning and hearing of the creditors holding previous mortgages.

The values which in either of the two cases may be fixed before commencing the repairs to the vessel to be the object of the refractionary credit must be recorded in the memorandum of the refractionary credit itself (Art. 22).

The creditor holding a marine mortgage on the vessel subjected to a refractionary credit, the value of which appears in the manner prescribed articles, shall preserve his right of preference with regard to the holder of the refractionary credit but only to an amount equal that in which the vessel itself was estimated. (Art .23).

BOTTOMRY BOND

BOTTOMRY BOND DEFINED.

A bottomry bond is a maritime contract by which a ship is hypothecated in security for money borrowed for the purposes of her voyage, under the condition, that if the ship arrive at the port of her destination the borrower, personally, as well as the ship, shall be liable for the repayment of the loan, together with such premium thereon as may have been agreed on, but that, if the ship be lost, the lender shall have no claim against the borrower, either for the sum advanced or the premium. (The Dora, 34 Fed. 343; The Launberga, 154 Fed. 959).

LIEN OF LENDER.

Under the American Law, whoever lends money upon a bottomry obligation for the ordinary transactions of her voyage has a lien upon the vessel which outranks all lien holders save the mariners for their wages. (The Dora (D. C.) 34 Fed. 343)

The same rule obtains in the Philippine Islands. Thus Revilla in his Commentaries on the Marine Mortgage Law of Spain August 31, 1893, says:

“* * * * The vessels shall be subject to the payment of * * * those debts which the law declares as preferred; and in case of a judicial sale of the vessel for the payment of creditors, the following are considered preferred; * * * the amounts borrowed on bottomry. These privileges, it seems, should only give the creditor preference in the proceeds of the sale with regard to the other credits in the order of their respective degrees, and not the preference of attachment and sale of the thing on which they hold a lien in order to collect their credit for this is a right which, on principle, is inherent only to mortgage credits. And, nevertheless, the preferred creditor who holds a lien on the vessel not only has a preferred right inherent to the character or cause of his credit, but also has the right to collect the same by attachment and sale of the vessel, that is, although the creditor may have transferred its ownership to a third party, until the credit should not have been extinguished or cancelled by any of the means provided by law.”

The same author continues:

“* * * * The marine preferences are of a purely legal creation* * * they constitute in a word true tacit legal mortgages, arising from the desire of protecting especial interests related to navigation. The assertion that marine preferences are tacit legal mortgages is uncontrovertible as regards the greater number of these contracts, for art. 580 of our Code requires the entry in the Registry of the credits specified in numbers 7, 8 and 9 only.

“By the right of persecution (persecución) we understand the power given the mortgage creditor to collect the amount of his credit by having the mortgaged vessel attached and sold without regard to the changes of ownership of the vessel, that is, even though the vessel may be in the hands of third

parties. This power is derived from the character of real right in which the marine mortgage is held because as a result of this the lien adheres to the mortgaged vessel and follows it constantly in what-ever hands it may be in possession, just as the shadow follows the body as practical people will put it. The mortgage right accompanies the thing even if it is alienated, *ves cum suo onere transit*—* * * The vessels, different from the other things movable, are subject to a right of persecution for the benefit of certain credits called preferred, in such manner that they may be attached and sold at the instance of any of the creditors to whom those credits belong.”

STEPS NECESSARY TO THE CREATION OF LIEN.

Article 32 of the Marine Mortgage Law of Spain, August 31, 1893, provides:

“The following will also have preference to the marine mortgage as long as the conditions expressed in the following articles are fulfilled:

(1) The amounts borrowed on bottomry bonds by the captain during the last voyage.

In order that the bottomry bond mentioned in the last preceding article may enjoy the preference therein provided, it shall be necessary that the amounts borrowed should have been made in the cases expressly authorized by article 611 of the Code of Commerce, that is, the captain who had no funds and did not expect to receive any from the agent, should have previously attempted to procure the same in the following order:

1. By requesting said funds of the consignees or correspondents of the vessel.
2. By applying to the consignee of the cargo or to the persons interested therein.
3. By drawing on the agent—and should not have succeeded. The captain must have applied to the judicial authority of the port, if in the Philippine Islands, and to the United States consul, if in a foreign country should there be one, and in his absence to the judge or court or to the proper local authority, presenting the certificate of the registry (Art. 612, Code of Commerce), and the instruments proving the obligation contracted.

The judicial authority, the consul or the local authority in a proper case, in view of the results of the proceedings instituted, shall make a temporary memorandum in the certificate of their result, in order that it may be recorded in the registry when the vessel returns to the port of its registry, or so that it can be admitted as a legal and preferred obligation in case of sale before the return, by reason of the sale of the vessel by virtue of a declaration of unfitness to navigate.

The lack of this formality shall make the captain personally liable for the credits which may be injured by his fault (Art. 583, Code of Commerce).

The temporary memorandum which, in accordance with art. 583 of the Code of Commerce, the judge or court, the consul or the local authority shall make in the certificate of registry which the captain must have on board in accordance with art. 612 of the Code of Commerce, shall have effect upon the lien until the vessel returns to the port of its departure.

As soon as this is done the owner of the vessel or its captain must present the certificate of ownership at the Custom House within 48 hours after the vessel enters port, in order that the loan may be entered in the registry of the vessels. If the port of departure is not the home port of the vessel it shall be presented within the said 48 hours to the judge or local authority or marine official who shall make a memorandum of the filing thereof and shall send notice of same to the home port of the vessel.

Where presentation is made within this time, the making of the memorandum shall have the effect of preserving the preference established in the last preceding article; and for all other effects given by law to the memorandum thus made, its date shall be that of the day on which the temporary memorandum in the certificate of ownership of the vessel was made. If it should be presented after the aforesaid period of time it shall also have effect but only from the date of its registration in the Custom House Registry of vessels.

Without prejudice to the obligations imposed by this article to the owner and the captain, the persons who gave the loan or the persons whom they may commission may cause the loan to be entered in the registry.

RANK OF BOTTOMRY LIEN.

The bottomry bond holder is relegated to the back-ground when he comes in competition with seamen's wages, salvage, materials, or even a claim for general average arising on the same voyage. The reason is that the bottomry holder stands in the shoes of the owner, and has, a proprietary interest in the ship, which estops him from questioning the priority of maritime liens to supply her, or to render her move valuable. In addition, the bottomry holder can charge a premium on the ship at a high rate of interest. He therefore becomes an insurer against the perils of the sea, and when those perils of the sea arise he cannot be heard to complain that those who labored to rescue the vessel from them should be preferred in the distribution. It is for the interest of the bottomry lender that the whole should be saved by a sacrifice of a part, and that the whole thus saved should contribute to make good the sacrifice, and that salvors and all others who render benefits which save or render available the bottom pledged to bottomry lenders should have a lien upon that bottom, even against the bottomry lender. (The Dora, supra).

Under article 580 of the Code of Commerce, the lien of a bottomry lender ranks *nine*.

COLLISION

LIEN FOR DAMAGES CAUSED BY COLLISION.

The rule in the United States is nowhere better stated than in the case of *The John G. Stevens*, 170 United States Report, 113, where Mr. Justice Gray declared:

"The collision, as soon as it takes place, creates, as security for the damages, a maritime lien or privilege, *jus in re*, a proprietary interest in the offending ship, and which, when enforced by admiralty process *in rem*, relates

back to the time of the collision. The offending ship is considered as herself the wrongdoer, and as herself bound to make compensation for the wrong done. The owner of the injured vessel is entitled to proceed *in rem* against the offender, without regard to the question who may be her owners, or to the division, the nature, or the extent of their interests in her. With the relations of the owners of those interests, as among themselves, the owner of the injured vessel has no concern." * * * "The lien for damages caused by collision outranks lien for necessary supplies furnished before the collision."

The Spanish Law also recognizes a lien against the offending ship for damages caused by collision. (Madariaga, *Cuestiones de Derecho Marítimo*, pp. 60-62, 63, 85; *Philippine Shipping Co. v. García*, 6 Phil. 281).

Article 837 of the Code of Commerce provides:

"The civil liability contracted by the shipowners in the cases prescribed in this section shall be understood as limited to the value of the vessel with all her equipment and all the freight money earned during the voyage."

This article is a necessary consequence of the right to abandon the vessel given to the shipowner in article 587 of the Code, and it is one of the many superfluities contained in the code. (Lorenzo Benito, "Lecciones," 352).

HOW LIEN EXTINGUISHED.

The lien is extinguished with the loss of the thing bound for the payment thereof. (*Philippine Shipping Co. vs. García*, 6 Phil. 286).

CHAPTER XIII MECHANICS

MECHANICS' LIEN

1. *Definition and nature.*

A mechanics' lien is a species of lien created by statute in most of the states, which exists in favor of persons who have performed work or furnished material in and for the erection of a building. It is not a general, but a particular, lien, and is in its nature peculiar and of an equitable character, and has been said to be somewhat analogous in its aims to the equitable lien of a vendor for unpaid-purchase money of lands sold. The lien is given to secure priority of payment of the price and value of work performed and the materials furnished, and springs out of the appropriation and use by the landowner of the mechanic's labors or the furnisher's materials. It rests upon the broad ground of natural equity and commercial necessity, (27 Cyc. 17)

2. *Existence of a mechanic's lien in the Philippine Islands.*

Mr. L. R. Wilfey, formerly Attorney-General for the Philippine Islands, has declared that "THERE IS NO MECHANIC'S LIEN LAW IN THE PHILIPPINE ISLANDS". (Op. Atty. Gen. Vol. III, p. 53).

With great respect to the opinion of the Attorney-General referred to above, I am nevertheless inclined to dissent from his opinion and hold that there is a mechanic's lien law in the Philippine Islands for the following reasons:

1—27 Cyc. 17 in discussing the origin of a mechanic's lien law, remarked that "mechanic's liens on buildings and land were recognized and favored by the civilians, and were clearly defined and regulated in the civil law; but such liens were not recognized in the common law, nor were they allowed in equity;"

2—The Philippines Islands is as yet a Civil Law country;

3—27 Cyc. 17, in support of its contention cited sections 1741, 1742, 1744 of Domant's Civil Law Sec. 1741 reads;

"The creditor whose money has been laid out in preserving or repairing the thing, as, for example, to secure a piece of ground against the current of a river, to prevent the fall of a house, or to rebuild it after its fall, has a privilege."

And section 1742 provides:

"Those whose money has been laid out on the improvement of an estate, such as to make a plantation, or to build upon it, or to augment the apartments of a house, or for other like causes, have a privilege upon the said improvements, as upon as purchase made with their money."

Again, section 1744 says:

"Architects and other undertakers, workmen, and artificers who bestow their labor on buildings or other works, and who furnish materials, and in general all those who employ their time, their labor, their care, or furnish any materials, whether it be the making of a thing, or its repairs, or its preservation, have the same privilege for their salaries, and for what they furnish, as those who have advanced money for these kinds of works, and which the seller has for the price of the thing sold."

4—Article 59 of the Mortgage Law in force in the Philippine Islands contains provisions similar to the above quoted. Said article 59 reads as follows:

"The agricultural creditor (*acreedor refaccionario*) may request an entry against the estate which is the subject of the loan for the amounts which he advanced in one payment or in successive ones, presenting the written contract he may have in any legal manner made with the debtor.

This entry shall have, with regard to the agricultural loan (*crédito refaccionario*), all the effects of a mortgage."

5—Article 1600 of the Civil Code provides:

"A person, who has performed a work on personal things, has the right to retain the same as a pledge until he is paid therefor."

The mechanic's lien law prevailing in the United States corresponds to our CREDITO REFACCIONARIO, and by such is understood one that arises out of a contract of *refaccion* (repairs) so called from the Latin word *reficere*—to remake, to renew, to give existence to that which, without the addition of new matter or performance of work, would perish. Among the Romans it only gave rise to a personal action, unless it was expressly stipulated that the property to be repaired

or constructed should be mortgaged, except when the money was to be employed in constructing an almost ruined edifice, in which case an implied mortgage was recognized in the person furnishing the money (*refaccionario*). *No urbis ruinis de formentur*. (3 Galindo and Escosura, Commentaries on the Spanish Mortgage Law, 521).

The Supreme Court of Spain in its decision dating October 11, 1894, has declared:

“Los créditos refaccionarios tienen el derecho de hipoteca tácita, y el de prelación sobre la finca refaccionada.”

Where a mechanic's lien law exists in the United States they are the creatures of local legislation. They are governed in everything by the statutes under which they arise. These statutes vary widely in different States. Hence my discussion will be confined to our statute law in the Philippine Islands.

REQUISITES OF BUILDING CONTRACTS.

As against that which as a general rule is established by article 3 of the Mortgage Law, is allowed by article 59 of the same and 51 of the regulations, that the said contract can be celebrated in any legal manner provided that it is in writing, although it be in a private document, without it being necessary to fix the amount of the credit, it being sufficient that enough data appear in order to liquidate at the termination of the work. (Art. 60): Contracts must be drawn up in such a fashion that they clearly express all the precise circumstances so as to avoid uncertainties and questions as to the performance. These circumstances should not only be asked for as is improperly said in article 51 of the regulations, but they should be demanded by the register; otherwise the contracts cannot be registered, as it therein said. (3 Galindo and Escosura, Commentaries on the Spanish Mortgage Law, 522).

ANNOTATION OF THE “CREDITO REFACCIONARIO.”

AS A PREREQUISITE TO THE CREATION OF THE LIEN.

According to paragraph 8 of article 42 of the Mortgage Law, the “*acreedor refaccionario*” can ask to have his credit annotated while the work is in progress. This does not mean to say that he cannot ask to have it made before the commencement of the work, because if the article were to be understood in that sense, after the contract was made, the power of the creditor to register his lien as against third party claims would be at the mercy of the debtor.

That which is meant is, that after the work is finished the registration cannot be made and the reason for that is that the registration is only a provisional remedy to insure the real rights which the creditor successively acquires by the amounts as he advances them, until such time as, the work being finished, he can figure the whole amount that the property has to answer for and then make the mortgage inscription. (3 Galindo and Escosura, Commentaries on the Mortgage Law, 523).

If made by virtue of a contract, it should be unanimous, so that the dissent of only one interested party will prevent the entry; it must be made in a public instrument by the owner and the persons in whose favor the said obligations are constituted and the agreement should apply to the very object of the *refaccion* or thing to be restored and the value of the property before commencing the work.

If as a result of the opposition of any of the interested parties to the real rights which are charged upon the estate to be repaired, the entry in the register by agreement cannot be made, recourse must be had to the courts to secure the registration, and the court cannot decree the registration without first giving a summary hearing to all persons interested in opposing it. (Arts. 55, 61 of the Mortgage Law). (3 Galindo and Escosura, Commentaries on the Spanish Mortgage Law, 526).

NECESSITY OF CONTRACT WITH OR WITHOUT CONSENT OF OWNER.

In order that a mechanic's lien may be established it is necessary that the work should have been done or the materials furnished in pursuance of a contract with the owner of the property or interest sought to be charged, or at least that he should have so consented to the improvement of his property that it is equitable; that it should be charged with a lien for the cost thereof. (27 Cyc. 505-51).

CHAPTER XIV MISCELLANEOUS CUSTOM DUTIES

LIEN ON GOODS IMPORTED FOR PAYMENT OF DUTIES.

The United States has a lien on goods imported for the payment of the duties accruing thereon, and is entitled to a virtual custody of them from the time of their arrival in port until the duties are paid or secured. *Harris vs. Dennie*, 3 Peters (U. S.— 292, 7 L. Ed. 683).

The same rule obtains in the Philippine Islands by virtue of the following section of the Administrative Code:

“SEC. 1399—Importation by sea begins when the importing vessel enters the jurisdictional waters of the Philippines Islands with intention to unload therein, and is not completed until the duties due upon the merchandise have been paid or secured to be paid at a port of entry and the legal permit for withdrawal shall have been granted, or, in case said merchandise is free of duty, until it has left the jurisdiction of the customs.

SEC. 1410—Except when done under customs supervision, all unloading or transshipment of the cargo of vessels from foreign ports, which do not discharge at a wharf, must be by bonded lighters; and likewise, on land, imported goods on which duty has not been paid shall be carried about and handled by bonded draymen or cartment only.

SEC. 1460, par. 2—The importer shall not by the transfer of any merchandise under bond be relieved either personally or upon the warehousing bond. Both principal and sureties shall continue liable until the duties are

paid or the merchandise exported, unless by assignment the merchandise covered by the bond is transferred to another party who shall accompany his assignment with a new warehousing bond.

Sec. 1469—All expenses incurred by the customs service for the carriage or storage of merchandise and other necessary operations in connection therewith, or incident to its seizure, shall be charged against such merchandise, and shall constitute a lien upon it."

GOODS IN POSSESSION OF COLLECTOR OF CUSTOMS PENDING SATISFACTION OF LIEN FOR IMPORT DUTIES NOT SUBJECT TO ATTACHMENT.

The United States having a lien on the goods for the payment of the duties accruing thereon, and being entitled to a virtual custody of them from the time of their arrival import until the duties are paid or secured, any attachment by a state officer is an interference with such lien and right of custody. (*Harris vs. Dennie*, supra).

The same rule is applicable to the Philippine Islands.

TAXES

LIEN FOR TAXES.

In the United States, statutes are usually enacted creating an express lien as to all the real estate of the tax debtor. (*Anderson vs. The State of Mississippi*, 33 Miss. 475; *Tradesmen's National Bank vs. Sheffield City Co.*, 137 Ala. 547.

Sec. 452—The real property tax for any year shall become due and payable on the first of January and from the same date said tax and all penalties subsequently accruing thereto shall constitute a lien upon the property subject to such tax.

Said lien shall be superior to all other liens, mortgages, or incumbrances of any kind whatsoever, shall be enforceable against the property whether in the possession of the delinquent or any subsequent owner or possessor, and shall be removable only by the payment of the taxes, penalties, and costs.

TAXES UNASSESSED.

"It is too clear for argument that taxes not existing are not liens and that the obligation to assess taxes is not a lien on the property on which they ought to be assessed." (*Heine vs. Commissioners*, 19 Wall. 659.)

EFFECT OF SALE.

"Upon a sale of land, while the lien upon the land is unaffected by the sale, the personal liability of the grantor to the government for the taxes does not pass to the grantee." (Op. Atty. Gen. Jan. 24, 1908, unp).

PERSONAL PROPERTY SUBJECT TO SEIZURE FOR PAYMENT OF DELINQUENT TAXES.

Sec. 459. of the Administrative Code provides that "after delinquency in the payment of the real property tax has occurred, the provincial treasurer or his deputy, if desirous of enforcing payment by distraining the personal property of any delinquent person or persons, shall issue a duly authenticated certificate, based upon the records of his office, showing the fact of delinquency and the amounts of tax and

penalty due from such delinquent or each of them. This certificate shall be sufficient warrant for the seizure of any non-exempt personal property belonging to the delinquents in question: and such process may be executed by the provincial treasurer, his deputy, or other officer authorized to execute legal process."

ACCESSION

OCCUPANT'S RIGHT TO COMPENSATION.

1. *At common law*—By the rigid rule of the common law, on the principle that a person is under no obligation to pay for unauthorized improvements made on his land, one making such improvements without the owner's knowledge or consent was not entitled to compensation therefor, even though he acted under a bona fide belief of ownership. In many jurisdictions, however, this doctrine has been modified, on equitable grounds, by allowing the bona fide occupant to set off the value of his permanent improvements, in an action by the owner of the land for rents and profits to the extent of such rents and profits. (22 Cyc. 11).

2. *Under the Civil Law*—By the rules of the Civil Law, the possessor of the property of another who had erected buildings or made other improvements hereon in good faith, supposing himself to be the owner, was entitled to payment for such improvements, after deducting from the value thereof a fair compensation for the rents or use of the property during the time he occupied it. (Putnam v. Ritchie, 6 Paige's Chancery Reports (N. Y.) 404, citing 3 Partida, tit. 28, law 41; Inst. Law of Spain 102).

This rule has been enlarged by our present Civil Code. Thus article 361 provides:

"The owners of the land on which somebody has built, sown, or planted, in good faith, is entitled to appropriate, as his own, the work, the sowing or planting by previously paying the indemnity specified in arts. 453 and 454 or to oblige the person who has built or planted the same to pay him the value of the land and to oblige him who sowed, to pay the corresponding rents."

RIGHT TO LIEN.

In the absence of a statute a bona fide occupant has no such lien at law as entitles him to be secured the value of his improvements before being compelled by suit to surrender possession to the true owner; but in some jurisdictions a statutory lien exists against the land for a balance due for improvements made by occupant in good faith. (22 Cyc. 30.)

In the Philippine Islands such a lien exists for the following reasons:

(1) The builder, planter, etc. has the natural possession of the soil, otherwise the building or plantation would have been impossible:

(2) There being natural possession, good faith, and right to indemnity according to articles 453 and 454 of the Civil Code, the right to retain the thing pending satisfaction of the indemnity is clearly recognized. (Q. Mucius Scaevola, Commentaries on the Civil Code, Vols. 8-9, p. 647.

NEGOTIORUM GESTIO

GESTOR'S LIEN.

Under the American law, the protection of one's property may not constitute a benefit, for one is not bound to protect his own property, and does not always regard it as worth the effort and expenses necessary to its protection. It must appear that the particular property which the gestor intervened to protect was worth, in the owner's eyes, as much as he is called upon to pay the plaintiff for its protection. (Woodward on Quasi-Contracts, sec. 198).

In the light of this principle, the recognition of the gestor's lien under the American law is a doubtful one.

Under the Spanish law, the right of retention (lien) for useful and necessary expenses is clearly recognized. Thus article 1893 of the Civil Code provides:

"The owner of property or a business who avails himself of the advantages of the administration of another when he has not expressly ratified the same, shall be liable for the obligations contracted for his benefit, and he should indemnify the administrator for the necessary and useful expenses which he may have incurred and for the injuries which he may have suffered in the discharge of his duties."

Q. Mucius Scaevola, Commentaries on the Spanish Civil Code. Vols. 8-9 page 647.

SOLUTIO INDEBITI

RECIPIENT'S LIEN.

Under the Spanish law, before the return is made, the person who unduly received the thing, has not only a right of counterclaim to be reimbursed of all improvements, useful and necessary expenses which he made, but also a right to retain the things in order to enforce his counterclaim (Arts. 453, 454, 1898 Civil Code). The recipient must have received the thing in good faith.

The principle laid down in 22 Cyc. 11, supra, with regard to the right to compensation for improvements puts a doubt in my mind as to the existence of the recipient's lien under the common-law.

BANKRUPTCY

LIENS.

1. *In general.*

Unless assailable as a preference or voidable transfer, or of such character that it is invalid as against creditors or is dissolved by an adjudication or bankruptcy, an outstanding lien or encumbrance on property of a debtor is not affected by his bankruptcy; but the trustee takes the property subject to such lien, and the rights of the lien holder remain unimpaired, and he is entitled to enforce his lien according to the terms of the agreement under which it was acquired, and to be paid the full amount secured by such lien out of the property or its proceedings before any part thereof is applied to the payment of the claims of general creditors. [7 Corpus Juris 185 et seq]. The state law governs in determining the validity of a lien on the property of a bankrupt. (In re U. S. Lumber Co., 206 Fed. 236).

Statutory liens are not dissolved by bankruptcy of the debtor. (7 Corpus Juris 190).

Under the express provisions of the Bankruptcy Act an adjudication of bankruptcy avoids all liens obtained against the property of the bankrupt though legal proceedings while he is insolvent and within one month (in the Philippine Islands) and within four months in the United States (Sec. 32, Act 1956; 7 Corpus Juris 195). Accordingly such an adjudication discharges the lien of an attachment, a judgment or an execution.

SECTION I.

SPECIAL PROVISIONS PECULIAR TO OUR JURISPRUDENCE.

COMMODATUM.

Just as the Civil Code in the preceding articles expressly provides for a right of retention (lien), so it denies such right in others. Thus article 1747 of the Civil Code expressly provides that "a bailee cannot retain the thing loaned under the pretext that the bailor owes him something, even should it be by reason of expenses."

USUFRUCT.

Art. 502 of the Civil Code recognizes a lien (right of retention) in favor of the usufructuary for extraordinary repairs to the building, as long as they are indispensable for the preservation of the thing. Said article reads:

"If the owner should make the extraordinary repairs he shall be entitled to demand of the usufructuary the legal interest on the amount invested in them during the continuance of the usufruct.

Should he not make them when they are indispensable for the preservation of the things, the usufructuary may make said repairs; but he shall have a right to demand of the owner, on the expiration of the usufruct, the increase in value which the estate may have acquired by reason of said works.

Should the owner refuse to pay said amount the usufructuary shall have the right to retain the thing until he reimburses himself with the proceeds thereof."

CHAPTER XV CONCLUSION

At the threshold I may say that I partly agree with what many practicing attorneys of this jurisdiction said, in that "the laws of the Philippine Islands with regard to business and commerce are, in many aspects antiquated and ill-adapted to promote mercantile activities and the prosperity of the country as a whole. Among the laws most urgently in need of amendment are those which treat of the means of enforcing the fulfillment of obligations and the payment of debts; such are liens and preferences."

Said attorneys attacked the existing condition of the law of liens and preferences by putting the following example:

"* * * * We will suppose that a wholesale merchant of Manila has an account against a local retailer in the sum of ₱5,000. The retailer has a good stock of goods on hand in a well-furnished store, and the entire lot

and building appear in the registry to belong to the retailer, and no mortgage has been recorded on either the real or personal property. The creditor receives reliable information that the retailer has begun to dispose of his assets with intent to defraud his creditors. A few days' delay will let everything disappear, and no creditor can collect anything. The vigilant wholesale merchant employs an attorney, files suit on his claim, gives the necessary bond, and attaches all the property of the debtor. After a few weeks the creditor recovers judgment and causes the sale of the attached property on execution. But there are many persons who may now make their appearance and be ahead of him in the distribution of the money realized. The attaching creditor may never have heard of them or their claims until after the goods were attached, and there may have been no way of ascertaining the existence of such claims until the claimants gave notice to the sheriff after the levy of the attachment. The claims may have been fraudulently devised and stored away to rescue the debtor from just such an emergency. Or the claimants may have been merely lax and indifferent, waiting for someone else to 'dig up' the debtor's assets for his benefit."

But he principal fault with the objections of the critics of the said attorney is their failure to realize that an attachment in the Philippine Islands creates a lien on the property, free of all after-acquired liens and preferences. As will have been seen, the lien created by an attachment relates to the property itself and is not a mere right to share in the distribution of the funds belonging to the debtor in *custodia legis*. If an attachment so subjects the property, can it be said that the vendor is prejudiced and that he had better not procured the attachment? Certainly not. The case of *Kuenzle & Streiff (Ltd.) vs. Juan Villanueva, and Ed. A. Keller & Co.*, 14 of Gaz. 2209, supports my contention.

The vendor procuring the attachment is first of all to be paid, unless there are previous existing liens on the property attached; I repeat liens and not merely preferences.

The creditors with preferential claims will follow in the distribution of the proceeds if any is left (*Kuenzle & Streiff (Ltd.) vs. Juan Villanueva, and Ed. A. Keller, supra*).

Their suggestion for an entire repeal of articles 1921 to 1929 inclusive of the Civil Code is to my mind a destruction of our legal lore; one not founded in the deficient utility of the law, but merely aimed at simplifying the glorious uncertainty of the law of liens and preferences in their minds.

The practical result of it all is not so bad as might be apprehended, from the sentiments of the aforementioned reform-seeking practicing attorneys who imagine our law of liens and preferences to be a turbid mass tumbling thru the years, carrying down foul and conflicting matter.

After carefully and studiously examining the great number of perplexing and difficult questions of the law of liens and preferences, I cannot but admire and commend the scrupulous and intelligent care and ability evinced by the Spanish legis-

lators in drafting the Civil and Commercial Codes enforced in the Philippine Islands and that of subsequent legislation enacted by the present administration following American precedents. In so declaring I do not wish to be understood as championing the cause of CONSERVATISM, and uphold the continuance of the present status of the law of liens, preferences, and attachments without considering its adaptability to modernized mercantile activities and to the needs of the situation. Far from adhering to such wretched policy, I have, in my discussion, as far as possible, attempted to point out the glaring defects of our law on the subject of liens only. I myself, having commercial proclivities would rather favor the introduction in the Philippine Islands of modern aspects of the law of liens, with a design to aid, instead of to hinder, the collection of accounts.

A comparison, therefore, of the principles enunciated regarding the present status of the law of liens in the Philippine Islands does not fall far short from the actual status of the law of liens prevailing in the United States.

THE END.