

**DIONISIO CONSTANTINO ET AL., PLAINTIFFS AND APPELLANTS, VS.
THE PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLEE.***G. R. No. 40327. March 10, 1934*

Ponente: IMPERIAL, J.

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On October 26, 1928, the Panabutan Lumber and Plantation Co., Inc., a domestic corporation, constituted a mortgage on practically all of its personal property in favor of the Philippine National Bank to secure an indebtedness amounting to P120,000. Inasmuch as the mortgagor failed to pay the obligation in question, the mortgagee directed the sheriff to make an extrajudicial sale of all the mortgaged property. Torrejon, Jurika & Co., Inc., et al. instituted in the Court of First Instance of Zamboanga civil case No. 1683 against the Panabutan Lumber & Plantation Co., Inc., and obtained a preliminary injunction in that case. In view of said writ, the sheriff suspended the extrajudicial sale. Later, however, while the aforesaid case was still pending, the parties agreed to the extrajudicial sale and the sheriff sold the said property to the Philippine National Bank for the sum of P31,000. On February 19, 1931, judgment was rendered in the aforesaid civil case No. 1683, declaring the chattel mortgage valid. The attorney for the Philippine National Bank notified the latter of the said judgment and the bank, believing that the judgment in question was already final and executory, sold all the mortgaged property it had acquired to Antonio de la Riva for the sum of P20,000. It appears, however, that before the aforesaid judgment became final, the attorney for the Philippine National Bank entered into a stipulation, without the latter's knowledge and consent, to have the judgment modified in the sense that certain personal properties, which appeared not to belong to the Panabutan Lumber & Plantation Co., Inc., be excluded from the said judgment, the mortgage and sale made by the sheriff. Said properties are described in paragraph 4 of the complaint. Consequently, the sale by the Philippine National Bank to De la Riva of the chattels, which were later excluded, was null and void.

On the other hand the herein plaintiffs instituted in the said Court of First Instance civil case No. 1681 against the Panabutan Lumber & Plantation Co., Inc., and obtained judgment against it in the sum of P30,495.91. In executing the said judgment, the sheriff attached the same property which was mortgaged to the Philippine National Bank and which the latter had sold to Antonio de la Riva. For this reason, Antonio de la Riva filed a third party claim of ownership. The sheriff notified the attorney for the plaintiffs of such third party claim and required the said plaintiffs to file a bond in the sum of P132,000, if they wanted him to proceed with the attachment and the sale of the property. The said plaintiffs, however, failed to file the bond whereupon the sheriff lifted the attachment.

In view of the circumstances the plaintiffs filed the suit, which gave rise to this appeal, alleging as a cause of action that their failure to execute the judgment obtained by them was due to the sale made by the Philippine National Bank to Antonio de la Riva of the excluded chattels. By way of relief they prayed that the Philippine National Bank be ordered to pay the full amount of the judgment obtained by them. The plaintiffs appealed from the judgment of the court dismissing their complaint, without costs.

The appellants assign the following alleged errors as committed by the trial court, to wit:

"I. The lower court erred in not declaring null and void the sale by the defendant Philippine National Bank to Antonio de la Riva of the property described in paragraph IV of the plaintiffs' complaint.

"II. The lower court erred in holding that the plaintiffs had no cause of action against the defendant Philippine National Bank.

"III. The lower court erred in not condemning the defendant Philippine National Bank to pay the plaintiffs the sum of P30,495.91 with legal interest thereon from December 27, 1929, and damages equivalent to the said sum, with costs.

"IV. The lower court erred in denying the plaintiffs-appellants' motion for a new trial."

The trial court did not expressly declare null and void the sale made by the Philippine National Bank to Antonio de la Riva of the chattels excluded from the mortgage and judgment because it decided the case upon the theory that the plaintiffs had no cause of action against the defendant. On this point the trial court committed no error. Under the law the plaintiffs had a more adequate and speedy remedy which consisted in filing the bond required of them by the sheriff and proceeding with the sale of the attached property until the amount of the judgment obtained by them was satisfied by the proceeds thereof. However, they renounced such remedy and therefore they are not now entitled to ask for a positive relief against the Philippine National Bank. Even granting that the sale of the excluded chattels by the Philippine National Bank to De la Riva was null and void, the plaintiffs' action should be brought against the purchaser because it is he who is in possession of the chattels against which the judgment for a certain sum of money obtained by them is sought to be satisfied.

Wherefore, the appealed judgment, being in accordance with the law, is hereby affirmed, without special pronouncement as to the costs of this instance. So ordered.

Malcolm, Villa-Real, Hull, and Goddard, JJ., concur.

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