

45 Phil. 511

[G.R. No. 20992. December 11, 1923]

IN THE MATTER OF THE INVOLUNTARY INSOLVENCY OF UMBERTO DE POLI. UMBERTO DE POLI, PETITIONER AND APPELLEE, VS. CHARTERED BANK OF INDIA, AUSTRALIA AND CHINA, HONGKONG AND SHANGHAI BANKING CORPORATION AND ASIA BANKING CORPORATION, OPPONENTS AND APPELLANTS.

D E C I S I O N

STATEMENT

May 25, 1922, U. de Poli filed his petition for a discharge, in which it was alleged that on December 8, 1920, he was adjudged insolvent under the provisions of Act No. 1956; that he has surrendered all of his property and property rights, except such as were exempt by law, and has complied with all orders of the court; that he has not done, suffered or been privy to any act, matter or thing contrary to the provisions of said Act; that he did not apply for his discharge within one year, for the reason that his property was not converted into money within that time.

In response to the petition, January 6, 1923, certain banks filed objections, alleging that they were creditors of the insolvent debtor in large sums, for which they held no adequate security; that U. de Poli, being then and there a licensed warehouseman, was guilty of fraud, in that he fraudulently issued duplicate and triplicate negotiable warehouse receipts to his creditors for the same goods without placing thereon the word "duplicate" or "triplicate;" that he was accused and plead guilty to the crime of fraudulently issuing such warehouse receipts, and was convicted of that crime and sentenced to a term of imprisonment in Bilibid Prison for one

year; that the banks in question consented to the one year sentence with the understanding that the insolvent should serve his time; that he secured his pardon through misrepresentation and without the knowledge of his creditors.

Upon such issues, the parties entered into the following stipulation:

“It is further stipulated and agreed that the warehouse receipts referred to in said informations in said criminal cases are the same warehouse receipts referred to by the Chartered Bank, the Asia Bank and the Hongkong Bank in their objections on January 6, 1923, to the discharge of the said insolvent; that said warehouse receipts were issued by said insolvent debtor from time to time to said banks in consideration of and as security for advances by the latter and were held by said banks at the time of the adjudication of insolvency of said debtor and that said banks in an effort to recover the goods described therein presented said warehouse receipts as evidence in the same insolvency proceedings in which the insolvent debtor now seeks to obtain his discharge.”

After hearing the testimony, the court rendered a decision to the effect “that said insolvent debtor U. de Poli be discharged from his debts as provided in section 64 of the Insolvency Law (Act No. 1956),” from which the banks in question appeal, contending that the trial court erred in holding that the pardon of the debtor relieved him from the application of the provisions of paragraphs 5 and 11 of sections 65 and 68 of the Insolvency Law, and in failing to find that the pardon was conditional, and in discharging him from the payment of his debts, which were admitted to have been incurred and created through fraud.

JOHNS, J.:

The question involved is the construction of section 65 of the Insolvency Law, the material portion of which is as follows:

“No discharge shall be granted, or if granted shall be valid, * * * (5) if he has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made, or been privy to the making of, any false or fraudulent entry in any book of account or other document with intent to defraud his creditors; * * * or (11) if he has been convicted of any misdemeanor under this Act, or has been guilty of fraud contrary to the true intent of this Act.”

And section 68:

“No debt created by the fraud or embezzlement of the debtor, or by his defalcation as a public officer or while acting in a fiduciary capacity, shall be discharged under this Act, but the debt may be proved, and the dividend thereon shall be a payment on account of said debt.”

And the legal force and effect of the pardon granted by the Governor-General, which is as follows:

“By virtue of the authority conferred upon me by the Philippine Organic Act of August 29, 1916, and upon the recommendation of the Honorable, the Secretary of Justice, the Attorney-General, the city fiscal and the assistant city fiscal, the unexecuted portion of the sentence in the case of U. de Poli, convicted by the Court of First Instance of Manila of violation of article 50 of Act No. 2137 (two charges) and sentenced on February 7, 1922, to imprisonment for one year, is hereby remitted, on condition that he shall not again be guilty of any misconduct.

“Upon acceptance of this pardon, U. de Poli will be released from confinement.”

The lower court relied upon the decision of this court in *Re*

Lontok (43 Phil., 293). The decision in that case is good law, but it does not aid the insolvent debtor. Here, we are dealing with the positive, express provisions of a statute enacted by the Legislature which says:

“No discharge shall be granted, or if granted shall be valid,” where the insolvent has falsified any of his books or entries, or has made any fraud in his entries with intent to defraud his creditors, and that—

“No debt created by the fraud or embezzlement of the debtor, etc. shall be discharged under this Act, but the debt may be proved, and the dividend thereon shall be a payment on account of said debt.”

Here, it was stipulated that the insolvent was indicted and plead guilty to a charge of falsifying warehouse receipts, in and by which he obtained money and credit from the respective banks. To hold that De Poli should be discharged upon the facts shown in the record would, in legal effect, nullify the plain and express provisions of the statute.

The judgment of the lower court is reversed, and one will be entered here, denying the petition for discharge, with costs in favor of the appellants and against the petitioner. So ordered.

Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.