

**MIGUEL PEREZ, PLAINTIFF AND APPELLEE, VS. JUAN BARCIA, DEFENDANT AND APPELLANT.***G.R. No. 29120. October 11, 1928*

Ponente: STREET, J.

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On June 22, 1925, the defendant, Juan Barcia y Zanuy, resident of Pontevedra, Occidental Negros, borrowed the sum of P20,000, for two years, from Jose Ledesma y Rosario, with interest at 12 per centum per annum, payable annually. To secure this debt Barcia mortgaged to Ledesma the hacienda Cambaros, being lot No. 1500 of the cadastral survey of Pontevedra, Occidental Negros, containing something more than 294 hectares, and registered in transfer certificate No. 4890 of the property registry of Occidental Negros. The property thus mortgaged belonged to the plaintiff herein, Miguel Perez y Tejido, who had, however, duly authorized the creation of this mortgage. Among the stipulations contained in this mortgage is one to the effect that in case of failure on the part of the debtor to comply with any of the obligations of the mortgage, all terms then pending should be considered as lapsed (se daran por vencidos todos los plazos que entonces hubiere pendientes). When the first year was ended Barcia failed to pay the interest then due, and as a consequence the creditor threatened to foreclose the mortgage. Thereupon, for his own protection, the owner, Miguel Perez, was compelled to intervene to avoid the sacrifice of the estate. To this end he procured indulgence for several months from the creditor Ledesma and later paid off the interest then due on the mortgage, amounting to P2,400.

Following this act, the plaintiff Perez instituted the present action against Barcia on April 22, 1927, in the Court of First Instance of Occidental Negros. In the petitory part of the complaint the court is asked to declare that the defendant has lost the right to the period for payment allowed in the mortgage, and it is further prayed that the defendant be required to pay to the plaintiff the sum of P20,000, with interest, in order that the plaintiff may free his property from the lien fixed upon it by the mortgage in favor of Ledesma. Upon hearing the cause the trial court gave judgment in favor of the plaintiff to recover the sum of P20,000 as capital of the loan, with interest at 12 per cent per annum from June 23, 1927, as well as for the sum of P2,400 which the plaintiff had paid to Ledesma as stipulated interest for one year on the mortgage indebtedness, with interest on the last named sum from the date of the judgment. From this judgment the defendant appealed.

With respect to the sum of P2,400 which the plaintiff paid to Ledesma to cover the interest for one year upon the mortgage debt, the propriety of the judgment in favor of the plaintiff is unquestionable. Though not literally such, the plaintiff was substantially in the position of a surety for the defendant, by reason of the mortgage upon the hacienda Cambaros; and a debtor is bound to indemnify his surety for any outlay that the latter makes in satisfying the obligation of the debtor (art. 1838, Civil Code). Moreover, the judgment for the amount mentioned was a proper remedy to extend to the plaintiff under the prayer for general relief. It results that no error was committed by the trial court in giving judgment for the item mentioned.

With respect to the item of P20,000, with interest, for which the court gave judgment in favor of the plaintiff, the case is different. As regards this part of the judgment, the cause of action rests on article 1843 of the Civil Code

which recognizes the right of the surety, in case of the insolvency of the debtor, to proceed against the principal debtor even before the surety has paid off the debt. But in giving judgment for this item the court apparently overlooked the fact that, in the closing paragraph of the article cited, the precise relief to which a surety may be entitled before paying the principal debt is defined; and the giving of a money judgment in favor of the surety for the amount of the debt is not among the remedies there enumerated.

The relief to which a surety is entitled, according to the paragraph referred to, is to obtain his release from the contract of suretyship or to obtain security to protect himself against any proceedings on the part of the creditor and against danger of insolvency of the debtor. Article 1843 of the Civil Code was therefore infringed by the trial court in giving judgment in favor of the plaintiff for the principal debt.

Furthermore, in the case before us, the plaintiff has voluntarily disabled himself from seeking security from the defendant as contemplated in the last paragraph of the article mentioned; for we find that in Exhibit 8, denominated memorandum, and executed by Perez in favor of Barcia, the plaintiff expressly agreed that, in view of the fact that Barcia could not give security for any amount which he might obtain by mortgaging the hacienda Cambaros, Perez would not require security or bond, and the plaintiff expressly renounced all security in his favor for the payment of the debt. It results that inasmuch as Perez thus disabled himself from obtaining the precise remedy which the law would have given, under the last paragraph of article 1843, Civil Code, no remedy at all can be extended to him under said article. In other words, the plaintiff will have no right of action to recover the debt from the defendant until the debt has actually been paid by the plaintiff.

Another point which is discussed in the briefs is this, namely, whether the plaintiff had a cause of action prior to the due date of the mortgage, the action having been begun full two months before the end of the period conceded to the debtor in the mortgage. Upon this it is insisted for the defendant that the action was prematurely brought; while the plaintiff contends that he had a present right of action when the suit was begun, both under article 1129 of the Civil Code and under the clause of the mortgage accelerating the maturity of the debt upon failure of the debtor to comply with any of his obligations. Into this question it is not necessary to enter, in the view which we have taken of the feature of the case last above discussed.

From what has been said it follows that the appealed decision must be reversed in so far as it gives judgment in favor of the plaintiff to recover of the defendant the sum of P20,000, with interest at 12 per centum per annum from June 23, 1927; and with respect to said item the defendant is absolved from the complaint, but without prejudice to the plaintiff. In respect to the sum of P2,400, with lawful interest from the date of the judgment in the court below, the judgment is affirmed. So ordered, without costs.

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

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