

**PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY (LTD.),
PLAINTIFF AND APPELLEE, VS. ARMANDO CAMPS Y CAMPS AND J. S.
LI TSUNG LING, DEFENDANTS. ARMANDO CAMPS Y CAMPS,
APPELLANT.**

G.R. No. 11607. December 14, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented by this appeal is whether or not the sale under execution by the sheriff, of certain real property including the buildings thereon, should be confirmed. The facts pertinent to that question and out of which it arose are undisputed and are as follows:

First. That on the 2d of October, 1912, the defendant, in order to guarantee the payment of a certain sum of money, executed and delivered to the plaintiff a mortgage on certain real estate, which is particularly described therein, including "the buildings erected thereon." (See Exhibit A.)

Second. That on the 11th of June, 1913, to secure the payment of an additional sum of money, the defendant executed and delivered to the plaintiff another mortgage upon the same property, which mortgage contained substantially the same conditions as those stated in the first. (See Exhibit B.)

Third. That, neither of said sums of money secured by said mortgages having been fully paid and satisfied, the plaintiff on the 11th of March, 1915, commenced an action to recover said sums and to foreclose said mortgages.

Fourth. That on the 4th of May, 1915, the defendant and appellant, Armando Camps y Camps, presented an answer to said petition in which he, after recognizing the execution and delivery of said mortgages (Exhibits A and B), denied each and all of the facts stated in the complaint. The defendant further alleged that the sum of P3,000, included in said mortgages for the payment of expenses, etc., was excessive.

Fifth. That upon the issue presented by the petition and answer, the cause was submitted to the court on the 23d of July, 1915, and, after hearing the respective parties, the Honorable James A. Ostrand, judge, rendered a judgment in favor of the plaintiff and against the defendant, ordering the foreclosure of said mortgages and requiring the defendant to deposit in the court, in accordance with the provisions of law, the amount of said judgment.

Sixth. That later the said judgment not having been paid an execution was issued out of the Court of First Instance of the city of Manila, on the 5th of October, 1915, for the purpose of recovering the amount of said judgment.

Seventh. That, during the effort of the sheriff to sell the property included in said mortgages, the defendant interposed an objection that a certain cinematograph which had been constructed upon the property mortgaged was not included therein and that it should not, therefore, be sold under said execution.

Eighth. That notwithstanding said objection the sheriff did sell the property mortgaged "together with the buildings erected thereon."

Ninth. That later the return of the sheriff on said execution was made to the court and the defendant then objected to the confirmation of said sale.

Tenth. That, after a consideration of the judgment theretofore rendered by Judge Ostrand, the execution, the sale, and the objection made by the defendant, the Honorable George R. Harvey, judge, on the 18th of November, 1915, confirmed said sale.

From the order of Judge Harvey confirming said sale the defendant appealed to this court and made the following assignments of error:

"(1) The lower court erred in declaring that the sale by the sheriff was accomplished in fulfillment of the judgment, the writ of execution, and the law; (2) the lower court also erred in declaring that the claim of the defendant that the building 'Cine Manila' ought to be excluded from sale by the sheriff inferred the revision, amendment, or modification of the judgment, now final, pronounced by the court; (3) that the same court erred in confirming the sale accomplished by the sheriff, without excluding or declaring excluded from said sale the building 'Cine Manila.' "

The appellant admitted that the said cinematograph in question was created by simply reforming a building located on the land at the time said mortgage was executed and delivered; that it was not a new structure on said land; that it was the result of changing and altering a building already upon the land, for the purpose of making it into a cinematograph.

After a careful examination of the record and the brief of the appellant, we find that the questions which he presents have heretofore been discussed by this court and decided against his contention in the case of *Bischoff vs. Pomar and Compania General de Tabacos* (12 Phil. Rep., 690). In that case this court discussed the very articles of the Mortgage Law upon which the appellant now seeks relief. In that case the court said:

"So that even though no mention had been made of said machinery and tramway in the mortgage instrument, the mortgage of the property whereon they are located is understood by law to extend to them and they must be considered as included therein, as well as all other improvements, unless there was an express stipulation between the parties that they should be excluded."

In the present case "the buildings erected thereon" were expressly included in the mortgage. Nothing in the form of buildings was excluded. The buildings, therefore, were manifestly included in the mortgage.

In view of the decision in the case of *Bischoff vs. Pomar and Compania General de Tabacos* (12 Phil Rep., 690), we find it unnecessary to rediscuss the articles cited by the appellant in support of his contention. For the foregoing reasons, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Torres, J., concurs.

Carson, and Moreland, JJ., concur in the result.

Trent, J., reserved his vote.

Araullo, J., dissents.

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