

7 Phil. 691

[G.R. No. 3467. March 07, 1907]

**DOLORES SOTO AND JOSE S. PALMEDA, PLAINTIFFS AND APPELLEES, VS.
DANIEL MORELOS, DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

This was an action commenced in the Court of First Instance of the city of Manila, to recover of the defendant the sum of 1,300 pesos. The action was based upon a public document executed by the defendant to the plaintiffs, dated the 30th day of November, 1904. The record shows that this indebtedness arose from the sale of a certain drug store, in the city of Manila, by the plaintiffs to the defendant, on or about the 11th day of April, 1902. The contract dated the 30th day of November, 1904, was a renewal of the obligations contained in the contract of the 11th of April, 1902. The contract had been renewed several times between the 11th day of April, 1902, and the 30th day of November, 1904. Under the original contract there was a stipulation that the said drug store should constitute a guarantee for the payment of the obligation. The original amount was 1,650 pesos, Philippine currency, payments having been made upon said contract until the amount remaining due at the beginning of the action was 1,300 pesos, Philippine currency. The plaintiffs in their complaint prayed that a judgment be rendered in their favor for 1,300 pesos, Philippine currency, and that the drug store, mentioned in said contract, be sold for the purpose of satisfying the judgment.

The defendant interposed several defenses.

After hearing the evidence adduced during the trial in the lower court, said court rendered a judgment in favor of the plaintiffs, and against the defendant, in the sum of 1,300 pesos, Philippine currency, and further ordered that if said amount was not paid within the time specified in said judgment, that the sheriff of Manila should proceed to sell said drug store, situated at No. 116, Calle Ilaya, city of Manila. From this decision, the defendant appealed

to this court, and assigned several errors.

An examination of the record brought to this court shows a preponderance of evidence in favor of the finding of the lower court with reference to the amount still due and remaining unpaid. The defendant admitted the execution and delivery of the contract, but insisted that a larger amount had been paid on said obligation than he had been given credit for by the plaintiffs. We fail to find sufficient evidence in the record, however, to change the finding of the lower court.

The lower court ordered that the said drug store be sold in case the defendant failed to pay the amount of the judgment, evidently upon the theory that the documents executed and delivered by the defendant to the plaintiffs constituted a chattel mortgage on said drug store; said documents did not, however, constitute a chattel mortgage against said property, and therefore the order of the lower court directing the sale of said drug store for the purpose of satisfying said judgment is not justified by the evidence adduced during the trial of the cause, and the law applicable to such cases. Therefore, that part of the judgment of the lower court is hereby reversed. The plaintiffs are only entitled to an execution to have their judgment satisfied out of whatever property there may be found belonging to the defendant, subject to execution.

There is a preponderance of evidence found in the record brought to this court in favor of the conclusions of the lower court with reference to the amount due the plaintiffs from the defendant. The judgment of the lower court, therefore, is hereby affirmed, with interest from the 23d day of January, 1906, and costs.

After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter let the record be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.