

EC. MCCULLOUGH & CO., INC., PLAINTIFF AND APPELLANT, VS. PEDRO G. ZOBOLI, DEFENDANT AND APPELLEE. ENRIQUE AYLLON, INTERVENER.*G.R. No. 9299. November 03, 1914*

Ponente: TRENT, J.

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The plaintiff in this case is a duly organized and registered corporation, having its principal place of business in the city of Manila. The defendant, Pedro G. Zoboli, prior to the 3d day of April, 1912, was a merchant and resident of this city, and was the owner of a shop known as the "Centro Postal Filatelico," and at that time he owed the plaintiff a balance for goods purchased in the sum of P705.62. On the 21st day of March, 1912, the plaintiff instituted a civil action for the purpose of collecting this amount. On the same day the defendant confessed judgment and at the same time consented to the issuance of an execution thereon. The execution was issued and sale thereunder was made on the 3d day of April, 1912, the goods levied upon being purchased by the plaintiff. On the 29th of April one Enrique Ayllon intervened, alleging that the goods which had been levied upon had been mortgaged to him by Zoboli to secure the payment of the sum of P2,500. This chattel mortgage, although dated January 12, 1912, was not presented for registry until the 29th of March of that year, and was not registered until the 3d day of the following month. The goods were levied upon and possession thereof was taken several days prior to the 29th of March.

After the property was sold and purchased by the plaintiff, the plaintiff employed Zoboli as manager in charge of the business, with the understanding that as soon as the judgment, together with the interest and costs, had been settled, he (Zoboli) could again take possession of the business as owner. Zoboli failed to carry out this agreement and, upon being requested to do so, refused to turn over the store to the plaintiff. The plaintiff thereupon instituted on the 5th of October, 1912, this action, praying for the possession of the business, with all of its stock, merchandise, fixtures, etc., or its equivalent in cash, and asking for a writ of replevin to take possession of the stock and merchandise. Zoboli answered denying the allegations contained in the complaint and setting up a counterclaim for damages in the sum of P5,000. On the 18th day of October, Enrique Ayllon intervened, by permission of the court, and asked for judgment against the plaintiff for the sum of P3,000.

After trial judgment was rendered in favor of the intervener and against the plaintiff for the sum of P1,732, with interest thereon at the rate of 24 per cent per annum from October 5, 1912. The plaintiff alone appealed, and now insists that the trial court erred in holding that the intervener had a preferred right over the plaintiff to the delivery and possession of the goods in question.

Section 4 of Act No. 1508 reads: "A chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides at the time of making the same, or, if he resides without the Philippine Islands, in the province in which

property is situated: Provided, however, That if the property is situated in a different province from that in which the mortgagor resides, the mortgage shall be recorded in the office of the register of deeds of both the province in which the mortgagor resides and that in which the property is situated, and for the purposes of this Act the city of Manila shall be deemed to be a province.”

In the case of *Meyers vs. Thein* (15 Phil. Rep., 303), this court said: "The above provision (sec. 4 of Act No. 1508) does not, in this respect, repeal paragraph 2 of the said article 1922, but extends the provisions thereof by providing that the property pledge is to be considered as being delivered to the mortgage creditor and to be in his possession, if the mortgage is recorded in the office of the register of deeds of the province. The code only refers to the actual delivery of the pledge; Act No. 1508 provides both for the actual and for the symbolic delivery thereof by means of the registration of the title."

And in the case of *Williams vs. McMicking* (17 Phil. Rep., 408), we said: "It will be noted that this section (sec. 4 of Act No. 1508) provides two ways for executing a valid chattel mortgage which shall operate against third persons; first, the property mortgaged must be delivered to and retained by the mortgagee; or, second, the mortgage must be recorded in the office of the register of deeds."

The plaintiff's title to the property in question depended upon the validity and effect of the levy and sale by virtue of the execution issued upon the judgment recovered against the defendant Zoboli. At the time the intervenor's mortgage was presented to the registrar and inscribed upon the registry books, the property was in the hands of the sheriff by virtue of the levy made under the execution. Therefore, the mortgagor could not have at that time delivered the possession of the property to the mortgagee. If there could not have been an actual delivery, there could not have been a valid symbolic delivery. Section 4 of Act No. 1508 (*supra*), provides that a chattel mortgage "shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides at the time of making the same." It will thus be seen that the statute makes a chattel mortgage void, if the same is not registered or if the property is not actually delivered to the mortgagee, against all persons except the mortgagor, his executors or administrators. The effect of the delay in recording a mortgage, in those cases where the property has not been actually delivered to the mortgagee, is to render it void as against intervening purchasers or creditors claiming liens by attachment, judgment, or execution.

While the mortgage in question was valid as between the defendant and intervenor,, it was invalid as to the plaintiff. The effect of section 4 (*supra*) is simply that as between the intervenor and plaintiff the mortgage had no force or operation whatever, and the case must be decided as if the mortgage had never existed.

For the foregoing reasons the judgment appealed from is reversed, without costs in this instance.

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

CONCURRING

MORELAND., J.

Generally speaking, I concur with the decision in this case. I regard it, however, as an opportune time and place to refer particularly to the method of foreclosing a chattel mortgage. From the number of cases that have come to this court in which chattel mortgages have been foreclosed by action, there seems to be an impression that a chattel mortgage cannot be foreclosed in any other manner. Such an impression, if it exists, is erroneous. It is not

necessary to begin an" fiction in order to foreclose a chattel mortgage. The mortgagee can foreclose by causing the property therein described to be seized by virtue of the mortgage itself and sold at public auction in the manner described by section 14 of Act No. 1508, the Chattel Mortgage Law. It is not necessary to go to the expense and suffer the delay of a judicial proceeding. The property is taken by a public officer armed with a copy of the mortgage and sold by him as agent of the mortgagee.

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