

1 Phil. 619

[G.R. No. 932. December 31, 1902]

**PEDRO REGALADO, PLAINTIFF AND APPELLEE, VS. LUCHSINGER & CO.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

SMITH, J.:

This is an appeal by Messrs. Luchsinger & Co. against a judgment of the Court of First Instance of the Province of Iloilo. No motion was made for a new trial in the court below, nor was any exception taken other than that against the judgment. This court, therefore can only consider in this instance whether the pleadings and facts admitted and those found by the Court of First Instance are sufficient to support the judgment by him rendered.

From the admissions in the pleadings and from the judgment sought to be reversed the following appear to be the facts in the case:

In March, 1893, Messrs. Luchsinger & Co. brought an executive action against Jose Regalado y Santa Ana for the recovery of 3,929 pesos and 60 cents, alleged to have been owed by the latter upon a promissory note, and, among other property of his, attached a certain warehouse and lot which it is admitted the maker of the note at that time possessed.

In 1896 the Court of First Instance entered a judgment in favor of Luchsinger & Co. and against Jose Regalado y Santa Ana for the total amount of the note, interest, and costs, which judgment was finally affirmed by the Royal Audiencia of Manila in 1897.

The record and the judgment so affirmed were returned to the Court of First Instance of Iloilo for execution, but, owing to the complications arising from claims made by third persons to some of the personalty embargoed, the destruction of part of the official records, and the general disturbance occasioned by the Spanish-American and Filipino wars, nothing further was done in the case until the 13th of April, 1900, upon which date the warehouse

and lot which this action concerns and which were under attachment, were put up at public auction by an order of the court of the 30th of that month.

On the day of the sale Pedro Regalado, a son of Jose Regalado y Santa Ana, instituted this suit in intervention under claim of ownership, and sought to obtain the suspension of the sale and the dissolution of the attachment, upon the ground that the judgment debtor was not, and that he, the said Pedro Regalado, was the absolute owner of the property to be sold.

Luchsinger & Co. opposed the contention of Pedro Regalado as to the ownership of the property attached, alleging that the acquisition of the property by the latter occurred subsequently to the attachment levied by them, and was therefore unavailing. In consequence of the filing of this complaint in intervention the sale of the warehouse and lot was suspended, and has so continued up to the present time.

On the 21st of March, 1902, more than one year before Luchsinger & Co, sought to obtain payment of their note, Jose Regalado y Santa Ana executed to Samuel Bischoff a mortgage on the warehouse and lot in question, as security for the payment to the latter of the sum of \$7,024.74. This mortgage was recorded in Iloilo on the 10th of June, 1892, and was assigned to Jose Maria Regalado by the mortgagee on July 12, 1897, but the instrument of assignment was never recorded in the register.

Jose Maria Regalado, as owner of the Bischoff mortgage, received the sum of \$9,834.48 in payment thereof, and canceled the mortgage in favor of the mortgagor, Jose Regalado y Santa Ana on the 28th of March, 1900; but the cancellation was not recorded in the register.

On the 2nd of March, 1893, Jose Regalado y Santa Ana executed a second mortgage upon the same warehouse and lot in favor of Alejandro Montelibano, to secure to him the payment of the sum of \$7,984.87, which mortgage appears to have been recorded on the 18th of March, 1893.

The Montelibano mortgage was assigned by the mortgagee to Jose Maria Regalado on the 8th of August, 1895, and the instrument of assignment was duly recorded on June 19, 1896.

Jose Maria Regalado, as owner of the Montelibano mortgage, received the sum due thereon, amounting to 17,984.87, and canceled the same in favor of Jose Regalado y Santa Ana on March 9, 1901, but did not record its cancellation.

Pedro Regalado, the plaintiff in this action, purchased the warehouse and lot above referred to subsequent to the levy of attachment by Luchsinger & Co. for the sum of 15,000, and the instrument of conveyance in his favor was recorded in the register on May 25, 1900. The \$15,000 which was the consideration for the sale made by Jose Regalado y Santa Ana to his son Pedro was devoted to the satisfaction of the Bischoff and Montelibano mortgages, transferred, as above stated, to Jose Maria Regalado.

Upon the facts the Court of First Instance dismissed the action brought by the plaintiff, Pedro Regalado, with the costs to the latter, and ordered execution in favor of Luchsinger & Co., as prayed for, against Jose Regalado y Santa Ana for the sum total of their claim, with the interest and costs, and ordered that the warehouse and lot be sold.

The Court of First Instance nevertheless recognized Pedro Regalado as a preferred creditor with respect to Luchsinger & Co. for the sum of \$15,000, devoted to the payment of the Bischoff and Montelibano mortgages, and decided that this sum, in addition to the expenses of repairs and preservation of the property, less the rents, issues, and profits obtained by him from the said property, should be first paid to the plaintiff, and that the product of the sale should be applied in the second place to the satisfaction of the claim of Luchsinger & Co., and that the balance, if any, should be paid to Pedro Regalado.

The plaintiff alleged in his complaint that he was the owner of the property attached by the judgment creditors. He did not allege or claim at any time in the course of the proceedings that he was a preferred creditor. The introduction by him into the suit of the Bischoff and Montelibano mortgages was not for the purpose of proving that he had a preferred claim upon the money which might be obtained by the judicial sale of the warehouse and lot, but only to show that he was the real owner of the property attached, purchased for a valuable consideration, and that the sale made to him by his father was a true and not a fictitious sale.

Pedro Regalado intervened in the executive action upon the sole ground that he was the owner of the property attached, and the judicial sale of the property directed by the Court of First Instance was suspended upon this ground - a result which could not have followed had the plaintiff sought to make use of the appropriate remedy available to a preferred creditor. (See arts. 1514, 1517, and 1518, of the Spanish Law of Civil Procedure.) This case was considered and tried by both parties as an intervention under the claim of ownership, and not as an intervention by a preferred creditor. The only question of fact or law raised by the pleadings was that of ownership, and to this issue alone the judgment of the court should

have been limited.

The evidence might have been quite sufficient to justify the belief of the learned judge of First Instance that Pedro Regalado was rather a preferred creditor than the owner, but as the claim to a preferred credit with respect to the property of the judgment debtor was not raised by the pleadings, judgment should not have been rendered in favor of the plaintiff upon this consideration of the facts. The purpose of the pleadings according to the Spanish procedure was that of stating therein, in a clear and precise manner, the points of fact and law in controversy between the parties litigant in such a way that the court might be informed of the issues, and that the parties might be prepared to contest the debated points. The court was without authority to raise or decide issues not presented by the pleadings. In this case the question as to whether the plaintiff was or was not a preferred creditor by reason of having paid the Montelibano and Bischoff mortgages was raised by the court itself, and the case was decided upon this issue without previous notice to the parties. The plaintiff may or may not have ground of complaint, but it is certain that the defendants have sufficient reason to object to a judgment which gives to the plaintiff a character which he has never claimed and which, therefore, the appellants had no opportunity to oppose.

The judgment of the court below is therefore reversed, with the costs to the appellee. In view of the condition of the record we are satisfied that justice requires that the case be returned to the court below for a new trial, and the clerk is directed to remand the case, after the entry of the judgment, in accordance with this decision. So ordered.

Arellano, C. J., Torres, Cooper, Willard, and Ladd, JJ., concur.

Mapa, J., disqualified.