

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE IGUIDEZ, DEFENDANT AND APPELLANT.

G.R. No. 12320. September 12, 1917

Ponente: CARSON, J.

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CARSON, J.:

The defendant was convicted in the court below of a violation of the provisions of sections 10 and 12 of Act No. 1508, the Chattel Mortgage Law, and sentenced to pay a fine of P460 or to three months' imprisonment, upon an information charging the commission of the offense as follows:

"That on or about May 23, 1914, within the jurisdiction of this municipality of Iloilo, Province of Iloilo, being the mortgagor, the said accused, voluntarily, illegally and criminally, without the consent of the mortgagee, sold to third persons the three calesas and the six horses (knowing that said three calesas and six horses were duly mortgaged to Erwin F. Koch, for the sum of P600 at the rate of 2 1/2 per cent per month), without, either at the time of said sale or up to the present time, the payment and cancellation of the mortgage—an infraction of articles 10 and 12 of Act No. 1508."

Sections 10 and 12 of the "Chattel Mortgage Law" are as follows:

"Sec. 10. A mortgagor of personal property shall not sell or pledge such property, or any part thereof, mortgaged by him without the consent of the mortgagee in writing on the back of the mortgage and on the margin of the record thereof in the office where such mortgage is recorded."

"Sec. 12. If a mortgagor violates either of the three last preceding sections he shall be fined a sum double the value of the property so wrongfully removed from the province, sold, pledged or mortgaged, one-half to the use of the party injured and the other half to the use of the Treasury of the Philippine Islands, or he may be imprisoned for a period not exceeding six months, or punished by both such fine and imprisonment, in the discretion of the court."

The evidence of record conclusively discloses, and indeed it is substantially admitted, that the accused sold a part of the mortgaged property without "the consent of the mortgagee in writing on the back of the mortgage" and without such consent in writing "on the margin of the record thereof in the office" where the mortgage was recorded. The trial judge was of opinion that the prosecution established its allegation as to the sale of the mortgaged property by the accused without the consent, tacit or express, of the mortgagee, and we are of opinion that there is nothing in the record which would justify us in disturbing the findings of the trial judge in this regard, at least to the extent that some of the mortgaged property was thus sold without the consent, tacit or express, of the mortgagee.

It appears that after these criminal proceedings had been instituted, and on the day previous to the trial in the court below, the accused paid the mortgage creditor the total amount due under the mortgage together with attorney's fees of 10 per cent on the amount recovered and interest at the rate of 2 1/2 per cent per month, or 25 per cent per annum, as stipulated in the mortgage contract, the interest being compounded every three months during the

period of the loan; and the main contention of counsel for the accused on this appeal is that the mortgage debt having been paid before the entry of the judgment of conviction, and, as he contends, overpaid by the recovery by the mortgage creditor of compound interest, the trial judge erred in imposing the penalty prescribed for a violation of the provisions of the Mortgage Law.

A similar contention was disposed of adversely in the case of *U. S. vs. Kilayko* (32 Phil. Rep., 619), wherein we said:

"Where property mortgaged under the provisions of the Chattel Mortgage Law (Act No. 1508) is wrongfully sold or disposed of by the mortgage debtor, the mortgage debtor is not relieved of criminal liability under the penal provisions of that statute by the mere fact that the mortgage indebtedness is thereafter paid in full.

"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."

Basing his argument on his contention that the evidence of record discloses that only a part of the property was sold by the accused, and that the property which remained in the hands of the mortgagor was more than sufficient to secure the unpaid balance of the mortgage indebtedness due at the time when the sale was made, counsel further contends that the interests of the mortgage creditor did not suffer and were in nowise affected by the sale of a part of the property, and that the accused should not be held criminally responsible for a violation of the terms of the Mortgage Law under such circumstances.

It is dear, however, that any unauthorized removal or sale of mortgaged property, whether, it be all or any part of such property, so long as all or any part of the mortgage indebtedness remains unpaid, is penalized under the above cited provisions of the mortgage law. The reasoning of our decision in the *Kilayko* case (*supra*) is equally applicable to the contention of counsel in this regard. Chattel mortgages would often prove to be broken reeds by way of security for the payment in full of mortgage indebtedness, if mortgage debtors could, with impunity and without the consent of the creditor, sell or dispose of a part of the mortgaged property, so long as, in their opinion, they retain enough to secure the final payment in full of the indebtedness. The debtor having mortgaged all the property to secure the payment of the mortgage indebtedness in full, the creditor cannot lawfully be deprived of all or any part of his security without his consent until "the mortgagor, his heirs, executors or administrators well and truly perform the full obligation (or obligations)" set out in the mortgage contract, "according to the terms thereof."

The accused undertook to prove that he had the tacit, if not the express consent of the agent of Bordman (who appears to have had charge of the negotiations looking to the collection of the mortgage indebtedness on behalf of the judgment creditor) for the sale of one of the horses. We do not deem it necessary, however, to review at length the adverse finding of the trial judge upon this contention of the accused because, first, it is not claimed that the consent of the mortgagee or his agent was given in writing in the manner and form prescribed in section 10 of the Mortgage Law, and second, whatever may have been the fact as to the alleged tacit consent of the agent of the mortgagee to the sale of this animal, we agree with the trial judge that the record conclusively discloses that the accused wrongfully disposed of some of the rest of the mortgaged property without the consent, tacit or express, of the mortgagee or his agent.

The trial judge imposed the prescribed penalty in the alternative, that is to say, he sentenced the accused to pay a

fine of P460 or to imprisonment for three months. The statute does not authorize the imposition of such an alternative sentence. The penalty prescribed by the statute is either a fine or imprisonment or both, one-half of any fine to the use of the injured party and the other half to the use of the Treasury of the Philippine Islands.

Under all the circumstances of this case as disclosed by the record, we think that the ends of justice will best be served by the imposition of a sentence of imprisonment for one month upon the convict. The judgment convicting and sentencing the accused should therefore be modified by substituting imprisonment for one month for so much thereof as imposes the alternative penalty of a fine of P460 or imprisonment for three months, and thus modified should be affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Johnson, Araullo, Street, and Malcolm, JJ., concur.

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