

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSE FERNANDEZ ESPEJO, DEFENDANT AND APPELLANT.

G. R. No. 36321. November 10, 1932

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of Iloilo in the name of the Government of the Philippine Islands against Jose Fernandez Espejo, for the purpose of foreclosing a mortgage given by the defendant to secure the repayment, to the Postal Savings Bank, of a loan of P45,000, with compound interest at 9 per centum per annum payable semi-annually, and with stipulation for payment, upon default, of the penal sum of P1,000 for costs, expenses and attorneys' fees for collection. Upon hearing the cause, after answer of the defendant, the trial court gave judgment in favor of the plaintiff, requiring the defendant, within ninety days, to pay the amount of P45,000, as principal, with interest at 9 per cent per annum computed semi-annually, and to June 15, 1931, together with premiums for insurance paid by the Postal Savings Bank, with the corresponding interest, as well as to pay the sum of P1,000 for attorneys' fees, and costs. It was further declared that all of these sums should bear interest at 9 per cent from June 16, 1931, and it was directed that, if the sums mentioned should not be paid within ninety days from date of notification of the sentence, or deposited within that time with the clerk of the court, the property described in Exhibit A should be sold to satisfy the judgment. From this judgment the defendant appealed.

The errors indicated in assignments Nos. 2 and 3 are without merit. The fourth assignment is formal; and upon analysis the only contention of moment raised by this appeal is contained in the first assignment, under which it is argued that this foreclosure is premature, having been instituted prior to the due date of the mortgage. This contention merits notice and is based upon the following facts: The mortgage contains provisions under which the Postal Savings Bank might have assumed possession of the property and administered it upon default on the part of the mortgagor in performing certain stipulations of the mortgage, namely:

"* * * (a) to pay the semi-annual or any accrued interests; (b) or to pay when due any tax or assessment levied by any branch of the Philippine Government on the property mortgaged; (c) or to timely renew the insurance policy on the buildings and improvements mortgaged or pay any of its premiums; (d) or to make the necessary repairs on the buildings and improvements as required by the mortgagee in order to preserve the same in good condition; (e) or to give additional security, in a sufficient amount, by first mortgage, or otherwise, on other property to secure this obligation adequately; as may be required by the mortgagee; (f) or in the event of any material depreciation in the value of the properties herein mortgaged; (g) or to comply with any of the stipulations, terms and conditions herein agreed upon."

But it was also stipulated that the mortgagee might institute judicial proceedings to foreclose the mortgage in accordance with law, if in the opinion of the mortgagee its interests should require such action (sec. 10). Normally

the foreclosure could only be brought after the due date of the mortgage, but it appears that, after the mortgage was executed and the defendant had received the money advanced by the Postal Savings Bank, he became unable to comply with various stipulations of the mortgage. In this connection we note that he failed to pay the semi-annual instalments of interest, the taxes assessed against the property, and the premiums for insurance on the building, with the result that the two latter items had to be paid by the mortgagee.

The failure of the mortgagor to comply with the requirements of the mortgage in the items above stated had the effect, under sections 7-9, inclusive, of rendering the mortgage subject to foreclosure and sale under Act No. 3135. Now, when the mortgage was rendered foreclosable for non-compliance with the stipulations referred to, this necessarily had the effect of accelerating the time for the payment of the mortgage, and the bringing of the action of foreclosure was justified.

We note that in section 7 of the mortgage it is declared that, upon notice to the mortgagor, the mortgage should be considered "automatically foreclosed" upon the contingencies above quoted from the mortgage. The expression "automatically foreclosed" is not well used, since such a thing as an automatic foreclosure of a mortgage is not permissible under our law, but sections 8 and 9 of the mortgage define particularly what is meant by the expression "automatically foreclosed", as thus used, namely, that the mortgagee should have a right to take possession and administer the property and sell in accordance with Act No. 3135, This means of course that the mortgage debt was matured for the purpose of a foreclosure sale, and if for that purpose, it was due for the purpose of a judicial proceeding of foreclosure. The contention of the appellant that the foreclosure was premature is therefore not well founded.

We note that in the brief of the Attorney-General it is claimed that the trial court committed error prejudicial to the plaintiff in certain features of the judgment. But the plaintiff did not appeal from the judgment and these contentions are not before us under conditions requiring a modification of the judgment at the plaintiff's instance. The judgment appealed from will be affirmed, and it is so ordered, with costs against the appellant.

Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

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