

THE CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. AMOS G. BELLIS, DEFENDANT AND APPELLEE. BENITA QUIOGUE DE V. DEL ROSARIO AND SALVADOR V. DEL ROSARIO, DEFENDANTS AND APPELLANTS.

G.R. No. 28133. March 09, 1928

Ponente: STATEMENT This is a bill of interpleader by the City of Manila against the defendants under the provisions of section 120 of the Code of Civil Procedure, in which it is sought to have them litigate and settle between themselves the corresponding amount of rental which each should have for the school building in the City of Manila, known as "Manila East High School," for which, by reason of their conflicting claims, the city has not paid any rent to either party since January 1, 1925. For answer the defendant Benita Quiogue de V. del Rosario and her husband admit the allegations made by the city in its interpleader, and for cross-complaint alleges that under the terms and conditions of the lease between them and the City of Manila, they are entitled to collect the whole amount of rental at the rate of P1,640 per month against the city, and damages in the sum of P10,000, with costs. In his amended answer the defendant Bellis admits the material allegations of the bill of interpleader, and alleges that he has had an actual survey made of the land in dispute in and by which it was found that 60.2813 per cent of the building in question belongs to him, and that he is entitled to a monthly rental of P988.60, and that his part of the property is shown by a survey made by the surveyor of the Bureau of Lands in G. L. R. O. Cadastral Record No. 275, which was approved by the Court of First Instance, and as a further answer in the nature of a crosscomplaint, he alleges that he became such owner of 60.28 per cent by purchase thereof at a sale for the foreclosure of a mortgage in his favor, and its confirmation on February 19, 1925, by the Court of First Instance of Manila, by reason of which he is entitled to a monthly rental of P988.60, with legal interest, and that under the provisions of article 1877 of the Civil Code, he is entitled to the portion of such rentals due and owing from January 1, 1925, to February 20, 1925, in the sum of P1,647.68, by reason of his real estate mortgage upon 60.28 per cent of the property on which the rentals accrued and are due and unpaid. That he is entitled to P988.60 a month, with legal interest as his portion of the monthly rental from February 20, 1925, by reason of the fact that upon that date, he became the owner of 60.28 per cent of the property and entitled to its possession by virtue of the confirmation of the foreclosure sale, and he also claims a portion of the 39.72 per cent sufficient to pay a deficiency judgment in his favor and against his codefendant, amounting to P4,154.26 after the credit thereon of P1,647.68 above-mentioned, with legal interest on the balance of such deficiency judgment, at the rate of 12 per cent per annum from December 19, 1926. As pointed out by the lower court, there were two trials in this case, in the first of which the case was submitted upon the following statement of facts: "All parties admit to the allegations contained in paragraphs 1, 2 and 3 of the complaint, and that the contract referred to in paragraph 3 is the same as the copy attached to the plaintiff's complaint. "It is further admitted that the defendant Bellis became the owner of a portion of the property mentioned in the complaint, on the 19th day of February, 1925, as more fully appears from a copy of the Order approving such purchase in civil case No. 26401, attached as Exhibit B. The exact portion of the property or building which might correspond to defendant Bellis by reason of his purchase was 21/41 or 20/40, the exact figures to be determined and submitted to the court. "It is further stipulated that the defendant, Benita Quiogue de V. del Rosario, each month demanded the payment of the rent provided for in the contract attached to the complaint, but payment of the same was refused, the plaintiff claiming that the defendant Bellis had made claim for a portion of said rent; and in connection with this stipulation of fact the plaintiff submits as Exhibit C, letter of the defendant Benita Quiogue de V. del Rosario, dated June 22, 1925. "It is admitted by the plaintiff that no rents have been paid under the contract mentioned in the complaint and offered herein since the first of January, 1925, up to this date to any of the defendants; "That the defendant Amos G. Bellis, since the issuance of the order of the Honorable Pedro Concepcion, Exhibit D, has

taken no steps to be placed in possession of said property, either by way of an order of court or by ejectment proceedings against his codefendant, Benita Quiogue de V. del Rosario and her husband, Salvador V. del Rosario "But the defendant Bellis gave notice to the City of Manila that he claimed to be the owner of a portion of said property purchased by him, which purchase was approved in Exhibit B of February 19, 1925, which notice appears in the letters of the defendant Bellis to the Mayor of the City of Manila, dated April 16th and 18th, 1925, and October 28, 1925, together with certificate of title No 24084, which letter of April 16th is marked Exhibit D, and letter of April 18th Exhibit E, and letter of October 28, 1925, Exhibit F, and the Torrens title Exhibit G, and the defendant Bellis claims to have written an additional letter on January 28, 1925, along the same lines, and 'it is agreed that if such letter is obtained from the City, that it may be offered and received and marked Exhibit H, together with the Mayor's answer to the said letter of January 28, 1925;' "That the defendant Bellis, as far back as January 28, 1925, notified the Mayor in writing of his purchase of a portion of the said property upon which the buildings, herein in question are erected, and that he, in that letter, claimed the rent should be paid to him for the portion corresponding to the amount which he had purchased by public auction, as provided by the court in Exhibit B on February 19, 1925. This stipulation is made subject to the production and presentation to the court of the original correspondence or duly certified copies thereof, approved by the attorneys for Mrs. Benita Quiogue de V. del Rosario and marked Exhibit H. "The defendant Benita Quiogue de V. del Rosario insists that the lease mentioned in plaintiff's complaint shall continue in force in accordance with its terms, the City of Manila to continue in the occupancy of the premises for the period of that lease; "But the defendant Bellis reserves any right which he may have to approve such a continuation of the lease, or to proceed, as he has already proceeded under article 1571 of the Civil Code regarding leased property, that the purchaser of property leased or under lease has the right to annul that lease; "That Mr. Amos G. Bellis consents to the occupancy of the building above referred to by the City of Manila, and to that effect signed a proposed contract of lease which is presented in evidence as Exhibit I; "That the plaintiff, prior to the institution of this action, endeavored in every way to have the defendants herein make an amicable arrangement as to the payment of the rents from the property in question, 'but was unsuccessful in its efforts;' "It is further agreed that certified copies may be substituted for any and all of the exhibits offered in this case." Judgment was first rendered upon that agreed statement of facts. Motions for a new trial were filed by plaintiff and defendant Amos G. Bellis which were granted on July 26, 1926. Both the plaintiff and the defendant Benita Quiogue de V. del Rosario and her husband duly objected to the admission of any other evidence, contending that there was an agreed statement of facts upon which the case had been tried and submitted. Be that as it may, the parties thereafter made and entered into the following stipulation of facts: "I. That on the 31st day of May, 1923, the defendants herein, Salvador V. del Rosario, and his wife, Benita Quiogue de V. del Rosario, in consideration of the sum of P40,000, which they received from the other defendant herein Amos G. Bellis, duly made and executed in favor of the said Amos G. Bellis and delivered to him a certain real estate mortgage on their land described in Transfer Certificate of Title No. 19633, of the Office of the Register of Deeds of Manila, with the buildings and improvements then on said land or which might be placed thereon in the future, and under the terms and conditions stated in the said mortgage, the original of which is attached to the record of case No. 26401, of this court, as Exhibit B, and is hereby made a part hereof, which mortgage was duly registered on said Transfer Certificate of Title No. 19633; "II. That on or about the 19th day of July, 1923 by mutual agreement of the parties in said mortgage, Exhibit B, the said Salvador V. del Rosario and Benita Quiogue de V. del Rosario, the registered owners thereof, made a subdivision of the property described in said mortgage, and had the description of said mortgaged property amended to read as follows: Then follows a technical description of the amendment. "And upon their verified petition had the Land Court make an order on July 26, 1923, approving said subdivision and amendment and cancelling said Transfer Certificate of Title No. 19633 of the Office of the Register of Deeds of Manila, and ordering issued in its stead a new transfer certificate of title containing the amended description with the said mortgage of the said Amos G. Bellis as amended duly registered thereon, and the said Transfer Certificate of Title No. 19633 was pursuant to such order cancelled and the new Transfer Certificate of Title No. 20151, of the Office of the Register of Deeds of Manila, issued in lieu thereof, with the said mortgage of Amos G. Bellis duly registered thereon, and the duplicate copy of said title was delivered to the said Amos G. Bellis. "III. That the said mortgagors, Salvador V. del Rosario and Benita Quiogue de V. del Rosario, defaulted in the conditions of said mortgage, Exhibit B, on April 30, 1924, by failing to pay the interest due thereon, and also in

failing to pay the installment of the principal due thereon on May 31, 1924, and by reason thereof the said Amos G. Bellis, on June 9, 1924, commenced case No. 26401, of this court, against said mortgagors, to foreclose said mortgage and to have the mortgaged property, as particularly described in said Transfer Certificate of Title No. 20151, sold to satisfy the amount due thereon, and after due trial of said action, on September 23, 1924, decision was entered therein for the foreclosure of said mortgage as provided by law, the original of which decision is attached to the record of said case No. 26401, of this court, and is hereby referred to as Exhibit 1, and made a part hereof; "IV. That the said Salvador V. del Rosario and Benita Quiogue de V. del Rosario failed to pay the said judgment, Exhibit I, and the mortgaged property described in the said Transfer Certificate of Title No. 20151, of the Office of the Register of Deeds of Manila, with the buildings and improvements thereon was sold as provided by law on January 24, 1925, to the said Amos G. Bellis, the defendant herein, for the sum of P40,000, which sale was duly approved by the court in said case on February 19, 1925, after due notice to all the parties in interest, as shown by its final order in said case, which is hereby referred to as Exhibit J, and made a part hereof; that on April 2, 1925, by virtue of said sale, the said Transfer Certificate of Title No. 20151 was surrendered by the said Salvador V. del Rosario and Benita Quiogue de V. del Rosario, and by order of the court cancelled and a new title No. 24084, of the Office of the Register of Deeds of Manila, with the same description as in said Title No. 20151, issued to the said Amos G. Bellis as the owner of said lands with the buildings and improvements thereon, a certified copy of which said title No. 24084 is attached to the record in this case as Exhibit G, which is hereby made a part hereof; "V. That on December 1, 1926, in cadastral case No 55, G. L. R. O. Cadastral Record No. 275, after due hearing and notice to all the parties in interest, an order was entered by the court, ordering the register of deeds of Manila to cancel the said title No. 24084, in the name of Amos G. Bellis, of the property formerly covered by said mortgage, and issue a new title in those proceedings for said property in the same terms as the one cancelled, with the technical description set forth in said order, which is attached hereto as Exhibit K, and made a part hereof which order was based on an amended plan made by the Bureau of Lands and approved by the court in those proceedings on November 10, 1926, as shown by its order attached hereto as Exhibit L, and made a part hereof, and by virtue of such order, title No. 27359, mentioned in paragraph 2 of his cross-complaint was issued to him, which title is hereby referred to as Exhibit M, and made a part hereof; "VIII. That on the 31st day of July, 1923, the defendant herein, Salvador V. del Rosario and Benita Quiogue de V. del Rosario, leased and let to the plaintiff in this case, the City of Manila, the said property known as the 'Manila East High School/ including that portion thereof with the buildings and improvements, covered by the mortgage of the said Amos G. Bellis, and particularly described in said Transfer Certificate of Title No. 20151 for a period of five years from August 1, 1923, as a monthly rental of P1,640, and under the other terms and conditions stated in the written contract of lease, copies of which are attached to the plaintiff's complaint and the defendant's answer, which are hereby referred to as Exhibit N, and made a part hereof; "IX. That on January 28, 1925, and many times subsequent thereto, the defendant, Amos G. Bellis, duly notified the City of Manila, the plaintiff in this case, that on January 24, 1925, he had purchased and was the owner of that portion of said property, known as the Manila East High School covered by his mortgage, as hereinbefore stated, and demanded that the proportional part of the rent of said property be paid to him, all of which is shown by the letters, Exhibits D, E, F, and H, and the answer to Exhibit H, which are attached to the record of this case, and made a part hereof; "X. That the defendants, Salvador V. del Rosario and Benita Quiogue de V. del Rosario, have each month demanded the payment of the rentals on the said Manila East High School from the City of Manila under the said contract of lease Exhibit N, and in this connection offers the letter of June 22, 1925, as Exhibit C, and makes it a part of this stipulation; "XI. That the plaintiff, the City of Manila, has paid no rents on said property known as the 'Manila East High School' under said contract Exhibit N since January 1, 1925, up to this date to any of the parties in this action. "XII. That the defendants, Salvador V. del Rosario and Benita Quiogue de V. del Rosario, insist that the contract of lease attached to the plaintiff's complaint and marked Exhibit N shall continue in force in accordance with its terms, the City of Manila to continue in the occupancy of the premises for the period of that lease. "That the defendant Amos G. Bellis, is willing and has consented to have the said contract of lease Exhibit N covering the said property now owned by him continue in force for its full period, as provided therein, provided the proportional part of the rent due thereunder to him is paid to him." The lower court held that a new trial having been granted and the case then being before the court upon an amended answer by the defendant Bellis, it would receive any further evidence "which might tend to show the truth of the

questions at issue" and in addition to such stipulated facts, the court found that the following facts were established by the evidence: "That the proportion of the building known as the 'Manila East High School' situated upon the land of defendant Bellis in Transfer Certificate of Title No. 27359 (Exhibit M) is 60.28 per cent as determined by a survey made by a surveyor of the Bureau of Lands (Exhibit R and the plan Exhibit Q), and that 60.28 per cent of the monthly rental of said building is the sum of P988.60 a month; that on April 8, 1926, counsel for defendant Amos G. Bellis petitioned the Court of First Instance of Manila in the mortgage foreclosure proceedings (civil case No. 26401 of this court) for the issuance of an order placing the defendant Bellis in actual possession of the property purchased by him in said foreclosure proceedings, which property described in his Certificate of Title No. 27359 (Exhibit M), and that on April 9, 1926, the court granted said petition and the Sheriff of the City of Manila placed the defendant Bellis in actual possession of the property so purchased by him at the foreclosure sale (Exhibits P and P-1); that on June 3, 1926, the defendant Bellis obtained in the mortgage foreclosure proceedings a deficiency judgment against the other defendants herein, Benita Quiogue de V. del Rosario and Salvador V. del Rosario, jointly and severally, for the balance due on his mortgage credit against them in the sum of P4,755.80 with interest at the rate of 12 per cent per annum from February 19, 1925, until paid, in accordance with the provisions of section 260 of Code of Civil Procedure (Exhibit O), and that no part of this deficiency judgment has been paid by said defendants. "The defendant Bellis claims the rentals due on said building known as the 'Manila East High School' from January 1, 1925 to February 19, 1925, inclusive, in the sum of P1,647.68, as a credit upon his said deficiency judgment (Exhibit O), by virtue of his mortgage on that portion of said property now covered by his Torrens Certificate of Title No. 27359 (Exhibit M). The evidence shows that on April 30, 1924, the mortgagors, said Benita Quiogue de V. del Rosario and Salvador V. del Rosario defaulted in the conditions of said mortgage by their failure to pay the interest due thereon, and also failed to pay the installments due on the principal on and after May 31, 1924; that said defendant Bellis foreclosed the said mortgage, and that the mortgaged property was sold by the Sheriff at public auction and was purchased by said defendant Bellis at the foreclosure sale on January 24, 1925, for P40,000; that after applying the amount paid for the mortgaged property by the said Bellis, the latter, on June 3, 1926, obtained a deficiency judgment against the mortgaged debtors in the sum of P4,755.80, with interest thereon at 12 per cent per annum from February 19, 1925; and by virtue of the provisions of article 1877 of the Civil Code the defendant Bellis, under his said mortgage, claims the unpaid rents which have become due on the mortgaged property since the date when his mortgage credit fell due. "It would appear that this right is established by the provisions of article 1877 of the Civil Code, which reads as follows: " 'A mortgage includes all natural accessions, improvements, growing fruits, and rents not collected when the obligation falls due, and the amount of any indemnities paid or due the owner by the insurers of the mortgaged property or by virtue of the exercise of the power of eminent domain, with the declarations, amplifications, and limitations established by law, whether the estate continues in the possession of the person who mortgaged it or whether it passes into the hands of a third person.' "The rentals now due unpaid on said mortgaged property from January 1, 1925, to February 19, 1925, inclusive, is the sum of P1,647.68, which sum the defendant Bellis is, under article 1877 of the Civil Code, entitled to have applied on his deficiency judgment against the other defendants in this case. "A survey of the said 'Manila East High School' by the Bureau of Lands shows that the interest of said defendant Bellis in said property is 60.28 per cent thereof, and that said Bellis has been the absolute owner of said portion of the 'Manila East High School' property since February 19, 1925. Section 257 of the Code of Civil Procedure provides that— " 'The sale when confirmed by decree of the court, shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser.' Hence, the confirmation of the sale by the court on February 19, 1925, divested the defendants Benita Quiogue de V. del Rosario and Salvador V. del Rosario of all the rights which they previously had in the mortgage property, including the right of ownership and the right of possession, and said rights were by operation of law vested in the defendant Amos G. Bellis as the purchaser of said property at the foreclosure sale. "The lease under which the City of Manila held said property and used it for the purposes of the Manila East High School was not recorded on the registered title, and for that reason the defendant Bellis had the right to cancel the lease to the 60.28 per cent of said property acquired by him; but, instead of cancelling said lease he agreed to have the lease continue in force and effect, and he gave notice to the City of Manila of his acquisition of a portion of said property and tried to collect from the City of Manila the rentals which accrued on his portion of said property from and after his acquisition of the portion of the land and building belonging

to him. In fact, on January 28, 1925, after the defendant Bellis had purchased the mortgaged property and before the confirmation of the sale by the court, the said Bellis notified the City of Manila that he had purchased said mortgaged property and was the owner thereof, and he demanded that a certain proportional part of the rentals be paid to him. Notwithstanding his notice and demand of the defendant Bellis, the City of Manila refused to pay any part of said rentals to said Bellis, and on November 24, 1925, brought this action of interpleader so that the claimants of said rentals could interplead and the courts determine their respective rights in and to said rentals. "The defendant Amos G. Bellis having expressly consented that said lease (Exhibit N) should continue in force and effect for its full period, provided that the proportional part of the rentals accruing upon the portion of the property owned by him be paid to him, it would appear that the said Bellis now has the right to collect the proportional part of said rentals claimed by him. "In the matter of the legal interest claimed by defendants, the court is of the opinion that plaintiff is not liable for interest on an unliquidated claim." It then entered judgment in favor of Bellis and against the City and the defendant Benita Quiogue de V. del Rosario and her husband for P27,021.68, the amount being 60.28 per cent of the whole amount of rentals due on the contract of lease of the property, known as the "Manila East High School," from February 20, 1925, to and including the month of May, 1927, with legal interest from the date of the judgment. It also rendered judgment in favor of Benita Quiogue de V. del Rosario and her husband for P2,733.30 as the total amount of the rentals due and unpaid from January 1, 1925, to February 19, 1925, at the rate of P1,640 a month, and for the further sum of P17,804.93, being 39.72 per cent of the whole amount of such rentals from February 20, 1925, to and including the month of May, 1927, with legal interest, and in favor of the defendant Bellis and against the defendant Benita Quiogue de V. del Rosario and her husband jointly and severally for the sum of P1,647.68 from and out of the amount of the judgment of the defendant Benita Quiogue de V. del Rosario and her husband for the period from January 1, 1925, to February 19, 1925, inclusive, being 60.28 per cent of the amount of rentals awarded to the defendants for that period, and in favor of the defendant Bellis for a preference over the amount of P17,804.93 in and to the amount of any balance remaining due on the deficiency judgment in his favor after applying the P1,647.68 as a credit thereon. From this judgment the defendant Benita Quiogue de V. del Rosario and her husband appeal and assign the following errors: "I. The lower court erred in admitting evidence over the objection of appellants at the second hearing on March 22, 1927, in addition to the agreed statement of facts submitted to the court by the parties at the first hearing on March 17, 1926. (P. 19, B. of E.). "II. The lower court erred in finding that the building belongs to appellee Amos G. Bellis and appellant Benita Quiogue de V. del Rosario in the proportion of 60.28 and 39.72 per cent instead of 21/41 and 20/41, respectively." JOHNS, J.

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STATEMENT

This is a bill of interpleader by the City of Manila against the defendants under the provisions of section 120 of the Code of Civil Procedure, in which it is sought to have them litigate and settle between themselves the corresponding amount of rental which each should have for the school building in the City of Manila, known as "Manila East High School," for which, by reason of their conflicting claims, the city has not paid any rent to either party since January 1, 1925.

For answer the defendant Benita Quiogue de V. del Rosario and her husband admit the allegations made by the city in its interpleader, and for cross-complaint alleges that under the terms and conditions of the lease between them and the City of Manila, they are entitled to collect the whole amount of rental at the rate of P1,640 per month against the city, and damages in the sum of P10,000, with costs.

In his amended answer the defendant Bellis admits the material allegations of the bill of interpleader, and alleges that he has had an actual survey made of the land in dispute in and by which it was found that 60.2813 per cent of the building in question belongs to him, and that he is entitled to a monthly rental of P988.60, and that his part of the property is shown by a survey made by the surveyor of the Bureau of Lands in G. L. R. O. Cadastral Record

No. 275, which was approved by the Court of First Instance, and as a further answer in the nature of a crosscomplaint, he alleges that he became such owner of 60.28 per cent by purchase thereof at a sale for the foreclosure of a mortgage in his favor, and its confirmation on February 19, 1925, by the Court of First Instance of Manila, by reason of which he is entitled to a monthly rental of P988.60, with legal interest, and that under the provisions of article 1877 of the Civil Code, he is entitled to the portion of such rentals due and owing from January 1, 1925, to February 20, 1925, in the sum of P1,647.68, by reason of his real estate mortgage upon 60.28 per cent of the property on which the rentals accrued and are due and unpaid. That he is entitled to P988.60 a month, with legal interest as his portion of the monthly rental from February 20, 1925, by reason of the fact that upon that date, he became the owner of 60.28 per cent of the property and entitled to its possession by virtue of the confirmation of the foreclosure sale, and he also claims a portion of the 39.72 per cent sufficient to pay a deficiency judgment in his favor and against his codefendant, amounting to P4,154.26 after the credit thereon of P1,647.68 above-mentioned, with legal interest on the balance of such deficiency judgment, at the rate of 12 per cent per annum from December 19, 1926.

As pointed out by the lower court, there were two trials in this case, in the first of which the case was submitted upon the following statement of facts:

"All parties admit to the allegations contained in paragraphs 1, 2 and 3 of the complaint, and that the contract referred to in paragraph 3 is the same as the copy attached to the plaintiff's complaint.

"It is further admitted that the defendant Bellis became the owner of a portion of the property mentioned in the complaint, on the 19th day of February, 1925, as more fully appears from a copy of the Order approving such purchase in civil case No. 26401, attached as Exhibit B. The exact portion of the property or building which might correspond to defendant Bellis by reason of his purchase was 21/41 or 20/40, the exact figures to be determined and submitted to the court.

"It is further stipulated that the defendant, Benita Quiogue de V. del Rosario, each month demanded the payment of the rent provided for in the contract attached to the complaint, but payment of the same was refused, the plaintiff claiming that the defendant Bellis had made claim for a portion of said rent; and in connection with this stipulation of fact the plaintiff submits as Exhibit C, letter of the defendant Benita Quiogue de V. del Rosario, dated June 22, 1925.

"It is admitted by the plaintiff that no rents have been paid under the contract mentioned in the complaint and offered herein since the first of January, 1925, up to this date to any of the defendants;

"That the defendant Amos G. Bellis, since the issuance of the order of the Honorable Pedro Concepcion, Exhibit D, has taken no steps to be placed in possession of said property, either by way of an order of court or by ejectment proceedings against his codefendant, Benita Quiogue de V. del Rosario and her husband, Salvador V. del Rosario

"But the defendant Bellis gave notice to the City of Manila that he claimed to be the owner of a portion of said property purchased by him, which purchase was approved in Exhibit B of February 19, 1925, which notice appears in the letters of the defendant Bellis to the Mayor of the City of Manila, dated April 16th and 18th, 1925, and October 28, 1925, together with certificate of title No 24084, which letter of April 16th is marked Exhibit D, and letter of April 18th Exhibit E, and letter of October 28, 1925, Exhibit F, and the Torrens title Exhibit G, and the defendant Bellis claims to have written an additional letter on January 28, 1925, along the same lines, and 'it is agreed that if such letter is obtained from the City, that it may be offered and received and marked Exhibit H, together with the Mayor's answer to the said letter of January 28, 1925;'

"That the defendant Bellis, as far back as January 28, 1925, notified the Mayor in writing of his purchase of a portion of the said property upon which the buildings, herein in question are erected, and that he, in that letter, claimed the rent should be paid to him for the portion corresponding to the amount which he had purchased by

public auction, as provided by the court in Exhibit B on February 19, 1925. This stipulation is made subject to the production and presentation to the court of the original correspondence or duly certified copies thereof, approved by the attorneys for Mrs. Benita Quiogue de V. del Rosario and marked Exhibit H.

"The defendant Benita Quiogue de V. del Rosario insists that the lease mentioned in plaintiff's complaint shall continue in force in accordance with its terms, the City of Manila to continue in the occupancy of the premises for the period of that lease;

"But the defendant Bellis reserves any right which he may have to approve such a continuation of the lease, or to proceed, as he has already proceeded under article 1571 of the Civil Code regarding leased property, that the purchaser of property leased or under lease has the right to annul that lease;

"That Mr. Amos G. Bellis consents to the occupancy of the building above referred to by the City of Manila, and to that effect signed a proposed contract of lease which is presented in evidence as Exhibit I;

"That the plaintiff, prior to the institution of this action, endeavored in every way to have the defendants herein make an amicable arrangement as to the payment of the rents from the property in question, 'but was unsuccessful in its efforts;'

"It is further agreed that certified copies may be substituted for any and all of the exhibits offered in this case."

Judgment was first rendered upon that agreed statement of facts. Motions for a new trial were filed by plaintiff and defendant Amos G. Bellis which were granted on July 26, 1926.

Both the plaintiff and the defendant Benita Quiogue de V. del Rosario and her husband duly objected to the admission of any other evidence, contending that there was an agreed statement of facts upon which the case had been tried and submitted. Be that as it may, the parties thereafter made and entered into the following stipulation of facts:

"I. That on the 31st day of May, 1923, the defendants herein, Salvador V. del Rosario, and his wife, Benita Quiogue de V. del Rosario, in consideration of the sum of P40,000, which they received from the other defendant herein Amos G. Bellis, duly made and executed in favor of the said Amos G. Bellis and delivered to him a certain real estate mortgage on their land described in Transfer Certificate of Title No. 19633, of the Office of the Register of Deeds of Manila, with the buildings and improvements then on said land or which might be placed thereon in the future, and under the terms and conditions stated in the said mortgage, the original of which is attached to the record of case No. 26401, of this court, as Exhibit B, and is hereby made a part hereof, which mortgage was duly registered on said Transfer Certificate of Title No. 19633;

"II. That on or about the 19th day of July, 1923 by mutual agreement of the parties in said mortgage, Exhibit B, the said Salvador V. del Rosario and Benita Quiogue de V. del Rosario, the registered owners thereof, made a subdivision of the property described in said mortgage, and had the description of said mortgaged property amended to read as follows:

Then follows a technical description of the amendment.

"And upon their verified petition had the Land Court make an order on July 26, 1923, approving said subdivision and amendment and cancelling said Transfer Certificate of Title No. 19633 of the Office of the Register of Deeds of Manila, and ordering issued in its stead a new transfer certificate of title containing the amended description with the said mortgage of the said Amos G. Bellis as amended duly registered thereon, and the said Transfer Certificate of Title No. 19633 was pursuant to such order cancelled and the new Transfer Certificate of Title No. 20151, of the Office of the Register of Deeds of Manila, issued in lieu thereof, with the said mortgage of Amos G. Bellis duly registered thereon, and the duplicate copy of said title was delivered to the said Amos G. Bellis.

"III. That the said mortgagors, Salvador V. del Rosario and Benita Quiogue de V. del Rosario, defaulted in the conditions of said mortgage, Exhibit B, on April 30, 1924, by failing to pay the interest due thereon, and also in failing to pay the installment of the principal due thereon on May 31, 1924, and by reason thereof the said Amos G. Bellis, on June 9, 1924, commenced case No. 26401, of this court, against said mortgagors, to foreclose said mortgage and to have the mortgaged property, as particularly described in said Transfer Certificate of Title No. 20151, sold to satisfy the amount due thereon, and after due trial of said action, on September 23, 1924, decision was entered therein for the foreclosure of said mortgage as provided by law, the original of which decision is attached to the record of said case No. 26401, of this court, and is hereby referred to as Exhibit 1, and made a part hereof;

"IV. That the said Salvador V. del Rosario and Benita Quiogue de V. del Rosario failed to pay the said judgment, Exhibit I, and the mortgaged property described in the said Transfer Certificate of Title No. 20151, of the Office of the Register of Deeds of Manila, with the buildings and improvements thereon was sold as provided by law on January 24, 1925, to the said Amos G. Bellis, the defendant herein, for the sum of P40,000, which sale was duly approved by the court in said case on February 19, 1925, after due notice to all the parties in interest, as shown by its final order in said case, which is hereby referred to as Exhibit J, and made a part hereof; that on April 2, 1925, by virtue of said sale, the said Transfer Certificate of Title No. 20151 was surrendered by the said Salvador V. del Rosario and Benita Quiogue de V. del Rosario, and by order of the court cancelled and a new title No. 24084, of the Office of the Register of Deeds of Manila, with the same description as in said Title No. 20151, issued to the said Amos G. Bellis as the owner of said lands with the buildings and improvements thereon, a certified copy of which said title No. 24084 is attached to the record in this case as Exhibit G, which is hereby made a part hereof;

"V. That on December 1, 1926, in cadastral case No 55, G. L. R. O. Cadastral Record No. 275, after due hearing and notice to all the parties in interest, an order was entered by the court, ordering the register of deeds of Manila to cancel the said title No. 24084, in the name of Amos G. Bellis, of the property formerly covered by said mortgage, and issue a new title in those proceedings for said property in the same terms as the one cancelled, with the technical description set forth in said order, which is attached hereto as Exhibit K, and made a part hereof which order was based on an amended plan made by the Bureau of Lands and approved by the court in those proceedings on November 10, 1926, as shown by its order attached hereto as Exhibit L, and made a part hereof, and by virtue of such order, title No. 27359, mentioned in paragraph 2 of his cross-complaint was issued to him, which title is hereby referred to as Exhibit M, and made a part hereof;

"VIII. That on the 31st day of July, 1923, the defendant herein, Salvador V. del Rosario and Benita Quiogue de V. del Rosario, leased and let to the plaintiff in this case, the City of Manila, the said property known as the 'Manila East High School/ including that portion thereof with the buildings and improvements, covered by the mortgage of the said Amos G. Bellis, and particularly described in said Transfer Certificate of Title No. 20151 for a period of five years from August 1, 1923, as a monthly rental of P1,640, and under the other terms and conditions stated in the written contract of lease, copies of which are attached to the plaintiff's complaint and the defendant's answer, which are hereby referred to as Exhibit N, and made a part hereof;

"IX. That on January 28, 1925, and many times subsequent thereto, the defendant, Amos G. Bellis, duly notified the City of Manila, the plaintiff in this case, that on January 24, 1925, he had purchased and was the owner of that portion of said property, known as the Manila East High School covered by his mortgage, as hereinbefore stated, and demanded that the proportional part of the rent of said property be paid to him, all of which is shown by the letters, Exhibits D, E, F, and H, and the answer to Exhibit H, which are attached to the record of this case, and made a part hereof;

"X. That the defendants, Salvador V. del Rosario and Benita Quiogue de V. del Rosario, have each month demanded the payment of the rentals on the said Manila East High School from the City of Manila under the said contract of lease Exhibit N, and in this connection offers the letter of June 22, 1925, as Exhibit C, and makes it a part of this stipulation;

"XI. That the plaintiff, the City of Manila, has paid no rents on said property known as the 'Manila East High School' under said contract Exhibit N since January 1, 1925, up to this date to any of the parties in this action.

"XII. That the defendants, Salvador V. del Rosario and Benita Quiogue de V. del Rosario, insist that the contract of lease attached to the plaintiff's complaint and marked Exhibit N shall continue in force in accordance with its terms, the City of Manila to continue in the occupancy of the premises for the period of that lease.

"That the defendant Amos G. Bellis, is willing and has consented to have the said contract of lease Exhibit N covering the said property now owned by him continue in force for its full period, as provided therein, provided the proportional part of the rent due thereunder to him is paid to him."

The lower court held that a new trial having been granted and the case then being before the court upon an amended answer by the defendant Bellis, it would receive any further evidence "which might tend to show the truth of the questions at issue" and in addition to such stipulated facts, the court found that the following facts were established by the evidence:

"That the proportion of the building known as the 'Manila East High School' situated upon the land of defendant Bellis in Transfer Certificate of Title No. 27359 (Exhibit M) is 60.28 per cent as determined by a survey made by a surveyor of the Bureau of Lands (Exhibit R and the plan Exhibit Q), and that 60.28 per cent of the monthly rental of said building is the sum of P988.60 a month; that on April 8, 1926, counsel for defendant Amos G. Bellis petitioned the Court of First Instance of Manila in the mortgage foreclosure proceedings (civil case No. 26401 of this court) for the issuance of an order placing the defendant Bellis in actual possession of the property purchased by him in said foreclosure proceedings, which property described in his Certificate of Title No. 27359 (Exhibit M), and that on April 9, 1926, the court granted said petition and the Sheriff of the City of Manila placed the defendant Bellis in actual possession of the property so purchased by him at the foreclosure sale (Exhibits P and P-1); that on June 3, 1926, the defendant Bellis obtained in the mortgage foreclosure proceedings a deficiency judgment against the other defendants herein, Benita Quiogue de V. del Rosario and Salvador V. del Rosario, jointly and severally, for the balance due on his mortgage credit against them in the sum of P4,755.80 with interest at the rate of 12 per cent per annum from February 19, 1925, until paid, in accordance with the provisions of section 260 of Code of Civil Procedure (Exhibit O), and that no part of this deficiency judgment has been paid by said defendants.

"The defendant Bellis claims the rentals due on said building known as the 'Manila East High School' from January 1, 1925 to February 19, 1925, inclusive, in the sum of P1,647.68, as a credit upon his said deficiency judgment (Exhibit O), by virtue of his mortgage on that portion of said property now covered by his Torrens Certificate of Title No. 27359 (Exhibit M). The evidence shows that on April 30, 1924, the mortgagors, said Benita Quiogue de V. del Rosario and Salvador V. del Rosario defaulted in the conditions of said mortgage by their failure to pay the interest due thereon, and also failed to pay the installments due on the principal on and after May 31, 1924; that said defendant Bellis foreclosed the said mortgage, and that the mortgaged property was sold by the Sheriff at public auction and was purchased by said defendant Bellis at the foreclosure sale on January 24, 1925, for P40,000; that after applying the amount paid for the mortgaged property by the said Bellis, the latter, on June 3, 1926, obtained a deficiency judgment against the mortgaged debtors in the sum of P4,755.80, with interest thereon at 12 per cent per annum from February 19, 1925; and by virtue of the provisions of article 1877 of the Civil Code the defendant Bellis, under his said mortgage, claims the unpaid rents which have become due on the mortgaged property since the date when his mortgage credit fell due.

"It would appear that this right is established by the provisions of article 1877 of the Civil Code, which reads as follows:

" 'A mortgage includes all natural accessions, improvements, growing fruits, and rents not collected when the obligation falls due, and the amount of any indemnities paid or due the owner by the insurers of the mortgaged

property or by virtue of the exercise of the power of eminent domain, with the declarations, amplifications, and limitations established by law, whether the estate continues in the possession of the person who mortgaged it or whether it passes into the hands of a third person.'

"The rentals now due unpaid on said mortgaged property from January 1, 1925, to February 19, 1925, inclusive, is the sum of P1,647.68, which sum the defendant Bellis is, under article 1877 of the Civil Code, entitled to have applied on his deficiency judgment against the other defendants in this case.

"A survey of the said 'Manila East High School' by the Bureau of Lands shows that the interest of said defendant Bellis in said property is 60.28 per cent thereof, and that said Bellis has been the absolute owner of said portion of the 'Manila East High School' property since February 19, 1925. Section 257 of the Code of Civil Procedure provides that—

" 'The sale when confirmed by decree of the court, shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser.' Hence, the confirmation of the sale by the court on February 19, 1925, divested the defendants Benita Quiogue de V. del Rosario and Salvador V. del Rosario of all the rights which they previously had in the mortgage property, including the right of ownership and the right of possession, and said rights were by operation of law vested in the defendant Amos G. Bellis as the purchaser of said property at the foreclosure sale.

"The lease under which the City of Manila held said property and used it for the purposes of the Manila East High School was not recorded on the registered title, and for that reason the defendant Bellis had the right to cancel the lease to the 60.28 per cent of said property acquired by him; but, instead of cancelling said lease he agreed to have the lease continue in force and effect, and he gave notice to the City of Manila of his acquisition of a portion of said property and tried to collect from the City of Manila the rentals which accrued on his portion of said property from and after his acquisition of the portion of the land and building belonging to him. In fact, on January 28, 1925, after the defendant Bellis had purchased the mortgaged property and before the confirmation of the sale by the court, the said Bellis notified the City of Manila that he had purchased said mortgaged property and was the owner thereof, and he demanded that a certain proportional part of the rentals be paid to him. Notwithstanding his notice and demand of the defendant Bellis, the City of Manila refused to pay any part of said rentals to said Bellis, and on November 24, 1925, brought this action of interpleader so that the claimants of said rentals could interplead and the courts determine their respective rights in and to said rentals.

"The defendant Amos G. Bellis having expressly consented that said lease (Exhibit N) should continue in force and effect for its full period, provided that the proportional part of the rentals accruing upon the portion of the property owned by him be paid to him, it would appear that the said Bellis now has the right to collect the proportional part of said rentals claimed by him.

"In the matter of the legal interest claimed by defendants, the court is of the opinion that plaintiff is not liable for interest on an unliquidated claim."

It then entered judgment in favor of Bellis and against the City and the defendant Benita Quiogue de V. del Rosario and her husband for P27,021.68, the amount being 60.28 per cent of the whole amount of rentals due on the contract of lease of the property, known as the "Manila East High School," from February 20, 1925, to and including the month of May, 1927, with legal interest from the date of the judgment. It also rendered judgment in favor of Benita Quiogue de V. del Rosario and her husband for P2,733.30 as the total amount of the rentals due and unpaid from January 1, 1925, to February 19, 1925, at the rate of P1,640 a month, and for the further sum of P17,804.93, being 39.72 per cent of the whole amount of such rentals from February 20, 1925, to and including the month of May, 1927, with legal interest, and in favor of the defendant Bellis and against the defendant Benita Quiogue de V. del Rosario and her husband jointly and severally for the sum of P1,647.68 from and out of the amount of the judgment of the defendant Benita Quiogue de V. del Rosario and her husband for the period from

January 1, 1925, to February 19, 1925, inclusive, being 60.28 per cent of the amount of rentals awarded to the defendants for that period, and in favor of the defendant Bellis for a preference over the amount of P17,804.93 in and to the amount of any balance remaining due on the deficiency judgment in his favor after applying the P1,647.68 as a credit thereon.

From this judgment the defendant Benita Quiogue de V. del Rosario and her husband appeal and assign the following errors:

"I. The lower court erred in admitting evidence over the objection of appellants at the second hearing on March 22, 1927, in addition to the agreed statement of facts submitted to the court by the parties at the first hearing on March 17, 1926. (P. 19, B. of E.).

"II. The lower court erred in finding that the building belongs to appellee Amos G. Bellis and appellant Benita Quiogue de V. del Rosario in the proportion of 60.28 and 39.72 per cent instead of 21/41 and 20/41, respectively."

JOHNS, J.:

Upon the first assignment of error, the appellants say:

"Upon the pleadings and said agreed statement of facts, the court rendered its decision on March 31, 1926, in favor of the appellant Benita Quiogue de V. del Rosario and against the appellees. Thereafter, appellees moved for a new trial which was granted by the court on July 26, 1926. An amended answer by appellee Amos G. Bellis having been filed and admitted, the case was again tried on March 22, 1927, during which hearing appellant objected to the admission of additional proofs in view of the agreed statement of facts theretofore submitted by the parties and for the further reason that the case was not on new trial on the ground of newly discovered evidence. The court overruled said objection to which ruling timely exception was taken by appellant (pp. 1 to 4, s. n.).

"There is nothing in the record to show that the case was before the court for a new trial on March 22, 1927, on the ground of newly discovered evidence. Neither is there any motion or petition presented by appellee Amos G. Bellis asking the court to relieve him from the effect of the agreed statement of facts to enable him to introduce additional proofs. We submit that considering the status of the case on March 22, 1927, the court should have sustained appellants' objection to the admission of additional proofs, and thereupon decided the case on the merits based on the stipulation of facts entered into by the parties to this case on March 17, 1926."

After which they contend that:

"The court cannot go outside the case as stated in the stipulation."

"As a consequence of this rule, the courts cannot order further evidence to be taken.

"If, notwithstanding such stipulation, the trial court makes a finding in conflict with the agreed facts, such finding will be ignored by the appellate court.

"In order that a party to a stipulation may be relieved therefrom, after decision thereon, leave of court upon valid cause shown is necessary, a thing which was not done in the instant case.

"Until an amendment is obtained and while the stipulation exists the facts recited therein are conclusive.

"Authority to obtain relief from the effects of a stipulation is vested in the courts, but such step must be taken before the decision is announced." Citing authorities under each one of those headings, and concluded as follows:

"It will be seen that: (1) There has been no attempt to deny the truth of the facts set forth in the stipulation; (2)

there has been no allegation of fraud or mistake in entering into the stipulation; (3) no attempt has been made by appellee Bellis to relieve himself from the effects of the stipulation in the manner provided for by law; (4) the terms of the stipulation are conclusive upon the parties; and (5) no additional evidence could be offered to vary the terms of the stipulation."

The authorities cited by the appellants under that assignment of error are good law, but the question is whether upon the admitted facts, they are in point.

March 17, 1926, the case was set down for hearing on the original pleadings and the original agreed statement of facts. March 31, 1926, the court entered judgment in and by which it was found under those pleadings that it could not adjudicate the rights of the defendants as between themselves, and it left each of them to their legal remedies against the other, and rendered judgment upon her crosscomplaint in favor of Benita Quiogue de V. del Rosario for the full amount of the rentals against the City of Manila. April 20, 1926, both the City of Manila and the defendant Bellis moved the court for a new trial on the ground that its decision was not in accord with the evidence and was against the law. Pending a decision of those motions and on July 20, 1926, the defendant Bellis moved the court that in the interest of justice the decision be reconsidered and set aside, and that he should be permitted to file an amended answer, which was attached to, and made a part of, the motion, and that the case be set down for trial on the merits. July 26, 1926, the court granted the motion to set aside its former decision and permitted the amended answer to be filed, and gave all parties leave to file such other and further pleadings as might be necessary to protect their rights, to which ruling no objection was made or exception taken by either party. December 14, 1926, the defendant Bellis filed another amended answer and cross-complaint in which he then claimed 60.28 per cent of the total amount of rents due or to become due from the plaintiff from and after January 1, 1925, and that from and out of the remaining portion of 39.72 per cent due from the City of Manila to the defendant Benita Quiogue de V. del Rosario, he should have a sufficient amount to pay his deficiency judgment against her and her husband in the sum of ₱4,154.26, with interest at 12 per cent from December 19, 1926.

Hence, we have this situation. After the case was tried and submitted and judgment was rendered on the original pleadings and the original stipulated facts, on motion of both the plaintiff and the defendant Bellis, that judgment was vacated and set aside, and the defendant Bellis was permitted to file his amended answer, to which no objection was made or exception taken. The amended answer, which was later filed with the leave of the court, presented new questions, both of law and fact, and different from those presented in the original answer of Bellis, upon which the case was first tried and submitted, all of which were germane to the former pleadings. It must be conceded that the setting aside of the original judgment and the granting of the new trial was a matter largely in the discretion of the trial court, and that the same thing is true as to the filing of the amended answer, upon which the case was finally tried and decided and the judgment rendered, from which this appeal is taken.

The legal effect of the granting of the new trial and the filing of the amended pleading was to have the case tried and submitted upon such pleading as amended, and the purpose of the filing of the amended answer was to permit Bellis to prove the facts alleged in his amended answer. In other words, its legal effect was to grant a new trial on the new issues made by the amended pleadings, and if Bellis could not introduce any evidence to sustain such amended pleadings, the granting of the new trial as to him would be a nullity. If the original judgment had not been set aside and had become final, it would present another and a very different question, and Bellis would then be bound and concluded by the original stipulation of facts. But after the original judgment was set aside and the amended pleadings were filed by order of the court, the parties then entered into another and a different stipulation of facts, and in that situation, the one stipulation of facts is just binding and has the same legal force and effect as the other stipulation. The legal principle for which the appellants contend under their first assignment of error would in legal effect nullify the power of the court to set aside a judgment or to grant a new

trial or the right of either party to file an amended pleading which would conflict with any stipulation of facts made under the former pleadings. All things considered, we cannot say, as a matter of law, that the trial court abused its discretion in setting aside the original judgment and in permitting the amended answer to be filed.

It is true that the appellants vigorously protested and objected to any new evidence being offered to sustain the amended pleadings, and that they did not waive their right to make such objection, but it is also true that they did enter into a second stipulation of facts, and that testimony was taken by both parties on the amended pleadings.

All things considered, we are clearly of the opinion that there is no merit in the first assignment of error.

It appears from the second stipulation of facts that since April 2, 1925, Bellis has been the registered owner under a Torrens title of the lands, buildings and improvements situated thereon described in Transfer Certificate of Titles Nos. 20151 and 24084, and which are now described in Transfer Certificate of Title No. 27359 of the Office of the Register of Deeds of Manila, and that he acquired them through foreclosure of a mortgage and in cadastral case No. 55 of the City of Manila. Although it is true that the total area of the lands described in Transfer Certificate of Titles Nos. 20151 and 24084 is therein stated to be 1,395.70 square meters more or less, and that the total area described in Transfer Certificate of Title No. 27359 is stated to be 1,437.30 square meters, yet, by a comparison of the technical description by metes and bounds in each of said titles, the land therein described is the same in each certificate, although it is true that there is a slight difference in the computed area.

As to the area in question, the lower court found as a fact that the proportion of the building known as the "Manila East High School" as situated upon the land of the defendant Bellis, evidenced by his Certificate of Title No. 27359, was 60.28 per cent, and this finding is based upon the evidence of Evangelino Laserna, who is a surveyor of the Bureau of Lands, and who made the surveys described in Transfer Certificate of Title No. 27359 and plotted the building on the plan, and the testimony of this witness as to the technical description and as to actual location of the building is not contradicted by that of any other witness, and must be accepted as true.

We have given this case the careful consideration which its importance demands, but are clearly of the opinion that the findings of fact made by the lower court are sustained by the evidence, and that the judgment should be affirmed, with costs. So ordered.

Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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