

**WARNER, BARNES & #038; CO., PLAINTIFFS AND APPELLEES, VS.
ROMAN AND CIRILO JAUCIAN, DEFENDANTS AND APPELLANTS.***G.R. No. 4794. February 16, 1909*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-4794/>**TORRES, J.:**

On February 20, 1907, while the suit between said parties was pending in this court by virtue of the appeal presented by the defendants, counsel for the plaintiff company petitioned the lower court to issue an execution for the enforcement of the judgment of September 17, 1906, appealed from by the defendants and by which they were sentenced to pay the sum of P61,500 with interest thereon at the rate of 10 per cent per annum from the 31st of December, 1905, plus the sum of P1,500, as agreed upon, for lawyer's fees and the costs, in case said defendants should not file a bond sufficient to secure the payment of said judgment if confirmed, or in case the property mortgaged should not be sufficient to satisfy the aforesaid judgment; the court below, by order dated February 27, 1907, granted the petition, and ordered the defendants to file a bond for P20,000 in favor of the plaintiff for the purpose of suspending the sale of the mortgaged property, notifying them that if they failed to present the bond on or before March 15, 1907, the clerk of the court should issue the corresponding execution against the property mortgaged; this bond ordered by the court appears to have been furnished.

By a written petition of April 12, 1908, counsel for the plaintiff asked the court to approve the auction sale of the mortgaged property and the execution of the corresponding bill of sale, in accordance with the statements made by the sheriff.

By another petition dated the 15th of said month, counsel for defendants prayed that the sale made on the 10th of the same month be annulled, and, consequently, that the sales made by the sheriff be also declared null and void, and that they be granted any relief that might be just and equitable. It is alleged in that petition that the clerk of the Court of First Instance, having on February 18 last received a certified copy of the decision of this court confirming the judgment entered in the aforesaid case, sent notice of the said decision to the parties by mail, on the same date, and on the 14th of March following issued an order of execution against the defendants without the request of the plaintiff nor any order of the court for the sale of said property, and before the time prescribed by law, from the 18th of February up to the 14th of March, 1908, for the granting of the petition for the sale of said property, had expired; that notwithstanding the fact that the plaintiff petitioned for the execution of the judgment during the pendency of the above-mentioned appeal, the defendants filed, by order of the court, a bond for P20,000 for the purpose of suspending the sale asked for; and that the provisions of article 127 of the Mortgage Law were not complied with at the auction sale of said property made On April 10, by selling the property at the upset price stipulated in the mortgage deed, because the sheriff made the sale at a price lower than that fixed for each lot, they being sold at P13,960, an amount greatly disproportionate to the real value and cost of said property.

After the hearing of both motions on April 20 above-cited, the court on the same date entered judgment ordering the approval of the sale and excluding the parties in the suit from all their rights in the property described, which

were transferred by the sale to the purchaser, and he directed the clerk of the court to issue a certified copy of said decision to the registrar of property for registration. To this order counsel for the defendants duly excepted and in due time presented the bill of exceptions, which was approved by order of the 30th of the same month and after-wards filed in this court.

Counsel for the defendants, for the reasons above stated, insists that the auction sale of the property of the defendants that was mortgaged to guarantee the payment of a credit of the plaintiff company, be declared null and void.

It is a fact, attested by the appellants, that after a certified copy of the decision rendered by this court[1] was received by the lower court on February 18, 1908, the clerk of that court notified both parties by mail of the confirmation of the judgment and on the 14th of March following issued an execution against the defendants, and the mortgaged property was sold at public auction on April 10, in accordance with the provisions of the Code of Civil Procedure.

Inasmuch as the appeal was decided in favor of the plaintiff company and the judgment of the court below affirmed by this court, the suit is already settled, and there is no reason for discussing the certainty of the credit or the rights of the parties; final process should have been commenced at once for the enforcement of the judgment; and in view of the fact that the plaintiff creditor previously asked for said execution, and that the parties, who had already been informed of the decision of this court in the second instance, were again notified of it by the clerk of the lower court, and that the judge upon being informed of said decision ordered its execution, although said clerk did not record the order or judicial decree, there are no legal reasons for now declaring that the proceedings are not in accordance with the law, and that the defendants have suffered any damage to their rights; the parties having been notified of the confirmation of the judgment of first instance, the proper proceeding was and is the issue of an order for the execution thereof and for the sale of the mortgaged property, unless the debtors should have paid the amount stated in the order and the costs before the sale took place and thus have prevented it. This they did not do from February 18 up to April 9, 1908. (Sec. 456, Code of Civil Procedure.)

The judgment of the court below, sustained by this court, ordered the defendants to pay the amount therein set forth, together with interest and costs, before the first day of the next term of court to that in which it was rendered, and also ordered that the mortgaged property should be sold in case of nonpayment within the time so prescribed.

All that which has been done by the court below falls within the terms of the judgment, and if it was not executed within the time therein prescribed, it was due to the appeal presented by the defendants; but the former having been sustained and the parties notified of the decision of this court on February 18, it was proper, on March 14, after the expiration of twenty-three days, to issue the order of execution, as there was neither good cause nor legal reason to delay the sale which, after due notice, was held on the 10th of April following.

Section 257 of the Code of Civil Procedure does not provide, in the English text, that in case of nonpayment, a previous requisition is necessary in order to proceed to the sale of the property in the manner and form prescribed by law for the sale of real estate under execution, etc. It is sufficient that the defendant debtor has been notified in order to proceed to the execution of the judgment, in case he fails to pay the amount therein required.

The fact that the order or decree providing for the issue of the order of execution was not set forth, does not constitute a cause for the nullification of the sale of the mortgaged property, as such order is equivalent to a confirmation of the statements contained in the judgment then made final.

The debtors stated in the mortgage deed the amount for which each one of the 17 lots therein mentioned would

respond each one of them being subsidiarily liable for the balance still due from others; but the amounts stated in said deed were not fixed as the upset prices of the property in case of sale at auction, according to article 127 of the Mortgage Law; but even in case that such prices had been so stipulated, it can not be said that the sale of the mortgaged property without upset price arid to the highest bidder, is not in conformity with the law of civil procedure now in force.

The procedure followed in the sale of said property, which sale was confirmed by the order appealed from, is that provided by sections 256 to 261, in connection with sections 443 to 463, of the Code of Civil Procedure, which repealed the former Ley de Enjuiciamiento Civil, and, among others, the said articles 127 and 128 of the Mortgage Law.

The sale of the mortgaged property took place without a fixed price, to the highest bidder, because the law of civil procedure now in force does not require the fixing of prices at judicial sales, so that, even in case the contracting parties have agreed in the mortgage deed that the mortgaged property should be sold at an upset price, the sale would be made at the price offered by the highest bidder, in accordance with the provisions of the Code of Civil Procedure, without taking into account the stipulations made by the parties, as provided by former laws now repealed; therefore the contention of the defendants and appellants that the sales of the aforesaid properties should be declared null, can not be sustained.

The question involved in this case is one of an obligation contracted in 1905 under the Civil Code, article 1255 of which provides that the contracting parties may make agreements with clauses and conditions which are not, in contravention of law, morals, or public order; it is provided by the law that, even though an upset price is stipulated for the sale, such agreement between the contracting parties shall not be complied with, because their wishes can not be substituted for the rules of procedure established by law for the settlement of suits before the courts, thus permitting them by mutual agreement to alter or modify the law to the grave damage of order and public interest; no reason can therefore be alleged, in the absence of an agreement as to upset price at the sale, upon which to base the petition for the nullification of said sales made to the highest bidder according to law, and consequently, such sales can not, under these circumstances, have caused any damage to the appellants. As to the other matter at issue, it is hereby declared that the doctrine established in case No. 2422, Banco Español-Filipino vs. Donaldson Sim & Co. (5 Phil. Rep., 418), and that in the case No. 4463, Yangco vs. Cruz Herrera,[1] was followed.

For the foregoing reasons we are of the opinion that the order of April 20, 1908, appealed from, should be, and is hereby affirmed, with costs against the appellants.

Arellano, C. J., Mapa, Johnson, and Willard, JJ., concur.

[1] Warner, Barnes & Co. vs. Jaucian et al., 9 Phil. Rep., 503.

[(1)]11 Phil. Rep., 402.

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.