

INSOLVENCY OF YAP CANGCO. E. VIEGELMANN & COMPANY ET AL., PETITIONERS AND APPELLEES, VS. JOSE PEREZ, CLAIMANT AND APPELLANT.

G.R. No. 10870, February 18, 1918

Ponente: CARSON, J.

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CARSON, J.:

The following notarial document was executed and acknowledged on the 18th day of March, 1913:

"That It Tan Achiong, alias Yap Cangco, of legal age, married, and a merchant and resident of this city of Manila, Philippine Islands, hereby make the following declaration and statement:

"First. That I am the sole and absolute owner of a hat factory situated on Calle Sacristia, No. 231, Binondo, Manila ; and that said factory at the present time contains the articles specified, with their respective value, in the detailed inventory hereinbelow set forth, to wit:

One presser for pressing hats.....

P2,000

Accessories for the presser.....

500

Ten machines for sewing hats.....

1,000

Fourteen bales of straw for hats.....

2,000

One thousand dozen papers, for inner hatbands.....

200

Linen outer hatbands.....

150

Linen sewing thread.....

150

Straw hats.....

500

Four machines for sewing umbrellas.....	
100	
Cloth and ribs for umbrellas.....	
400	
Satin	
150	
Hat lining.....	
100	
Gelatine gum.....	
150	
Cardboard.....	
80	
Acids for whitening straw.....	
100	
Apparatus used in whitening process.....	
200	
Wooden hat forms.....	
300	
Sum total.....	
P8,080	

"Second. That the above-mentioned goods are free from all charges and encumbrances or liabilities.

"Third. That in consideration of the sum of one thousand pesos (1,000), Philippine currency, which in this act I have received from Don Jose Perez, of legal age, married, an employee by occupation, and a resident of this city of Manila, I do hereby assign, sell, and convey to the said Don Jose Perez, to his heirs and assigns, the personal property specified in the preceding paragraph of this instrument, and do hold myself responsible to him for the title over said goods which titles I bind myself to defend now and always against all just claims by whomsoever presented.

"Fourth. That this sale is executed under the covenant or condition that if I should return to the purchaser within the period of three months from the date of the execution of this instrument the one thousand pesos (P1,000), Philippine currency, which constitute consideration in this sale, I shall be entitled to redeem or repurchase the goods hereby sold; but I shall not be entitled so to do, if I should allow the said period for redemption to elapse without availing myself of the right, in which case this sale shall become absolute and irrevocable.

"Fifth. That I obligate myself (not), in any manner, to dispose of the personal property hereby sold, but shall be entitled to do so only after I should repurchase them.

"Sixth. That I Jose Perez, state that I accept this deed of sale under right of repurchase, in the precise terms and conditions upon which it has been executed in my favor by the vendor Tan Achiong, alias Yap Gangco.

"Seventh. That I, the vendor with right of repurchase, likewise obligate myself, for the safeguard of the purchaser Don Jose Perez, to keep in good and serviceable condition in the said hat factory the personal property described in the first paragraph of this instrument.

"Eighth. That I, Jose Perez, whose (personal circumstances have hereinabove been set forth, hereby lease during the term for the redemption, to Tan Achiong, alias Yap Cangco, the personal property sold to me by him and mentioned in the first paragraph of this instrument, for the monthly rental of thirty pesos (P30), Philippine currency, payable in advance precisely on the eighteenth day of each month, it being understood that if, as lessee, he should fail so to pay a single month's rent, this sale shall likewise be absolutely and irrevocably consummated.

"Ninth. That I, Tan Achiong, alias Yap Cangco, whose personal circumstances have hereinabove been set forth, do accept this contract of lease in the precise terms in which it has been executed in my favor by the purchaser under right of repurchase, said D. Jose Perez, and obligate myself to pay the said rent in the residence of the lessor.

"Tenth. It is also stipulated by and between the contracting parties that the purchaser under right of repurchase may make use of the right to reject the lessee, although the term of the contract may not have expired, if the lessee should violate any of the clauses of this contract.

"Eleventh. That Tan Achiong, alias Yap Cangco, obligates himself to endorse in favor of Don Jose Perez the fire insurance policy of the property hereby sold, which policy bears the number 1016867 of the Yorkshire Fire and Life Insurance Company.

"In witness whereof we sign these presents in triplicate in Manila, this eighteenth day of March, nineteen hundred and thirteen. (Sgd.) Tan Achiong. (Sgd.) Jose Perez signed in the presence of: (Sgd.) Paulino Flores. (Sgd.) Lope Consing.

"United States of America,

"Philippine Islands

"City of Manila.

"Reg. No. 51, p. 14.

"In the city of Manila, this eighteenth day of March, nineteen hundred and thirteen, A. D., before me, the undersigned, a notary public of this city, personally appeared Tan Achiong, alias Yap Cangco, and Jose Perez, whom I certify that I know to be the persons who executed the foregoing instrument, and they stated that they freely and voluntarily executed the same. The contracting parties exhibited to me their personal registration certificates Nos. H-33113 and F-41794, issued by the Collector of Internal Revenue, at Manila, on July 13th and April 10th, 1912, respectively.

"In witness whereof I hereunto sign these presents and affix my official seal, on the day, month, and year above mentioned."

It appears that more than three months after the date of the acknowledgment of this instrument, Yap Cangco was declared insolvent; that on the 4th day of November, 1913, K. Matsumoto was designated as assignee by the creditors; and that on the same day he was ordered to sell all the insolvent's estate.

Under the order of the court the greater part of the property described in the foregoing document was taken into the possession of the assignee as the property of the insolvent. On November 18, 1913, Perez, the appellant in this

case, presented a claim in the course of the insolvency proceedings, setting forth that under the terms of the foregoing document, he had become the owner of the property described therein, as a result of the failure of the insolvent to redeem or repurchase it at the time stipulated therefor; and that he was entitled to possession as against the assignee and the creditors of the insolvent, or to the proceeds arising from its sale in the course of the bankruptcy proceedings.

The trial judge relying upon our rulings in the cases of *Fidelity and Deposit Co. of Maryland vs. Wilson* (8 Phil. Rep., 51), *Kuenzle & Streiff vs. Macke & Chandler* (14 Phil. Rep., 610) and *Williams vs. McMicking* (17 Phil. Rep., 408) was of the opinion that, since there was no actual physical delivery of the possession of these goods at the time of the execution of the document, title did not pass from the insolvent, so that the claimant was not entitled to the possession of the goods, or to the proceeds of their sale. He, therefore, ordered that Perez be paid merely his pro rata share of the proceeds of the sale of the property of the insolvent on an equal footing with the general unsecured creditors.

It is manifest that in thus construing the cases relied upon, the trial judge overlooked, or did not have his attention specifically called to the fact that in this case, the document evidencing the transfer is a public instrument acknowledged before a notary; while in the cases relied upon, the claims of transfer of title rested on alleged agreements set forth in private documents unaccompanied by the actual or physical transfer of the property.

The cases relied upon should be read together with our decision in *Florendo vs. Foz* (20 Phil. Rep., 388), wherein we said:

"When the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if in said instrument the contrary does not appear or may be clearly inferred.

"As the contrary does not appear nor is to be inferred from the public instrument executed by the defendant, its execution was really a formal or symbolical delivery of the property sold and authorized the plaintiff to use the title of ownership as proof that he was thenceforth the owner of the property."

The importance of this distinction will readily be seen from the express terms of article 1462 of the Civil Code, which reads as follows:

"A thing sold shall be considered as delivered, when it is placed in the hands and possession of the vendee.

"When the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if in said instrument the contrary does not appear or may be clearly inferred."

From what has been said it must be clear that if the document above set forth was in fact, what it purports on its face to be, Perez, the purchaser of the goods described therein, is entitled to the possession of these goods as against the assignee of the vendor, in the insolvency proceedings, or to the proceeds of the sale of these goods by the assignee in the course of those proceedings.

It is contended, however, that having in mind the terms of this instrument and the circumstances under which it was executed, it should not be held to be a genuine and valid sale of the goods therein mentioned with a reserved right to repurchase in the vendor. We are compelled to agree with this contention.

Examining the instrument itself, it will be seen that it purports to convey to the purchaser a hat and cane factory, including the machinery, the stock of raw materials, and all the manufactured goods actually on hand, and at the same time leaves this property in the possession of the vendor, with the right to sell the manufactured goods on

hand, to convert the raw materials into hats and canes, and to dispose of the manufactured articles. It will be seen furthermore, that it purports to sell goods inventoried at an agreed valuation of more than P8,000 for and in consideration of the sum of P1,000 which the purchaser had advanced to the vendor. The record further discloses that this instrument purporting to be a deed of sale with a reserved right of repurchase, was executed by the vendor with relation to the same property which had been conveyed to the same purchaser in a former deed wherein the purchase price was fixed at P2,000, and the vendor was left in possession under an agreement that he would hold the property as the tenant of the purchaser at a monthly rental of P60. The evidence of record explains and discloses the necessity for the execution of the second deed of sale, by the fact that the purchase price set forth in the first deed was in truth and in fact the amount of an advance of money to the vendor by the alleged purchaser, which had been partially repaid at the time the second deed was executed, so that the parties deemed it expedient to execute a new instrument, fixing the purchase price at the amount of the unpaid balance of the original advance, and reducing the amount of the rent from a monthly payment equal to three per cent per month on the original advance to a monthly payment equal to three per cent per month on the balance due after payment had been made of a part of that advance.

Under the doctrine announced in the cases of *Laureano vs. Kilayco* (34 Phil. Rep., 148) ; *Cuyugan vs. Santos* (34 Phil. Rep., 100) ; and *PP. Agustinos Recoletos vs. Lichauco* (34 Phil. Rep. (5), we have no hesitation in holding that the instrument in question did not evidence a genuine sale with the right to repurchase reserved to the vendor, and that although it was cast in the form usually adopted in evidencing such a transaction, it was in truth and in fact no more than a solemn declaration in a public document acknowledging his indebtedness, in the sum of P1,000, the borrower at the same time solemnly obligating himself to hold the property described in the instrument under the conditions set forth therein as security for the payment of the loan.

The instrument, not having been recorded in the mortgage registry, cannot be given the effect of a mortgage, so as to prejudice the rights of third persons in and to the property; the creditor cannot therefore maintain his claim to the property or the proceeds of its sale in the hands of the assignee on bankruptcy proceedings on the ground that he held a mortgage, either legal or equitable, upon the property.

We are of opinion, however, that the creditor, Perez, whose indebtedness is acknowledged in a public instrument, executed more than three months prior to the institution of the bankruptcy proceedings, is entitled to a preference in the distribution of the proceeds of the sale of his debtor's property in the hands of the assignee in these bankruptcy proceedings, as against unsecured creditors. (Subsection 3, article 1924, Civil Code.)

Ruling upon a motion for a rehearing in the case of *Tec Bi & Co. vs. Chartered Bank of India, Australia and China*, (16 Off. Gaz. 911) we said:

"It is true, as said by counsel, that in a long line of decision, filed before and since the enactment of the Bankruptcy Act on May 20, 1909, this court has steadfastly and uniformly construed, applied and recognized as in full force and effect, in this jurisdiction, the various provisions of articles 1922 and 1924 of the Spanish Civil Code touching statutory preferences where such preferences have been asserted, as in the case at bar, in judicial proceedings, other than formal bankruptcy proceedings; and we have said, furthermore, on more than one occasion, that the doctrine announced in these decisions constitutes a rule of property not subject to change except by legislative enactment. See discussion and citation of cases in *Alzua and Arnalot vs. Johnson*, 21 Phil. Rep., 308.) But counsel contends that all these statutory preferences were swept away by necessary implication as a result of the enactment of the Insolvency Law (Act No. 1956). We cannot give our assent to this contention.

"It seems to be based on the general provisions of chapter VI of the Bankruptcy Act, which do not provide for the recognition of any of these 'statutory preferences/ other than those included in the list of preferred claims set forth

in sections 49 and 50, although the order in which 'preferred claims' shall be paid from the proceeds of the sale of the property of the insolvent which comes into the hands of the assignee, is expressly set forth in these sections, which provide furthermore that 'all other creditors shall be paid pro rata.'

"But this argument for repeal, by implication, of the provisions of the Spanish Code touching 'statutory preferences,' not mentioned in Chapter VI of the Act, takes no account of the provisions of section 59 of the Bankruptcy Act, by virtue of which a right to any of these statutory preferences may be set up and maintained, if duly asserted in the manner and form therein prescribed. This article is as follows:

" 'When a creditor has a mortgage, or pledge of real or personal property of the debtor, or a lien thereon, for securing the payment of a debt owing to him from the debtor, or an attachment or execution on property of the debtor duly recorded and not dissolved under this Act, he shall be admitted as a creditor for the balance of the debt only, after deducting the value of such property, such value to be ascertained by the agreement between him and the receiver, if any, and if no receiver, then upon such sum as the court or a judge thereof may decide to be fair and reasonable, before the election of an assignee, or by a sale thereof, to be made in such manner as the court or judge thereof shall direct; or the creditor may release or convey his claim to the receiver, if any, or if no receiver then to the sheriff, before the election of an assignee, or to the assignee if an assignee has been elected, upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the debtor's right of redemption thereon on receiving such excess; or he may sell the property subject to the claim of the creditor thereon, and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not sold or released, and delivered up, or its value fixed, the creditor shall not be allowed to prove any part of his debt, but the assignee shall deliver to the creditor all such property upon which the creditor holds a mortgage, pledge, or lien, upon which he has an attachment or execution.

" 'It has been suggested that under our former rulings, these "statutory preferences" cannot be treated as Hens affecting the property of the debtor, as that word is used in the above cited section of the Bankruptcy Act. But while it is true that we have held in a number of decisions, that these "statutory preferences" of the Civil Code are not Hens in the strict and limited sense of that word as used in Anglo-American jurisprudence, and while we have taken considerable pains to distinguish the nature and effect of these "statutory preferences" (sometimes called "civil law liens" by American law writers), from that of "liens," as that word is used in the strict technical parlance of the American and English authorities; nevertheless there can be no question that when a right to one of these "statutory preferences" has actually been asserted, in the course of judicial proceedings which have for their object the distribution of funds derived from the sale of all or any part of the assets of the debtor, by a proper party to such proceedings, as intervener or otherwise, the consequences flowing therefrom are closely assimilated to, and substantially identical with those arising as a result of the assertion in the course of such proceedings, of a recorded "lien" upon the assets of the debtor with a view to its enforcement therein. We are of opinion, therefore, that the word "lien" as used in section 59 of the Insolvency Law should be held to include "statutory preferences" such as those now under consideration if and when they are duly asserted in the course of bankruptcy proceedings.

" 'We are not unaware of the fact that this construction of the language of the statute may give rise to some practical difficulties in the administration of insolvency proceedings; but we do not apprehend that these difficulties will prove to be any less surmountable than similar practical difficulties with which our courts have been confronted, in applying and construing the terms of many other statutes enacted in recent years, wherein the general provisions and the terminology in which they are expressed have been borrowed directly from American or English precedents, in the enactment of which the legislator had in mind provisions of substantive law radically

different from those of the Spanish substantive law still in force in these Islands.

" 'The right to a preference in the case at bar being founded upon the failure of a debtor to pay the purchase price of goods sold to him by the plaintiff, it may be well to add that the right of the vendor of merchandise bought on credit by an insolvent, "so long as the actual delivery thereof has not been made" to have such goods placed at his disposal, in the manner and form prescribed in subsection 8, section 48 of the Insolvency Law, is manifestly an additional and cumulative remedy allowed a vendor of merchandise, the purchase price of which has not been paid, and is in no wise in conflict with the right of such a vendor to assert the preference secured to him in article 1922 of the Code of Civil Procedure, in any case wherein delivery has actually been made.

" 'As we said in the case of Smith, Bell & Co., vs. Maronilla (R. G. No. 8769), decided February 5, 1916, (Off. Gaz., 976) (wherein we ruled adversely upon a similar contention as to the repeal by implication of the provisions of articles 1922 and 1924 of the Civil Code, as a result of the enactment of the provisions of the new Code of Civil Procedure touching the distribution of the estates of deceased person), we would be loath to believe that it was the intention of the legislator to destroy all these valuable privileges, without substituting anything in their stead; and we decline to sustain such a contention in the absence of clear and explicit language in the statute which, either in express terms or by necessary implication, leads to conclusion.

" 'Strong and compelling reasons of public policy, in this jurisdiction as elsewhere, have resulted in the enactment of legislation providing special security in one form or another, for credits for construction, repair and preservation of personal property; transportation charges; seeds and ether agricultural advances; rents; credits evidence in solemn judgments; and the like. The security in such cases, furnished under statutory authority in the United States, in the form of liens on the property of the debtor, was not affected, nor intended to be affected by the enactment of the American prototypes of the provisions of our Insolvency Law and our Code of Civil Procedure; and we are satisfied that it was not the intention of the legislature to destroy, without providing a substitute therefor, the security in the form of "statutory preferences" furnished in our Civil Code in like cases, and that the language of these statutes does not sustain such a contention.' "

Twenty days hereafter let judgment be entered, reversing the judgment entered in the court below, in so far as it denies the right of the appellant, Jose Perez, to a preference, a3 against unsecured general creditors, in the distribution of the funds in the hands of the assignee in these bankruptcy proceedings, to the full amount of the indebtedness acknowledged in the public document above set forth, without costs in this instance, and ten days thereafter let the record be returned to the court below where judgment will be entered making provision for the distribution of these funds in accordance herewith. So ordered.

Arellano, C. J., Johnson, Araullo, Street, and Malcolm, JJ., concur.

Torres, Avanceña, and Fisher, JJ., did not take part in the case.

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