

MANILA TRADING & SUPPLY COMPANY, PLAINTIFF AND APPELLEE, VS. CO KIM AND SO TEK, DEFENDANTS AND APPELLANTS.

G.R. No. 47869. April 08, 1941

Ponente: MORAN, J.

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MORAN, J.:

On July 6, 1938, defendants, Co Kim and So Tek, purchased from plaintiff, Manila Trading & Supply Company, a truck for P807.20, paying thereon "200 in advance and executing a promissory note on the balance; and, to secure the payment of the note, defendants executed in favor of the plaintiff a chattel mortgage on said truck. On defendants' default to pay three installments, plaintiff, waiving its right to the mortgage, instituted an ordinary action on the note and sought to attach defendants' properties including the truck in question. From the judgment rendered for the plaintiff, defendants took the present appeal. Defendants contend that the attachment by the plaintiff of the truck in question, is equivalent to a proceeding in foreclosure of the mortgage thereon, and, therefore, Act No. 4122 should be applied in their favor. Attachments incident to an ordinary action and foreclosure of a chattel mortgage are different, alternative remedies. The rule is now settled that a mortgage creditor may elect to waive his security and bring, instead, an ordinary action to recover the indebtedness with the right to execute a judgment thereon on all the properties of the debtor, including the subject-matter of the mortgage (*Manila Trading & Supply Co. vs. Alba*, G. R. No. 44965; *Manila Trading & Supply Co. vs. Reyes*, 62 Phil. 461; *Bachrach Motor Co. vs. Millan*, 61 Phil., 409), subject to the qualification that if he fails in the remedy by him elected, he cannot pursue further the remedy he has waived (*Bachrach Motor Co. vs. Millan*, *supra*; and as to real properties, see *Bachrach Motor Co. vs. Icarangal*, 38 Off. Gaz., 389).

Judgment is affirmed, with costs against appellants.

Imperial, Diaz, Laurel, and Horrilleno, JJ., concur.

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