

# COURT OF APPEALS

*The Government of the Philippine Islands, plaintiff-appellee, vs. Mariano Conde, defendant-appellant G. R. Nos. 3031 and 3249, October 26, 1939, Padilla, J.*

1. JUDICIAL SALE; CONFIRMATION; INADEQUACY OF PRICE.—“We have it as an established doctrine that inadequacy of the price alone, unless shocking to the conscience of the court, will not be sufficient to set aside the sale, if there is no showing, \* \* \*, that in the event of resale a better price can be obtained, or that there was fraud, collusion, mistake, surprise, unfairness or irregularity in the conduct of said sale” (The Government of the Philippine Islands vs. Zapanta, et al., 37 Off. Gaz., 1729-1730).
2. APPEAL; EXECUTION PENDING APPEAL; STAY OF EXECUTION; SUPERSEDEAS BOND.—A party against whom execution is issued for special reasons, cannot appeal by bill of exceptions from the order of execution. The only way of staying such execution is by filing a supersedeas bond, or by extraordinary legal remedy.

## DECISION

Pursuant to a judgment affirmed by the Supreme Court in a foreclosure suit, the mortgaged property was sold at public auction for P8,000 to the plaintiff. Afterwards, confirmation of the sale and deficiency judgment for P6,195.53 and 8% interest thereon, were prayed for by the plaintiff. The defendant objected on the ground of inadequacy of price as compared to its assessed and actual market values. The Court confirmed the sale and issued an *alias* writ of execution for the deficiency. Exception to the order of confirmation and execution and motion for new trial were filed. Denial of motion and announcement of intent to appeal followed one another. Pending allowance of the bill of exceptions, the plaintiff prayed that, notwithstanding the filing of the bill of exceptions, an order of execution be issued for the satisfaction of the deficiency judgment, on the ground that the appeal was frivolous and intended to delay the satisfaction thereof, unless a supersedeas bond for the amount of the deficiency judgment were given. This prayer was granted. The defendant excepted and moved for reconsideration. The last motion having been denied, another bill of exceptions was filed to appeal from the order of execution. There are, therefore, two ap-

pals, one from the order of confirmation and other from the order of execution of the deficiency judgment pursuant to the provisions of section 144 of the Code of Civil Procedure. The first appeal bears G. R. No. 3031 and the second G. R. No. 3249 of this Court.

As the second appeal is an offshoot of the first, we see no usefulness in writing two opinions. Appellant has filed one brief in support of the two appeals.

The ground for the objection to the confirmation of sale of the mortgage property for P8,000 is inadequacy of price, as compared to its assessed or actual market value. It is alleged that the assessed value was P13,950, and the market value on December 9, 1937, the date when the objection to the confirmation of sale was filed, was estimated at P16,000. This estimated value is not supported by any evidence. In declining to set aside an order of confirmation on the ground of inadequacy of price, the Supreme Court said:

“Assuming that the reasonable value of the properties is P66,000, as the affidavits of the real estate brokers purport to show, we do not think that the price of P43,000 at which they were sold is so grossly inadequate as to shock the conscience of the court. In Bank of the Philippine Islands vs. Green (52 Phil., 491), the property worth P60,000 was sold for P25,000; in National Bank vs. Gonzales (45 Phil., 693), the property worth P45,950 was sold for P15,000; and in the Government of the Philippine Islands vs. Serna (G. R. No. 32195, March 8, 1939, not reported), the property worth P120,000 was sold for P15,000. In none of these cases did this court set aside the sale for inadequacy of price.

“We have it as an established doctrine that inadequacy of the price alone, unless shocking to the conscience of the court, will not be sufficient to set

**Headnote 1** aside the sale, if there is no showing, as in the instant case, that in the event of a resale a better price can be obtained, or that there was fraud, collusion, mistake, surprise, unfairness or irregularity in the conduct of said sale. (Government of the Philippine Islands vs. Green, *supra*; Warner, Barnes & Co. vs. Santos, 14 Phil., 446; La Urbana vs. Belando, 54 Phil., 930; National Bank vs. Gonzales, *supra*; Guerrero vs. Guerrero, 37 Phil., 442; Cu Unifeng & Sons vs. Mahalacat Sugar Co., 58 Phil., 439; and Government of the Philippine Islands vs. Serna, *supra*.) (The Government of the Philippine Islands vs. Zapanta, et al., 37 Off. Gaz., 1729-1730.)

The question involved in the second appeal (G. R. No. 3249) is whether the party, against whom execution is issued for special reasons, may appeal by bill of exceptions from the order of execution. A

stay of execution by an appeal from an order directing it would render the execution of judgments for special reasons nugatory, ineffective, and valueless, as the party against whom execution is issued may always stay it by taking an appeal therefrom by bill of exceptions. If by filing a bill of exceptions such party may stay execution, there would be added to section 144 of the Code of Civil Procedure provisions that the legislative department had not intended to enact. The only way of staying such execution is by filing a supersedeas bond. This was required in the order of execution appealed from, but, instead of filing it, the appellant announced his intention to appeal by bill of exceptions which he subsequently filed. It is a clever circumvention of the law and of the order of execution which we cannot countenance, much less sanction. Relief against abuse of discretion by the Court in ordering execution of judgment for special reasons or fixing excessive amount of supersedeas bonds should not be by appeal but by extraordinary legal remedy.

There being no ground for disturbing the order of the Court of December 15, 1937, confirming the sale of the mortgaged property and requiring payment of the balance of deficiency, the same is affirmed, with costs against the appellant.

As no appeal can be taken from the order of February 12, 1938, directing execution of the deficiency judgment for special reasons, the appeal taken from said order is dismissed, with costs against the appellant.

So ordered.

SABINO PADILLA.

We CONCUR: Cesar Benzon, Pedro Fuentes, Jose Lopez Vito, Alex. Reyes.

## TECHNICALITIES TANGLE JUSTICE IN NAME OF FORM

“Every lawyer knows that the continued reversal of judgments, the sending of parties to a litigation to and from between the trial and appellate courts, has become a disgrace to the administration of justice. Everybody knows that the vast network of highly technical rules of evidence and procedure serves to tangle justice in the name of form. It is a disgrace to our law, and a discredit to our institutions.”—Elihu Root in *Washington University Law Quarterly*, Vol. 23, April, 1938, No. 3.