

VOLUNTARY INSOLVENCY OF P. BLANC. D. J. MAHONEY, RECEIVER, APPELLEE, VS: MARIANO TUASON, CREDITOR, APPELLANT.*G.R. No. 14129. July 30, 1919*

Ponente: TORRES, J.

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In, a petition dated October 26, 1916, counsel for D. J. Mahoney, receiver of the insolvency of P. Blanc, prayed the Court of First Instance of Manila to cite Mariano Tuason to appear and explain before the court the reason why he had in his custody the jewels mentioned in the said petition, and after the hearing, to order him, if proper, to deliver the said jewels to the receiver, in order that they form part of the estate of the insolvent P. Blanc. Said receiver alleges that Mariano Tuason took the said jewels from the store of the insolvent P. Blanc before the adjudication of the insolvency of the latter, said jewels not having been mortgaged or encumbered in any manner in his favor, according to informations received by the receiver-petitioner in the investigation he conducted for the purpose.

Mariano Tuason was cited to appear. On November 6, 1916, he submitted his answer stating that before the month of February, 1913, he guaranteed, at the instance of the insolvent P. Blanc, the credit in the sum of fourteen thousand pesos (P14,000) which the Chartered Bank of India, Australia and China had granted to said P. Blanc; that on February 3d of the same year, in order to guarantee the said security, P. Blanc gave as pledge the jewels mentioned in Exhibit 1, the value of which was fixed by P. Blanc himself in the amount of fourteen thousand ten pesos (P14,010), although the value fixed in the document is fourteen thousand one hundred fifteen pesos (P14,115); that said credit was increased till it reached the amount of sixteen thousand pesos (P16,000) and to secure the payment of this sum P. Blanc executed, on June 20, 1913, a document whereby he bound himself to refund the said amount by paying the creditor a monthly installment of one thousand pesos (P1,000) plus 1 per cent interest per month on the amount he owed the bank as mentioned above, and in case of failure to do so, to pay an indemnity of one hundred fifty pesos (P150) a month, as is stipulated in Exhibit 2. In the said exhibit it was stipulated that, if said P. Blanc could not comply with the obligations contracted by him, the surety would be authorized to detain the jewels¹ pledged for half their value; that P. Blanc did not pay the debt due to the bank, wherefore Tuason had to pay and did in fact pay to the said bank the entire debt owed by P. Blanc which exceeded the sum of sixteen thousand pesos (P16,000). Of this amount, P. Blanc only paid to Tuason five monthly payments, that is, five thousand pesos (P5,000) which, when deducted from sixteen thousand pesos (P16,000), gives a balance of eleven thousand pesos (P11,000); that this remainder added to the three thousand six hundred seventy pesos (P3,670), the interests accrued, and four thousand two hundred pesos (P4,200), the sum of the accumulated penalties, gives a total of eighteen thousand eight hundred seventy pesos (P18,870) in favor of the creditor and against P. Blanc; that the latter had been taking from the creditor various jewels amounting to three thousand seven hundred forty four pesos (P3,744) which sum deducted from twenty thousand and ninety-four pesos (P20,094), the total value of the jewels pledged, gives a balance of sixteen thousand three hundred fifty pesos (P16,350); that, in view of the default incurred by the said P. Blanc from April, 1914, the surety appropriated to himself the said jewels in half their value, that is, in eight thousand one hundred seventy five

pesos (P8,175) which sum, deducted from the total debt of P. Blanc in the sum of eighteen thousand eight hundred seventy pesos (P18,870), gives a balance of ten thousand six hundred ninety-five pesos (P10,695); that, in turn, Mariano Tuason on various occasions had been receiving from the debtor P. Blanc certain jewels amounting to one thousand five hundred forty six pesos and forty centavos (P1,546.40) which, deducted from the preceding balance, gives a remainder of nine thousand one hundred forty eight pesos and sixty centavos (P9,148.60) which is the net amount actually due from the insolvent P. Blanc to his creditor. Wherefore, after stating that of the jewels mentioned in the petition of D. J. Mahoney he has not received any of those specified in paragraph 12th of his answer, Tuason prayed that the jewels specified in paragraph 2 and 4 of his petition be declared to have passed in his favor and to pertain to his legitimate ownership and that the court approve as correct the - liquidation of P. Blanc's debt and order that the said debtor pay to the creditor Tuason the remaining debt of nine thousand one hundred fortyeight pesos and sixty centavos (P9,148.60) in the same proportion and under the same conditions as the other creditors of the said P. Blanc.

After hearing the evidence the court, on November 19, 1917, ordered Mariano Tuason to deliver to the receiver all the jewels which he (Tuason) has received by way of pledge from the insolvent P. Blanc and which appear in detail in the motion filed by the said receiver on October 26, 1916, and, in case he can not deliver all of the said jewels or any of them, to pay to the said receiver the price thereof, after an appraisal to be had in the same proceeding, in order that they form part of the estate of the insolvent without prejudice to the right of Mariano Tuason to present his claim in these proceedings for the amount of his credit, still due from the insolvent to the end that the said claim may be settled in accordance with law.

On December 3, 1917, Mariano Tuason appealed from this order, and his appeal having been admitted by the court the corresponding bill of exceptions was forwarded to the clerk of this court. (Record, pp. 15-17.)

The evidence presented by both parties to sustain their respective claims does not seem to have been forwarded to this court, but as the appellant in his brief only impugns the holding of the trial court declaring the nullity of the agreement contained in the document of June 20, 1913, to the effect that should the debtor P. Blanc fail to comply with the obligations contracted by him in said document in favor of Mariano Tuason, the latter would be entitled to retain the jewels given in pledge, all the other conclusions reached by the trial court in his decision are therefore accepted.

The questions involved, in this case and submitted for the decision of this court is whether a contract of pledge or of chattel mortgage duly entered into is rendered null and void by an additional stipulation among the contracting parties that in case of the debtor's failure to comply with the conditions agreed upon, the creditor would be authorized to retain the jewels and merchandise pledged in half of their value and absolutely appropriating them to himself.

In the private document containing the contract of pledge appears the express agreement that if Blanc should fail to comply with the obligations stipulated, among other things, that of paying one thousand pesos (P1,000) monthly in advance beginning from June, 1913, till his debt shall have been paid together with the stipulated interests and the interests paid to the bank, the creditor would be entitled to retain the jewels and other thing given in pledge to the said creditor in an amount which results after deducting the fifty per cent (50%). Moreover, it is found that the debtor Blanc had withdrawn or taken from the possession of the creditor several jewels worth three thousand seven hundred forty-four pesos (P3,744) which amount deducted from twenty thousand ninety-four pesos (P20,094), the total value of the jewels pledged to the creditor, would leave a balance in the hands of the latter of jewels worth sixteen thousand three hundred fifty pesos (P16,350).

The following are indisputable facts: that P. Blanc, the owner of the jewels, entered into the said contract of

pledge, delivering to the creditor Mariano Tuason several jewels and other merchandise mentioned in the documents referred to, for the purpose of securing the fulfillment of the obligation which he (Blanc) had contracted in favor of the latter who had guaranteed the payment of a considerable amount of money which Blanc owed to the Chartered Bank which amount Tuason had to pay, because of Blanc's obligation to do so; that the latter is unquestionably the owner of the jewels and merchandise so pledged and had the free disposition of them as in fact he did, there appearing nothing to the contrary; and lastly, it appears from the document, although private, and not discussed nor impugned by anybody, that the creditor Tuason is in actual possession of the jewels and merchandise which were pledged and delivered to him freely and spontaneously by the debtor Blanc. (Articles 1857 and 1863, Civil Code.)

On July 2, 1906, Act No. 1508, entitled The Chattel Mortgage Law, was approved and became effective beginning August 1st of the same year. Section 3 of the said Act reads:

"A chattel mortgage is a conditional sale of personal property as security for the payment of a debt or the performance of some other obligation specified therein, the condition being that the sale shall be void upon the seller paying to the purchaser a sum of money or doing some other act named. If the condition is performed according to its terms the mortgage and sale immediately become void, and the mortgagee is thereby divested of his title."

And section 4 of the same Act provides:

"A chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides at the time of making the same, or, if he resides without the Philippine islands, in the province in which the property is situated: Provided, however, That if the property is situated in a different province from that in which the mortgagor resides, the mortgage shall be recorded in the office of the register of deeds of both the province in which the mortgagor resides and that in which the property is situated, and for the purposes of this Act the city of Manila shall be deemed to be a province."

From the foregoing provisions of the above-cited act, it is inferred that the same does not entirely repeal the provisions of the Civil Code, but only modify them in part and amplify them in another, as may be seen from an examination of, and comparison between, the provisions of the Civil Code regarding pledge and the above-quoted provisions of Act No. 1508.

Article 1865 of the Civil Code provides that no pledge shall be effective against a third person unless evidence of its date appears in a public instrument. The provision of this article has, undoubtedly, been modified by section 4 of the Chattel Mortgage Law, in so far as it provides that a chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides.

From the date the said Act No. 1508 was in force, a contract of pledge or chattel mortgage should be deemed legally entered into and should produce all its effects and consequences, provided it appears to have been in some manner perfected and that the things pledged have been delivered, and in a contrary case, and even if the creditor has not received them or has not retained them in his custody, provided that the contract of pledge of chattel mortgage appears in a notarial document and is inscribed in the registry of deeds of the province.

It is a fact admitted as well as fully proven in the record that the creditor Tuason paid to the Chartered Bank the sum of sixteen thousand, pesos (P16,000) which the debtor Blanc owed and failed to pay, and that the latter did

not reimburse Tuason the amount paid to the bank together with interests thereon. It is but just, therefore, that Tuason recover all the amounts paid by him to the bank in payment of Blanc's debt, and that he recovers his credit together with the interests paid to the bank and the other amounts agreed upon between him and debtor Blanc with regard to the selling price of the jewels and merchandise which were delivered to him by Blanc and of those of which Tuason is actually in lawful possession, said contract of pledge of chattel mortgage producing at all events the effect of preference, in accordance with the provisions of the Civil Code and Act No. 1508.

It is true that the creditor Tuason has no right to appropriate to himself the merchandise pledged, nor can he make payment by himself and to himself with half or the total value of the same (art. 1859, Civil Code), inasmuch as he is only permitted to recover his credit, which Blanc owes, from the proceeds of the sale of the jewels and merchandise delivered to him in pledge, and said sale at public auction should be effected, according to article 1872, before a notary, and according to section 14 of Act No. 1508, in a public place in the municipality after previous notices and notifications to the debtor through the sheriff of the province.

If the last part of the contract concerning the fact that the creditor Tuason is entitled to retain and appropriate to himself the merchandise received in pledge is null and indefensible, because he can only recover his credit, according to law, from the proceeds of the sale of the same, there is no sound reason nor any legal provision which determines the nullity of the principal contract by virtue of which Tuason paid Blanc's debt to the bank, and according to the stipulation, Tuason took possession of the jewels and merchandise pledged as security for the big sum of money which he had paid and which the debtor Blanc had not refunded.

The additional stipulation between the contracting parties, whereby the debtor authorized the creditor to appropriate to himself the merchandise pledged for the recovery of his credit, is certainly contrary to law, and besides being expressly forbidden by law, it is immoral; but the fact that said stipulation is added to the principal contract of chattel mortgage does not substantially and necessarily affect the validity and efficacy of the said, contract, for the reason that the contract being¹ perfect in itself could have subsisted even if the parties had not agreed as to the manner the creditor could collect his credit from the proceeds of the things pledged, inasmuch as the law has expressly established the procedure in order that the creditor may not be defrauded or deceived in his right to recover his credit from the proceeds of the things retained by him as security, in case the debtor should fail to comply with the obligation contracted by him.

If the creditor Tuason could not appropriate to himself the jewels and merchandise which he had in his custody, by way of pledge—an act expressly prohibited by law—it does not follow that the contract of pledge or mortgage of the jewels and the other merchandise which was duly executed between the said Tuason and Blanc was also null, because if the latter could not pay his debt by refunding to Tuason the amount paid to the Chartered Bank, there is no just nor legal reason which prevents the creditor from recovering his credit and other amounts which Blanc was obliged to pay from the proceeds of the sale of the jewels and merchandise pledged.

Moreover, it appears that the contract of pledge or mortgage of the jewels and merchandise, which are now in the possession of Tuason, and the delivery of the same to him as security for the considerable amount of debt took place long before the commencement of the insolvency proceeding of the debtor Blanc and before the thirty days referred to in section 70 of Act No. 1956.

In view of the foregoing considerations, it follows that, in reversing the judgment appealed from, it should be held, as we hereby hold, that the contract of pledge or chattel mortgage entered into between P. Blanc and Mariano Tuason on June 20, 1913, and stated in the documents on pp. 14 to 21 of the bill of exceptions, is valid and subsisting; that the creditor, Mariano Tuason, has the right to recover his credit of eighteen thousand eight hundred seventy pesos (P18,870) from the proceeds of the public sale of the merchandise pledged, which sale

should be effected by the sheriff of the city of Manila in the manner and with the formalities established by section 14 of Act ,No. 1508; and that the stipulation contained in the last part of the document (page 21 of the bill of exceptions) whereby the debtor authorized the creditor Tuason to retain the jewels in his possession is null and void. However, the creditor Tuason is obliged to deliver to the receiver, D. J. Mahoney, the balance of the proceeds of the sale of the jewels and .merchandise pledged, after deducting his credit, the interests thereon and the other amounts to which he is entitled to recover, according to the stipulation contained in the said, contract. There is no special finding as to costs. So ordered.

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

Judgment reversed.

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