

**MITSUI BUSSAN KAISHA (LTD.), PLAINTIFF AND APPELLANT, VS.
HONGKONG & SHANGHAI BANKING CORPORATION,
DEFENDANT AND APPELLEE, FRANCISCO CHUA SECO, INTERVENER
AND APPELLANT.**

G.R. No. 11079. January 12, 1917

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal by the plaintiff and the intervener from a judgment of the Court of First Instance in favor of the defendant bank.

Counsel for the plaintiff-appellant make twenty-one assignments of error, all of which relate to the question whether or not the plaintiff parted with the title to the coal which is the subject matter of this litigation. Counsel for the intervener make the following assignment of error:

"The lower court erred in holding Exhibit 1 valid, notwithstanding the provisions of section 70 of Act No. 1956, known as The Insolvency Law, and in deciding in favor of the defendant and not deciding in favor of the intervener."

The admitted facts are these: The plaintiff and the Coal Supply Company of Manila, by Chua Pue Tee and Ramon Basa, entered into a contract on December 9, 1913, by which the former agreed to deliver to the latter 8,000 tons of Japanese coal, payment to be made by documentary draft at sixty days' sight at the International Bank in Manila. In March, 1914, the plaintiff shipped 4,500 tons of coal on the Argonia of the Hamburg-American Line, invoiced and consigned to itself at Manila, which arrived about the 27th of that month. Immediately thereafter the Coal Supply Company cleared this shipment through the custom- house and paid the duty thereon. After the coal had been thus cleared the Coal Supply Company sold at shipside delivery to twenty-three of its customers a part of the shipment and the remainder, 3,238 tons and 935 kilos, was deposited in the Coal Supply Company's coal yard and mixed with coal of like character.

The Coal Supply Company was a registered partnership, the partners being Chua Teng Chong, Ramon Basa, and Mariano Tan Boyan. Chua Teng Chong was the managing partner and he gave a general power of attorney to Chua Pue Tee on April 11, 1906, and from that date Chua Pue Tee transacted all the business of Chua Teng Chong, whether in connection with the Coal Supply Company or otherwise. On April 13, 1914, Chua Pue Tee, for Chua Teng Chong, attempted to pledge 3,600 tons of coal in the coal yard of the Coal Supply Company (the 3,238 tons and 935 kilos in question being included therein) to the Hongkong & Shanghai Banking Corporation for P30,000 which was actually delivered in cash to Chua Pue Tee on that date by the bank. This transaction is evidenced by the private document Exhibit 5. On April 16, 1914, Chua Pue Tee, acting on behalf of Chua Teng Chong, pledged the 3,600 tons of coal to the bank by means of a public document (Exhibit 1) and delivered the possession thereof to the pledgee. The bill of lading for the 4,500 tons of coal shipped on the Argonia was indorsed and delivered to the Coal Supply Company by the plaintiff's Manila manager on April 16, 1914. On

April 15 or April 13, 1914, Chua Pue Tee transferred from the Coal Supply Company to Chua Teng Chong, according to the books of the latter, the 3,600 tons of coal for P34,200. On the face of the draft for 30,150 yen, being the contract price of the 4,500 tons of coal, payable at the International Banking Corporation, appear the words, "Accepted 15th of April, 1914, payable 15th June, 1914, Coal Supply Company, signed Chua Pue Tee," and the following appears on the back of the draft:

"Noted for nonacceptance this 16th day of April, 1914, on Chiow Soo, who stated that he did not know whether or not he had power of attorney sufficient to accept draft. This at the office of the Coal Supply Company, Manila, P. I., at five o'clock p. m., on April 16, A. D., 1914. Said Chiow Soo stating that Chua Teng Chong was the manager of said Coal Supply Company, (Sgd.) Jos. N. Wolfson, notary public. For the International Banking Corporation, (Sgd.) J. H. Gray, pro-accountant."

The draft was not attached to the bill of lading, but was sent to the International Bank in Manila. The Hongkong Bank acted in good faith when it turned over to Chua Pue Tee, as the representative of Chua Teng Chong, the P30,000 on April 13, 1918. The bank knew nothing of the plaintiff's claim at that time, nor of Chua Teng Chong's nor of the Coal Supply Company's insolvency.

We will look to the testimony of the witnesses in order to ascertain the other material facts. Y. Mikami, the plaintiff's manager in Manila, testified substantially as follows:

"We made a contract with the Coal Supply Company for 8,000 tons of coal to be delivered during the months of March, April, May, and June, 1914, f. o. b. F. o. b. is a commercial term used generally among commercial people; that is, we put the coal aboard the steamer at Moji, payment to be made by bill of exchange sixty days after sight. In pursuance with the terms of that contract 4,500 tons were shipped in March as per invoice (Exhibit B). The bill of lading (Exhibit A) was originally in our possession when the cargo arrived in Manila, but the Coal Supply Company asked us to let them have the bill of lading, but we told them, 'Unless you accept the draft, we will not give you the bill of lading,' and finally on the 16th of April they told us the draft had been accepted; on the strength of that word we gave them the bill of lading and they gave us a receipt for the bill of lading. It is customary to attach bills of lading to drafts when merchandise is shipped from a foreign port and consigned to persons or corporations other than our company and to instruct the bank or banks through whom the drafts are drawn to attach the documents and deliver them upon the acceptance of the drafts, but when the cargoes are consigned through one of our branch offices to our office in Manila, this custom does not prevail. In the case of the shipment of the 4,500 tons of coal the draft was sent to our office in Kobe and the bill of lading was sent direct to us in Manila. The 4,500 tons of coal arrived about the 27th or 28th of March and was discharged by the Coal Supply Company upon its arrival. A part of this coal was sold by the Coal Supply Company direct to its consumers and the majority was piled in the Coal Supply Company's coal-yard. The letter (Exhibit E) is the contract for the 8,000 tons of coal, which was made by me as the plaintiff's representative. This contract or letter was approved on behalf of the Coal Supply Company by Mr. Basa and Mr. Chua Pue Tee. I cannot say whether I would have accepted this contract if it had been approved by Mr. Basa only, because it depends upon circumstances. The contract was signed by me and sent to the Coal Supply Company, approved and returned to our office to the man in charge of the coal department, and if the man in the coal department says it is all right, he so informs me and in that way I approve it."

Ramon Basa, another witness for the plaintiff and one of the partners of the Coal Supply Company, testified that a part of the coal which arrived on the Argonia was delivered directly to consumers and the other part deposited in the Coal Supply Company's yard; that the 3,238 tons and 935 kilos of the Argonia's coal was later taken possession of by the Hongkong Bank; that the managing partner of the Coal Supply Company since its organization was Chua Pue Tee; that the business of the company was transacted sometimes by him (the witness)

; that Chua Pue Tee was absent at the time he (the witness) made the contract with the plaintiff; that Chua Pue Tee was in town when the coal was delivered to the Coal Supply Company and at the time the draft was presented for acceptance ;

that Chua Pue Tee did sign the contract (Exhibit E) in order to give it full force and effect; that the coal which was discharged from the Argonia was mixed with other coal in the yard; and that there has never been any formal dissolution of the Coal Supply Company.

Chua Pue Tee, a witness for the defense, testified that he executed the documents in favor of the Hongkong Bank on behalf of Chua Teng Chong, his principal; that he transacted all the business since 1906, the date of the execution of the power of attorney, for his principal, Chua Teng Chong; that Chua Teng Chong never intervened personally in any of the business; that the Coal Supply Company was indebted to Chua Teng Chong, on account of overdrafts, in the sum of P45,000; that the 3,600 tons of coal transferred from the Coal Supply Company to Chua Teng Chong was in part payment of the f*45,000; and that the date of the transfer was April 13, 1914.

Counsel for the plaintiff insist (a) that under the facts above set forth the title to the 3,238 tons and 935 kilos of coal did not pass to the Coal Supply Company, (b) that Chua Pue Tee was without authority to transfer the 3,600 tons of coal to his principal, Chua Teng Chong, and (c) that the possession of the bill of lading was obtained by the Coal Supply Company through fraud. In support of these contentions it is argued that, under the contract, it was the intention of the parties that the plaintiff should retain the title to the coal until the draft was accepted by the Coal Supply Company and payment assumed by the International Bank, and until after the lawful surrender of the bill of lading by the plaintiff to the Coal Supply Company.

The plaintiff's Manila manager knew of the arrival of the Argonia with the 4,500 tons of coal. He knew that the Coal Supply Company took charge of the cargo, cleared it through the custom-house, paid the duty, sold part of it at shipside delivery, and deposited the remainder in the yard. All this occurred without the slightest protest from Mikami, although he knew of the transactions at the time they were taking place and had in his possession the bill of lading which arrived, as he stated, on the Argonia. There was therefore a complete and unconditional delivery of the coal to the Coal Supply Company, with at least the implied consent of Mikami.

With reference to the surrender of the bill of lading, counsel for the plaintiff say, "On April 16, upon the strength of a telephone message purporting to come from the Coal Company stating that the draft had been accepted (S. N., p. 6) the plaintiff turned over the bill of lading to the company." The testimony here referred to is that of Mikami and he makes no mention of having received a telephone message. He says that the bill of lading was in his possession when the Argonia arrived in Manila and that he told the Coal Supply Company, "Unless you accept the draft, we will not give you the bill of lading, and finally on ,the 16th of April they told us the draft had been accepted, on the strength of that word we gave them the bill of lading." Mikami does not explain what he meant by "accept" in reference to the draft, but it would appear that he meant accepted by the Coal Supply Company, otherwise he would not have used the words "unless you (referring to the Coal Supply) accept the draft, we will not give you the bill of lading." If this is what he meant, there certainly was no fraud in so far as this part of the transaction was concerned, for the reason that the draft was accepted on April 15 by Chua Pue Tee for the Coal Supply Company. Chua Pue Tee had been transacting the business as the manager of the Coal Supply Company and his approval of the original contract for the 8,000 tons of coal was accepted by the plaintiff's local manager. It is true that the contract had also been signed by Basa. Counsel now insist that Mikami meant that not only had he (Mikami) understood that the Coal Supply Company had accepted the draft, but that the International Bank had also assumed payment thereof. If this be the true meaning of the words "documentary draft," the conduct of the parties certainly was not in harmony with such a meaning. Otherwise Mikami would not have stood by and

permitted the Coal Supply Company to sell part of the coal at shipside delivery and deposit the other with coal of a like character in its coal yard. The Coal Supply Company was not limited in the amount which it desired to sell at shipside delivery. It could have thus sold the entire cargo and still there would have been no objection on the part of Mikami or anyone acting for him. Furthermore, if Mikami had understood that the International Bank was to assume payment of, the draft under the terms of the contract he would have made inquiries with reference to this matter in order to ascertain from the bank just what action it was going to take before he surrendered possession of the bill of lading.

Laying aside the question of the acceptance of the draft and the surrender of the bill of lading, we think the trial court did not err in holding that the title to the coal passed from the plaintiff to the Coal Supply Company at the time the coal was delivered in the manner and under the circumstances above set forth, in so far as innocent third parties are concerned. It is quite clear that the purchasers of a part of the coal at shipside delivery were not required to investigate the title of the Coal Supply Company for the purpose of ascertaining what were the terms upon which that company had acquired the coal it was selling. Those purchasers had no information to the effect that the coal was originally to be delivered by the seller, whoever he may have been, upon the acceptance of a draft, nor had they any idea that such draft had not been already accepted. All they knew and all they cared to know was the fact that the vendor of the coal to the Coal Supply Company had made delivery thereof to the person who was selling the same, or at least no one was objecting to these sales by the Coal Supply Company. The position of the Hongkong Bank is essentially the same as the purchasers at shipside delivery. The Coal Supply Company made no objection to the transfer of the 3,600 tons of coal to Chua Teng Chong in part payment of the P45,000 which it owed him. It is true that this transfer was made by Chua Pue Tee for the Coal Supply Company, but the bank, in making the P30,000 loan, was under no legal obligation to investigate the title to the coal beyond the Coal Supply Company. The bank knew that there was a large pile of coal in the yard of the Coal Supply Company and under the control of that company, but it did not know how the Coal Supply Company had obtained the coal; nor whether all of the coal had been sold to the Coal Supply Company by one or more persons or corporations; nor did the bank have any idea that any vendor of the Coal Supply Company claimed an interest in the coal based upon the acceptance of drafts or delivery of bills of lading. The bank had a right to assume that if any such questions had arisen they would have been definitely settled before the coal was delivered to the Coal Supply Company and mixed with other coal which that company had in the yard. The conduct of the parties in this case shows that the coal was sold by the plaintiff to the Coal Supply Company on sixty days' credit. This is the reason why the plaintiff's local manager permitted the Coal Supply Company to take charge of the 4,500 tons of coal upon its arrival in Manila and dispose of it in just such manner as the company might desire, leaving the questions of acceptance of the draft and the delivery of the bill of lading to be attended to later. We therefore conclude that the judgment appealed from, in so far as the plaintiff is concerned, is strictly in accordance with the law and the merits of the case.

There is no dispute about the facts between the Hongkong Bank and the intervener. Both agree that the title to the coal in question was in Chua Teng Chong. As above indicated, Chua Pue Tee, acting for Chua Teng Chong, attempted to pledge the coal to the bank on the 13th of April, 1914, by means of the private document, Exhibit 5. The bank, acting in good faith and without any knowledge of the insolvency of Chua Teng Chong, turned over to the latter's representative, Chua Pue Tee, the P30,000 in cash in consideration for the so-called pledge of April 13. On April 16 the bank, having in the meantime discovered that Chua Teng Chong was insolvent, secured a real pledge and took physical possession of the coal. Chua Teng Chong was adjudged insolvent and the intervener was elected assignee, both acts occurring within thirty days after the execution of both the private document (Exhibit 5) and the pledge (Exhibit 1).

Counsel for the intervener, or assignee, contend that the instrument of April 13 (Exhibit 5) was of no legal value,

the same being merely a "trust receipt/" and that the public document of April 16 (Exhibit 1), although it was executed with all the legal formalities of a pledge and the bank took actual possession of the coal, is absolutely void under section 70 of Act No. 1956. While, on the other hand, counsel for the bank contend that the two instruments cannot be impugned seriatim and thus be avoided upon separate and distinct grounds imputable to each alone, but, on the contrary, they must be considered together according to the joint effect of both. Or, in other words, it is maintained on behalf of the bank that the instrument of April 13, while not effective as against third persons, is nevertheless a binding and valid contract between the parties thereto, and that the assignee in bankruptcy is not a third person, but stands in the shoes of the bankrupt.

We will first inquire what rights the bank acquired by the loan, as evidenced by the instrument of April 13, if Chua Teng Chong had not been insolvent. It is agreed that Chua Pue Tee was duly authorized, under the power of attorney, to execute the instrument and obtain the loan, in so far as Chua Teng Chong was concerned. The instrument of April 13 being a promise to constitute a pledge and having been accepted by the bank, a right of action on the part of the bank was created thereby and the bank could have, under article 1862 of the Civil Code, compelled the fulfillment of the agreement. Consequently, if the assignee occupies no better position than the bankrupt or the insolvent, he cannot defeat the bank's rights acquired under the two instruments. The solution of this question requires an examination of Act No. 1956, effective May 20, 1909, and known as The Insolvency Law.

In 1908 two bills (Assembly Bill No. 126 and Commission Bill No. 87) were introduced in the Philippine Legislature and both were rejected. The committee of the Commission, in reporting upon the Assembly bill, stated in its report of June 12, 1908, that "The law seeks to blend the American laws of insolvency and bankruptcy with the Spanish law of bankruptcy. Such a policy is sure to result in complications and to bring about a system so cumbersome and unwieldy as to make it impracticable and uneconomical."

Later a joint conference committee was appointed from the two houses and it prepared a bill which was designated Assembly Bill No. 576. This bill was passed without any material changes and became Act No. 1956. By comparing the Commission Bill No. 87 with Act No. 1956, it will be seen that every section of the former is embodied in the latter. The only apparent exception is section 41 of the Commission Bill, but the substantial provisions of that section appear in subsection 9 of section 48 of the Act. Furthermore, there is little in the Act from section 14 which is not in the Commission Bill. Subsection 3 of section 71 of the Act contains penal provisions which relate to the suspension of payments and which are not in the Commission Bill. Section 48 of the Act has no counterpart in the Commission Bill. Again, a comparison of Commission Bill No. 87 with the Insolvency Act of California, enacted in 1895, section by section and clause by clause, shows that the former is, in a great many respects, a copy of the latter. The Commission Bill omits one of the acts of bankruptcy named in section 9 of the California Act. Also sections 15 and 26, subsection 5 of section 25, and subsection 3 of section 1, and several minor portions of the other sections of the California Act are omitted. These relate to procedure in the main and are substantially governed by other provisions in the Commission Bill. The concluding sections of the Commission Bill and of the California Act are different. The most important difference is the inclusion in the Commission Bill of section 34, which is wholly lacking in the California Act. This section deals with preferred claims and has its counterpart in section 486 of the United States Bankruptcy Act of 1898. Another addition is chapter 7 of the Commission Bill entitled "Compositions." This chapter corresponds closely to sections 12 and 13 of the United States Bankruptcy Act of 1898. The result is that the only provisions in Act No. 1956, which tend to show that the Legislature did not intend to adopt in this jurisdiction the American theory of bankruptcy, are found in section 48. This section, by its nine subdivisions, specifies what property in the hands of the insolvent may not be taken by the assignee. These provisions are found neither in the United States Bankruptcy Act of 1898 nor in the California Act of 1895. They are found, however, in Assembly Bill No. 126 and were inserted for the purpose

of avoiding a conflict between Act No. 1956 and certain well denned provisions of the Civil Code.

Act No. 1956 deals with three principal subjects, namely, suspension of payments, voluntary insolvency, and involuntary insolvency. That part of the Act referring to the first appears to have been taken from the Spanish Code of Commerce, as amended by the law of June 10, 1897. Formerly there were in England and America marked distinctions between bankruptcy laws and insolvency laws. The two principal distinctions, which have been given by

various authors, between these laws are: First, bankruptcy laws applied only to traders and merchants, while insolvency laws applied to all classes of persons; second, the former discharged absolutely the debts of the honest debtor, while the latter discharged only the person of the debtor from arrest and imprisonment, but left the property subsequently acquired by the debtor liable to the demands of his creditors. More recently in some jurisdictions no attempt has been made to distinguish between them. A bankruptcy law may contain those regulations which are generally found in insolvency laws, and an insolvency law may deal with those which are common in bankruptcy laws. Whether these distinctions were recognized and maintained in the Spanish system is of no importance. It is sufficient to say that the Act, in so far as it relates to voluntary and involuntary insolvency, is essentially a bankruptcy law because it discharges the honest debtor.

Section 32 of Act No. 1956 provides that: "As soon as an assignee is elected or appointed and qualified, the clerk of the court shall, by an instrument under his hand and seal of the court, assign and convey to the assignee all the real and personal property, estate, and effects of the debtor with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of the proceedings in insolvency, and shall relate back to the acts upon which the adjudication was founded, and by operation of law shall vest the title to all such property, estate, and effects in the assignee, (not exempt from law from execution) although the same is then attached on mesne process, as the property of the debtor." The assignment shall also dissolve any attachment levied, vacate and set aside any judgment entered by default or otherwise, and vacate and set aside any execution issued on such judgment within thirty days immediately prior to the commencement of the insolvency proceedings. And sections 33 and 36 confer the right and the power upon the assignee to recover all the estate, assets, debts, and claims belonging to or due to the insolvent, and to recover from any person receiving a conveyance, gift, transfer, payment or assignment, made contrary to any provision of the Act, the property thereby transferred or assigned or the value thereof, with damages for the detention. Section 61 provides that: "Any person who shall have accepted any preference, having reasonable cause to believe that the same was made or given by the debtor contrary to any provision of this Act, shall not be allowed to prove the debt or claim on account of which the preference was made or given, nor shall he receive any dividend thereon until he shall have surrendered to the assignee all property, money, benefit, or advantage, received by him under such preference." And section 70 reads as follows:

"If any debtor, being insolvent, or in contemplation of insolvency, within thirty days before the filing of a petition by or against him, with a view to giving a preference to any creditor or person having a claim against him or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, mortgage, assignment, transfer, sale, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, to anyone, the person receiving such payment, pledge, mortgage, assignment, transfer, sale, or conveyance, or to be benefited thereby, or by such attachment or seizure, having reasonable cause to believe that such debtor is insolvent, and that such attachment, sequestration, seizure, payment, pledge, mortgage, conveyance, transfer, sale, or assignment is made with a view to prevent his property from coming to his assignee in insolvency, or to prevent the same from being distributed ratably among his creditors, or to defeat the object of, or in any way hinder, impede, or delay the operation of or to evade any of the provisions of this Act, such attachment, sequestration, seizure, payment, pledge, mortgage, transfer, sale,

assignment, or conveyance is void, and the assignee, or the receiver, may recover the property, or the value thereof, as assets of such insolvent debtor. If such payment, pledge, mortgage, conveyance, sale, assignment, or transfer is not made in the usual and ordinary course of business of the debtor, or if such seizure is made under a judgment which the debtor has confessed or offered to allow, that fact shall be prima facie evidence of fraud. Any payment, pledge, mortgage,

conveyance, sale, assignment, or transfer of property of whatever character made by the insolvent within one month before the filing of a petition in insolvency by or against him, except for a valuable pecuniary consideration made in good faith, shall be void. All assignments, transfers, conveyances, mortgages, or incumbrances of real estate shall be deemed, under this section, to have been made at the time the instrument conveying or affecting such realty was filed for record in the office of the register of deeds of the province or city where the same is situated."

Section 70 creates a limitation upon the otherwise general right of a debtor to prefer certain creditors by means of pledges, mortgages, etc., and declares void enumerated acts of an insolvent or of one in contemplation of insolvency, which have for their view the giving of a preference to a creditor or person having a claim against, or who is under any liability for the insolvent, provided, also, that the person receiving the benefit of the act has reasonable cause to believe that the person making it is insolvent, or that it is done with a view to prevent the insolvent's property from coming to his assignee, or that it is done to prevent the same from being distributed ratably among his creditors, or that it is done to defeat the object of, or in any way hinder, impede, or delay the operation of, or to evade any of the provisions of the Act. The section, therefore, contemplates a special class of acts, which the insolvent may be tempted to perform, and declares them void. Those acts have each and all to do with attachments, sequestrations, seizures, payments, pledges, etc., and generally with attempts upon the part of the insolvent to favor and prefer a creditor or one under liability for him. And it must be held that, if a particular act by an insolvent or by a person in contemplation of insolvency be not made with a view to give preference to a person standing in this relation to the insolvent, the same does not come within the purview of the section. It is not necessary to now determine whether an assignee has the right under other provisions of the Act to maintain an action to set aside a fraudulent conveyance or transfer of property made by the insolvent to a person who did not stand in the relation of creditor to him, trusting to a secret understanding with the transferee that he (the insolvent) should in due time receive back from such transferee the property transferred, the purpose and object of the transfer being to defraud the creditors of their just dues for the benefit of the insolvent himself.

The legislative history of that part of Act No. 1956, which deals with voluntary and involuntary insolvency and which is essentially a bankruptcy law, clearly shows that the Legislature intended to establish in this jurisdiction the essential features of the American system of bankruptcy. This being true, we may look to the decisions of the Supreme Court of the United States for guidance in determining the extent of the title to the insolvent's estate which is vested in the assignee by the clerk's assignment. The Congressional legislative history of bankruptcy in the United States may be briefly set forth as follows: The first National Bankruptcy Act was approved August 4, 1800, and repealed December 19, 1803. The second was approved August 19, 1841, and repealed March 3, 1843, and the third was approved March 2, 1867, and repealed June 7, 1878. The present Bankruptcy Law is the Act of Congress of July 1, 1898, as amended by subsequent Acts, the principal amendments being those of February 5, 1903, and June 25, 1910.

By the Act of 1867, it was provided that as soon as an assignee was appointed and qualified the judge or register should, by instrument, assign or convey to him all the property of the bankrupt, and such assignment shall relate back to the commencement of the proceedings in bankruptcy, and by law shall vest the title to the estate in the assignee. But section 70a of the Act of 1898 omits the provision that the trustee's title "shall relate back to the commencement of the proceedings in bankruptcy," and states that it shall vest "as of the date he was adjudged a

bankrupt." Act No. 1956 provided, that, as above indicated, the assignment shall relate back to the commencement of the proceedings in insolvency and to the acts upon which the adjudication was founded.

Section 35 of the Act of Congress of 1867 reads in part as follows:

"That if any person, being insolvent, or in contemplation of insolvency, within four months before the filing of the petition by or against him, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person is insolvent and that such attachment, payment, pledge, assignment or conveyance is made in fraud of the provisions of this act, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefited; and if any person being insolvent, or in contemplation of insolvency or bankruptcy, within six months before the filing of the petition by or against him, makes any payment, sale, assignment, transfer, conveyance, or other disposition of any part of his property to any person who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and that such payment, sale, assignment, transfer, or other conveyance is made with a view to prevent his property from coming to his assignee in bankruptcy, or to prevent the same from being distributed under this act, or to defeat the object of, or in any way impair, hinder, impede, or delay the operation and effect of, or to evade any of the provisions of this act, the sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property, or the value thereof, as assets of the bankrupt."

Section 35 was amended by the Act of June 22, 1874, as follows:

"First. After the word 'and' in line eleven, insert the word 'knowing.'

"Secondly, After the word 'attachment,' in the same line, insert the words 'sequestration, seizure.'

"Thirdly. After the word 'and/' in line twenty, insert the word 'knowing.' And nothing in said section thirty-five shall be construed to invalidate any loan of actual value or the security therefor, made in good faith, upon a security taken in good faith on the occasion of the making of such loan."

In *Hauselt vs. Harrison* (105 U. S., 401), Harrison, as assignee in bankruptcy of Edward Bayer, commenced an action of replevin on February 20, 1875, against Charles Hauselt and Charles Korn to recover possession of certain skins, which it was alleged had been transferred by Bayer to them in violation of the Bankruptcy Law. Bayer, who, upon his own petition filed November 10, 1874, was adjudged a bankrupt on January 18, 1875, owned and was possessed of a tannery in Pennsylvania. Hauselt was a leather merchant in New York. On May 29, 1874, Bayer and Hauselt entered into a written contract by which Bayer agreed to advance certain monies to Hauselt to be used in purchasing skins, to be tanned and finished by Korn, and then to be shipped to Hauselt by Bayer, to be sold on commission. It was further agreed that all the skins, whether green, in process of tanning, tanned, or tanned and finished, should be considered as security, for the refunding of the monies advanced by Hauselt. This agreement was evidenced by private document duly executed before witnesses on the day above mentioned, The business was carried on according to the terms of the contract until November 6, 1874, during which time Hauselt had made large cash advances in excess of the value of the skins received and of the value of the property in litigation. On November 6, 1874, Bayer notified Hauselt that he could proceed no further with the business on account of his financial condition. Thereupon the two parties entered into another agreement, which was likewise evidenced by private document, dated November 6, 1874. According to the terms of this contract

Hauselt was authorized to take immediate possession and sole control of the tannery, buildings, and all the material on hand, and to run and use the same to the best advantage of the parties, applying the net proceeds of the sales to Hauselt's credit for monies advanced. Hauselt immediately took possession of the tannery, together with all the materials therein. It was assumed that at the date of the second contract Hauselt had knowledge of Bayer's insolvency and of his intention to immediately file his petition in bankruptcy. The Circuit Court charged the jury that the title to the skins purchased by means of the advances under the contract of May, 1874, was in Bayer; that Hauselt had no right to the possession of them at any time while they were in the process of manufacture; that the only security given by the contract was the personal obligation of Bayer to consign them to Hauselt for sale, when the manufacture was complete; and that the contract of November 6, 1874, and the possession delivered and taken in pursuance of it, was a transfer, to which Hauselt was not entitled, and constituted a preference within the meaning of the Bankruptcy Law, Bayer being insolvent, and Hauselt having reasonable cause to believe him to be so. In determining the questions thus presented, the Supreme Court of the United States said:

"Notwithstanding the differences between the contract of May 29, 1874, between Bayer and Hauselt, and the contract considered by this court in the case of the Powder Company vs. Burkhardt (97 U. S., 110 [XXIV, 973]), it must be conceded that the legal title to the skins purchased with the money advanced by Hauselt vested in Bayer. But it was not an unqualified property. * * * The clause providing for security must be held to mean something; and it declares that the skins themselves, before delivery of possession to Hauselt under the contract, for purposes of sale, shall be considered as security * * *. Such a lien is good between the parties, without a change of possession, even though void as against subsequent purchasers in good faith without notice, and creditors levying executions or attachments; and if followed by a delivery of possession, before the rights of third persons have intervened, it is good absolutely.

* * * * *

"If, in consequence of his bankruptcy, the property had come into the possession of his assignees, they would have taken it subject to all legal and equitable claims of others not in fraud of the rights of general creditors. They would be affected by all the equities which could be urged against him. (Cook vs. Tullis, 18 Wall., 341 [85 U. S., XXI, 937.]) In Yeatman vs. Savings Institution (95 U. S., 764, [24 XXIV, 589]) it was held to be an established rule that, 'except in cases of attachments against the property of the bankrupt within a prescribed time preceding the commencement of proceedings in bankruptcy, and except in cases where the disposition of property by the bankrupt is declared by law to be fraudulent and void, the assignee takes the title, subject to all equities, liens, or incumbrances, whether created by operation of law or by act of the bankrupt, which existed against the property in the hands of the bankrupt.'

" 'He takes the property in the same plight and condition that the bankrupt held it.' (Winsor vs. McLellan, 2 Story, 492.) In Stewart vs. Platt (101 U. S., 739 [XXV, 818]), it was held that, although the chattel mortgages, involved in that litigation, by reason of the failure to file them in the proper place, were void as against judgment creditors, they were valid and effective as between the parties. Mr. Justice Harlan, delivering the opinion of the court, said: 'The assignee took the property subject to such equities, liens, or incumbrances as would have affected it had no adjudication in bankruptcy been made. * * * The latter (the assignee), representing general creditors, cannot dispute such claim, since, had there been no adjudication, it could not have been disputed by the mortgagors. The assignee can assert in behalf of the general creditors no claims to the proceeds of the sale of that property which the bankrupts themselves could not have asserted in a contest exclusively between them and their mortgagee.'

"It follows that, Bayer becoming a bankrupt while in possession of the skins purchased, and in the tannery, under the contract of May 29, 1874, if his assignee in bankruptcy had taken possession of them, he would have done so, subject to the terms of that contract; and Hauselt would have had the right to require, either that he should perform

the contract to its termination, so far as the skins then on hand were concerned, by finishing them, and forwarding them for sale; or that he should surrender possession to Hauselt, under some arrangement, mutually beneficial, whereby the enterprise might be wound up, under his management, such as that actually made by Bayer, on November 6, 1874; or if the assignee sold the property in the condition in which he received it, that he should account to Hauselt specifically for the proceeds of the sale, and recognize him as a creditor for the remainder of his advances, not thereby refunded.

"Such being the mutual rights of the parties, the transaction of November 6, 1874, though made with knowledge of Bayer's insolvency, and in contemplation of his bankruptcy, if made in good faith, as it is admitted to have been, for the purpose of securing to Hauselt the benefits of the contract of May 29, 1874, was legitimate, and did not constitute, as was held by the Circuit Court, an unlawful preference in fraud of the bankrupt law. It is quite true that Hauselt could not have compelled Bayer, by an action at law, to deliver to him possession of his tannery and its contents; nor could he have recovered possession of the skins, tanned or untanned, by force of a legal title; but it is equally true that, in equity, he could, by injunction, have prevented Bayer from making any disposition of the property, inconsistent with his obligations under the contract; and upon proof of his inability or unwillingness to complete the performance of his agreement the court would not have hesitated, in the exercise of a familiar jurisdiction, to protect the interests of Hauselt, by placing the property in the custody of a receiver for preservation, with authority, if such a course seemed expedient, in its discretion, to finish the unfinished work, and ultimately, by a sale and distribution of its proceeds, to adjust the rights of the parties.

"For these reasons, we think the court below erred in its charges to the jury. The judgment is, therefore, reversed, with instructions to grant a new trial; and it is so ordered."

In *Stewart vs. Platt* (101 U. S., 731) which was an action instituted by the assignee in bankruptcy on May 26, 1871, and which had for its object the determination of the rights of the assignee and the mortgagee of certain personal property, the mortgage neither being recorded nor accompanied by possession, the Supreme Court of the United States said:

"But the final decree in the Circuit Court is erroneous in directing the residue of the proceeds of the sale of the mortgage property, after satisfying execution creditors, 'to be paid to the assignee (in bankruptcy) for the purposes of the trust,' and in charging that balance with the payment of the fees due counsel of the assignee.

"In *Yeatman vs. Savings Institution* (95 XL S., 764 [XXIV, 589]), we held it to be an established rule that, 'except in cases of attachment against the property of the bankrupt within a prescribed time preceding the commence of proceedings in bankruptcy, and except in cases where the disposition of property by the bankrupt is declared by law to be fraudulent and void, the assignee takes the title subject to all equities, liens, or incumbrances, whether created by operation of law or by act of the bankrupt, which existed against the property in the hands of the bankrupt. (*Brown vs. Heathcote*, 1 Atk., 160; *Mitchell vs. Winslow*, 2 Story, 630; *Gibson vs. Warden*, 14 Wall., 244 [81 U. S., XX, 797]; *Cook vs. Tullis*, 18 Wall., 332 [85 U. S., XXI, 933] ; *Donaldson vs. Farwell*, 93 U. S., 631 [XXIII, 993]; *Jerome vs. McCarter*, 94 U. S., 734 [XXIV, 136].) He takes the property in the same "plight and condition" that the bankrupt held it. (*Winsor vs. McLellan*, 2 Story, 492.)'

"The decree below is plainly in contravention of this rule. Although the chattel mortgages, by reason of the failure to file them in the proper place, were void as against judgment creditors, they were valid and effective as between the mortgagors and the mortgagees. (*Lane vs. Lutz*, 1 Keyes [N. Y.], 213; *Wescott vs. Gunn*, 4 Duer [N. Y.], 107; *Smith vs. Acker*, 23 Wend. [N. Y.], 653.) Suppose the mortgagors had not been adjudged bankrupts, and there had been no creditors, subsequent purchasers, or mortgagees in good faith to complain, as they alone might, of the failure to file the mortgages in the towns where the mortgagors respectively resided. It could not be doubted that

Stewart, in that event, could have enforced a lien upon the mortgaged property in satisfaction of his claim for rent. The assignee took the property subject to such equities, liens, or incumbrances as would have effected it, had no adjudication in bankruptcy been made. While the rights of creditors, whose executions preceded the bankruptcy, were properly adjudged to be superior to any which passed to the assignee by operation of law, the balance of the fund, after satisfying those executions, belonged to the mortgagee, and not to the assignee for the purposes of his trust. The latter, representing general creditors cannot dispute such claim, since, had there been no adjudication, it could not have been disputed by the mortgagors. The assignee can assert, in behalf of the general creditors, no claim to the proceeds of the sale of that property which the bankrupts themselves could not have asserted in a contest exclusively between them and their mortgagee. As between the mortgagors and the mortgagees, the chattel mortgages were and are unimpeachable for fraud, or upon any other ground recognized in the Bankrupt Law."

Both *Hauselt vs. Harrison* and *Stewart vs. Platt* were decided under the United States Bankruptcy Law of 1867 and in accordance with the above quoted section 35 of that Act.

Section 60a and (b) and the pertinent parts of section 67e of the United States Bankruptcy Law of 1898 read:

"Sec. 60. Preferred Creditors.— (a) A person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.

"(b) If a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition or before the adjudication, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person."

"Sec. 67e. That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this Act subsequent to the passage of this Act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors."

In *Thompson vs. Fairbanks* (196 U. S., 516), Moore filed his voluntary petition in bankruptcy in the United States District Court of Vermont on the 30th of June, 1900, and was duly adjudged a bankrupt on the 3d of July, 1900. Thompson was appointed trustee on September 15, 1900, and instituted an action in June, 1901, against Fairbanks to recover from him the value of certain personal property alleged to have belonged to the bankrupt Moore and which was sold and converted by Fairbanks to his own use. Although the case was not finally determined by the Supreme Court of the United States until February, 1905, it was decided under the above quoted provisions of the Bankruptcy Law of 1898, the court saying:

"Under the present bankrupt act, the trustee takes the property of the bankrupt, in cases unaffected by fraud, in the same plight and condition that the bankrupt himself held it, and subject to all the equities impressed upon it in the hands of the bankrupt, except in cases where there has been a conveyance or encumbrance of the property which is void as against the trustee by some positive provision of the act."

Section 60a and (b) of the Bankruptcy Act of 1898 were amended by the Act of February 5, 1903, to read as follows:

"(a) A person shall be deemed to have given a preference if, being insolvent, he has within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable anyone of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

"(b) If a bankrupt shall have given a preference, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person. And, for the purpose of such recovery, any court of bankruptcy, as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

In the case of *In re Automobile Livery Service Co.* (176 Fed. Rep., 792), which arose subsequent to the amendment of 1903 and before that of 1910: "The Jefferson County Savings Bank and the Harris Transfer and Warehouse Company propounded their claim before the referee in bankruptcy for two automobiles, which were in the possession of the latter, as warehouseman for the former, when the petition was filed, and which were surrendered by the latter to the receiver in bankruptcy. The automobiles were shipped to the bankrupt by the makers, with draft and bill of lading attached, and the president and secretary of the bankrupt, in order to raise the money to take up the drafts and secure the bills of lading, executed its notes, payable to its president, and indorsed by him to the * * * bank * * *. Each of the notes recited that the automobile, the release of which it secured, was pledged for the payment of the note and all subsequent indebtedness to the bank, but possession of each automobile remained in the bankrupt until the maturity and default of the first note falling due, whereupon the claimant, with consent of the bankrupt, took possession of the automobiles under its contract for pledge, and stored them with the warehousing company, * * *. The bankrupt was insolvent when the bank took possession of the automobiles."

"The trustee asserts title to be in the bankrupt upon the grounds: (1) That the pledge was made by the officers of the bankrupt, without authority from its board of directors;. (2) that the note, to secure which the pledge was given, was executed to the president of the bankrupt and not to the claimant; and (3) that there was no delivery of the articles pledged to the pledgee at the time of the creation of the pledge."

All three contentions were decided against the trustee, the court saying with reference to the third that: "3. The agreement to pledge the automobiles was not accompanied by their delivery to the pledgee, and was invalid as a pledge, for that reason, in its inception. Upon the maturity of the first note which fell due and the dishonor of it by the bankrupt, the claimant took possession of the automobiles and stored them for its account with the warehouse company. This was done before bankruptcy proceedings were instituted, but within four months thereof, and while the bankrupt was insolvent; and from the default in payment of the note, the insolvency of the bankrupt and an intent to prefer, if a preference was created by the transaction, was reasonably to have been inferred by the claimant. In the absence of the prior agreement to give the pledge, the subsequent surrender of the property would without doubt have constituted a voidable preference. If possession had accompanied the agreement to give the pledge, the pledge would equally without doubt have been valid, though given within four months of the filing of the petition, because of the contemporaneous consideration moving to the bankrupt for the agreement to give the pledge. The pertinent inquiry then is as to whether the subsequent delivery of possession of the pledged property

to the pledgee, though without a new consideration, relates back to the original agreement and is rescued from the infirmity it would otherwise be subject to by reason thereof. Subsequent delivery of property agreed to be pledged has been

held by the Supreme Court of Alabama to validate the pledge, except as against intervening liens which have attached in the interim. (Nobles vs. Christian & Craft Grocery Co., 113 Ala., 220; 20 South., 961; American Pig Iron Storage Warrant Co. vs. German, 126 Ala., 239; 28 South, 603; 85 Am. St. Rep., 21.)

"If the decisions of the state court hold valid transactions to create liens in cases in which delivery is made subsequent to the agreement to give the lien but before the right of intervening creditors has been fastened upon the property, the delivery of the property, under such circumstances, will not constitute an illegal and voidable preference under the bankruptcy law. (Thompson vs. Fairbanks, 196 U. S., 516; 25 Sup. Ct, 306; 49 L. Ed., 577; Humphrey vs. Tatman, 198 U. S., 91; 25 Sup. Ct., 567; 49 L. Ed., 956.)"

Section 60b, as amended by the Act of June 25, 1910, is as follows:

"If a bankrupt shall have procured or suffered a judgment to be entered against him in favor of any person or have made a transfer of any of his property, and if, at the time of the transfer, or of the entry of the judgment, or of the recording or registering of the transfer if by law recording or registering thereof is required, and being within four months before the filing of the petition in bankruptcy or after the filing thereof and before the adjudication, the bankrupt be insolvent and the judgment or transfer then operate as a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, shall then have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person."

The amendment of 1910 to section 47 reads:

"* * * and such trustees, as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also, as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied."

The above cited cases, which arose before the amendments of June 25, 1910, establish the principle that the exercise of a preexisting right well founded in equity is not a preference, although occurring within the prescribed period. It may be argued that this principle has for its foundation the fact that the preexisting right was created prior to the commencement of the prescribed period and therefore cannot be invoked where such a right is created thereafter. The distinction is without a difference, because the trustee stood in the shoes of the bankrupt in so far as these matters were concerned. In either case the taking possession of the property related back to the time when the right to do so was created.

The principle, as thus established by the courts in the United States, is to be found in a decision of the Supreme Court of the Philippine Islands in the case of Torres de Villanueva vs. Standard Oil Company of New York (34 Phil. Rep., 370). In that case Elisa Torres de Villanueva was the applicant in the Land Court for the registration of two parcels of land conveyed to her in 1894 by or from her husband, Vicente S. Villanueva. The Standard Oil Company, as a creditor of Vicente Villanueva, opposed the registration on the ground that the deed from Villanueva to his wife in 1894 was a violation of article 1458 of the Civil Code, and this contention was supported by the judgment of the trial court. The evidence disclosed that the conveyance in 1894 had been made in pursuance of a promise by Villanueva in 1875 to Elisa Torres, as his future wife, to make her a gift *propter nuptias* of P2,000 and that, therefore, the deed of 1894, although in violation of the then existing law, related back

to the promise originally made and was valid. This court said:

"What was effected in 1894 by means of the document executed on stamped paper, in accordance with Law 84, Title 18, of the third Partida, is not therefore, a simple gift, but a gift propter nuptias; it was not a sale made by the husband to the wife, but was the fulfillment of the pledge promised in 1875, all in conformity with the laws in force, but the provisions of the Civil Code in no wise apply thereto. Therefore, neither in 1875, nor in 1894, could the husband and wife have intended to defraud any creditor, for the record does not show that they then had any creditor."

Counsel for the assignee cite no authorities in their printed brief, but during the oral argument they called our attention to the case of *Veloso vs. The Assignee in Bankruptcy of Du Tec Chuan* (34 Phil. Rep., 488), and urge that the rule therein announced fully supports their contention in the instant case. The findings of fact and order for judgment of the trial court in that case read:

"Mariano G. Veloso has presented a claim against the insolvent estate of Du Tec Chuan for P5,000 with interest at the rate of 12 per cent per annum from July 21, 1912, and maintains that said claim is entitled to preference. Only the alleged right to preference and not the claim itself is opposed by the assignee.

"The claim to preference rests upon the alleged pledge of a fire insurance policy, under which policy the insolvent recovered from the Assurance Company the sum of P7,174.45, which sum, is now in the hands of the assignee. No documentary evidence substantiating the claim to preference has been presented and the court is not aware of any legal provision under which an oral assignment or pledge of a chose in action can be held effective as against third parties.' The reference in the chattel mortgage, Exhibit 3, to payment of insurance premium is not a sufficient assignment.

"The Court therefore holds that the insolvent estate of Du Tec Chuan is indebted to Mariano G. Veloso in the sum of P5,000 with interest at the rate of 12 per cent per annum from July 21, 1912, but that the credit is not entitled to preference."

It was urged on appeal that the trial court erred (1) in holding that there was no valid pledge so as to be effective against third parties; (2) in holding that an oral assignment of a pledge is not effective against other creditors herein, and (3) in denying plaintiff's preferential rights. The Supreme Court disposed of the case as follows:

"This appeal involves two claims presented to the assignee in the bankruptcy proceedings of Du Tec Chuan; one by M. F. de Souza for services rendered to Du Tec Chuan before going into bankruptcy; and the other by M. G. Veloso who asks to be declared a preferred creditor and entitled to have his claim paid out of the insurance money collected as a result of the destruction by fire of certain personal property on which the said Veloso held a chattel mortgage. The fact that claimant held the chattel mortgage is the reason why the preference is claimed.

"After a careful examination of the record we have reached the conclusion that the trial court was correct in its decision with respect to both claims; and on the opinions written in these two cases we affirm the judgment appealed from, with costs against the appellants. So ordered."

The plaintiff Veloso alleges in his complaint in the court below, among other things—

"That at or about the time of executing said note (the debt was evidenced by a promissory note), said insolvent, as security for the payment thereon pledged and delivered to said Veloso an assurance policy No. 4129790, issued by the Alliance Assurance Company (Ltd.), for Twelve Thousand (P12,000) pesos, covering certain goods, wares and merchandise belonging to said Du Tec Chuan; that thereafter said Veloso notified said Insurance Company of the transfer of aforesaid policy and which transfer was recognized by said Insurance Company; that

notwithstanding the transfer made by said insolvent to said Veloso of said policy, said insolvent did institute action and did recover in said action Seven Thousand One Hundred Seventy-four and 45/100 (P7,174.45) pesos, interest and costs and which sum constitutes the greater part of the Thirteen Thousand Seven Hundred Forty-three and 48/100 P13,743.48) pesos now reported by the assignee as in his hands."

The acts of Veloso in permitting Du Tec Chuan, without objection, to recover in an action against the insurance company on the policy after the insured property had been burned and later turning over to the assignee the amount thus recovered, are contrary to the theory that the insurance policy had been pledged and transferred to him. There was, therefore, no preexisting right on the part of Veloso created by the alleged pledge and transfer of the policy, because such alleged pledge and transfer never, in fact, existed.

As was said in the concurring opinion, the question whether the chattel mortgage, being a transfer of the title of the property to the mortgagee, did not subrogate the mortgagee to or place him in such a position in equity as would entitle him, to exercise all of the rights which the mortgagor had in the property, including the insurance policy in case of loss, being one which had not been raised on the appeal nor argued in any way, the court was not called upon to discuss or decide it. Consequently, the disposition of the case by this court, as thus presented, establishes no rule with reference to preferences under the Insolvency Law, which is controlling or in any wise conflicts with the views which we have expressed in the case under consideration.

Act No. 1956 has no provision corresponding to that of the Congressional amendment of 1910, putting the trustee in the position of the most favored lien holder. Those provisions of our Act, making the effective date of a transfer the date the instrument is filed for record, applies to real estate only.

In view of the principles announced in the foregoing cases, we are of the opinion that the exercise of the right on the part of the bank to take possession of the coal within the thirty days did not constitute an illegal preference because it was taken pursuant to a valid agreement to pledge for which a present consideration had moved to the insolvent and, therefore, related back to such agreement, no claimants with better rights having intervened.

For the foregoing reasons the judgment appealed from is affirmed, with costs against the appellants. The coal having been sold in the meantime by agreement of the parties and it not appearing that the amount realized therefrom exceeds P30,000, the bank, under this judgment, is entitled to the money. So ordered.

Torres and Carson, JJ., concur.

Moreland and Araullo, JJ., concur in the result.

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