

VALERIANA RAYMUNDO ET AL., PLAINTIFFS AND APPELLANTS, VS. TOMAS SUNICO, DEFENDANT AND APPELLEE.*G.R. No. 8241. September 27, 1913*

Ponente: TRENT, J.

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This is an action to set a sheriff's sale of three parcels of land which had been mortgaged by the appellant, Valeriana Raymundo, to the appellee and bought in by the appellee at the public sale was irregularly confirmed by the court. The defendant's demurrer was sustained and the action dismissed upon the ground that the allegations in the complaint do not constitute a cause of action. From this judgment the plaintiffs appealed.

The demurrer admits all of the allegations in the complaint which are well pleaded. The facts as alleged in the complaint are these: Valeriana Raymundo was the owner of three parcels of land situated in the municipality of Bay, Province of Laguna. She mortgaged this land to a company or society known as "Chuidian, Buenaventura y Compañia" to secure the payment of P5,915.56. On April 6, 1908, an action was commenced to foreclose this mortgage. On November 20 of that year a judgment was rendered in favor of the plaintiff in that action for the amount of the mortgage together with interest and costs, and an order was entered directing the defendants (plaintiffs here) to pay the amount of that judgment within the time prescribed by law and in case of their failure to do so, directed that the property be sold in accordance with the provisions of sections 256 and 457 of Act No. 190. An appeal was taken to the Supreme Court where the judgment was affirmed and the record returned to the court below on January 9, 1911.[1] On February 3 of that year the court issued an order in which it directed that the three parcels of land be sold to satisfy the judgment. In compliance with this order the sheriff sold the land at public auction on March 24, 1911, to the mortgagee for the sum of P7,468.48, being the total amount then due. On June 5, 1911, the sale was approved by the court without any notice whatever to the plaintiffs in this action. The plaintiffs remained entirely ignorant of the confirmation of the sale by the court until July 5, 1911, when Valeriana offered to pay the defendant the entire amount of the judgment against her with interest and costs, which offer was refused. Thereupon this action was instituted to set aside the sale.

The question whether or not a mortgagor is entitled as a matter of right to notice of the hearing for the approval of the sheriff's sale is directly raised, or, in other words, if the sale of mortgaged property is approved without giving the mortgagor an opportunity to be heard, is such approval valid and sufficient to pass title?

Section 257 of the Code of Civil Procedure provides:

"When the defendant, after being directed to do so, as provided in the last preceding section, failed to pay the principal, interest and costs at the time directed in the order, the court shall order the property to be sold in the manner and under the regulations that govern sales of real estate under execution; but such sale shall not affect the rights of persons holding prior incumbrances upon the same estate, or a part thereof. The sale, when confirmed by decree of the court, shall operate to divest the rights of all the parties to the action, and to vest their rights in the purchaser. Should the court decline to confirm the sale, for good cause shown, and should set it aside, it shall order a resale in accordance with law."

That no title passes under a sheriff's sale of mortgaged real property until the sale is confirmed by the court having jurisdiction, appears to be clear from the reading of the above section. Jones, in his treatise on mortgages, section 1637, says: "Until confirmed by the court the sale is incomplete. The acceptance of the bid confers no title upon the purchaser, and not even any absolute right, to have the purchase completed. He is nothing more than a preferred bidder, or proposer for the purchase, subject to the sanction of the court afterwards."

As the title to mortgaged real property does not vest in the purchaser until after the confirmation of the sale, he has, prior to that time, no right to the possession of such property, and no legal cause of complaint against the defendants, who remain in possession, exercising the rights of ownership. On the other hand, the mortgagors have no means, until after the confirmation, of compelling the purchaser to comply with the terms of the sale. Should the mortgagors attempt to compel a purchaser to pay in his money an answer on the part of the purchaser to the effect that the sale had not been confirmed would be sufficient. The confirmation operates to divest the title out of the former owner and to vest it in the purchaser. It is at this time when the rights or title passes, and not before. Sales of mortgaged real estate should be more strictly scrutinized than ordinary sales under execution. In the former the title, as we have said, passes to the purchaser upon confirmation by the court, and the defendant or debtor has no right to redeem within the statutory period granted in cases of ordinary execution sales. In some of the States of the American Union there are statutes permitting the mortgagor to redeem after the foreclosure sale, has been confirmed. There is no such privilege extended to him by statute in the Philippine Islands. The right of the mortgagor and those claiming under him to redeem from the mortgage is extinguished by the foreclosure when the same has been properly made. But, up to the time of confirmation the title remains in the mortgagor.

The last part of section 257, *supra*, reads: "Should the court decline to confirm the sale, for good cause shown, and should set it aside, it shall order a resale in accordance with law."

This part of the section clearly shows that there must be a hearing for the confirmation of the sale. If there is no hearing the parties would have no opportunity to show that the sale should be set aside. The court cannot set aside the sale except for good cause which must be shown. This good cause cannot be shown unless the interested parties be given an opportunity, and they cannot be given an opportunity unless a hearing is had upon the question whether or not the sale should be confirmed. It is quite true that it is not required that this hearing shall be a separate action. It is a part of the foreclosure proceedings. It is a very essential part of those proceedings because the hearing gives the interested parties an opportunity to lay before the court their reasons why the sale should or should not be confirmed, and it is the result of this hearing which divests the title if the sale is confirmed. That the hearing for the confirmation of the sale must be upon motion and all parties interested be notified, including the plaintiff, defendant, and the purchaser at the sale, in order that they may show cause, if there is any, why the sale should not be confirmed, appears, we think, very clear from the reading of section 257, *supra*, and the nature and character of the sale and the results which flow from the confirmation.

Valeriana Raymundo was not only a party to the foreclosure proceedings, but she was the party most interested in the confirmation of the sale. She was the owner of the land and remains owner until the sale is regularly confirmed. She loses all of her right, title, and interest in the property upon the confirmation, but not before. If the property had been sold under an ordinary execution she would not have been so vitally interested because she would have had one year from the sale in which to redeem the property, but in this action she could not redeem after the sale had been regularly confirmed. To deprive her of her property by confirming the sale without giving her an opportunity to be heard would be contrary to the plain principles of justice. She may have good reasons why the sale should not have been confirmed; such as irregularities in the conduct of the sale, misconduct on the part of the sheriff or any of the parties, misrepresentations, etc., but whatever may be her reasons, and however well founded they may be, she has been given no opportunity to present them to the court. She must certainly be

given this opportunity before it can be held that she has lost all her interest in the property by virtue of the foreclosure proceedings.

For the foregoing reasons we are of the opinion that the allegations in the amended complaint state a cause of action. The orders appealed from are therefore reversed and the case will be returned to the court below with instructions to require the defendant to answer. The case will then proceed to final determination. Without costs in this instance.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.

DISSENTING

MORELAND, J.,

This is an appeal from a judgment dismissing the action following an order sustaining a demurrer to the complaint upon the ground that it did not state facts sufficient to constitute a cause of action.

The complaint, after alleging the residence of the parties, the making of the mortgage, the beginning of the action of foreclosure, the finding of the amount due, the making of the decree requiring the payment of the sum due on or before the first day of the next term of court in pursuance to section 256 of the Code of Civil Procedure, the appeal from that judgment to the Supreme Court, the affirmance thereof, the failure of the plaintiff to pay the sum within the time required by the order, the consequent decree to sell, and the sale under such foreclosure, proceeds:

"7. The 5th day of June, 1911, said sale was approved by this court without notice of any kind to the plaintiff who was and remained in complete ignorance of said confirmation until the ____ day of July, 1911, when, believing that she had a perfect right to do so, she offered to pay and satisfy completely the mortgage debt and the judgment based thereon, together with costs and interest; that the said defendant refused to accept it, at the same time informing the plaintiff of the fact that the sale had been confirmed by the court.

"8. The provincial sheriff of Laguna, in conformity with the said order of confirmation, upon a date unknown to this plaintiff, executed in favor of the defendant a conveyance transferring the absolute property in said lands.

"9. The lands in question are worth P15,000 and in the said foreclosure sale were sold for less than half their value, to the great injury of the plaintiff.

"10. That, if the plaintiff had been informed of the intention of the court to confirm the sale, she would have satisfied the mortgage debt completely, with costs and interest, and would thereby have obtained the disapprobation instead of the confirmation of said sale.

"11. For these reasons the sale of the said premises to the defendant is null and the plaintiff has the right to redeem them, paying the judgment with costs and interest, leaving the lands in question free from lien of said mortgage.

"12. That the amount of said judgment, with interest and costs to date, is seven thousand six hundred and seventy pesos and forty seven centavos (P7,670.47), which sum this plaintiff offers to pay to the defendant to redeem said lands, and for that purpose deposits the same with the clerk of this court subject to the disposition of the defendant, the plaintiff at the same time offering to pay any other sum which the court regards equitable and just for the redemption of said property in question.

"Wherefore, the plaintiff prays that, after service of process upon the defendant, the court dictate a judgment annulling the sale and permitting the plaintiff to redeem the land in question from the lien of said mortgage,

together with any other remedy which is just and equitable, together with costs."

The prevailing opinion says that "this is an action to set aside a sheriff's sale of three parcels of land, which had been mortgaged by the appellant, Valeriana Raymundo, to the appellee and bought in by the appellee at the public sale, on the ground that the sale was irregularly confirmed by the court;" and "the plaintiff remained entirely ignorant of the confirmation of the sale by the court until July 5, 1911, when Valeriana offered to pay the defendant the entire amount of the judgment against her with interest and costs, which offer was refused. Thereupon this action was instituted to set aside the sale."

If these statements of the nature of the action are correct, they in themselves demonstrate, to my mind, the correctness of the judgment of the court below.

First, as to the correctness of these statements.

Upon the whole case as it is presented to this court it would appear, upon ordinary principles, that the statement is substantially correct. While, in my opinion, under the allegations of the complaint and the prayer for relief, the action is intended in legal effect to be one to redeem, the setting aside of the sale being merely an incident thereto, it would be, generally speaking and under all the circumstances, but natural for the court to feel itself bound by the construction put upon the complaint and, consequently, the nature of the action, by the plaintiff herself both here and in the court below. The opening paragraph of appellant's brief reads as follows: "This is an action to set aside a sheriff's sale of three parcels of land which have been mortgaged by appellant to appellee and bought in by the appellee (who was also the mortgagee) at the public sale, on the ground that the sale was irregularly confirmed by the court and appellant has been deprived of her property without due process of law." One of the errors assigned is that, "the lower court erred in not holding that the sheriff's sale in question should have been set aside, inasmuch as the sale had been confirmed ex parte without notifying appellant of the hearing to confirm the same." The argument of counsel throughout the brief confirms, in the strongest way, this theory of the action. There is nothing therein which in any way establishes or tends to establish the theory that the action is one to redeem, but, on the contrary, every line of the brief tends to support the position taken by the majority of the court when it holds that the action is one to set aside a sale, said action being based upon the sole ground that plaintiff was not notified of the hearing on the motion to confirm.

While there is an allegation in the complaint upon which there might possibly have been based, originally, the claim that the sale was irregular for the reason that the decree of foreclosure was made during the same term of court at which the judgment of the Supreme Court affirming the judgment declaring the amount due and ordering the same paid was received, whereas, under section 256 of the Code of Civil Procedure, as construed by a recent decision of this court, the decree of foreclosure and sale should not have been made until the "first day of the next term of the court immediately succeeding the one at which" the judgment of the court was returned; and while this objection seems to have been presented to and argued in the court below upon the hearing of the demurrer, inasmuch as that court, in its decision sustaining the demurrer, refers to that objection and discusses it at some length, nevertheless, this objection seems to have been abandoned in this court, as no error is assigned in regard to it, no mention is made of it anywhere in the brief, and there has been no argument in any wise touching it. Moreover, the manner in which this objection, if it be one, is set out in the complaint gives every evidence that it was not intended to be relied upon as an objection, the facts relating to it being given in a narrative form and for the apparent purpose merely of giving a connected history of the case. It is not, as a matter of pleading, put in the form of an objection and there are lacking the other allegations which should have accompanied it if the pleader had intended to make it one of the bases of his cause of action.

For the reason stated one might naturally feel constrained to accept this theory of the case in spite of the

inconsistency involved in the idea that sale may be set aside for errors of procedure in the confirmation and even though, for that reason, the bare statement of the theory demonstrates, of necessity, that the complaint states no cause of action whatever and that the action is unsustainable.

The difficulty I meet, however, in considering the case from the view taken of it by the court is the impossibility, as I view it, of discussing it logically and rationally. How is one to discuss the proposition that a sale in foreclosure should be set aside for causes that have not the remotest connection with the validity or regularity of the sale? Is the thesis that a sale should be set aside for the sole reason that a party did not get notice of the hearing on its confirmation discussable at all? How can we logically and rationally deal with a case when we start out with, to my mind, an impossible assumption, with a theory the elements of which are contradictory? And upon what principles shall we proceed when we begin with the hypothesis that one thing is the cause of another when the two things, the cause and the effect, bear no legal or rational relation to each other? Under such circumstances the complaint should be dismissed out of hand. No discussion, it seems to me, is necessary to demonstrate that an action to set aside a sale in foreclosure upon the sole ground that the plaintiff had no notice of the confirmation is inherently and necessarily unsustainable. However, in view of all the circumstances, I shall present my views on the various phases of the case as presented by the appellant and the court.

Second, as to the impossibility of maintaining the action.

(1) This is not the proper remedy.

The proceeding should have been by motion.

It should be noted that, according to the allegations of the complaint, as construed by the plaintiff herself, the action is not one to set aside the sale for fraud, misconduct or irregularity in the sale itself. The alleged irregularity, namely, failure of notice, relates solely to the confirmation of the sale. The complaint, therefore, shows upon its face that there is no reason for setting aside the sale. It is conceded, of course, that an action or motion to set aside a sale must be based upon irregularity, fraud or misconduct in the sale itself. The only purpose for which an order confirming the sale can be vacated is to give the party an opportunity to be present at the hearing on the motion to confirm and to take such action in opposition thereto as seems advisable.

Therefore, the fact that plaintiff's action is based solely upon the failure of notice of the hearing on the action to confirm is a concession that the action cannot be one to set aside the sale, or that, if it was intended to be such an action, it cannot in any manner be maintained. The only purpose in attacking the confirmation is to get rid of it in order that the moving party may ultimately attack the sale itself. The sole purpose of the plaintiff, in spite of her reiterated desire to set aside the sale and her insistence in the presentation to this court of that question alone, is to set aside the order of confirmation. This is clearly demonstrated by the allegations of the complaint itself, they clearly disclosing that there is absolutely no reason to set aside the sale itself.

This being the case, it is clear that the plaintiff has mistaken her remedy. An attempt to set aside an order of confirmation by action is an attempt to create a procedure heretofore unheard of. The failure of the plaintiff to be present at the hearing, even though through no fault of her own, partakes of the nature of a default; and a proceeding to obtain the opportunity of being present is governed very largely by the rules applicable to defaults. The moving party must show not only that there was no notice but also that she was prejudiced by the fact that she was not heard. These matters are always presented to the court by motion, and whether or not the order is set aside and the moving party heard rests in the sound discretion of the court. It is a proceeding in the foreclosure action and not independent thereof. It is a quick, simple, and inexpensive proceeding that requires no trial and none of the delays or expenses incident to a separate and independent action.

Furthermore, the procedure by action robs the court below of the discretion which it would exercise in the decision of a motion. As was just intimated, the court, in deciding a motion to vacate an order confirming" a sale in foreclosure should exercise sound discretion; and its action will not be disturbed unless there clearly appears an abuse of that discretion. In an action a court cannot exercise discretion. An action is governed by and decided upon legal principles and the court can exercise no discretion in the decision of the case. If it makes a mistake in the decision, that mistake is an error which will reverse the judgment if it be prejudicial of a substantial right. In resolving a motion the court may exercise its sound discretion, and its action will not be reversed except when there clearly appears to have been an abuse of discretion. An action will not lie to set aside a default whether it occur with or without fault or negligence of the plaintiff. A motion is the proper proceeding.

(2) The complaint is not sufficient, even though the action be the proper proceeding. It does not allege a single fact against the regularity or validity of the sale. It should be noted that, according to the allegations of the complaint as construed by the plaintiff herself, the action is not one to set aside the sale for fraud, misconduct, or irregularity in the sale itself. The only irregularity alleged, namely, the failure of notice of the hearing to confirm, relates solely to the confirmation of the sale. The complaint therefore, shows no reason for setting it aside.

As I have already said, it is perfectly clear, of course, that an action to set aside a sale must be based upon irregularity, fraud or misconduct in the sale itself. The complaint in this case alleges no irregularity, fraud or misconduct, and therefore in no way attacks the validity of the sale. The isolated statement that "the lands in question are worth P15,000 and in the said foreclosure sale were sold for less than half their value, to the great injury of the plaintiff," is not sufficient. In the case of *Warner, Barnes & Co. vs. Santos* (14 Phil. Rep., 446), the court said at page 449:

"The basis of the objection of the defendant in the lower court was that he was able to obtain from another person about P800 more than the sheriff received from the person to whom he sold said property. This person was not discovered by the defendant until ten or twelve days after the sale took place. No objection is made by the defendant that the sale was not duly advertised or that there was any collusion on the part of the sheriff or the other parties interested in the sale. It is the duty of the court, of course, in the sale of property under the conditions of the present case, to obtain as much money for the judgment debtor out of his property as it is possible. This duty on the part of the court, however, does not justify negligent delay in an attempt to protect his rights on the part of the said judgment debtor.

"In the present case the defendant made no attempt to defend his rights until some days after judgment, execution, and sale. The Supreme Court of the United States has held in numerous decisions, that a sale under foreclosure proceedings would not be set aside upon the ground that the sheriff did not receive as much money as he might have received, providing all of the proceedings were valid and regular, unless the sale was made for a sum grossly inadequate in comparison with the real value of the property.

"A judicial sale of real estate will not be set aside for inadequacy of price unless the inadequacy be so great as to shock the conscience or unless there be additional circumstances against its fairness. (*Graffam et al. vs. Burgess*, 117 U. S., 180; *Schroeder vs. Young*, 161 U. S., 334; *Livingston vs. Byrne*, 11 Johnson (N. Y.), 555; *Eberhardt vs. Gilchrist*, 11 N. J. Equity, 167; *Montague vs. Dawes*, 14 Allen (Mass.), 369; *Drinan vs. Nichols*, 115 Mass., 353.)

"While mere inadequacy of price under judicial sales has rarely been held sufficient to justify the setting aside of a judicial sale of property, courts will not be slow to seize upon this or other circumstances impeaching the fairness of the transaction as cause for vacating such judicial sales, especially if the inadequacy be so gross as to shock the conscience. (*Schroeder vs. Young*, 161 U. S., 334; *Byers vs. Surget*, 19 Howard, 303; *Pacific Railroad Company vs. Ketchum*, 101 U. S., 289.)"

Wiltzie in his work on Mortgage Foreclosure says, volume 2, page 1338: "The general rule is that mere

inadequacy of price brought by mortgaged premises on sale under a decree of foreclosure, is not sufficient ground for setting aside the sale and ordering a resale, in the absence of any showing of fraud, collusion, unfairness, or oppression, unless so gross as necessarily to raise the inference of fraud or imposition; or in the absence of evidence tending to show bad faith, unfairness in the conduct of the sale, the deterring of bidders, an undue advantage taken of the ignorance or weakness of the persons whose property rights are affected by the sale, or other circumstances tainting the transaction with fraud, and entitling the parties injuriously affected to equitable relief.

"Nor will a sale be set aside and a resale ordered upon the mere expression of opinion that the property on a resale would bring a much higher price; it must be shown affirmatively that it will sell for a larger price. A resale will not be ordered upon a mere guaranty of an advance price; or upon a mere statement founded only upon information that some of the bondholders deterred other proposed buyers, not named, from bidding, by creating an impression that they were going to bid a much larger sum for the property, where in fact they only clothed their committee with a discretion to buy the property at any price limited only by such sum. Neither will a resale be ordered upon a mere conjecture or surmise that if the property had been offered for sale at another season it would have brought a better price, when it is not shown that any person with capital or means was prevented from attending."

From these authorities it is clear that the allegation of the complaint relative to inadequacy of price is not, standing alone, always sufficient to put the defendant to answer.

Moreover, that objection, if plaintiff meant it to be an objection, was abandoned on appeal. The only error assigned touching the validity of the sale is that numbered 3, alleging that "the lower court erred in not holding that the sheriff's sale in question should have been set aside, inasmuch as the sale had been confirmed ex parte without notifying the appellant of the hearing to confirm the same." The only reference in appellant's brief to this particular objection was made in his "statement of facts" in which appears the following paragraph:

"In accordance with the order of confirmation the provincial sheriff of Laguna executed a deed of sale of the land in question to the appellee, which land was actually worth, at the time of the sale, the sum of P15,000, whereupon the appellant filed this action in the Court of First Instance against the defendant, asking that the sale above referred to be annulled and that plaintiff be permitted to redeem the said land in question, satisfying the mortgage in its entirety, and asking any other remedy which, in accordance with the facts, the court may deem just and expedient."

The argument of counsel is wholly taken up in discussing, first, the alleged error of the court in refusing to accept the amended complaint; second, in confirming the sale without notice to the plaintiff, and third, in holding that plaintiff had not offered to repurchase. There is not a word in all the argument referring to the inadequacy of price or predicated any right to relief thereon.

It is apparent, therefore, that there is not an allegation in the complaint which in the remotest way touches the validity of the sale itself. The whole attack of plaintiff is clearly directed against the order confirming the sale. Her only objection against the foreclosure proceeding from beginning to end is that she received no notice of the hearing upon the motion to confirm. That is the only basis upon which 'the action is brought. This, as I have said before, in no way touches the validity of the sale. The setting aside of the order confirming the sale has no effect whatever upon the sale itself. The only purpose which can underlie a proceeding to vacate an order confirming the sale is to give the party an opportunity to be present at the hearing and to take such action in opposition to the confirmation as she has. Such purpose cannot be subserved by an action to set aside the sale. The procedure should have been by motion. But on such a motion, the plaintiff, to be within the rule, would have been obliged to allege and prove that the sale was irregular or that there was fraud or misconduct therein and that she was prejudiced by reason thereof. Without such allegations and sufficient proof thereof, the order of confirmation

would not have been disturbed even though she admittedly had no notice of the hearing. This is clear, for, if the moving party has no legal objection to make to the sale, why set aside the confirmation? Courts do not spend their time and vacate their proceedings to give persons an opportunity to present objections when they admittedly have no objections to present. The order is not void; the court had jurisdiction to make it; the failure to give notice was a mere irregularity, a false step in a proceeding over which the court had complete jurisdiction. It cannot, therefore, be set aside for nought.

Although the court, as we have seen from the decision, states that "this is an action to set aside a sheriff's sale * * * on the ground that the sale was irregularly confirmed by the court," nevertheless, later in the opinion the court puts this as a question before it: "The question whether or not a mortgagor is entitled as a matter of right to notice of the hearing for the approval of the sheriff's sale is directly raised, or, in other words, if the sale of mortgaged property is approved without giving the mortgagor an opportunity to be heard, is such approval valid and sufficient to pass title?"

Referring to the first part of the question, or rather the first question, as there are two questions presented by the quotation instead of one, I do not see that the question stated by the court is raised in any way. What has the irregularity of a to do with setting aside the sale! A motion to vacate an order confirming a sale is based upon grounds entirely different from those urged in a motion to set aside a sale. In this very case the reason alleged as a ground for setting aside the order of confirmation, namely, the failure of notice, is no ground whatever for setting aside the sale itself.

Relative to the second part of the quotation, what relevancy has the question whether or not the confirmation passes the title to the mortgaged premises in an action to set aside a sale? If the plaintiff has a right to set aside the sale, it is of no consequence how the title passes or when it passes. The right to set aside a sale depends on the validity and regularity of the sale and these matters have no connection with the passing of the title. In the same way, the right to set aside an order confirming a sale has no possible relation or connection with the title, how it passes, or when it passes. As the right to set aside a sale depends upon events which occurred during the conduct of the sale and has no relation to its legal effects, so the right to set aside an order of confirmation rests upon events which occurred during the process of such confirmation and does not depend at all upon the legal effects which follow such confirmation.

Therefore, the finding by the court "that no title passes under a sheriff's sale of mortgaged real property until the sale is confirmed by the court having jurisdiction appears to be clear from the reading of the above section," and that "the confirmation operates to divest the title out of the former owner and to vest it in the purchaser," and that "it is at this time when the rights of title pass, and not before," are findings which, in my humble opinion, are quite disconnected with any question legitimately arising in an action to set aside a sale, or to vacate an order confirming the sale. Those would, perhaps, be pertinent in an action to redeem, as they might have some influence on the time when the right to redeem expired; but, in an action to set aside a sale, or an order confirming a sale, those questions are wholly immaterial. The error, if I may call it such, into which the court fell in defining the question before it as set out hereinabove and in making the findings just referred to arose, in my judgment, from the fact that, while the court and the parties have treated this action as one to set aside a sale, there has, nevertheless, remained the inherent and almost insurmountable difficulty arising from the fact, as I have above stated, that the object of the action is really and essentially to redeem. Both the parties and the court if I may be permitted to say so, have mistaken the nature of the action, and confusion as to the real question raised necessarily results.

For the same reasons, the discussion of the court relative to the moment when the right to redeem is destroyed is, in my humble opinion, immaterial in this action. As much may be said, I think, in regard to its discussion of

whether or not the mortgagee has a statutory right to redeem beyond the time when the sale is confirmed and deed delivered to the purchaser. As a necessary result the finding of the court with respect to the existence of that statutory right that "there is no such privilege extended to him by statute in the Philippine Islands" and that "the right of the mortgagor and those claiming under him to redeem from the mortgage is extinguished by the foreclosure when same has been properly made," are findings and decisions upon questions not involved in the action as defined by the parties and the court.

As I have before intimated, the mere fact that the plaintiff had no notice of the motion to confirm the sale is not sufficient of itself to set the order of confirmation aside. She must have been prejudiced in her substantial rights by reason of some defect in the sale; otherwise she has, no standing on the motion. What is the object of setting the order of confirmation aside if the plaintiff has no complaint to make against the sale itself? It would be nonsense for the court to set aside its order and allow the plaintiff to be heard on the motion to confirm if the plaintiff had no complaint to make against the regularity or validity of the sale. A court will not set aside an order already made unless that action will benefit some one. So far as appears in this case not the slightest benefit would be conferred upon the plaintiff by setting aside the order of confirmation. She has no complaint to make against the sale or against the confirmation of the sale. The only possible purpose of a hearing on a confirmation is to give the mortgagor an opportunity to allege something against the regularity or validity of the sale. That is the only thing the mortgagor can do upon a hearing to confirm. She could not be heard to say that the sale ought not to be confirmed because it would cut off the equity of redemption. That is the legal and necessary effect of a sale. Therefore, the mortgagor cannot be heard to say in this action that the confirmation of the sale prejudiced her because it cut off her right of redemption, nor can she urge that as a reason why she should have the order of confirmation set aside. The allegation of plaintiff that, if she had been notified of the motion to confirm and the hearing thereon, she would have redeemed the premises before the confirmation took place, can have no bearing.

The prejudice suffered by the failure to receive notice of the motion to confirm must, to warrant the vacating of the decree of confirmation, result from the decree directly. It cannot be a mere incident to the decree nor result remotely therefrom. The prejudice must be the necessary and immediate result of the decree. The fact, if it is a fact, that the order of confirmation is the act which divests the interests of the mortgagor and invests those interests in the purchaser is no reason in itself for setting aside that order. Unless the moving party can show that he could have attacked the sale on legal grounds and was prevented from so doing by the fact that he received no notice of the hearing on the motion to confirm, he has no standing on the motion. The fact that the order of confirmation was the last step in the foreclosure proceeding and was, therefore, the final act destroying forever the plaintiff's right to redeem has no significance in a motion to vacate that order. As a matter of fact, it is not really the order of confirmation that does the mischief; it is the sale. If there is a valid sale, the order of confirmation follows of necessity; and the court has no right to withhold it. It is the absolute right of the mortgagee to have a valid sale confirmed; no one can prevent it. The fact, if it is a fact, that the confirmation destroys the right to redeem has no significance. If the mortgagor can offer no objections to the sale, the confirmation was not only proper-it was necessary; and a refusal to confirm would have been error.

It is clear, therefore, that the only possible basis for opening the order of confirmation is to give a plaintiff an opportunity to object to the sale. This she does not desire to do. Her purpose seems to be simply to redeem. Believing that the confirmation of the sale was the final act in a proceeding to destroy her equity of redemption she seeks to have that confirmation set aside that she may redeem. She is not entitled to that relief.

Finally, it should be noted what effect this decision will have upon the court below when the cause is returned for trial. The majority holds that the failure to notify the mortgagor of the hearing on the motion to confirm is sufficient to set aside not the order of confirmation but the sale itself. Therefore, when this case goes back to the

Court of First Instance, all that the plaintiff has to do to set aside the sale, against the validity of which absolutely nothing has been alleged, is to prove that he did not receive notice of the hearing to confirm. This presents a situation which, in judgment, is unique.

The judgment below is correct and should be affirmed.

[1] 17 Phil. Rep., 648.

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