

DANIEL DEACAJO, DEMANDANTE-APELANTE, CONTRA EMETRIO LABITIGAN, FAUSTA ABAS, MARIA LABITIGAN, CARLOS LABITIGAN Y JULIAN LABITIGAN, DEMANDADOS-APELADOS.

G. R. No. 35361. December 17, 1931

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-35361/>

IMPERIAL, J.:

El demandante Daniel Deacajo apelo' de la parte de la, decision dictada por el Juzgado de Primera Instancia de Tayabas sobreseyendo el aaunto en lo que respecta a los codeman dados Pausta, Abas, Maria, Csvrlos y Julian Labitigan.

La accion versa sobre ejecucion de una hipoteca.

El 9 de mayo de 1929 Demetrio Labitigan y Guillermo Labitigan otorgaron la escritura Exh. A a favor de Pedro Villaseñor por la que hipotecaron a este la parcela de terreno descrita, en el certificado original de titulo No. 15979, Exh. C, expedido a favor de ambos, para garantizar un prestamo de P1,400 juntamente con sus intereses. Por otra escritura, Exh. B, Pedro Villaseñor cedio todo su derecho e interes en la hipoteca a favor del aqui apelante, Daniel Deacajo. Habiendo transcurrido el plazo fijado sin que la obligacion principal hubiese sido amortizada, el apelante-ejecuto la accion encaminada a ejecutar la referida hipoteca. Por haber fallecido el deudor Guillermo Labitigan en noviembre de 1929, la accion, en lo que se referia a este deudor fallecido, se dirigió contra su viuda Fausta. Abas y sus tres hijos menores de edad, llamados Maria, Carlos y Julian quienes estuvieron representados en juicio por el curador ad-litem nombrado por el Juzgado.

No ha habido dificultad alguna en cuanto al vencimiento de la hipoteca y en realidad los demandados no se defendieron durante el juicio, pues, fueron declarados en rebeldia. Pero se cuestiona la procedencia del sobreseimiento del asunto acordado por el Juzgado en lo que respecta a los herederos del finado Guillermo Labitigan. El Juzgado se fundo al hacer esto en que segun el art. 708 del Código de Procedimiento Civil el albacea o administrador judicial de dicho difunto debia ser el demandado y no los herederos del mismo. El apelante contendió que de acuerdo con el citado articulo la accion ejercitada por el puede mantenerse contra los aludidos herederos. Sin discutir mas extensamente este punto legal hemos llegado a la conclusion de que en el presente caso, por lo menos, la accion debia haberse dirigido contra el albacea o administrador de dicho difunto deudor porque de este modo quedarian mejor protegidos los derechos tanto del acreedor hipotecario como de los herederos de dicho deudor. En cuanto al primero, semejante procedimiento le conferiria derecho a reclamar ante la comision cualquiera deficiencia en la sentencia que resultare despues de ejecutada o vendida en publica subasta la propiedad inmueble pignorada; y respecto a los ultimos, su administrador o albacea se hallaria en mejor posicion para defenderles y para redimir el inmueble hipotecado en el caso de que asi lo estimare beneficioso, de conformidad con lo dispuesto en la ultima clausula del art. 708 del Código de Procedimiento Civil.

Se confirma la decision recurrida, con las costas de esta instancia, al apelante. Transcurridos diez dias desde la pronulacion de esta decision, dictese sentencia a tenor de lo resuelto y, a los cinco de dictada, devuelvanse los

autoe al Juzgado de su procedencia.

Asi se ordena.

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

DISSENTING

STREET, J.:

The administrator of the deceased mortgagor, if one has been appointed, is certainly a proper party to a foreclosure proceesing, but he is not in any my opinion a neccessary party in any case; and if none is appointed the foreclosure proceedings can be brought against the heirs alone, as the only real partiers in interest. The only effect of the failure to join thwe asdministrator is that the mortgage creditor waives his right to deficiency judgment against the estate, in case the mortgaged property does not bring enough to pay off the debt. The appointment of the administrator is a step that involves expense, and if the creditor is willing to waive the a defieny judgment, the foreclosure can proceed against the heirs. It is so stated in Jones on Mortgages, Vol. II, sec. 1414, and in 42 C. J., p. 54; of our Code of Civil Procedure and section 708/ evidently makes a distinction in taht it requires the executor or administrator to be made a party when the mortgage creditor desires to obtaine a judgment for the deficiency, and does not require such reperesentative to be made a defendant when the creditor is content to rely upon his mortgage alone.

The impression that the personnal representative of the deceased ought in every case to be made a party defendant in the forclosure proceedings seems to have its origin in the instinctive feeling that somebody ought to be made a defendant against whom a judgment could be rendered for the debt, as contemplated in section 256 of the Code of Civil Procedure. But it should be remembered that the judgment for the mortgage debt under that section is purely a matter of form, since the initial judgment for the debt ina forclosure case cannot be executed by ordinary process. An order of sale is required after the period of three months sahall have elapsed without payment of the debt.

It will be noted that sections 256 and 257 of our Code of Civil Procedure are based upon provisions contained in the Code of Georgia. But although section 2748 of the Code of Georgia of 1895 syas that the action to foreclosure may be bought gainstt he executor or administrator of the deceased mortgagor, there is n io requirement that his personal representative shall be made a party defendant to the proceeding. As a general rule of equity practice, the proceeding can be brought gainst the heirs alone and should be souhgt when no executor or administrator has been appointed for the deceased mortgagor and the creditor does not seek to obtain a deficiency judgment.

the appealed judgment should, in my opinion, be reversed and the couse remended for further proceedings.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.