

**FLORENCIO GONZALEZ DIEZ, PLAINTIFF AND APPELLEE, VS.
VICENTE DELGADO AND T. B. IMPERIAL, PROVINCIAL SHERIFF OF
AMBOS CAMARINES, DEFENDANTS. VICENTE DELGADO,
APPELLANT. WALTER E....**

G.R. No. 11732. January 12, 1918

Ponente: TORRES, J.

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TORRES, J.:

In these proceedings brought in the Court of First Instance of Camarines by Florencio Gonzalez Diez for the redemption of four properties belonging to Pedro Bonnevie sold at public auction and adjudicated to the Chinaman Vicente Delgado, judgment was rendered, on June 10, 1915, holding that the plaintiff was entitled to redeem said properties from their purchaser, the defendant Delgado, upon payment to him of P465 with interest thereon at the rate of one per cent per month from February 3, 1913, to January 2, 1914, on which date the plaintiff attempted to redeem same from the defendant first deducting, however, from said sum that of P310, as the products and rents collected by the sheriff and delivered to Vicente Delgado. The latter was ordered to execute in favor of the plaintiff Gonzalez Diez a certificate of redemption, upon payment of said sum. Furthermore, the sheriff was ordered to put the plaintiff in possession of the four redeemed properties. The intervention presented by Walter E. Olsen was dismissed, but to him and to Vicente Delgado was reserved the fight to bring such action or actions, by separate proceedings, as might be proper against the property sold under execution that had belonged to Pedro Bonnevie.

No special finding was made as to the costs. From that judgment the respective counsels for the defendants and for the intervenor appealed and moved for a reopening of the case. This motion was denied and counsel excepted.

In February, 1909, Vicente Delgado brought suit against Pedro Bonnevie, in the Court of First Instance of Ambos Camarines, registered under No. 1022, for the collection of P6,009.50 which the latter owed him. In those proceedings judgment for P2,754.81 was rendered in Delgado's favor, on August 30, 1910, and was affirmed by the Supreme Court,[1] with interest from said date.

On December 9, 1912, a writ of execution issued in the aforementioned proceedings No. 1022, and in compliance therewith, on February 3, 1913, the provincial sheriff T. B. Imperial, sold at public auction and to the highest bidder ten urban properties situated in Naga, formerly Nueva Caceres, belonging to the judgment debtor Pedro Bonnevie, and these were adjudicated to the purchaser and judgment creditor Vicente Delgado, for the amount of P1,750. Among these ten properties so sold, were the four described in the complaint that initiated these proceedings; their sale prices were the following:

"For the property described under the letter A in the complaint.....

P250

"For the property described under the letter B in the complaint.....

40

"For the property described under the letter C in the complaint.....

150

"For the property described under the letter D in the complaint.....

25

465"

As the proceeds of said public sale were insufficient to cover Vicente Delgado's credit, he demanded that the sheriff Imperial proceed to collect the judgment debtor Bonnevie's credits; this was done, with the result that said debtor's tenants paid the sheriff the amount of the rents for the properties sold at auction. There were collected from this source, as rentals for the properties B and C, the sums of P90 and P220, respectively, or a total amount of P310.

By virtue of the judgment rendered by the Court of First Instance of Ambos Camarines in the civil case No. 1524, Vicente Barretto vs. Pedro Bonnevie, and in civil case No.1539, Florencio Gonzalez Diez vs. Pedro Bonnevie, for foreclosure of mortgages, the auction sale held on February 3, 1913, was set aside, in so far as concerned the six properties adjudicated to Vicente Delgado, the remaining four being those involved in the present suit.

On October 1, 1910, Gonzalez Diez acquired from Jose Robles Lahesa a credit of P10,000 against Pedro Bonnevie, secured by a mortgage on six properties situated in Nueva Caceres now Naga, Ambos Camarines, said mortgage was recorded in the registry of property on February 7, 1910.

For nonfulfilment of contract, the creditor Gonzalez Diez, on December 23, 1912, brought suit, registered under No. 1539 in the Court of First Instance of Ambos Camarines, against Pedro Bonnevie, to enforce payment of Diez's mortgage credit of P10,000 and, on July 22, 1913, judgment was rendered in favor of this creditor for the sum of P13,175, with interest. As no appeal was taken this judgment became final.

On October 11, 1913, the properties mortgaged to Florencio Gonzalez Diez were levied upon, sold at public auction and adjudicated to him for P8,500. This sale was approved by the court. But, as there still remained an unpaid balance of P4,675, on the creditor's motion another writ of execution was issued, on November 25, 1913, whereby at the indication of Gonzalez Diez, there was attached the right of redemption held by the judgment debtor Pedro Bonnevie in the four properties that had been judicially sold and awarded to the creditor Vicente Delgado. The term for the redemption was to expire on February 3, 1914. After due legal procedure said right of redemption was sold at public auction to the judgment creditor Florencio Gonzalez Diez, on December 17, 1913, for P2,000, or P500 for each property.

The second creditor Florencio Gonzalez Diez made a demand upon the first creditor Vicente Delgado for the resale of the said four properties by virtue of the right of redemption which Diez had acquired at the judicial sale held in December, 1913, and inclosed with his letter Exhibit A, containing that demand, four documents necessary to establish his right as redemptioner. The first judgment creditor Vicente Delgado refused to accede to that demand and alleged that he was entitled to retain said four properties for the sum of P1,623.71, as disclosed by the defendant Vicente Delgado's Exhibit 1 and 2 (record, pp. 80-81). Therefore, on the 24th and 25th of January, 1915, Gonzalez Diez deposited with the clerk of court the sum of P265 for the purpose of effecting the repurchase of said four real properties (Exhibit B).

At this status of the proceedings, the redemptioner Florencio Gonzalez Diez, on January 23, 1914, filed against Vicente Delgado a complaint, originating this suit in order to be declared entitled to redeem from the latter the four properties described in the complaint, to compel Delgado to sell them to him, and afterwards to render him an account of all sums received and paid. It was further prayed in the complaint that said properties, the subject matter of the suit, be delivered to the plaintiff, and that the defendant Delgado be ordered to pay Diez P500 as losses and damages, together with the costs of the case.

On January 24, 1914, the Honorable A. C. Carson, a Justice of this Supreme Court, issued a writ of preliminary injunction against the defendant sheriff, T. B. Imperial, enjoining him from issuing to the defendant Vicente Delgado the final certificate of title of said four properties acquired by the latter at auction.

With respect to the intervener, Walter E. Olsen, the record discloses that Antonio V. Herrero, a creditor of Pedro Bonnevie for P20,000, assigned P11,000 of this amount to Joaquin Garcia Lopez, who, for its collection, filed suit, No. 8658, in the Court of First Instance of Manila, against Bonnevie and, on March 15, 1912, was awarded judgment for said sum of P11,000 together with interest thereon. That judgment became final and executory for the reason that the Supreme Court held that the bill of exceptions submitted by Bonnevie[2] had been improperly admitted. In the appeal raised by Bonnevie before the Supreme Court the intervener, Olsen, together with Hartford Beaumont, became sureties for the appellant to guarantee the amount of the judgment obtained by Joaquin Garcia Lopez; but, by reason of the dismissal of said appeal, the creditor Garcia Lopez, toward the end of 1912, procured an attachment of the property belonging to the intervener, Olsen, in order to obtain the execution of the judgment awarded him. Walter E. Olsen, therefore, on January 2, 1913, had to pay the amount of said judgment, P13,730.36.

It further appears from the record that subsequently Garcia Lopez obtained in the court of this city a judgment in his favor and on his petition the sheriff of Ambos Camarines was ordered to levy attachment on all the property that might be shown by the registry to belong to the debtor Pedro Bonnevie; and that said sheriff was informed that the writ of execution would be transmitted by mail. All this took place on May 16, 1912. The register of deeds of Ambos Camarines demanded that the sheriff of that province inform him in favor of whom the entry of the attachment should be made, and the sheriff, by a letter of March 27, 1912, informed him that the judgment creditor was Joaquin Garcia Lopez, in whose favor such entry should be made.

On March 18, 1912, the register of deeds made an entry of presentation in volume 6 of his daybook setting forth that, at 8.30 that morning, the sheriff had presented to him a certified copy of a telegram from the sheriff of the city of Manila informing the addressee of the issuance of a writ of execution against Pedro Bonnevie for P13,000, and requiring said register to make an entry of the attachment of the property belonging to the debtor Bonnevie and recorded in the registry. It does not appear that this entry was made.

On March 22, 1912, the sheriff of Ambos Camarines levied upon the properties of the judgment debtor Pedro Bonnevie, among which were those designated under the letters (a), (d), (e), and (i), these four latter being the same properties sought to be redeemed by plaintiff Gonzalez Diez. However, the execution against Bonnevie by which his properties were attached on March 22, 1912, was transmitted to said sheriff of Ambos Camarines by that of Manila, only on January 13, 1913 (record, p. 36), for the reason that on March 30, 1912, on account of an agreement between Garcia Lopez and Bonnevie, the judge of the Court of First Instance of Manila issued an order suspending the execution of the judgment against Bonnevie and directing that the sheriff of Ambos Camarines desist from performing said execution of judgment though it should be understood that said suspension would not release any real property which had previously been attached and whose attachment had been recorded in the registry of property of the Province of Camarines. Those facts apparently explain why the judgment creditor Garcia Lopez did not remit to the sheriff of Camarines the funds required for the legal notices and publications

and other proceedings connected with the judicial sale.

As disclosed by the proceedings had by the sheriff of Ambos Camarines (Exhibit BB, pp. 33-35), the order for the suspension of the attachment of March 30, 1912, was telegraphed to him on the same date, March 30, but said attachment of the real property of the judgment debtor Pedro Bonnevie had already been made when the telegraphic order of suspension was received, for, according to the return made by the deputy sheriff in serving said order of suspension of execution, the attachment levied on Pedro Bonnevie's personal property was dissolved, leaving in force, however, that levied on the real property specified in the Exhibit BB.

The defendant Vicente Delgado, in answer to the complaint filed by Gonzalez Diez, asked to be absolved therefrom; that the plaintiff be declared not entitled to redeem the properties referred to, on account of his failure duly to deposit the price of the sale together with the interest thereon; that the defendant be held to have a lien on said property; and that, in case it be recognized that the plaintiff Gonzalez Diez had a right to make the redemption, he be compelled to pay P465—the price at auction of said four real properties—together with the interest thereon, and the sum of P1,623.71, the value of the defendant's lien. In the amended answer, the defendant asked for a dismissal of the complaint, with the costs against the plaintiff, on the grounds that the complaint did not state sufficient facts for a cause of action and that the right of redemption is not attachable according to the laws in force, as being a mere special privilege granted by the law exclusively to the judgment debtor and to certain and determinate redemptioners, among whom the plaintiff, Gonzalez Diez, was not comprised.

The intervener, Walter E. Olsen, filed his complaint on August 3, 1914, and therein alleged that, as surety of Pedro Bonnevie, he paid P13,730.36 to Joaquin Garcia Lopez, subrogating himself in all the rights and actions of the creditor Garcia Lopez; that the instrument of debt executed by Pedro Bonnevie in favor of Antonio V. Herrero, predecessor in interest of Garcia Lopez, dated December 28, 1909, was prior to the instrument of debt executed on January 3, 1910, by Pedro Bonnevie in behalf of Jose Robles Lahesa, predecessor in interest of the plaintiff, Gonzalez Diez; that the judgment against Pedro Bonnevie, obtained by Garcia Lopez on March 15, 1912, is prior to those obtained by Vicente Delgado on August 30, 1910, and by Florencio Gonzalez Diez on July 1, 1913; and that the cautionary entry made in the registry of property in favor of Garcia Lopez on March 22, 1912, of the property of Pedro Bonnevie, predecessor of the intervener, is an encumbrance which makes that property subject to the payment of the judgment whereby said property was levied upon, the attachments effected by Vicente Delgado and Florencio Gonzalez Diez subsequent to said date of the cautionary entry, March 22, 1912, being ineffective. Therefore the intervener, Walter E. Olsen, prayed the court to hold that the intervener's right takes precedence over that of the plaintiff Gonzalez Diez as well as that of the defendant Vicente Delgado; that the attachment levied on Bonnevie's property on March 22, 1912, is an encumbrance; that the judicial sale made of said property before the payment of the value of the preferred right to which it was subject is null and void, unless the purchaser of said property shall reimburse the intervener in the full amount of the judgment; and that the costs of the case be against the other parties.

The plaintiff, Gonzalez Diez, after denying all the allegations made by the intervener Olsen's petition, set forth in especial defense that the judgment obtained on August 30, 1910, by the defendant, Vicente Delgado, against the debtor Bonnevie in the Court of Ambos Camarines, is of a date prior to that of the judgment rendered on March 15, 1912, in the suit prosecuted by Garcia Lopez against the same Bonnevie; that the properties described in his complaint were free of all charge and encumbrance on said date of August 30, 1910, as shown by the registry of property of that province, with the exception of the property mentioned in said judgment obtained by Vicente Delgado; that on July 22, 1913, judgment was rendered in another suit prosecuted by the plaintiff Gonzalez Diez, in the same court of Ambos Camarines, against the same Bonnevie, who was ordered to pay P13,175 with interest; that never up to that time had any entry been made in the registry of property of said province of any

encumbrance whatever on said properties in favor of Garcia Lopez, predecessor in interest of the intervener, nor in favor of the latter, unless perhaps record may have been made in the registry of said judgment awarded the plaintiff on March 15, 1912; that, therefore, any right which the intervener might claim could not prejudice the rights acquired by the plaintiff and the defendant; that said intervener, as well as his predecessor in interest, was aware that the judgment that was being executed was the one obtained by Delgado and by Gonzalez Diez against the property of Pedro Bonnevie, notwithstanding which neither the intervener nor his predecessor in interest took any steps whatever to oppose those judgments in the manner provided by law; that, during the month of December, while two executions were pending in the Court of First Instance, obtained by the intervener Olsen and by Gonzalez Diez, the former succeeded in having the debtor Bonnevie's real property attached and sold at public auction, and did not include in such attachment the right of redemption of the four properties in question, which right was attached and sold at the instance of the plaintiff Gonzalez Diez, without any objection on the part of the intervener or of his predecessor in interest, notwithstanding that they were informed in the matter; that both the sale of the said properties made at the petition of the defendant Vicente Delgado, as well as that made at the petition of Gonzalez Diez, was entered in the registry of property. The plaintiff concluded by asking to be absolved from the complaint in the intervention, with the costs against the intervener Olsen.

From the facts pleaded and proven by the parties in this case, and from the arguments respectively made by them in support of their contentions, the following questions arise, which were duly explained in the judgment appealed from:

1. Is the right of redemption, granted by the law to the execution debtor whose property was previously sold at another public auction, subject to attachment and to sale at public auction ?
2. In the cases where the right of legal redemption is exercised, what sum must the redemptioner pay to the first judgment creditor, the purchaser of the property sold and subject to redemption? and ,
3. Is the sale at public auction of certain properties upon which an attachment lies, placed thereon at the petition of the predecessor in interest of the intervenor and prior in date to that of the attachment levied on the same property by the first judgment creditor (in the instant case, Vicente Delgado), valid or not?

The trial court resolved the first and third questions in the affirmative, and the second in accordance with the provisions of section 465 of the Code of Civil Procedure, only obliging the redemptioner to pay to the purchaser of the properties the amount paid in the acquisition, plus the interest provided by law, together with all the taxes and other lawful expenses paid by the purchaser, after deducting from said amounts the revenue collected by him. In that sense, on June 10, 1915, judgment was rendered whereby it was held (a) that the plaintiff Gonzalez Diez was entitled to redeem from the defendant Vicente Delgado the four properties in litigation, upon payment to the latter of P465, with interest thereon at one per cent per month from February 3, 1913, to January 2, 1914, the date when the plaintiff attempted the redemption, deducting from this amount the sum of P310, the total of the rents collected by the sheriff and delivered to Vicente Delgado; (b) that the defendant Delgado should execute in favor of the plaintiff Gonzalez Diez the corresponding certificate of redemption, upon payment of the price of the redemption; (c) that the defendant sheriff should put the plaintiff in possession of the disputed properties, after the redemption had been made; and (d) that the complaint in intervention of Walter E. Olsen be dismissed, reserving to the latter, as well as to the defendant Delgado any and all rights which they still might have by reason of their respective credits. There was no express finding as to costs.

Counsel for Walter E. Olsen and Vicente Delgado excepted to this judgment and, after due legal proceedings, perfected their respective bills of exceptions for the review by this court of the findings of fact and of law contained in the judgment appealed from.

1. With respect to the property liable to execution, the Code of Civil procedure, in section 450, provides as follows:

"Sec. 450. Property liable to execution.—All goods, chattels, moneys and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Shares and interest in any corporation or company, and debts, credits, and all other property, both real and personal, or any interest in either real or personal property and all other property, not capable of manual delivery, may be attached on execution, in like manner as upon writs of attachment."

In the decision rendered in the case of *Reyes vs. Grey* (21 Phil. Rep., 73) we held that the term property, in section 450 of the Code of Civil Procedure, "comprehends every species of title inchoate or complete, legal or equitable. The said Code authorized the sale, under execution, of every kind of property and every interest in property which is, or may be, the subject of private ownership and transfer. It deals with equitable rights and interest, as it deals with legal, without anywhere expressly recognizing or making any distinction between them." And, moreover, the rule was laid down that the real test as to whether or not property can be attached and sold upon execution is: Does the judgment debtor hold such a beneficial interest in the property that he can sell or otherwise dispose of it for value? If he does, then the property is subject to execution and to the payment of his debts.

As a result of the legal doctrine established in the case above cited, *Reyes vs. Grey*, it was therein held that the right of usufruct, even though gratuitous, is conveyable for a consideration and liable to attachment and sale. In the case of *Gonzaga vs. Garcia* (27 Phil. Rep., 7) it was stated that in conventional redemptions the vendor may convey to a third party the vendor's right to redeem the property. And in the case of *Benedicto vs. Yulo* (26 Phil. Rep., 160), from the decision rendered therein by this court it is deduced that the judgment debtor, whose property has been sold under execution, may convey or sell his right of legal redemption to third persons.

It is unquestionable that if the judgment debtor *Pedro Bonnevie* could, in the case mentioned, exercise his legal right to redeem the properties of his ownership, sold at the request of his creditor, he had by such right an alienable interest that, in the relations and transactions between men, represents a value equivalent to its price. This interest forms a part of the property of his ownership from which originates his right of redemption, and this right, as private property, is not exempt from attachment and execution. (Sec. 452, Code of Civ. Proc.)

2. Section 465 of the Code of Civil Procedure expressly provides: That the judgment debtor or redemptioner may redeem the property judicially sold from the purchaser at any time within twelve months after the sale, on paying the purchaser the amount of his purchase, with one per cent per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount, at the same rate.

The defendant *Vicente Delgado* accepts the repurchase of the four properties concerned in the complaint, provided that the redemptioner *Gonzalez Diez* pay him, besides the amounts specified by law, the sum of P1,623.71, the total value of defendant's lien in said properties, and relies for the purpose, in the trial court, on the provisions of article 1213 of the Civil Code, and in this appeal on luminous American precedents and on that of the case of *Aldecda & Co. vs. Navarro* (23 Phil. Rep., 203). But notwithstanding all this, we regard the procedure prescribed in said section 465 of the Code of Civil Procedure as being so clear and conclusive as to admit of no modification or different legal interpretation, outside of that of common sense in which the words used in said section must be understood. Had it been the judgment debtor himself, *Pedro Bonnevie*, who had exercised the right of redemption, would the defendant *Delgado* perchance have refused to resell him said four properties, on

the ground that the total amount of the judgment in his favor had not been completely paid by the redemptioner debtor? We think that such a plea would have been untenable. If the acquirer of that right of redemption, the defendant, subrogated himself under exactly the same conditions that bound the judgment debtor, to repurchase the properties sold, we do not know under what legal provisions such a condition could be required of the latter, asking that he be recognized to have the right of a lien over said properties.

The appellant Delgado furthermore insists that his alleged lien falls within the sanction of the last part of the first paragraph of said section 465 of the Code of Civil Procedure, the original English text of which must govern in cases of contradiction with the Spanish. That part says: "And if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest." Which clause, literally translated into Spanish, would be given the following meaning: "Y si el comprador fuera tambien acreedor y tuviere un gravamen anterior al del retrayente, que no sea por virtud de la sentencia bajo la cual efectuo la compra (other than the judgment, etc.) la cantidad de tal gravamen o derecho de retention, con interest." It is to be noted that the purchaser of the property, Delgado, claims a lien precisely under the judgment pursuant to which he purchased said properties; from which it is clearly to be deduced that under the legal provision relied upon by Delgado he has no such lien.

Sutherland, in his work "Code Pleading, Practice and Forms" (vol. 2, par. 2078), citing section 702 of the Code of Civil Procedure of California which, as we are advised, is the matrix of section 465 of the Code of Civil Procedure here in force, gives the same literal construction to said section. His interpretation of section 465 of the present Code of Civil Procedure conveys no different meaning from our own interpretation above given; and none of the legal citations given by the author, in connection with the matter treated in the main text referred to, supports the appellant's contention, but rather do they establish principles contrary thereto.

We particularly refer to the citation of the case of *J. B. Campbell vs. W. J. Oaks*, sheriff (68 Cal., 222). The facts held by the trial court and by the Supreme Court to have been proven are the following: That in September, 1880, the mercantile firm of *A. Blochman & Co.*, of which Ernest Cerf was one of the partners, obtained judgment against *J. B. Campbell* for the total sum of \$653.68 and the costs of the suit; that in an action prosecuted by one *Lasar* against the same *J. B. Campbell*, the latter was also ordered to pay the amount specified in the complaint, and, on January 3, 1881, the defendant-sheriff *W. J. Oaks*, after compliance with the requirements of law, sold at public auction a piece of land belonging to the debtor *Campbell*; that, for the sum of \$3.15, said land was knocked down to Ernest Cerf, who purchased it with the money and on the account of *A. Blochman & Co.*, judgment creditor of said *Campbell* and of which firm the successful bidder, Cerf, was a partner. On the date of the auction sale *Campbell* was able to pay to *Blochman & Co.* only the sum of \$142.71; consequently, there remained a balance of more than \$500 to be collected by *Campbell*. On January 11, 1881, the judgment debtor, *Campbell*, petitioned the sheriff, the defendant *Oaks*, to be allowed to repurchase the land sold to Cerf; but the sheriff refused to permit the proposed redemption on the ground that the property sold was still encumbered in favor of *Blochman & Co.* by reason of a judgment not yet totally satisfied.

The court below—making application of section 702 of the Code of Civil Procedure of California (almost the same as section 465 of ours) the last clause of which textually reads as follows: "* * * and if the purchaser be also a creditor having a prior lien to that of the redemption (other than the judgment, etc.), the amount of such lien with interest"—held that the judgment debtor and redemptioner come within the purview of the last part of said section 702, and that *Campbell* could not redeem the property sold at auction until it should be released from the encumbrance in favor of *Blochman & Co.* However, the Supreme Court reversed the judgment of the lower court on the ground of the provisions of section 702, and held that the situation of the judgment debtor *Campbell* was not comprised under the last paragraph of said section 702, above transcribed, but that it fell within the first part

of said section (which is the same as section 465 of the Philippine Code). The judgment debtor was therefore permitted to repurchase the property in question, notwithstanding that the judgment rendered in favor of Blochman & Co., in 1880, had not been totally paid.

With respect to the contention of the intervener Walter E. Olsen, to wit, that the sale of the property of the common debtor Pedro Bonnevie is null and void inasmuch as it is encumbered by the lien placed thereon by said intervener, the latter's right to collect his credit is preferent to that of Florencio Gonzalez Diez and to that of Vicente Delgado.

In the intervener's brief filed at the trial court it was alleged that the attachment of the real properties of the debtor Bonnevie was recorded in the registry of property on March 22, 1912. This averment is inexact, for the annotation made in the registry was of the cable advice of the issuance of the writ of execution against the debtor, but it does not appear that any annotation was made in the registry of the attachment levied on said properties by virtue of the writ subsequently received. Indeed, the intervener's own counsel, in his brief filed on appeal recognizes and affirms, on page 8 of the same, that in fact said annotation was not made, and adds that if it had been, as it should have, the four properties the redemption of which is here questioned, would have been encumbered. So, then, it is undeniable and beyond all doubt that the attachment levied by the sheriff of Ambos Camarines under the writ issued out of the Court of First Instance of this city, was not duly entered in the registry of property of that province where the attached properties are situated.

The sole assignment of error in the intervener's brief is as follows:

"The court of origin erred in not taking account in its judgment in this case, of the dates of the creditor titles of each one of the parties in this case; whereby it violated the provision contained in paragraph No. 1 of section 1924 of the Civil Code, and likewise the provisions of article 44 of the Mortgage Law."

Before proceeding to explain the certainty of the error assigned to the judgment appealed from, it may be said at the start that paragraph No.1 of article 1924 of the Civil Code is not applicable to the present case, inasmuch as it is not herein a matter of credits in favor of the province of the municipality.

As regards the violation of article 44 of the Mortgage Law, for the purpose of the refutation of the sole error assigned it is sufficient to recall that the creditor Garcia Lopez, predecessor in interest of the intervener Walter E. Olsen, did not obtain an entry in his favor of the attachment levied on the property of the judgment debtor, as aforestated, and therefore it is not now necessary to go back to examine whether the case, in connection with the attached property, comes within the provisions of the second part of said article, in order to consider preferred said creditor as to whose rights the intervenor has succeeded.

Furthermore, it must be kept in mind that in the matter of the claim for the payment of the credit held by the Chinaman, Vicente Delgado, judgment was rendered on August 30, 1910, while that handed down in the action prosecuted by Garcia Lopez was only of the date of March 15, 1912. Although the judgment obtained by Gonzalez Diez was of the date of December 23d of the same year, 1912, that is, subsequent to the dates of the two just above mentioned, nevertheless the credit held by this last creditor is of a hypothecary nature and is an inevitable encumbrance upon the property expressly designated by the debt or as security for the payment of his debt in such manner that, in a contention on preference of credits, it is unquestionable that the mortgaged properties of the debt or Bonnevie are especially subject to the payment of his debt to Gonzalez Diez, in preference to his other creditors Delgado and Olsen. The latter could have obtained the attachment of the property mortgaged in favor of Robles Lahesa, the predecessor in interest of Gonzalez Diez; but, whenever Diez might claim a better right in the proceeds from the sale of the mortgaged property, it cannot be doubted that he would succeed in collecting before either Garcia Lopez or Walter E. Olsen, the latter being a mere creditor by evidence

of a written instrument (acreedor meramente escriturario). (Art. 1923, Civil Code.)

It is also to be noted that Gonzalez Diez obtained the attachment and sale of the property mortgaged in his favor, without any opposition on the part of the successor of Garcia Lopez, to wit, the intervener Olsen, and notwithstanding the prior attachment, but without entry in the registry.

There now remains to be settled whether the intervener Olsen, who is merely a creditor by evidence of a written instrument (acreedor meramente escriturario), also has a preferent right over Gonzalez Diez, the mortgage creditor of the right of redemption exercised by this latter, instead of the common debtor Pedro Bonnevie, over the property sold at the petition of the creditor Vicente Delgado and awarded to him as the purchaser and highest bidder.

It is indisputable that the right of redemption pertains, in the first place, to the debtor and, in his default, to the creditor, which right must be exercised necessarily within the period of twelve months fixed by law. (Sees. 464 and 465, Code of Civ. Proc.)

Within the statutory period the creditor Gonzalez Diez offered to redeem the four properties adjudicated to the Chinaman Vicente Delgado, and, owing to the latter's refusal to accept the redemption, deposited with the clerk of court the amount for which the property was bid in, and also obtained by judicial order the attachment and sale at public auction of said right of redemption which was sold to and bid in by him as the highest bidder. Meanwhile the intervener Walter E. Olsen took no steps whatever, nor exercised any right which he might have had as creditor in the right of redemption sold and adjudicated to the mortgage creditor Gonzalez Diez, neither did he oppose in due time the previous sale made, at the petition of the defendant creditor Vicente Delgado, of the four properties that were the subject-matter of the redemption. And the intervener's failure so to do was without doubt because he had no right on which he might rely for the support of his claim wherefore he kept silent and allowed said sales to be consummated, both that of the four properties purchased by Vicente Delgado and that of the right of redemption of the same, acquired at public auction by and adjudicated to the plaintiff Gonzalez Diez.

On the supposition that the citation of No. 1 of article 1924 of the Civil Code, made by the appellant in the assignment of error contained in his brief, is a mistake, and that it should be understood that he meant to cite, instead, No. 3, letter A, of the same article, we invite the appellants's attention to the fact that this article refers to the other personal and real property of the debtor against which there are several competitive credits, which reference covers the case of the intervener and the other judgment creditor Vicente Delgado, inasmuch as they both are creditors but not mortgage creditors, and as the credits they hold are without special privilege. It is true that Walter E. Olsen's credit is only evidenced by a written instrument, it not appearing whether Vicente Delgado's is or not; but it is undeniable that the judgment obtained by Delgado is prior by nearly two years to that rendered in the action prosecuted by Walter E. Olsen's predecessor in interest; therefore, the property belonging to the debt or Bonnevie having been attached and sold for the payment of the latter's debt to Delgado, without opposition or protest on Olsen's part, it would not be proper, in view of the acts performed under the sanction of the law, to grant the petition for the annulment of the sale at public auction of the debtor's property for the payment of Delgado's credit, inasmuch as the prior attachment levied on the properties subsequently sold does not constitute an encumbrance on them, for the reason that that prior attachment was not registered and was voided by the subsequent sale of the properties sold under execution on the petition of another creditor who obtained a prior judgment that became final.

With respect to the real properties of the common debtor Bonnevie, especially mortgaged in security of the mortgage credit held by Gonzalez Diez, the intervenor's claim is most decidedly improper, inasmuch as, pursuant to No. 3 of article 1923 of the Civil Code, mortgage credits entered and recorded in the registry of property, with

regard to the property mortgaged, are preferred credits, and under no respect whatever can a creditor who is merely one by force of a written instrument, such as is the intervener Olsen, find any support in law to entitle him to enjoy preference over them.

As regards the right of redemption exercised by the mortgage creditor on behalf of the debtor Bonnevie, of the four properties attached and sold on the petition of the creditor Vicente Delgado, we repeat that the intervener Olsen has no preferent right over said attached properties for the execution of a judgment obtained long before by the creditor Delgado, and, consequently, he can not allege a right of preference over the right of redemption which, in the first place, pertained to the same debtor over the four properties sold by the latter at public auction; furthermore, after the lapse of the period fixed by law for the exercise of such right of redemption by the mortgage creditor Gonzalez Diez, the intervener's claim in the said right of legal redemption not altogether tenable, that right was sold at public auction and duly adjudicated to the plaintiff creditor Gonzalez Diez.

And, finally, the petition for the annulment solicited by the intervener Olsen is notably tardy and untimely inasmuch as he filed his claim on July 29, 1914, many months after the debtor's properties and the right to redeem them had been sold as the intervener advanced no good and legal ground on which to found his claim of nullity, and particularly as the intervener failed opportunely to institute proper legal proceedings in the matter of preference of credits, prior to the aforementioned sales at public auction, as well as because he really has no such right.

As to the other points in discussion, even though the mtervener certainly had had a preferent right even against Vicente Delgado, with respect to the properties, and against Gonzalez Diez, in respect to the right of redemption, still the action tardily brought cannot prosper, according to the rule laid down in the decision of the case of Esguerra vs. Tecson (21 Phil. Rep., 518), enunciated as follows:

"When a person who has a preferred claim against a debtor permits junior creditors to secure a final judgment and execution and to purchase property of the debtor at a lawful public sale, the rights of the purchasers at the sale will not be disturbed. The law protects him who is diligent in the protection of his own rights."

In view of the facts above referred to, it is in all respects improper to allow any discussion on the preference of claims, which would have been in order before payment and adjudication was made.

For the foregoing reasons, whereby the errors assigned by the appellants to the judgment appealed from are deemed to have been refuted, said judgment should be, as it is hereby, affirmed, with the costs of this instance against the appellants in equal shares. So ordered.

Arellano, C. J., Johnson, Malcolm, and Avanceña, JJ., concur.

Araullo, J., did not sit in the case.

Street, J., with whom concur Carson and Fisher JJ., concurring.

[1] Delgado vs. Bonnevie and Arandez (23 Phil. Rep., 308).

[2] R.G. No. 9186, January 28, 1915, not published.

CONCURRING OPINION

STREET, J.: concurring

While I agree with the result attained by the court in the decision of this case, I feel constrained to express my dissent from so much of the opinion of the court as holds that the right of the execution debtor to redeem, given by section 464 of the Code of Civil Procedure, is such an interest as can be taken in execution by a second judgment creditor. The Code of Civil Procedure gives to the junior judgment creditor a right to effect the redemption himself (sec. 464, 2) and prescribes the method in which the redemption shall be effected (sec. 465). This method does not contemplate the levy of another execution. The right given by the statute to the junior creditor is fully as efficacious as the right which he may be supposed to obtain from the debtor by levying an execution upon the right of redemption possessed by the latter.

Again, when the first execution is levied by the senior judgment creditor it necessarily takes and holds every leviabie interest of the judgment debtor in the property. The suggestion that the right of redemption possessed by the debtor must be considered capable of being taken upon execution because the terms of section 450 of the Code of Civil Procedure are very broad seems, as an argument, to be somewhat self-destructive, since it is obvious that the first execution must be fully as effective to take and hold the leviabie interest of the debtor as the second. In my opinion the privilege of redemption, being a right which survives the first execution, cannot be seized or taken upon a second.

We concede some force to the argument based on the idea that the right of redemption is a thing of value and that it is in certain respects transmissible. Under subsection 1 of section 464 of the Code of Civil Procedure it evidently passes upon the death of the debtor to his executor, or administrator, as a successor in interest. Whether or not this right may be sold or transferred by the debtor inter vivos is a question upon which this court, so far as appears, has not conclusively passed.

As the debtor's right of redemption is thus admittedly in some respects transmissible, it may seem upon first impression that such right should be capable of alienation without the debtor's consent, or invitum, upon execution. We think it a case, however, in which this conclusion can not be adopted because it is fundamentally repugnant to the conception on which the right is conceded to the debtor and is inconsistent with the method of procedure prescribed by law. If the right of redemption is capable of being taken in execution at all, the creditor in the original execution, when his debt is unsatisfied, could himself levy a second execution upon the right of redemption; and by purchasing at the execution sale, he could effectually take away what the statute had attempted to save to the debtor. In this way the purpose of the law in creating the right of redemption would be defeated. This consequence could not in my opinion have been intended by the legislature, and I therefore think that the method of redemption prescribed for the junior judgment creditor in section 465 necessarily excludes the right to levy an execution upon the debtor's right of redemption.

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