

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. SEVERO ALEJANO ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 34001. March 11, 1931

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

This action was brought by the plaintiff, Philippine National Bank, against Severo Alejano and his wife, Eusebia Piansay, and F. M. Yap Tico & Co., Ltd.

The facts relevant to the questions submitted by this appeal are the following:

On March 16, 1922, the defendant Severo Alejano mortgaged the property described in the complaint to the plaintiff bank, to secure the payment of a debt of P300,000 which he owed the plaintiff. Payment of this debt was to be made, according to the agreement, by installments, to wit: P30,000 on the 30th of May, 1923; P30,000 on the 30th of May, 1924; P30,000 on the 30th of May, 1925; P30,000 on the 30th of May, 1926; and P180,000 on the 30th of May, 1927. Severo Alejano paid the sum of P60,000, due on May 30, 1923, and on May 30, 1924. But he failed to pay the P30,000 due upon the third installment, which became payable on May 30, 1925, as well as the remaining installments. The plaintiff bank, from the month of November, 1926, until January, 1927, had received from Alejano 2,868.40 piculs of sugar valued at P31,189.58, harvested on the mortgaged property during that period of time.

On the 18th of said month of March, 1922, that is, two days after the mortgage referred to had been executed in favor of the plaintiff bank, Severo Alejano executed, in accordance with the Chattel Mortgage Law, a first mortgage on the crops of said property, for the seasons of 1922- 23 to 1926-27, of the plantation already mortgaged to the bank.

The present action was instituted by the plaintiff bank against the defendant Severo Alejano for the recovery of the balance of the unpaid credit, with interest, and for the foreclosure of the mortgage in case of non-payment.

The defendant F. M. Yap Tico & Co., Ltd., filed a counterclaim against the plaintiff for the recovery of the amount of P31,189.58, as the value of the sugar produced during the season of 1926-27, taken possession of by the plaintiff.

The trial court rendered judgment sentencing the defendant Severo Alejano and his wife Eusebia Piansay to pay the plaintiff, with other pronouncements, the amount still owed to it, and ordering that in case of failure to make this payment within the period of 90 days, the mortgaged property described in the complaint should be sold at public auction.

With reference to the counterclaim filed by the defendant F. M. Yap Tico & Co., Ltd., the court sentenced the plaintiff Philippine National Bank to pay it the sum of P31,189.58, minus T712.21, being the expenses of the commission, loading, unloading, and freight of the sugar worth the amount claimed in the counterclaim.

The plaintiff appealed from this judgment.

The only question involved in this appeal is whether the plaintiff bank is entitled to the sugar produced during the 1926-27 season on the property mortgaged to it, with a preferential right over Yap Tico & Co. Since said property was mortgaged to the plaintiff on March 16, 1922, and it was only on the 18th of the same month that the crops on said property for the seasons of 1922-23 to 1926-27 were mortgaged to F. M. Yap Tico & Co., Ltd., the question is reduced to whether or not the crop on said property for the season of 1926-27 is included in the mortgage on the same in favor of the bank. If so, the mortgage on the property to the bank being prior to the mortgage on the crops thereof in favor of F. M. Yap Tico & Co., Ltd., it is clear that the bank has a preferential right to the sugar over the latter.

Article 1877 of the Civil Code provides that a mortgage includes the fruits not collected when the obligation falls due. According to this the fruits on the property mortgaged to the bank at the time the obligation fell due were included in the mortgage. Since the defendant Severo Alejano was in arrears from the 30th of May, 1924, the obligation, in fact, according to the contract, was due, and therefore the fruits on the plantation on that date were from that time subject to the mortgage until the payment of the obligation (*Hijos de I. de la Rama vs. Betia*, 54 Phil.. 149 and 991; *Afable vs. Belando*, p. 64, ante.) The mortgage on the crops of the property in favor of F. M. Yap Tico & Co., Ltd., being subsequent to the mortgage on the property to the bank, cannot prevail over the latter's right.

This conclusion renders it unnecessary to consider the remainder of the questions raised on this appeal.

For the foregoing, the judgment appealed from is reversed, and the plaintiff is hereby absolved from the counterclaim filed by defendant F. M. Yap Tico & Co., Ltd., without special pronouncement of costs. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, and Johns, JJ., concur.

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