

## MANILA TRADING & SUPPLY COMPANY, PLAINTIFF AND APPELLEE, VS. TAMARAW PLANTATION COMPANY, DEFENDANT AND APPELLANT.

*G.R. No. 22995. February 28, 1925*

Ponente: VILLAMOR, J.

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### VILLAMOR, J.:

The parties herein submitted the case to the trial court for decision upon the following stipulation of facts:

#### "FIRST CAUSE OF ACTION

"1. On August 23, 1920, the plaintiff sold to the defendant the goods mentioned in Exhibit A of the defendant for P5,300, if paid in cash, but as it was not so paid, there was added to said amount the sum of P265, which is 5 per cent thereon, making a total of P5,565.

"2. This total sum of P5,565 was to be paid in the manner specified in Exhibit A, and to secure said payment, the defendant signed Exhibit A, which was duly registered in the office of the register of deeds.

"3. The defendant paid the first six monthly instalments provided in Exhibit A, plus P213.89 on account of the seventh instalment, that is, a total of P2,996.39, and failed to pay the rest, namely, P2,568.61; wherefore said goods were on August 15, 1922, sold by the sheriff of Mindoro at public auction, as provided in Act No. 1508, the proceeds of the sale having amounted to P2,000, which were paid to the plaintiff.

"4. The sum of P1,989.84 sought to be recovered in the first cause of action includes the stipulated penalty of 33 1/3 per cent which amounted to P856.20, and also the interest at 12 per cent per annum from the date of the execution of the document, August 23, 1920, up to the date of the sale of the goods by the sheriff, namely, August 15, 1922, Manila Trading & Supply Co. vs. Tamaraw Plantation Co. on P2,568.61, which is the balance remaining unpaid on said date of August 15, 1922, of the amount secured by Exhibit A; so that the principal sought to be recovered is P517.08, the interest P616.56, and the penalty P856.20 making a total of P1,989.84.

#### "SECOND CAUSE OF ACTION

"1. On December 24, 1920, the plaintiff sold to the defendant the goods mentioned in Exhibit B for P2,550, if paid in cash. To said amount there was added the sum of P127.50, which is 5 per cent thereon, making a total of P1,877.50.

"2. This total sum of P2,677.50 was to be paid in the manner specified in Exhibit B, and to secure the payment thereof, the defendant executed Exhibit B, which was registered in the office of the register of deeds.

"3. The defendant paid P800 upon the delivery of the goods, but did not pay anything more afterwards; wherefore said goods were sold at public auction by the sheriff of Mindoro on August 15, 1922, for P1,000, as provided in Act No. 1508, said sum of P1,000 having been paid to the plaintiff.

"4. The sum of P1,853.80 sought to be recovered in the second cause of action includes the stipulated penalty

of 33 1/3 per cent, which amounts to P625.83, and also the interest at 12 per cent per annum from the date of the execution of the document, December 24, 1920, up to the date of the sale of the goods by the sheriff, namely, August 15, 1922, on P1,877.50, which is the balance remaining unpaid on said date of August 15, 1922, of the amount secured by Exhibit B; so that the principal sought to be recovered is P858.23, the interest P369.74, and the penalty P625.83, making a total of P1,853.83.

#### "THIRD CAUSE OF ACTION

"The facts are admitted by the defendant."

The trial court, in view of said stipulation of facts, rendered judgment, sentencing the defendant to pay to the plaintiff company, upon the first cause of action, the sum of P1,989.84, with interest at 12 per cent per annum from August 16, 1922, on the P517.08; upon the second cause of action, the sum of P1,853.83, with interest at 12 per cent per annum from said date of August 16, 1922, on the P858.23; and upon the third cause of action, the sum of P474.74, with legal interest from January 26, 1924, and the costs of the suit.

The questions of law raised by the appellant in its assignment of errors are: (1) Whether or not a creditor holding a chattel mortgage may bring an action for the recovery of any part of his credit remaining unpaid after the sale at public auction of the chattels mortgaged; (2) whether or not the increase of the price of an article sold on credit upon its cash sale value constitutes interest within the meaning of the Usury Law; (3) whether or not a contract is legal in which a penalty is stipulated, consisting in the payment of interest at the rate of 33 1/3 per cent on the amount due; and (4) whether or not judgment for costs may be rendered, besides the amount stipulated as penalty.

In support of its contention, the appellant invokes the doctrines laid down in the case of *Meyers vs. Thein* (15 Phil., 303), and in *Bachrach vs. Mantel* (25 Phil., 410). In the former, this court said:

"It becomes necessary to pass upon the nature of the contract of mortgage or pledge of personal property, in accordance with the provisions of section 3 of the said Act No. 1508 which prescribes that 'a chattel mortgage is a conditional sale of personal property as security for the payment of a debt, or the performance of some other obligation specified therein, the condition being that the sale shall be void upon the seller paying to the purchaser a sum of money or doing some other act named. If the condition is performed according to its terms the mortgage and sale immediately become void, and the mortgagee is thereby divested of his title.'

"From the language of the law it now appears: (1) That by the operation of Act No. 1508 the actual contract of pledge of the Civil Code degenerates into one of sale by mutual consent; (2) that, under Act No. 1508, a chattel mortgage is a sale with pacto de retro, almost equivalent to that under the same name in the Civil Code; (3) that as in a contract of sale with pacto de retro where the juridical dominion and possession of the thing sold pass to the purchaser as soon as the sale is consummated, so also in a chattel mortgage the dominion and possession of the mortgaged personal property pass to the creditor-pledgee, because, as the law provides, it is nothing more than a conditional sale; (4) that, in the same manner that a contract of sale is consummated by the delivery, either actual or symbolic, of the thing sold, which symbol of the delivery may be the inscription of the instrument in the registry, so also a chattel mortgage is consummated by a similar delivery, actual or symbolic, by means of an analogous inscription in the registry.

"Therefore, so long as the mortgage exists, the dominion, with respect to the mortgaged personal property, rests with the creditor-pledgee from the time of the inscription of the mortgage in the registry, and the furniture ceases to be the property of the debtor for the reason that it has become the property of the creditor, in like manner as the dominion of a thing sold is transferred to the purchaser and ceases to belong to the vendor from the moment of the delivery thereof, as a result of the sale. \* \* \* "

And in the latter case, that is to say, in *Bachrach vs. Mantel*, this court held:

"Much stress is laid by the plaintiff upon the case of *Meyers vs. Thein* (15 Phil., 303). That case dealt with a

chattel mortgage from the viewpoint of the Civil Code respecting preference of creditors, treating the mortgagee as a creditor with a pledge. Chattel mortgages have another aspect, however, and one from which their real nature more clearly appears. Under the Chattel Mortgage Law the mortgagee becomes the owner of the property in the sense that he has the legal title, the mortgagor having the right to retain possession, to have the beneficial use, and to defeat the title of the mortgagee by compliance with the terms of the mortgage. In a sense, the mortgagee is the legal, the mortgagor the equitable owner. \* \* \*

Under these two cases, the appellant argues:

"It is, therefore, beyond doubt that a chattel mortgage executed in accordance with Act No. 1508 is a conditional sale, or sale of the chattels with right of repurchase.

"A chattel mortgage under Act No. 1508 is a sale with right of repurchase, almost identical to that with similar name of the Civil Code; it was so held by this Honorable Court in *Meyers vs. Thein* (15 Phil., 303), and incidentally it was said in *Rosales vs. Reyes and Ordoveza* (25 Phil., 495) that ' \* \* \* a chattel mortgage, in many respects similar to a sale under pacto de retro. \* \* \* ' It is, therefore, clear that a chattel mortgage partakes of the character of the sale with right of repurchase of the Civil Code, and that it is not a mortgage within the meaning of said Code. What then is a contract of sale with right of repurchase? According to this Honorable Court, interpreting articles 1507 and 1518 of the Civil Code Conventional redemption is the right which the vendor reserves to himself to recover the thing sold, with the obligation to reimburse to the vendee the price of the sale, the expenses of the contract, and any other legitimate payment made by reason of the sale, and the useful and necessary expenses incurred for account of the thing sold.' (*Lichauco vs. Berenguer*, 20 Phil., 12.)

"What would be the effect of a contract of sale with right of repurchase, if the vendor does not comply with the condition subsequent? Article 1509 of the Civil Code says that 'the vendee shall acquire irrevocably the ownership of the thing sold and no more. There is no law whatever providing that, if the value of the thing sold is not sufficient to cover the debt owing from the vendor to the purchaser, that is to say, the purchase price, the purchaser shall have an action against the vendor to recover the difference. Nor is there any such provision in Act No. 1508, the Chattel Mortgage Law. All said Act No. 1508 provides on this point is what appears in section 14 thereof.

"A reading of said section 14 of Act No. 1508 will show that there does not exist any such right to maintain an action for the difference between the price obtained in a sale at public auction and that which must really be paid."

In answer to this argument, it must be noted in the first place that in *Meyers vs. Thein*, supra, it is not said that a chattel mortgage is in effect the same as a contract of sale with right of repurchase, but is a sale with right of repurchase almost identical to that of the Civil Code having said denomination. And in *Bachrach vs. Mantel*, supra, the court holds that the mortgagee in a chattel mortgage is the legal, and the mortgagor the equitable, owner. Secondly, what is held in those two cases is that a chattel mortgage is a conditional sale as security for the payment of the debt, according to section 3 of Act No. 1508. If the thing pledged is sold, it is for the purpose of securing the payment of the debt; so that if the price of the sale is insufficient to cover the debt, the debtor is not thereby relieved from the payment of the balance, just as the creditor cannot retain the surplus in case the price of the sale should exceed the debt secured. In the case of *Bachrach Motor Co. vs. Summers* (42 Phil., 3), we said that: "The definition of the chattel mortgage found in section 3 of the Chattel Mortgage Law (Act No. 1508) is a description of the form in which the contract used to be commonly drafted in common-law countries rather than a statement of its legal effects; and while it is true that the contract has been customarily written in the form of an out and out sale, conditioned to be void upon performance of some condition subsequent, as for instance, the payment of the secured debt, nevertheless the equitable conception of the mortgage, now generally dominant, treats the mortgage merely as a security. There is no real analogy between the chattel mortgage contract and a

conditional sale as understood in the civil law."

Section 14 of Act No. 1508 provides, with regard to the application of the proceeds of the sale of the chattels mortgaged, as follows:

" \* \* \* The proceeds of such sale shall be applied to the payment, first, of the costs and expenses of keeping and sale, and then to the payment of the demand or obligation secured by such mortgage, and the residue shall be paid to persons holding subsequent mortgages in their order, and the balance, after paying the mortgages, shall be paid to the mortgagor or person holding under him on demand."

Which simply shows that the contention of the appellant is untenable.

But where the same question now raised by the appellant was directly solved is in *Bank of the Philippine Islands vs. Olutanga Lumber Company*, R. G. No. 22656, decided December 17, 1924.[1] In that case there was raised the question whether or not a creditor, holding a chattel mortgage as security for the payment of the debt, may maintain an action for the recovery of the balance remaining unpaid after the foreclosure of the mortgage. This court decided this question in the affirmative. In the body of the decision the court said:

"The theory of the court a quo evidently is, that a chattel mortgage is a conditional sale of the property, and, in case of a failure of the condition, to wit: to pay the debt, the sale becomes absolute and the creditor is obliged to resort to the mortgaged property for a payment of this debt, and the foreclosure of the mortgage is his sole recourse.

"While it is true that section 3 of Act No. 1508 provides that 'a chattel mortgage is a conditional sale it further provides that it 'is a conditional sale of personal property as security for the payment of a debt, or for the performance of some other obligation specified therein.' The lower court overlooked the fact that the chattels included in the chattel mortgage are only given as a security and not as a payment of the debt, in case of a failure of payment \* \* \*.

"The theory of the lower court would lead to the absurd conclusion that if the chattels mentioned in the mortgage, given as security, should sell for more than the amount of the indebtedness secured, that the creditor would be entitled to the full amount for which it might be sold, even though that amount was greatly in excess of the indebtedness. Such a result certainly was not contemplated by the legislature when it adopted Act No. 1508. There seems to be no reason supporting that theory under the provision of the law. The value of chattels changes greatly from time to time, and sometimes very rapidly. If, for example, the chattels should greatly increase in value and a sale under that condition should result in largely overpaying the indebtedness, and if the creditor is not permitted to retain the excess, then the same token would require the debtor to pay the deficiency in case of a reduction in the price of the chattels between the date of the contract and a breach of the condition.

"Mr. Justice Kent, in the 12th Edition of his Commentaries, as well as other authors on the question of chattel mortgages, have said, that 'in case of a sale under a foreclosure of a chattel mortgage, there is no question that the mortgagee or creditor may maintain an action for the deficiency, if any should occur.' And the fact that Act No. 1508 permits a private sale, such sale is not, in fact, a satisfaction of the debt, to any greater extent than the value of the property at the time of the sale. The amount received at the time of the sale, of course, always requiring good faith and honesty in the sale, is only a payment, pro tanto, and an action may be maintained for a deficiency in the debt."

The appellant assigns error to the action of the trial court in not having held usurious the contracts of sale and mortgage of agricultural implements evidenced by Exhibits A and B.

The parties have agreed that the price of the goods sold and mortgaged in the document Exhibit A was P5,300, if paid in cash, but as said goods were purchased on credit, the cash price was increased 5 per cent. The parties have

also agreed that to the cash price of the goods sold and mortgaged in the document Exhibit B there was added 5 per cent of said amount because the goods were purchased on credit. Now appellant argues that the price of the sale on credit, which is 5 per cent more than the cash price, added to the 12 per cent interest stipulated by the parties, makes the contracts of sale and mortgage in question usurious. This contention of the appellant is untenable.

The instant case is of a chattel mortgage given to secure payment for the agricultural implements sold by the plaintiff to the defendant. The transaction was carried out between the parties in good faith, and there is no proof that the contract of sale of agricultural effects, secured by a mortgage on the same goods, was executed as a loan of money. This being so, the parties may freely agree upon the price of the goods sold, and it cannot be said that the credit, greater than the cash, price, constitutes interest within the meaning of the Usury Law. The increase of the price, when the sale is on credit, serves not only to cover the expenses generally entailed by such transactions on credit, but also to encourage cash sales, so useful to commerce. It is up to the purchaser to decide which price he prefers in making the purchase. If he prefers to purchase for cash, he obtains a 5 per cent reduction of the price; if, on the contrary, he prefers to buy on credit, he cannot complain of the increase of the price demanded by the vendor.

In 27 R. C. L., p. 214, it is said: "On principle and authority, the owner of property, whether real or personal, has a perfect right to name the price on which he is willing to sell, and to refuse to accede to any other. He may offer to sell at a designated price for cash or at a much higher price on credit, and a credit sale will not constitute usury however great the difference between the two prices, unless the buying and selling was a mere pretense." And in 39 Cyc., p. 927, it is also established that: "A vendor may well fix upon his property one price for cash and another for credit, and the mere fact that the credit price exceeds the cash price by a greater percentage than is permitted by the usury laws is a matter of concern to the parties but not to the courts, barring evidence of bad faith. If the parties have acted in good faith such a transaction is not a loan, and not usurious."

The appellant also assigns as error the fact that the trial court awarded the penalty, as set forth in the judgment, together with payment of the costs.

In the case of *Bachrach vs. Golingo* (39 Phil., 138), this court held:

"The courts have the same power to limit the amount recoverable under a special provision in a promissory note whereby the debtor obligates himself to pay a specified amount, or a certain per centum of the principal debt, in satisfaction of the attorney's fee for which the creditor would become liable in suing upon the note."

And in *Bachrach Garage and Taxicab Co. vs. Golingo* (39 Phil., 912), it was held:

"The stipulation that in case of noncompliance the debtor shall pay a fixed amount for the fees of the attorney who may be employed by the creditor for the purpose of enforcing compliance with the obligation is not deemed to be an interest within the purview of Act No. 2655, and neither is the computation fixed by said Act applicable thereto. It is not an indemnity for gain which cannot be realized, but an amount which the creditors spends and which constitutes a loss really suffered by reason of the non-compliance with the obligation. However, when the amount stipulated for the attorney's fees is so exorbitant that it exceeds that which should justly be paid for that purpose, the excess shall be considered as indirect or simulated interest, according to the spirit of the law, and should therefore be subject to the computation. In the case at bar, the 12½ per cent to which the trial court reduced the 25 per cent stipulated represent, in our opinion, the amount which the plaintiff was justly obliged to pay for his attorney's fees, and should not be considered as interest in the computation of the latter."

While the parties may agree as to the penalty that the debtor must pay in addition to the interest in case of nonfulfillment of the obligation, yet as this includes attorney's fees and costs, this court has jurisdiction to

determine the reasonableness of the sum stipulated as penalty. Therefore, considering the penalty of 33 1/3 per cent of the debt claimed upon the first and second causes of action to be in effect a stipulation for attorney's fees, we are of the opinion, and so hold, that the 33 1/3 per cent of the amount due as penalty is excessive and must be reduced to 12 per cent.

The appellee agrees that the judgment appealed from must be modified as regards the computation of the penalty. As to the payment of the costs, we agree with the appellant that the penalty stipulated includes the payment of the costs in the first two causes of action; but we see no reason whatever why judgment for costs shall not be given upon the third cause of action, wherein no stipulation was made as to the payment of any additional amount by way of penalty.

For the foregoing, the judgment appealed from is affirmed with the modification that the defendant stands sentenced: (a) Upon the first cause of action to pay the plaintiff the sum of P517.08, as principal, plus the sum of P616.56, as interest at the rate of 12 per cent per annum from August 23, 1920, the date of the execution of the mortgage Exhibit A, to August 15, 1922, the date of the foreclosure of the mortgage and sale of the chattels mortgaged, upon the balance of the mortgage debt remaining unpaid on said date of the foreclosure of the mortgage, to wit, P2,568.61, plus the sum of P308.23 as liquidated damages, which is 12 per cent of said sum of P2,568.61, that is, a total of P1,541.77; (b) upon the second cause of action, to pay the plaintiff the sum of P858.23, as principal, plus the sum of P369.74, as interest at the rate of 12 per cent per annum from December 24, 1920, the date of the execution of the mortgage Exhibit B, to August 15, 1922, the date of the foreclosure of the mortgage and sale of the chattels mortgaged, upon the balance of the mortgage debt remaining unpaid on said date of the foreclosure of the mortgage, to wit, P1,877.50, plus the sum of P225.30, as liquidated damages, which is 12 per cent of said sum of P1,877.50, that is, a total of P1,453.27; (c) upon the third cause of action, to pay the plaintiff the sum of P474.74 which the defendant company admits in the stipulation of facts, with legal interest thereon from January 25, 1924, the date of the filing of the plaintiff's complaint, and the costs of the suit in the trial court. Without special pronouncement as to the costs of this instance, it is so ordered.

Johnson, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.

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[1] Page 20, ante.

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