SALVADOR SERRA, PLAINTIFF AND APPELLANT, VS. THE PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLANT.

G.R. No. L-21727. April 05, 1924

Ponente: JOHN, J.

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JOHN, J.:

July 17, 1920, P. C. Whitaker and V. Concepcion executed a real mortgage to and in favor of the plaintiff for P750,000 as and for the balance of the purchase price of P1,695,861.90 for what is known as the Hacienda and Central Palma, a plantation containing about nine hundred hectares of land devoted to the cultivation of sugar, with the central and sugar business thereon established, with all its buildings, machinery, improvements, appurtenances, properties real and personal, rights, actions', and interests, including the sugar cane plantation of the agricultural year 1920-1921, which plantation covers all the land belonging to the vendor. The mortgage contains a particular description of the real property, to which is attached an itemized list of personal property. It was duly signed, witnessed, acknowledged and filed for record.

On February 6, 1922, the plaintiff filed in the Court of First Instance of Occidental Negros a complaint to foreclose on account of a breach of the conditions of the mortgage as to payments in which suit the bank was made a defendant. Among other things, the complaint prayed for the appointment of a receiver, but none was ever appointed.

The bank appeared and filed an answer.

On April 28, 1922, the court rendered a decree of foreclosure as prayed for in the complaint, from which the bank took an appeal, which was later abandoned. January 4, 1923, the plaintiff commenced this action against the defendant bank, and on February 28, 1923, filed an amended complaint in which, after formal pleas, it alleges the execution of the mortgage, and that on June 30, 1921, by reason of the default, the mortgage became due and owing, as the bank well knew; that at the time of the maturity of the mortgage "there existed upon the mortgaged property a growing crop of sugar cane, the property of the said mortgagors;" that on the 30th of June, 1921, the bank "took possession of the mortgaged premises under an agreement with the owners and mortgagors thereof, the said Whitaker and Ccncepcion," and, without plaintiff's consent, took possession of the crop of sugar cane tb.en growing, and manufactured it into centrifugal sugar in the sugar factory on the premises, and converted the proceeds to its own use; that the value of such sugar cane is P21,003.63. It then alleges its suit to foreclose the mortgage in which the bank was made a defendant, and the rendition of the decree and the sale of the property, leaving a balance due to plaintiff of 1*408,826, and that it has made demand upon the defendant for the value of the manufactured sugar.

As a second cause of action, plaintiff alleges that at the time of the execution of the mortgage there existed contracts between the mortgagors and the owners of a number of plantations, in and by which such owners undertake and agree for a term of years to deliver to the mortgagors all the sugar cane grown upon their respective plantations to be manufactured by the mortgagors into centrifugal sugar in the factory on the mortgaged premises,

by which the mortgagors were to receive from 40 to 50 per cent of the sugar produced from the cane, all of which contracts were recorded; that the bank took possession of the mortgaged premises, including the sugar factory, and received from the owners of said plantations, subject to such recorded milling contracts, large quantities of sugar cane to be manufactured into centrifugal sugar, from which the defendant received 15,375.57 piculs of sugar of the value of 1*164,672.35; that the net profit derived by the defendant from the manufactured sugar was P137,441.93, which is now due and owing the plaintiff.

As a third cause of action, plaintiff alleges that Whitaker and Concepcion, the mortgagors, purchased and placed on the mortgaged premises for the operation of the plantation, forty-two additional cane cars of the value of P29,400, which cars, after maturity of plaintiff's mortgage, and without plaintiff's consent, the defendant removed from the plaintiff's premises, and converted to its own use, and he prays judgment against the defendant for the value of the cars.

As a fourth cause of action, it is alleged that at the time of the maturity of the mortgage, there was growing crop of sugar cane grown by the croppers under their respective contracts with the owners of the mortgaged property, under which the croppers were to pay the owners 25 per cent of the cane grown by them on the rented lands, and that the defendant bank, without the knowledge of the plaintiff, took possession of the cane amounting to 1,240.47 tons, which was of the value of P15,695.80, and which it converted to its own use, making a total of P203,541.36, for which plaintiff prays judgment.

For answer, after admitting the formal pleas, the defendant makes a specific denial of all other allegations of the complaint, and, as a special defense, alleges that prior to the maturity of plaintiff's mortgage Whitaker and Concepcion were indebted to it in a large sum of money, and, in order to secure payment, they assigned to the bank "all the sugar they were to obtain from the mortgaged premises and the operation of the Palma Central for the season 1921-1922;" that the crop of sugar cane for the season 1921-1922 on the mortgaged premises as well as that grown on most of the adjacent properties were planted, cultivated and harvested with money advanced by the defendant bank; that the proceeds of the sale of the sugar and its by-products for 1921-1922, which the defendant received, were applied to the indebtedness of Whitaker and Concepcion then existing, amounting to more than P1,000,000.

Upon such issues the parties entered into the following stipulation of facts:

"I. Plaintiff is a resident of the municipality of Hog, Occidental Negros, Philippine Islands. Defendant is a banking corporation organized and existing under the provisions of Act No. 2612 of the Philippine Legislature, doing business and maintaining its principal office in the City of Manila, Philippine Islands.

"II. On the 17th day of July, 1920, P. C. Whitaker and Venancio Concepcion, who were at that time the owners of a certain tract of land and improvements thereon existing, known as the Hacienda and Central Palma, situated in the municipality of Hog, Occidental Negros, Philippine Islands, mortgaged the same to the plaintiff herein as security for the payment of the sum of seven hundred fifty thousand pesos (P750,000) Philippine currency, together with interest thereon at the rate of eight per centum (8%) per annum. The Hacienda Palma is a plantation containing approximately 899-01-40 hectares used for the cultivation of sugar cane. The Central Palma is a milling plant for the production of centrifugal sugar from sugar cane, having a capacity of approximately 200 tons of sugar cane per day. The Central Palma is situated on the Hacienda Palma. A copy of the mortgage to plaintiff is hereunto attached, marked Exhibit A, and made a part hereof.

"III. The said mortgage was duly registered in accordance with the provisions of the Land Registration Act, on or about the 28th day of July, 1920, at 3 p. m.

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"IV. After the letters, Exhibits B and C, hereunto attached, and made a part hereof, were written and received, and before the beginning of the milling season of 1921-1922, one H. G. Shoemaker was put in charge of the Hacienda Palma and the Palma Central, as manager, and operated said properties as such manager during the entire milling season of 1921-1922, which ended on or about the 26th day of June, 1922. Plaintiff contends that the said Shoemaker was appointed by and was the agent of the Philippine National Bank and that his possession was that of the said bank.

"V. At the time Shoemaker took charge of the Palma Central as manager, a crop of sugar was growing on the Hacienda Palma. Part of this cane was grown by and was the property of croppers (aparceros) who were cultivating the land on shares. Under the terms of their agreement with Whitaker and Concepcion, these croppers were required to pay and did pay twenty per centum (20%) of all the sugar cane produced by them on the said land by way of rental for its use, and were required to grind the cane produced by them in the Palma Central under an arrangement by which the croppers were to receive thirty-five per centum (35%) of the sugar produced from the cane grown by them, and Whitaker and Concepcion, as owners of the mill, were to receive the remaining sixty-five per centum (65%) of the sugar so produced, twenty per centum as rent for the land and forty-five per centum for their services in grinding and converting the cane into centrifugal sugar. The waste molasses produced from the croppers' share of the cane was also divided between the croppers and the owners of the mill, under their agreement, in the proportion of thirty-five per centum to the croppers and sixty-five per centum to the owners of the mill.

"VI. During the 1921-1922 milling season, which ended the 26th day of June, 1922, while Shoemaker was the manager of the Palma Central, there were produced in the said central a total of 51,205.35 piculs of centrifugal sugar and approximately 165,000 gallons of waste molasses produced from cane received from the following sources:

"(a) 2,935.66 piculs of sugar and about 8,800 gallons of molasses were produced from approximately 1,871 tons of cane grown on the hacienda by Whitaker and Concepcion.

"(b) 8,055.78 piculs of sugar and about 24,200 gallons of molasses were produced from approximately 4,930 tons of cane produced by croppers occupying land forming part of the Hacienda Palma of which sixty-five per centum, viz., 5,236.27 piculs of sugar and 15,730 gallons of molasses, was retained by Shoemaker on behalf of his principal as rent for the use of the land and as compensation for the milling of the cane.

"(c) 40,213.91 piculs of sugar and about 132,000 gallons of molasses were produced from approximately 25,732 tons of sugar cane by planters owning and operating plantation? adjacent to or in the vicinity of the Palma Central, and served by its plantation railroad, of which 15,413.55 piculs of sugar and about 46,200 gallons of molasses were retained by Shoemaker on behalf of his principal as the share of the Central for its services in grinding such cane and converting the juice into centrifugal sugar and molasses'.

"VII. The cost of planting and cultivating the cane grown by Whitaker and Concepcion upon the Hacienda Palma, from which were produced the 2,935.66 piculs of sugar and 8,800 gallons of molasses mentioned in subsection (a) of the paragraph next preceding, was defrayed with funds advanced for that purpose to Whitaker and Concepcion by the Philippine National Bank. The cost of growing the cane from which the sugar and molasses mentioned in subsections (b) and (c) of the paragraph next preceding were produced was defrayed by advances made by Whitaker and Concepcion to the croppers and planters out of funds borrowed by Whitaker and Concepcion for that purpose from the Philippine National Bank.

"VIII. All the sugar and molasses produced by the Palma Central during the 1921-1922 milling season from cane grown on the Hacienda Palma by Whitaker and Concepcion and all the sugar and molasses produced from cane

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received from croppers as rent of the land of the hacienda occupied by them, and all the sugar and molasses retained as compensation for the services rendered by the Palma Central in milling the croppers' share of the cane grown by them on the Hacienda Palma and in milling the cane produced by owners and operators of adjacent and neighboring plantations, was sold by the Philippine National Bank, through the Philippine Sugar Centrals Agency, at an average price of P10.61 per picul for the sugar, and 3¼ cents per gallon for the molasses, and the proceeds of the sale of such sugar and molasses applied to the satisfaction protanto of the indebtedness of Whitaker and Concepcaon to the said bank, upon which indebtedness a balance of P1,007,519.89 is still due and unpaid.

"IX. During the time that Shoemaker was in charge of the Palma Central, he received from the Philippine National Bank, directly and through the Philippine Sugar Centrals Agency, a total sum of P371,890.82, to be used by him in connection with the operation of the Palma Central during the milling season of 1921-1922, which was expended by him as shown by his letter, dated June 20th, 1923, addressed to Mr. Roman J. Lacson, chief of the legal department of the Philippine National Bank, a copy of which and of the statements of account therein mentioned igf attached hereto, marked Exhibit E and made a part hereof.

"X. At the time Shoemaker, on behalf of his principal, took charge of the Palma Central, the rolling stock equipment of the plantation railroad forming part of said central included 42 cane cars were originally the property of the Binalbagan Estate, Incorporated, a corporation owning and operating a sugar central in a neighboring district of the Province of Occidental Negros, but were first loaned to the owners of the Hacienda Palma by Messrs. Whitaker and Concepcion. Under date of March 13, 1920, Mr. Phil. C. Whitaker, as president and general manager of the Binalbagan Estate, Incorporated, executed to the Philippine National Bank a contract of pledge, of which a copy is here-unto attached, marked Exhibit D and made a part hereof.

This contract was registered in the Registry of Chattel Mortgages in the office of the register of deeds of the Province of Occidental Negros on March 20, 1920, but no delivery of possession of the property mentioned in the pledge agreement was made to the pledgee or to any other person on its behalf. It is contended by defendant and denied by plaintiff that the 42 cane cars above-mentioned were included in the 400 cars mentioned in Schedule A attached to said contract, Exhibit D; it is further contended by plaintiff, and denied by defendant, that even if it were the intention of the parties1 to the said contract of pledge, Exhibit D, to include therein the said 42 cane cars, the description of said cars was insufficient to create a valid lien upon them under the provisions of the Chattel Mortgage Law. It is contended by defendant, and denied by plaintiff, that said 42 cane cars here in dispute were included in the 400 cars mentioned in said Schedule A attached to said contract, Exhibit D, and that the same were validly mortgaged to defendant. After the execution and registration of said contract, Exhibit D, the 42 cane cars here in dispute, on or about the 30th day of June, 1921, were transferred to Whitaker and Concepcion, the owners of the Hacienda Palma, and the said Whitaker and Concepcion were debited on the books of the Binalbagan Estate, Incorporated, with the value of said cars, P29,400. It is contended by defendant, and denied by plaintiff, that the transfer of said 42 cane cars was made by one Venancio Concepcion without authority from the Board of Directors of the Binalbagan Estate, Incorporated, and of the Philippine National Bank; it is contended by plaintiff, and denied by defendant, that the transfer of the said cane cars was made by a properly authorized officer of the Binalbagan Estate, Incorporated, with the knowledge and consent of the Philippine National Bank. Thereafter, on or about the 1st day of June, 1922, the said Shoemaker, assuming to act on behalf of his principal, caused 36 of the said 42 cane cars to be removed from the Hacienda Palma and redelivered to the Binalbagan Estate, Incorporated, and the value of said cars, namely, the sum of P25,200, was credited to Whitaker and Concepcion in their account with the Binalbagan Estate, Incorporated, such transfer having been made without the knowledge or consent of plaintiff herein. It is contended by plaintiff, and denied by defendant, that the re-transfer of the said cars was in excess of any authority possessed by the said Shoemaker and that in re-moving the same from the Hacienda Palma and redelivering them to the Binalbagan Estate, Incorporated, he acted in pursuance to

instructions given him by the Philippine Nationad Bank through the Philippine Sugar Centrals Agency. This is the name of an administrative division of the organization of the Philippine National Bank, having no separate corporate entity. At all times herein mentioned Mr. D. M. Sample was the head of the Philippine Sugar Centrals Agency, and authorized by the Philippine National Bank to act as such.

"XI. The documents attached hereto, marked respectively Exhibits F and G, are true copies of minutes of the board of directors of Binalbagan Estate, Inc.; and those marked Exhibits H and I respectively are true copies of their originals. They are to be considered as evidence on behalf of plaintiff.

"XII. The gross amount received by the Philippine National Bank from the sale of the Central's share of the sugar and molasses, including that made from cane grown on the Hacienda Palma, produced during the 1921-1922 milling season in the Central Palma, was the sum of P243,224.09, which was applied by the bank to the payment pro tanto of the amount which the defendant bank advanced to Shoemaker during that period for expenditure in connection with the operation of said Central, as shown by the latter and statements of the said Shoemaker here-unto attached and marked Exhibit E.

"XIII. On or about the 15th day of February, 1922, plaintiff herein brought suit, for the foreclosure of his mortgage upon the Hacienda Palma, in the Court of First Instance of Occidental Negros, Philippine Islands, and on the 28th day of April, 1922, judgment was rendered in said court in favor of plaintiff for the recovery from the mortgagors, Whitaker and Concepcion, of the sura of P750,000, together with interest thereon at the rate of eight per centum (8%) per annum from the 29th day of January, 1920, until paid, and for the further sum of P7,000 as costs and attorneys' fees, and by said judgment it was decreed'that in the event of the failure of the judgment debtors to pay the said sums for which judgment was rendered within three months from the date of said judgment, the mortgaged premises should be sold at foreclosure sale in accordance with law, and the proceeds, or such part thereof as might be necessary, applied to the payment of said judgment. The Philippine National Bank was a parly to that action and filed an answer therein, a copy of which is hereunto attached, marked Exhibit J, and made a part hereof.

"XIV. The judgment debtors in said foreclosure suit, to wit, the said Whitaker and Concepcion, having failed to pay the amount of said judgment, or any part thereof, within the time limited by the judgment hereinabove mentioned, and not having appealed therefrom, plaintiff herein caused the mortgaged property to be sold at foreclosure sale in accordance with law, which said sale took place on or about the 8th day of August, 1922.

"XV. The amount realized by plaintiff from the sale of the mortgaged premises was the sum of five hundred thousand pesos (P500,000), Philippine currency, leaving a balance of four hundred eight thousand eight hundred and twenty-six pesos (P408,826) which is now wholly due, owing and unpaid.

"The parties hereunto respectively reserve the right to introduce such evidence, additional to the facts established by this stipulation, and relevant to the pleadings, as they may consider advisable."

They also made a further stipulation as to Exhibits HH, II, JJ, KK, LL, MM, and NN, and the depositions of certain witnesses.

Upon the whole record the lower court rendered judgment in favor of the plaintiff and against the defendant for P20,571.42 for and as profit which the bank received from the sale of the sugar and molasses, and for the sum of P17,368.50 as the value of the sugar which it received from the croppers, and for the sum of P29,400, the value of the sugar cane ears.

From the decision both parties appeal, the plaintiff contending that the court erred in permitting the bank to take credit for a milling cost of P3.70 per picul, and in holding that it was a possessor in good faith, and that plaintiff is

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not entitled to the grinding on shares profit "during milling season of 1921-1922 of sugar cane grown by adjacent owners of the hacienda and croppers under the milling contracts, and in refusing to find that plaintiff is entitled to the profits which the bank derived from the milling.

The defendant assigns twenty-four errors, in substance, that the court erred in finding that if it had not been for the negotiations between it and the plaintiff for the purchase of the mortgage, Whitaker and Concepcion would have made delivery of the property, and in finding that there is no evidence that the bank held a mortgage on the Palma Estate, and that it did not have any legal interest in the estate, and that its answer in the foreclosure suit was not made in good faith, and that Shoemaker "had stripped the estate of the last vestige of sugar," and in failing to find that the 1921-1922 sugar crop was pledged to the bank, and that it was entitled to collect the fruits and rentals, and in finding that the 1921-1922 crop was affected by the mortgage given to plaintiff by Whitaker and Concepcion, and in finding that the unharvested fruits and uncollected rentals of the mortgaged estate became the property of the plaintiff, and in finding that the mortgagor had any right to the fruits and rentals prior to the time he took possession, and that upon the maturity of the mortgage, such fruits and rentals became a part of the mortgage, and in failing to find that the bank did not make any gain or net profit from the crop of 1921-1922, and in finding the bank liable for the value of the forty-two sugar cane cars, and that they were subject to plaintiff's mortgage, and that the bank received the proceeds, and in finding that the bank was liable for any amount, and in not absolving it from the complaint.

JOHN, J.:

Opposing counsel have filed exhaustive briefs, but under our view of this case the questions as to whether the bank was a possessor of the plantation in good faith, and, if so, what was the financial result of its operations of the property, are the ones which, are important and decisive.

During the times alleged Concepcion was in almost absolute control of the defendant and its funds. A short time previous and with the funds of the bank, he and his associates acquired what is known as the Binalbagan Sugar Plantation, and gave a pledge to the bank on forty-five kilometers of 36-inch railway; 35 pounds rails; two 16-ton locomotives, Vulcan type; two 20-ton Baldwin locomotives, and four hundred 2-ton cane cars to secure the payment of P2,660,000. This was on March 13, 1920. Soon after this was done Concepcion and Whitaker conceived the idea of purchasing the Palma Hacienda in question, and as a result of negotiations between them and the plaintiff, they agreed to purchase the property for P1,500,000, which from one cause or another was increased to P1,695,861.90 at the time the deal was closed. The conveyance to them was made, resulting in the execution of the mortgage by Whitaker and Concepcion for P750,000, and the payment of the balance of the purchase price in money.

It is very apparent from the record that the difference of P45,861.80, which the plaintiff received, between the selling price and the amount of the mortgage, was either directly or indirectly paid out of the funds of the bank. After the respective purchases were made, Whitaker and his associates, with a view of operating them, took possession of both properties and operated them in one form or another until Whitaker and Concepcion delivered the possession of the Palma Estate to the bank, through Shoemaker as its agent. At that time the bank held the above pledge on the property of the Binalbagan Hacienda for P2,660,000, and had invested in the Palma Sugar Central about P945,861.90, all of which was subject to plaintiff's mortgage of P750,000. In this situation Concepcion and Whitaker did not have the money with which to operate the Palma property or to cultivate, plant and harvest the crop, and the bank was called upon to furnish the money for that purpose, to protect its own interest, and from time to time, the bank advanced money for that purpose amounting in the aggregate to about P371,89 0.82.

The stipulation of facts recites that the cost of planting and cultivating the cane grown by Whitaker and Concepcion upon the Hacienda Palma from which was produced the 2,935.66 piculs of sugar and 8,800 gallons of molasses, was defrayed with funds advanced for that purpose to them by the bank; that the cost of growing the cane from which the sugar and molasses mentioned in subsections (b) and (c) of the next preceding paragraph was produced, was defrayed by advances made by Whitaker and Concepcion to the croppers and planters out of funds borrowed by them for that purpose from the bank; that all the sugar and molasses from the cane grown on the hacienda by Whitaker and Concepcion, and all the sugar and molasses from the cane received from the croppers as rent of the hacienda land occupied by them, and all the sugar and molasses retained as compensation for the services rendered by the Palma Central, in milling the croppers' shares of the cane grown by them on the hacienda, and in milling the cane produced by owners and operators of adjacent and neighboring plantations, were sold by the bank to the Philippine Sugar Centrals Agency at an average price of P10.61 per picul of sugar, and 3£ cents per gallon of molasses, and that the proceeds of such sale were applied pro tanto to the indebtedness of Whitaker and Concepcion to the bank upon which there is a balance still due and owing of 21,007,519.89. During the time that Shoemaker was in charge of the Palma Central, he received from the bank directly, and through the Philippine Sugar Centrals Agency, 371,890.82 to be used by him in connection with the operation of the Palma Central during the milling season of 1921-1922, and he expended that amount for that purpose. The proof is conclusive that at the time alleged, Concepcion and Whitaker were not only entitled to the possession of the property, but were in its actual possession.

In this situation, and to protect the bank in any further advances which it made, Whitaker and Concepcion surrendered the possession of the property to the bank, and it took the actual, physical possession of the property, and remained in the quiet and peaceful possession during all of the times of which the plaintiff complains. In other words, with the consent and approval of Concepcion and Whitaker, the bank took the actual possession of the property to protect its own interest and in any future advances which it might make for its operation. But it is claimed that by its subsequent actions and conduct, the bank became a possessor in bad faith; that it misled and deceived the plaintiff and induced him to delay the foreclosure of his mortgage until such time as it could harvest and remove the 1921- 1922 crop of sugar.

Upon the return of the plaintiff from Spain, in one form or another, the bank had over P1,000,000 invested in the property, a large portion of which the plaintiff had received as a part of its purchase price.

It appears that from time to time, there were negotiations between them with the end in view that the bank would take over plaintiff's mortgage, and it is very apparent that at one time the bank seriously contemplated doing so. It is also apparent that it would have been a good business investment for the bank to have done so, and that, as the owner of plaintiff's mortgage, it would have been in a position to better protect its own interests. But, in the final analysis, there was no express contract or agreement that the bank would take over plaintiff's mortgage, and at or about that time, there was a financial upheaval in the bank, and Concepcion no longer had control of its funds.

It is very apparent that the plaintiff needed his money, and from his point of view he wanted the bank to take over plaintiff's mortgage. But he also knew, or should have known, that the bank was lawfully in possession of the property, and had advanced large amounts of money to plant, cultivate, and harvest the growing crops of sugar. With this knowledge, he did not apply for the appointment of a receiver or take possession of the property. It is a matter of common knowledge that during all of this time the price of sugar was down, and that few, if any, sugar plantations were operated at a profit, and apparently plaintiff was willing that the bank should remain in possession and harvest the crops pending any negotiations for the sale and purchase of his mortgage. In other words, having knowledge of the fact that the bank was in possession, and the character, nature, and purpose of its possession, and that in legal effect it was in possession as a creditor, the plaintiff, without protest or objection,

suffered and permitted the bank to remain in possession until the sugar crop was fully harvested, hoping and expecting that it would purchase his mortgage and pay him his money.

The plaintiff could have brought his suit to foreclose any time after his mortgage became due. That was a matter in his own choice and discretion. Although he may have thought and expected that the bank would take over his mortgage, he had no legal right to delay his suit to foreclose, relying upon anything which it said or did, and hold the bank liable for his own delay. Upon that point, plaintiff's claim is not tenable.

In legal effect, plaintiff, as mortgagor, now seeks an accounting from the bank during the time it was in possession of the property as a creditor.

As we analyze the evidence, the bank not only took possession of the property in good faith, but it continued to remain in possession in good faith. This is specially true in so far as it sought to get back its money which was used in planting, growing, harvesting, and marketing the crops. It appears from paragraph XII of the stipulation of facts that the gross amount received by the bank from the sale of the Central's share of sugar and molasses, including that which was made from cane grown on the Hacienda Palma during the milling season of 1921-1922 in the Central Palma, was P243,224.09. It also appears from Exhibit E, which is a financial statement certified to by Timoteo Laureano, as bookkeeper, and approved by Shoemaker, and referred to in paragraph XII of the stipulation that, while the bank was in possession, it actually paid out P371,890.82. In other words, its actual receipts during the time it was in possession were 243,224.09, and its actual disbursements were 371,890.82. But it is contended, and the trial court found, that a large amount of the money, which the bank paid out, should not be charged to operating expenses. Assuming that to be true, there is still a wide margin of expenditures for operating expenses over receipts. Plaintiff relies on article 1877 of the Civil Code, as follows :

"A mortgage includes all natural accessions, improvements, growing fruits, and rents not collected when the obligation falls due, and the amount of any indemnities paid or due the owner by the insurers of the mortgaged property or by virtue of the exercise of the power of eminent domain, with the declarations, amplifications, and limitations established by law, whether the estate continues in the possession of the person who mortgaged it or whether it passes into the hands of a third person," and cites the case of Royal Insurance Company vs. Miller (199 U. S., 353; 50 L. ed., 226). That was a case in which the owner of a sugar plantation in Porto Rico mortgaged it to a bank in Ponce to secure a loan of $15,036.27, in which the mortgage covered the plantation, sugar central, and appurtenant buildings. In terms it included all the property described "and the fruits thereof," all of which was insured and destroyed by fire. The mortgagor brought an action against the insurance company to recover the value of the property lost, including the value of sugar and molasses, which were harvested from the plantation and stored in one of its warehouses. In legal effect, the United States Supreme Court held that the mortgagor could recover the value of the sugar and molasses from the insurance company under the provisions of the law very similar to article 1877 of the Civil Code. Upon the facts stated in the opinion, that is good law, but there is a marked legal distinction between the facts in that and the instant case. There, the insurance company had nothing whatever to do with the planting, cultivating, harvesting, and milling of the sugar and molasses. Here, the bank was a creditor in possession, and it furnished and advanced the money which produced the sugar and molasses, without which they would not have been produced.

In the case of the insurance company against Miller, the mortgage itself specifically recites that it covered "and the fruits thereof." In the instant case, fruits are not mentioned or described in plaintiff's mortgage, and the only right which the plaintiff has or claims to growing fruits is founded on article 1877 of the Civil Code. Under the facts shown in the record that article must be construed in connection with, and as it relates to, other articles of the Code.

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In construing article 1877, in volume 12, page 500, Manresa says:

"This principle of extension of the incumbrance is based on the fact that the realty and the accessions permanently incorporated thereto form a unity and on the presumed will of the person who mortgaged it or effected the incorporation, whereby it is supposed that in creating a real right upon a real property the mortgagor subjects the whole property to the incumbrance, and that the incorporation of any additional thing to a property of this class is made so that the condition and consequences of the lien to which the property is subject will follow the same."

Article 1879 provides:

"The creditor may demand from any third person in possession of the mortgaged property the payment of the part of the credit secured by such property, in the manner and form established by law."

Article 1880 provides:

"The form, operation, and effect of mortgages as well as all matters relating to their creation, modification, and extinction, and all other matters which have not been included in this chapter, shall be subject to the provisions of the Mortgage Law, which continues in force."

Article 112 of what is known as the Mortgage Law provides:

"When the mortgaged estate passes into the hands of a third party, the mortgage shall not extend to the chattels permanently located in the buildings, nor to the improvements which do not consist in repairs, works for security or alterations, provided the costs thereof have been defrayed by the new owner, nor to growing crops and rents due, which are the property of the latter."

Further construing article 1877, in volume 12, page 501, Manresa says:

"However, as provided in article 112 of the Mortgage Law, when the property mortgaged passes to a third possessor, the mortgage will not be extended * * * to the pending fruits and the rents due that belong to the same. * * *

"The ground for this exception is obvious, since in that case the presumed will is lacking, which is the cause and juridical motive of the principle of extension above-mentioned." Subsection 6 of article 1922 of the Civil Code says: "Credits for seed and expenses of cultivation and harvesting, advanced to the debtor, with respect to the fruits of the crops which they were used to produce." In construing that subsection, in volume 12, page 684, Manresa says:

"It is a legal doctrine that no fruits can be held to be such except those remaining after deducting the expenses made for the production, gathering, and preservation thereof."

In addition to that, article 356 of the Civil Code provides :

"He who receives fruits is obliged to pay any expenses which may have been incurred by another in the production, gathering, and preservation thereof."

Here, we have this situation. At the time the bank took possession, the property was run down and out of repair, and there were no funds with which to do anything. From time to time as required the bank advanced the money with which to prepare the soil, plant, cultivate, and harvest the crops, and made certain repairs which were thought and deemed necessary to operate the property and make it a going concern.

It took and remained in peaceful possession of the property, and in legal effect was a creditor in possession, and any money which it expended on the property was expended in good faith. The proof is conclusive that the

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amount which it expended during the period of its possession was more than the amount it received from all sources. The plaintiff knew or should have known that the bank was in possession, and the nature and purpose of its possession, and that it was expending its money in operating the property. Yet, in the face of that knowledge, he did not utter a word of protest, claim or assert his right to possession. Apparently, he was content with the possession of the bank, and that it should expend its own money in the operation of the property. After it surrendered possession of the property, and relying upon article 1877, plaintiff now contends that, as mortgagee, he is entitled to all of the growing fruits on the property as of the date when his mortgage matured.

Upon the facts shown in the record and the authorities above cited, article 1877 will not bear that construction. Under such facts, the most that plaintiff could claim would be the net proceeds of the growing fruits. It appearing that the bank in good faith expended more money than it received, and that there are no net proceeds from its operation of the property, it follows that there is nothing for which the bank should account to the plaintiff. The bank ought not to be held responsible for the low price of sugar. Under the conditions then existing, it is very probable that, if the plaintiff himself had taken possession of the property at the time the bank did, and had operated it, that he also would have sustained a loss. As to the sugar cane cars, it appears that on the 13th day of March, 1920, the Binalbagan Estate, Inc., executed a mortgage to the defendant bank to secure the payment of a sum not to exceed 1*2,660,000 upon certain property, including "four hundred (400) two tons' cane cars." While this mortgage was in force and effect, and without obtaining any formal release, forty-two sugar cane cars were taken and removed from the Binalbagan Central to the Palma Central where they were used in the operation of the Palma property. At the time of their removal, an entry was made on the books of the Binalbagan Estate charging them to Whitaker and Concepcion at a valuation of P29,400.

When the bank surrendered possession, thirty-six of the cars were taken from the Palma Central and returned to the Binalbagan Estate, and a corresponding entry was made in the books, giving credit to Whitaker and Concepcion for the value of the returned cars. It also appears that during the time they were in use on the Palma Central, the remaining six were worn out and became of no value, and for such reason were not returned.

The plaintiff claims that when the cars were placed and used upon the Palma Central, they became subject to his mortgage, and for such reason he is entitled to judgment against the bank for their value, and that is what the trial court found.

The proof is conclusive that the cars in question were a portion of 400 cars covered by the bank's mortgage. In other words, the bank held a mortgage on the cars which were removed from the Binalbagan Estate to the Palma Central, and because they were later returned to the property from which they were taken, plaintiff claims that he should have judgment against the bank for the value of the cars which were mortgaged to the bank.

There is no evidence that the bank released its mortgage or that it was ever intended by any one that the cars in question should become permanently affixed to, or a part of the Palma Estate. The transaction was more in the nature of a loan of the use of the cars. It was never intended that they should be released from the mortgage, or that the title to them should pass out of the Binalbagan Estate and become vested in the Palma Central. In the absence of a release from its mortgage, it would be a legal anomaly to render judgment against the bank for the value of the cars upon which it had a mortgage to secure a preexisting debt.

The fact that the cars when removed were charged to Whitaker and Concepcion, and that they received credit on the books for them when returned, would not release the cars from the bank's mortgage* and the fact that they were returned after the bank surrendered possession of the Palma Central clearly indicates that it was a loan of the use of the cars and that it was never intended that the title should pass from the Binalbagan Estate to the Palma Central.

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It is contended that the bank's mortgage on the cars is void for want of certainty and identity. But the proof is conclusive that the bank had a mortgage on 400 cars, and that 42 cars were taken from the Binalbagan Estate to the Palma Central, and that 36 of them were later returned. Hence, it must follow that when they were taken, the cars in question were the property of, and belonged to, the Binalbagan Estate. Plaintiff does not claim to be an innocent purchaser for value. Any title that he claims to have on the cars is founded on his mortgage.

Under this view it is not necessary to pass upon the other numerous questions raised on the appeal.

The judgment of the lower court in favor of the plaintiff and against the defendant bank is reversed, and it is absolved from all liability, without costs to either party on this appeal. So ordered.

Araullo, C. J., Johnson, Street, Avanceña, Ostrand, and Romualdez, JJ., concur.

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