

ADRIANO PANLILIO, PLAINTIFF AND APPELLANT, VS. ESTEBAN VICTORIO, AS SHERIFF OF THE PROVINCE OF PAMPANGA, STAHL & RUMCKER AND MARIANO TORRES, DEFENDANTS AND APPELLEES.*G.R. No. 10953. December 12, 1916*

Ponente: TORRES, J.

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This is an appeal, by bill of exceptions filed by counsel for the plaintiff, from the judgment of the Court of First Instance of Pampanga of February 5, 1915, which absolved the defendants from the complaint, rescinded the contract of the sale between Adriano Panlilio and Mariano Torres Pamintuan (on the ground of defrauding creditors) of the effects worth P3,000, specified in the document Exhibit 1, and moreover ordered that the plaintiff return the property that came into his possession by virtue of the preliminary attachment issued by the said court on May 20, 1914, as well as the sum of P19.36, the proceeds obtained from said sale, to the defendant sheriff; that with the said sum of P19.36 and with the proceeds from a sale of said property, defendant pay the amount of the judgment pronounced by the court of the said province in civil case No. 1026, Stahl and Rumcker, plaintiffs, against Mariano Torres, defendant (execution sale having been ordered on November 4, 1914) in addition to the sum of P51.33; that the sheriff deliver said sums to the aforementioned Stahl and Rumcker; that in case the plaintiff be unable to return the said effects and the sum of P19.36, he should pay to the defendants Stahl and Rumcker the amount of the said judgments, in addition to the sum of P51.33, or such part of the said sums as might still be unpaid. The costs were assessed against the plaintiff.

On May 20, 1914, counsel for Adriano Panlilio filed a written complaint in the Court of First Instance of Pampanga, alleging that the plaintiff, being the owner, was entitled to the possession of the furniture, shelving, glassware, medicines, drugs and other chemicals, perfumery, toilet powder, and other movable and immovable property pertaining to drug and perfumery stores—all of which are specifically described in the second paragraph of the complaint; that the defendant sheriff of said province, Esteban Victorio, was unlawfully detaining the said personal property, the subject matter of the complaint; that he had seized the same by virtue of a writ of preliminary attachment issued, at the request of the defendants Stahl and Rumcker, against the property of the defendant Mariano Torres, as the result of a civil action brought by the said Stahl and Rumcker against the said Mariano Torres; that the said property of the true and actual value of P3,000 had not been attached for the payment of any tax or fine lawfully imposed, nor for the execution of any judgment against the property of the plaintiff Adriano Panlilio; that by such procedure the plaintiff had been caused losses and damages to the amount of P1,000, and that therefore, after compliance with the provisions of sections 264 et seq. of the Code of Civil Procedure, he requested the court to issue a warrant directing a judicial officer immediately to proceed to take custody of and to deliver to the plaintiff the property described in the second paragraph of the complaint; that after due legal procedure, he render a decision in behalf of the plaintiff for the ownership of the property claimed in the complaint, to order the final delivery of the same to the plaintiff, or, this being impossible, to sentence the

defendants to pay to the plaintiff the sum of P3,000, as the value thereof as well as the sum of P1,000 as losses and damages, with the costs against the defendants.

Upon the plaintiff's furnishing bond, the court, by order of June 3, 1914, directed the seizure of the property, described in the complaint, which was delivered to the plaintiff.

On June 19, 1914, the defendant sheriff Esteban Victorio entered his appearance and denied the allegations contained in the complaint. In special defense he set forth that the property in litigation had been attached in compliance with a lawful and valid order, and that therefore he requested to be held exempt from all liability.

On July 10, 1914, the defendants Stahl and Rumcker answered the aforementioned complaint by a general and specific denial of the allegations contained in each and all of its paragraphs, and in special defense set forth that on May 6, 1914, they filed a complaint in the court of First Instance of Pampanga against Mariano Torres Pamintuan in connection with the property in question; that, on June 30, 1914, they obtained a favorable judgment (copies of said complaint and judgment were attached to their answer as Exhibits A and B, respectively); that the property specified in the complaint belonged to the Botica de Bacolor (Bacolor Drug store) owned by their codefendant Mariano Torres Pamintuan; that the said drug store together with the said property were attached by the sheriff of Pampanga as a result of the aforesaid complaint, Exhibit A; that the plaintiff Adriano Panlilio claimed same and alleged he had bought them from the defendant Mariano Torres Pamintuan under right of repurchase; that all these effects (perfumery, drugs, medicines, and the property aforementioned) had been acquired from the defendants' establishment by Mariano Torres Pamintuan who had not yet completely paid the price or value thereof; that these facts were known to the plaintiff Panlilio who also obtained his supplies of medicines and other effects from these defendants; that, for several years previous to February 2, 1914, the said Pamintuan had been receiving from them perfumery, medicines, drugs and other articles related thereto, binding himself to pay for the same out of the proceeds from the sales made in his drug store in Bacolor; that the alleged sale of the said drug store, attached together with all its effects, by Pamintuan in favor of the plaintiff Panlilio was executed in fraud of the defendants Stahl and Rumcker who are lawful creditors of the first named, inasmuch as both prior and subsequent to January 10, 1914, the date of the alleged sale ' to the plaintiff, the said Pamintuan had stated in writing and verbally that the drug store and all its effects were his own property and were unencumbered; that Pamintuan had no other property with which to pay his debt to Stahl and Rumcker; that the latter had no other legal remedy whereby to obtain reparation of the damage caused them by the fraudulent sale of the said drug store together with its effects to the plaintiff; and, finally, that the plaintiff had, without just cause, obtained the sequestration of the property in litigation, thereby causing these defendants losses and damages in the amount of P1,400. The defendants Stahl and Rumcker therefore prayed the court either to annul the sale of the litigated property by Pamintuan to the plaintiff, or else to declare the said sale rescinded in so far as it be prejudicial to the rights, credits and interests of these defendants; to order the said property returned to the sheriff so that he might go on with its sale and with these proceeds pay Stahl and Rumcker the amount of the judgment obtained by them against Pamintuan; and to order the plaintiff to pay them the amount of their losses and damages as well as the costs of the suit.

After the hearing of the case and the introduction of evidence by both parties, the decision aforementioned was rendered, to which the plaintiff excepted and in writing moved for a reopening of the proceedings and the holding of a new trial. This motion was overruled, exception was taken by the appellant, and, upon presentation of the proper bill of exceptions, the same was approved and transmitted to the clerk of this court.

The questions to be resolved in this suit are: (1) Whether or not the contract of sale contained in the document Exhibit 1 and ratified before a notary on March 25, 1914, is fraudulent; (2) if so, whether or not it should be rescinded and whether or not the plaintiff should be ordered to pay for the losses and damages occasioned; (3) and

whether or not, as a result of such a finding and sentence, the defendants Stahl and Rumcker are entitled to ask for the execution of the judgment, obtained by them on June 20, 1914, against their debtor Mariano Torres Pamintuan, for the sale of the effects contained in his drug store in Bacolor and attached on petition of the said defendants, his creditors.

Mariano Torres Pamintuan, one of the herein defendants, had established a drug store in the pueblo of Bacolor, Province of Pampanga, and for reasons related to the business had come to have several creditors two of whom, Joaquin Paruli and his wife Maxima Punu, had been compelled to file suit in the justice of the peace court of Bacolor against the said Pamintuan for the recovery of a debt of P300, and on March 13, 1914, had obtained a judgment ordering the debtor Pamintuan to pay the said P300 to the plaintiff spouses (Exhibit MM; record, p. 77). Torres' drug store having been attached April 23, 1914, for the recovery of said amount, the herein plaintiff Panlilio filed a third party claim and, as the judgment creditors Paruli and Punu were unable to give bond, the attachment had to be released. Stahl and Rumcker likewise filed a third party claim to the attached property and also asked for an attachment of the effects of Pamintuan's drug store in satisfaction for the value, still unpaid, of like articles from their establishment. Although Panlilio opposed this attachment and presented a third party claim, the attachment was continued in force under the bond given by Stahl and Rumcker. Owing to this, the intervener Adriano Panlilio filed the present complaint to set aside the claim made by Stahl and Rumcker and to obtain the delivery to himself of all the effects of Pamintuan's said drug store, purposes attained through an order issued by the Court of First Instance of Pampanga, on June 3, 1914, directing said seizure and delivery of the property in litigation. The plaintiff claims all these effects by reason of an absolute sale executed in his behalf, as he alleges, on January 10, 1914, by Pamintuan (Exhibit 1, record, pp. 45-46). In effect, by means of this document, Mariano Torres Pamintuan sold to the plaintiff Adriano Panlilio the said drug store with its entire stock of medicines, bottles, shelving, and other articles for P800, on the condition that if, by the end of February, 1914, the vendor should not repurchase the same, the sale should thenceforth become absolute (Exhibit 1). This document contains the names of Sisenando Dizon and Baldomero Quiambao, as attesting witnesses. It bears the date of San Fernando, Pampanga, January 10, 1914, but was not ratified before a notary until March 25, 1914, as shown by the certification of the notary and justice of the peace of San Fernando, A. Carpio.

The contention of the defendants Stahl and Rumcker is that the alleged sale of the drug store to Panlilio was made, not on January 10, 1914, but on March 25, 1914, that same was executed in fraud of Pamintuan's creditors, that thereby they were injured in their rights because Pamintuan had received from them various quantities of drug store effects, on credit, still unpaid, amounting to P919.76 in value.

As the sale mentioned in the document Exhibit 1 is alleged to be defective in that it was executed in fraud of creditors, the first question to be determined is whether the sale was actually made for the purpose of defrauding the vendor's creditors, the sole ground sieged by the plaintiff for having been able to petition for the delivery of the effects, contained in the drug store, which, according to the said document, he had acquired; and for having been able to deprive the defendants, Stahl and Rumcker, of the right to recover out of the sale value of the pharmaceutical effects which, at their petition, were attached as a result of the final judgment rendered against their debtor, Mariano Torres Pamintuan.

The record shows as duly proven that the alleged sale of the Bacolor drug store and the effects therein contained (by Pamintuan to the plaintiff Panlilio on January 10, 1914, according to the document Exhibit 1 ratified only on March 25th of the same year) was fraudulent and is rescindible, since it was effected for the purpose of defrauding the vendor's creditors, among them the defendants Stahl and Rumcker who had sold on credit a large quantity of medicines to the vendor Pamintuan, the owner of the drug store, who sold the same, still unpaid for, to the plaintiff with intention undoubtedly of preventing these defendants, to their prejudice and damage, from being

able to recover the value thereof.

On May 20, 1914, when counsel for the plaintiff filed suit in demand for the delivery to his client of the effects contained in the drug store purchased by Panlilio, these same effects had already been judicially attached on petition of the defendants Stahl and Rumcker who in the first part of May of that year filed a third party claim of better right to the said effects, likewise previously attached at the instance of the husband and wife Paruli and Punu, other creditors of Mariano Torres Pamintuan.

Article 1291 of the Civil Code, among other provisions, prescribes as follows:

"The following [contracts] may be rescinded:

"1. * * *. 2. * * *. 3. Those executed in fraud of creditors, when the latter can not recover, in any other manner, what is due them."

It cannot be doubted that when Pamintuan saw by virtue of the proceedings prosecuted against him by the judgment creditors Paruli and Punu, the effects contained in his drug store in Bacolor attached, and when he saw Stahl and Rumcker come forward with a third party claim and likewise obtained a reattachment of the same effects to cover the amount due them, he came to an understanding with the plaintiff; that the deed of sale of the drug store (Exhibit 1) was drawn up; and that, notwithstanding this document appears to have been executed and ratified on March 25, 1914, the date of January 10, 1914, was written therein, a fact affirmed by one of the attesting witnesses, Sisenando Dizon, who testified to using the typewriter for the first sheet and his own handwriting for the second sheet of the document containing said ratification and to having written both sheets on the same day. From this testimony it is concluded that the document Exhibit 1 was drawn up and ratified on March 25, 1914, that it was not drawn up on January 10 of that year, and that therefore the simulated sale of the Bacolor drug store, by Pamintuan to the plaintiff was in fraud of the creditors Paruli and Punu and of the defendants Stahl and Rumcker, inasmuch as the vendor positively knew on said 25th of March that he was being sued by said Paruli and Punu in the pueblo of Bacolor, that he was indebted to Stahl and Rumcker for P919.76, by reason of not yet having paid to the said defendants the price of a large quantity of medicines received on credit from the Boie Pharmacy, and that therefore, in making a real or a simulated sale of his drug store and its effects to plaintiff Panlilio, vendor acted deceitfully, in bad faith and with intent to defraud his said creditors.

The defendants Stahl and Rumcker have not been able to collect their credit from their debtor Pamintuan, to find any property out of which they might be able to do so, or any means whereby to recover the debt. Therefore, pursuant to the provisions of the said article 1291 of the Civil Code, they have a right to oppose the plaintiff's claim and to demand of the courts the rescission of the said contract of sale, Exhibit 1.

The existence and realty of the debt which Pamintuan owes to defendants Stahl and Rumcker is evident—a debt for a certain sum, contracted long prior to the feigned contract of sale in the document Exhibit 1—and therefore the priority of the credit of said creditors is fully proven by the Exhibits A and B, of which the second contains the judgment rendered in the proceedings brought by Stahl and Rumcker against Pamintuan, whereby the latter was sentenced to pay to the former the aforementioned sum owing since March, 1913.

The record having fully proven that the defendants Stahl and Rumcker possess the status of creditors by reason of said debt long prior to the aforementioned fraudulent contract of sale, there only remains to be determined whether the said contract was in fact executed in fraud and to the prejudice of the owners of the pharmaceutical effects taken on credit and without payment by the debtor and fraudulent vendor Mariano Torres Pamintuan.

Pamintuan's creditors are entitled to the presumption of fraud mentioned in article 1297 of the Civil Code for the reason that the deceitful contract of conveyance was executed for a valuable consideration eleven days after the

judgment of March 13, 1914, by which Pamintuan, the common debtor, was sentenced to pay a certain amount owing his creditors and, notwithstanding the fact that creditors other than the owners of the unpaid drug store effects obtained said judgment, the condition of insolvency susceptible of the presumption of property having been alienated with intent to defraud creditors appears positively determined by the said condemnatory judgment which orders the payment of one of the pecuniary liabilities of the debtor, and that same, now final, induces the presumption of insolvency and favors Stahl and Rumcker, although they obtained final judgment against Pamintuan only on June 20, 1914.

Granted as a fact that final judgment had already been rendered against the common debtor who eleven days thereafter sold his drug store and its effects to the plaintiff (as appeared later), and therefore that said alienation is assumed as made in fraud, not only of the creditor who obtained said judgment, but also of the other lawful creditors of the debtor making the fraudulent sale, inasmuch as all his credits being affected by said sale and one of his lawful creditors being the firm of Stahl & Rumcker, inevitably the owners of the pharmaceutical effects, sold on credit, not yet collected, it is evident that Stahl and Rumcker, though not having obtained final judgment in their favor when said fraudulent sale was made, must be included, according to law, among the defrauded creditors, and therefore have a perfect right to invoke in their behalf the presumption that the said sale of pharmaceutical effects, for which they have not been paid, was made in fraud of their rights and interests, also with the intent to make their collection impossible.

In spite of the fact that it was unnecessary for Stahl and Rumcker to prove themselves the victims of a fraudulent act of their debtor Pamintuan, nevertheless the record shows conclusive evidence that said sale was certainly fraudulent.

The embarrassing situation caused by lack of means as well as the state of insolvency in which the debtor, Pamintuan found himself at the time of the execution of said fraudulent contract of sale appear to be shown by the letters Exhibits C and D addressed by himself to his creditors Stahl and Rumcker, by the return (subscribed by the sheriff on the back of the writ Exhibit C) to the effect that after all the necessary investigations had been made no property belonging to the debtor Pamintuan had been found, not even in the tax assessment record, and likewise by the testimony of his creditor Mariano Buyson Lampa who stated that, prior to said sale he was asked by Pamintuan either to buy the drug store or else to furnish more money for the payment of creditors. This testimony shows that the debtor Pamintuan, knowing that his creditors Paruli and Punu had a final judgment in their favor and that his other creditors Stahl and Rumcker, the owners of the pharmaceutical effects received on credit still due, might collect their credit for same, proceeded to sell these effects to the plaintiff, with the decided purpose of preventing Stahl and Rumcker from recovering the amounts owing them, thus causing grave detriment to their interests.

Furthermore, though the contract of sale was ratified on March 25, 1914, the alleged purchaser neither took charge nor possession of the drug store and its contents, until May 1st of the same year and then he did so by means of his agent Emilio Valdes—procedure which indicates that the acquisition and purchase of the drug store was effected only by collusion with its owner Pamintuan for the purpose of balking action by the creditors and of defrauding them.

Aside from the foregoing facts, it was duly proven at the trial that the sum of P800, recorded as the selling price of the drug store, was not actually delivered at the time of the execution and ratification of the document, nor did the notary before whom the contract was ratified so certify, but that it was made to appear said amount represented (according to plaintiff) the sum of P800 which the vendor was owing him, and which was recorded in the document as the selling price of said drug store.

The certainty and reality of the said debt is not duly shown by the record, wherefore it cannot properly be admitted that a price was paid in the said sale which, for this very reason, is held to have been simulated and executed solely for the purpose of defrauding the vendor's creditors. If that sale were true, a list would have been made of the effects contained in the drug store, in the same manner that the purchaser, on requesting that they be delivered to him, made a detailed list of them in his written complaint, and the purchaser would immediately have taken charge and possession of the effects purchased by him and would not have allowed, as he did, more than a month to pass before doing so, and even then he sent an agent who, as far as the record shows, did not take over the drug store and its contents under inventory. This procedure on the part of the plaintiff is still further proof that the sale of the drug store was recorded without details in a document ratified before a notary solely for the purpose of defrauding the vendor's creditors.

Article 1290 of the Civil Code provides:

"Contracts validly executed may be rescinded in the cases established by law."

Sub article 3 of article 1291 above cited provides that contracts executed in fraud of creditors, when the latter cannot recover in any other manner what is due them, are rescindible; and sub article 5 of this same article prescribes that any other contracts specially determined by law, may be rescinded. So we find the following provision in article 1297:

"Alienations for valuable considerations, made by persons against whom a condemnatory judgment, in any instance, has been previously rendered, or a writ of seizure of property has been issued, shall also be presumed fraudulent."

By virtue of the foregoing, it is indisputable that the case at bar is governed by the aforesaid articles of the Civil Code, inasmuch as when, on March 25, 1914, it was made to appear that there had been executed a contract of sale of said drug store between its owner, Torres Pamintuan and the purchaser, Adriano Panlilio, the judgment against the vendor by which he was sentenced to pay the sum he was owing the spouses Paruli and Punu had already become final, wherefore it is presumed that the said sale was effected in fraud of the vendor's creditors, among whom are the owners of the pharmaceutical effects, Stahl and Rumcker who have not yet recovered the price thereof.

Once shown that the sale in question was fraudulent, it must be rescinded, as expressly prescribed by law. Article 1295 of the Civil Code prescribes:

"Rescission obliges the return of the things which were the objects of the contract, with their fruits and the sum with interest; therefore it can only be carried into effect when the person who may have claimed it can return that which, on his part, he is bound to do.

"Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who have not acted in bad faith.

"In such case the indemnity for damages may be claimed from the person who caused the lesion."

The effects sold by Pamintuan were under attachment by the defendants Stahl and Rumcker when the plaintiff obtained from the court an order for their delivery to him, through means of the complaint filed in this suit, and if, as shown by the record, the plaintiff in turn sold these effects to a third person, and if it was impossible for him afterwards to return them to the sheriff, as he was ordered to do in the judgment, of course their value must be reimbursed to the defendants Stahl and Rumcker, inasmuch as, the sale having been rescinded on account of its being fraudulent, these creditors have an indisputable right to the value of the effects that were the subject of the fraud—a right recognized by a final judgment.

The fact of the plaintiff having proceeded to sell the pharmaceutical effects fraudulently acquired by him from Pamintuan while the present suit was still pending and no final decision had as yet been rendered therein, shows a glaring lack of good faith on the part of the plaintiff who had not been declared the absolute owner of the effects that had been fraudulently sold to him by Pamintuan, and he well knew that these effects, when they were delivered to him, were under an attachment obtained by the defendants Stahl and Runicker.

With reference to the fourth assignment of error referred to in the affidavit subscribed by the plaintiff's counsel, Pedro Abad Santos, on January 15, 1915, and the order issued by Judge P. M. Moir, of April 29 of the same year, it is disclosed by the report submitted by the honorable judge who decided the case that the latter did not receive any written report whatever from Attorney Aguas in connection with the present suit, and it would not be proper to qualify the said judge's procedure as erroneous because of his having received from this attorney a volume of the Philippine Reports containing a decision of this Supreme Court, applicable, in that attorney's opinion, to the case at bar, and because he permitted Aguas to invite his attention to certain points of the testimony of the witnesses examined during the trial. These acts could not be rejected by the judge at their beginning, and by his tolerating them even for courtesy's sake he neither prejudged the issues nor showed partiality, nor does it appear that he decided the suit contrary to law and without due regard for the evidence.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, the said judgment should be and is hereby affirmed, with the costs against the appellant. So ordered.

Johnson, Carson, Trent, and Araullo, JJ., concur.

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