

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. EUGENIO KILAYKO, DEFENDANT AND APPELLEE.

G.R. No. 10630. December 21, 1915

Ponente: CARSON, J.

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CARSON, J.:

The information in this case charges the defendant and appellee with a violation of the penal provisions of section 12 of the Chattel Mortgage Law (Act No. 1508), in that, as it is alleged, he sold certain property, mortgaged by him under the provisions of that Act, without the consent of the mortgagee, and notwithstanding the fact that the debt secured by the chattel mortgage had not been paid in full.

After the defendant had been arraigned and pleaded not guilty, and before any of the witnesses were called to the witness stand, counsel for the accused interposed what he called a demurrer to the information, wherein; after admitting the truth of the facts alleged in the information, he insisted, that the information should be dismissed, because, as he urged, certain facts within the knowledge of the court made it clear that the pending criminal action could not be successfully maintained.

After some discussion by counsel, the so-called demurrer, which was in truth a motion to dismiss the information, was submitted with the understanding that both parties admitted and agreed upon the following statement of facts: First, that the defendant did in fact sell the mortgaged property described in the information without the consent of the mortgagee, and without having first paid the mortgage debt in full. Second, that at the time when the mortgaged property was sold a substantial part of the indebtedness secured by the mortgage still remained unpaid. Third, that at the time of the institution of this action the total amount of the indebtedness had been discharged either by payment direct to the creditor, or by the deposit of the total amount of the unpaid balance of the mortgage debt in the hands of the clerk of the court, after formal tender of the creditor and his refusal to accept the amount thus tendered in settlement of the indebtedness.

The contention of counsel for the defendant in the court below was based on the erroneous assumption that the penal provisions of section 12, of Act No. 1508, do not authorize the enforcement of the penalties therein prescribed, in any case wherein it appears that the mortgage indebtedness has been discharged in full at the time of the institution of criminal proceedings. In support of this contention, counsel assumes that the protection of the mortgagee, in any case in which criminal proceedings are instituted, is the sole purpose and object of the penal provisions of the statute. The argument would seem to be that since the statute prescribes that the fine which the courts are authorized to impose on conviction of a wrongful sale of mortgaged property must be equal in amount to double the value of the property sold, one-half of which is to go to the mortgagee, it could not have been the intention of the legislator to permit the mortgagee to recover such a fine in any case in which he had already recovered the amount of the indebtedness secured by the mortgage. Thus, in the case at bar, in which the mortgage debt of P10,200 had been paid in full when the criminal action was instituted, it is urged that it would be unjust and unreasonable to impose a fine of P20,400, and turn over one-half of that amount, to the mortgage creditor, thereby permitting him to recover double the amount of the original indebtedness.

To these contentions of counsel we answer: First, that we know of no limitation on the power of the legislator to prescribe lawful penalties for wrongful acts such as that with which the accused was charged in the case at bar; and that on principle, and in accordance with a like usage in cases of robbery, theft, embezzlement and estafa, the mere fact that the indebtedness secured by the mortgage has been paid in whole or in part, after a wrongful sale of the mortgaged property, does not necessarily relieve the wrongdoer of criminal liability for the offense committed by him: Second, that the penalty prescribed by the statute is either a fine, or imprisonment for not more than six months, or both; so that it is left to the sound discretion of the courts whether or not a fine will be imposed in case of conviction; and in any case wherein the imposition of the prescribed fine would seem to be excessive or to work an undue hardship on the debtor, the courts are empowered to limit the penalty imposed to imprisonment for a period which may not exceed six months and may be of as short duration as the court may deem proper under all the circumstances of the case: and third, that the object of the penal provisions of the Chattel Mortgage Law is not merely to protect the mortgagee in particular cases in which criminal actions are instituted, and to secure the payment of the mortgage indebtedness in such cases (although they may, and should have that effect in many instances), but also to give the necessary sanction to the provision of the statute in the interest of the public at large, so that in all cases wherein loans are made and secured under the terms of the statute, the mortgage debtors may be deterred from the violation of its provisions and the mortgage creditors may be protected against loss or inconvenience resulting from the wrongful removal or sale of the mortgaged property.

The trial judge granted the motion by counsel for the accused and dismissed the complaint, relying, as it would appear from his opinion, on the fallacious contentions of counsel for the accused.

The parties seem to have treated the action of the judge merely as a ruling on a demurrer and not as a decision of the cause on the merits; and the provincial fiscal brought the case here on appeal without objection.

In dismissing the complaint the trial judge refers to the motion of counsel for the accused as a "so-called demurrer;" but it does not clearly appear whether he regarded the entry of his order dismissing the complaint as a decision of the case on the merits, or a ruling sustaining a demurrer.

We are of opinion, however, that the ruling of the trial judge on the motion of counsel for the accused was in truth and in effect a final judgment on the merits from which no appeal lay on behalf of the Government. The accused had been arraigned and pleaded "not guilty," and the judgment of the court was entered upon an agreed statement of facts. The agreed statement of facts disclosed everything which the prosecution and the accused were prepared to prove by the testimony of their respective witnesses. After the submission of the agreed statement of facts, the trial was regularly terminated, and it only remained for the trial judge to enter his judgment convicting and sentencing the accused, or acquitting him and dismissing the information upon which the proceedings had been instituted. Manifestly, the accused was in jeopardy of conviction from the moment the case was submitted on the agreed statement of facts until judgment was entered dismissing the information. Indeed, there can be no doubt that but for the erroneous view of the trial judge as to the nature and effect of the penal provision of section 12 of the Chattel Mortgage Law, a judgment of conviction would have been lawfully entered upon the agreed statement of facts, followed by the imposition of the prescribed penalty.

The judgment entered in the court below was not a mere order sustaining a demurrer, but a final judgment disposing of the case on the merits; so that were we to reverse the judgment and direct the court below to proceed with the trial, the accused would be entitled to have the information dismissed on the plea of double jeopardy.

The provincial fiscal perfected an appeal from the judgment on the erroneous theory that the judgment of dismissal was an order sustaining a demurrer to the information; and without objection on the part of the accused, the record was brought here, and the case argued and submitted on that theory. Clearly the Government had no

right of appeal from the judgment entered in the court below, and the appeal must be dismissed with the costs de oficio. We have, however, deemed it proper to discuss the questions actually submitted with relation to the construction which should be placed upon the statute, partly, in order to make clear the grounds upon which we base our ruling as to the nature and character of the proceedings had in the court below, and partly, to avoid any possible misapprehension which might arise as a result of the fact that our dismissal of the appeal leaves the judgment of the court below, dismissing the information, in full force and effect.

Ten days hereafter let judgment be entered dismissing the appeal in this case with costs de oficio, and ten days thereafter let the record be returned to the court wherein it originated. So ordered.

Arellano, C.J., Torres, Johnson, Trent, and Araullo, JJ., concur.

CONCURRING
MORELAND, J.,

I agree on the ground that the case was tried in the court below and the accused acquitted.

Appeal dismissed.

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