

CHARTERED BANK OF INDIA, AUSTRALIA AND CHINA, HONGKONG & SHANGHAI BANKING CORPORATION, AND W. F. STEVENSON & CO., LTD., PLAINTIFFS, VS. C. A. IMPERIAL, JUDGE OF THE COURT OF FIR...*G.R. No. 17222. March 15, 1921*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-17222/>

On December 7, 1920, the Philippine National Bank brought suit in the Court of First Instance of the City of Manila against Umberto de Poli, Henry Hunter Bayne, and J. G. Lawrence, to compel the defendants to deliver to it the goods and merchandise described in the mortgage executed on the dates mentioned in the complaint, to secure the payment of the sum of P662,000, plus P4,000 as damages. Immediately after the filing of said complaint, the attorney for the bank asked the clerk of the court, in writing, to issue a writ ordering the sheriff to seize the goods described in the affidavit attached to said complaint, and to that end the plaintiff gave bond in the sum of P1,324,000. Said order having been issued under the seal of the court, the sheriff proceeded on the next day, the 8th, with the seizure and attachment of the personal property, or, to be more exact, of the goods and merchandise described in said affidavit and stored at the time in the warehouse of the defendant Umberto de Poli, of which goods and merchandise the sheriff took actual possession.

On the same day, December 8th, within twenty-four hours after the sheriff had seized and taken possession of said merchandise, the Chartered Bank of India, Australia and China, the Hongkong & Shanghai Banking Corporation and W. F. Stevenson & Co., Ltd., filed a petition in the office of the clerk of the court in which they asked that, after a hearing and the proper legal proceedings, the defendant Umberto de Poli be declared insolvent under the provisions of Act No. 1956. The latter consented to the petition and admitted each and every allegation thereof, waiving his right to be heard and to file any opposition thereto. By virtue of what has just been related, the Court of First Instance issued an order declaring Umberto de Poli to be in a state of insolvency and commanding the sheriff to take charge and possession of all property, real and personal, and of all the effects, books, documents and belongings of the debtor, except those exempt by law from execution, and to keep them in his custody in accordance with law until further orders of the court or until an assignee should be appointed. The sheriff complied therewith, and also took possession of the goods and merchandise which had already been attached by him in the action instituted by the Philippine National Bank against Umberto de Poli. Therefore, as stated by the court in one of its orders, a copy of which appears in the record, the goods and merchandise included in the affidavit attached to the complaint of the Philippine National Bank were in the possession and under the custody of the sheriff of the court, by virtue of said orders which are as follows, to wit, the order of seizure issued by the clerk under the seal of the court by virtue of the petition presented by counsel for the Philippine National Bank, as plaintiff, in case No. 19235, initiated by said complaint, and mortgage creditor of Umberto de Poli, and the order issued by the same court in the insolvency proceedings, case No. 19240, by which the same officer was ordered to take charge of all the property, real and personal, books, and all other personal property of the insolvent, and to keep them in his custody until further orders or until an assignee should be appointed in accordance with the Bankruptcy or Insolvency Law.

The two cases being at this stage, the first of which was taken cognizance of by the Honorable Pedro Concepcion,

who presided over one branch of said court, and the second by the Honorable C. A. Imperial, who presided over another branch, the Chartered Bank of India, Australia and China, the Hongkong & Shanghai Banking Corporation, and W. F. Stevenson & Co., Ltd., on December 9 presented a motion in case No. 19235, praying for the reconsideration and annulment of the writ of attachment issued against Umberto de Poli in said case upon the petition of the Philippine National Bank, and that all further proceedings in the case be suspended until a decision should have been rendered by the court as to the discharge of the insolvent debtor according to the procedure established by law, on the grounds that the goods attached were then in the possession of the sheriff of Manila, as provisional assignee of the property of the insolvent; that upon the face of the complaint presented by the Philippine National Bank it was probable that the debt contracted by Umberto de Poli was among those subject to the Insolvency Law; that it was not there alleged that the goods described in said complaint had at any time been in the possession of the plaintiff, and that the attempts made by the latter to take possession of them under the writ of attachment constituted in themselves a confession that no valid contract of pledge of said goods had ever been executed.

The Honorable C. A. Imperial having, by agreement of the parties, taken cognizance of the two cases; passed upon the motion above mentioned presented by the creditors of Umberto de Poli and issued an order, dated the 16th of December, denying the same upon the grounds therein stated, and ordering the sheriff to dispose of the property seized at the instance of the Philippine National Bank, strictly in accordance with the provisions of law relating to manual delivery of personal property; that said case No. 19235, instituted by the Philippine National Bank against U. de Poli et al., should follow its usual course; and finally, that inasmuch as four of the five days mentioned in section 267 of Act No. 190 had already elapsed, the sheriff should deliver to the plaintiff bank the goods seized by him if, within one day, the defendants did not make use of the right given them by said section and no claim was presented by any third person in accordance with section 270 of the same Act. Said judge on the same day entered another order of a like tenor, disposing of a petition presented by Macleod & Co., a registered partnership and unsecured creditor of U. de Poli, in which it prayed for an order enjoining the sheriff from seizing or transferring the goods or merchandise in question, which were then in the warehouse of said De Poli, or any other property belonging to him, or from interfering with them until they should finally be delivered to the assignee in insolvency.

Because of the facts above stated, the Chartered Bank of India, Australia and China, the Hongkong & Shanghai Banking Corporation and W. F. Stevenson & Co., Ltd., upon whose petition Umberto de Poli was declared insolvent in case No. 19240, on the following day, December 17, presented in this court a petition for a writ of certiorari and injunction against the Honorable C. A. Imperial and the Philippine National Bank, wherein the facts above mentioned and other matters in relation thereto were set forth, and it was alleged that the order of the lower court, for the continuation of the proceedings instituted by the Philippine National Bank and the delivery to the latter of the merchandise and effects seized, was beyond the jurisdiction of the court presided over by the respondent judge; that should it be enforced, irreparable damage would result to the petitioners and other creditors of the insolvent, and that the petitioners had no other plain, speedy and adequate remedy. Wherefore they prayed; (a) That a writ of certiorari be issued against the respondent judge and that after proper proceedings the said order of December 16 be annulled; (b) that an injunction be issued forbidding the respondents and each of them to carry on the proceedings in said attachment suit, case No. 19235, especially the levying of the attachment issued therein; and, lastly, that pending said proceedings a preliminary writ of injunction be issued enjoining the enforcement of the writ of attachment and the order already mentioned.

The preliminary writ of injunction applied for was issued by one of the Justices of this court after the filing of a bond, and the respondents were summoned to appear within the time granted them to show cause why the writ of certiorari and injunction applied for should not be granted. The Philippine National Bank appeared, as ordered,

and asked that said preliminary writ of injunction be dissolved. The case was then argued and submitted to this court, the parties having filed written arguments in support of their respective contentions.

This court has repeatedly declared that a writ of certiorari will not issue unless it clearly appears that the court against which it is directed has acted without or in excess of its jurisdiction; that if a court has jurisdiction over the subject-matter of the suit and the persons of the parties, the decisions upon all questions relating to the cause are decisions within its jurisdiction and no matter how erroneous and irregular they may be they cannot be corrected by means of certiorari. The decisions of this court are numerous, *Herrera vs. Barretto and Joaquin* (25 Phil., 245), being among them, in which a careful study and discussion of the remedy and the doctrine on certiorari and injunction are made. In said case this court briefly enumerates the cases submitted to and decided by it up to that date, upon petitions of this nature, and it concludes by saying that a complete and detailed examination of all the cases decided by this court on certiorari and injunction fully support the proposition that the decision of a Court of First Instance, which has jurisdiction over the persons of the parties and the subject-matter of the suit, cannot be corrected by means of certiorari, however erroneous it may be, but by appeal. In the same case it was declared that jurisdiction should be distinguished from the exercise of jurisdiction and that the power to decide a case, and not the decision therein rendered, is what constitutes jurisdiction.

It cannot be disputed that the Court of First Instance of Manila, or rather the Honorable Judge C. A. Imperial, who presided over one of the branches of said court, having taken cognizance of case No. 19235, brought by the Philippine National Bank against Umberto de Poli for the recovery of the merchandise which had been mortgaged to it as security for the payment of P662,000 and to enforce payment of said credit in the manner provided by Act No. 1508, on chattel mortgages, in connection with the provisions of sections 262 to 272 of the Code of Civil Procedure, concerning manual delivery of personal property; and said court, having also taken cognizance of case No. 19240, commenced by the herein petitioners for the declaration of insolvency of the same Umberto de Poli, had jurisdiction over the persons and the subject-matter, respectively, of each of said cases. He had full jurisdiction to act upon all the petitions which might be presented in either case, issuing proper order, and this is the more so because the petitioners themselves, the Chartered Bank of India, Australia and China, the Hongkong & Shanghai Banking Corporation, and W. F. Stevenson & Co., Ltd., who were parties to the suit and had instituted the insolvency proceedings against U. de Poli, presented the motion of December 9, 1920, upon which the order of the 16th of the same month was issued, and which order the petitioners themselves now pretend to have been issued by the court without jurisdiction in case No. 19235 brought by the Philippine National Bank against U. de Poli; and the act itself of the petitioners' making that motion in said case was a clear acknowledgment of the jurisdiction of said court to issue said order.

If the respondent judge had decided said motion of the petitioners in insolvency, as well as that of the other creditor Macleod & Co., in a manner favorable to them, that is, by annulling the writ of attachment issued at the instance of the Philippine National Bank against U. de Poli, and ordering the suspension of the proceedings in case No. 19235, to await the final outcome of the insolvency proceedings No. X9240, in which it had jurisdiction over the persons of the parties and the subject-matter thereof, would said creditors have filed the petition in this court for certiorari and injunction on the ground of lack of jurisdiction of the court? Certainly not. They would have admitted said jurisdiction, because as a matter of fact and according to themselves the court had jurisdiction. Then, as the court must also have had jurisdiction to deny the motion of the creditors, any error that the court might have committed should be corrected not by certiorari and injunction, but by an ordinary appeal.

Nevertheless, the plaintiffs argue that as Umberto de Poli was declared insolvent, and as all civil proceedings against him should have been suspended from the moment of the adjudication of insolvency, and as the sheriff should have taken possession of all the property, credits, and documents of the insolvent, and upon the

appointment of an assignee, according to Act No. 1956, turned them over to the latter, the respondent judge, in violation of said law, exceeded his jurisdiction in issuing the order of December 16, 1920, whereby the sheriff of the court was directed to dispose of the property seized at the instance of the Philippine National Bank, in conformity with the provisions of law concerning manual delivery of personal property, and case No. 19235 was allowed to follow its course, in which case said attachment was issued and levied.

As a general rule, proceedings of a universal character, such as bankruptcy and insolvency, and testamentary and intestate proceedings, also include proceedings of a particular nature that are related to the subject-matter thereof. In accordance with this rule, Act No. 1956, that is to say, the Insolvency Law, contains provisions of this character, among which sections 24, 32 and 60 may be mentioned, which are cited by the petitioners.

The first of said sections, namely, section 24, prescribes the proceedings to be followed subsequent to the order adjudicating the involuntary insolvency of the debtor, such as the publication thereof and the seizure of all property and belongings of the insolvent by the sheriff and provides that, upon the issuance of such order, all the proceedings pending against the insolvent shall be stayed. Again, section 32 states that as soon as an assignee is elected or appointed and has qualified, the clerk of the court shall, by an instrument under his hand and the 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 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, although the same is then attached on mesne process as the property of the debtor, such assignment operating to vest in the assignee all of the estate of the insolvent debtor not exempt by law from execution. The same section further provides that the assignment shall also dissolve any attachment levied within one month next preceding the commencement of the insolvency proceedings, and vacate and set aside any judgment entered in any action commenced within thirty days immediately prior to the commencement of insolvency proceedings, and any execution issued thereon and any judgment entered by default or consent of the debtor within thirty days immediately prior to the commencement of the insolvency proceedings.

It is also true that section 60 of said Act No. 1956 contains, among others, the provision quoted in the memorandum presented by the petitioners in these proceedings, to wit, that no creditor whose debt is provable under said Act shall be allowed, after the commencement of insolvency proceedings, to prosecute to final judgment any action therefor against the debtor until the question of the debtor's discharge shall have been determined, and any such suit or proceeding shall, upon the application of the debtor or of any creditor or the assignee, be stayed to await the determination of the court on the question of discharge; provided that if the amount due the creditor is in dispute, the suit, by leave of the court in insolvency, may proceed to judgment for the purpose of ascertaining the amount due, which amount, when determined, may be allowed in the insolvency proceedings, but execution shall be stayed as aforesaid.

But it is also true that in the same Act No. 1956 there is an exception to said general rule, as well as to the provision therein contained based on said rule, to wit: In the first sections of said Act, contained in chapter 2 thereof, which relate to suspension of payments, it is provided that the course of all executions pending against the debtor shall be suspended before the sale is made thereunder, provided the debtor makes a request therefor to the court in which the proceeding for suspension of payments is pending, unless the execution be against property especially mortgaged (sec. 6) which is exempt from the provisions of said section and, in the concluding part of said section, while it is prohibited for creditors other than those mentioned in section 9 to sue or institute any action for the collection of their debts from the moment that suspension of payments is applied for and while the proceedings are pending, exception is made in favor of those mentioned in said section 9, among whom are the

creditors holding legal or contractual mortgages.

Section 9, chapter 2, of said Act, in regulating the meeting of creditors to be held after the presentation and filing" of the debtor's petition for suspension of payments, provides that creditors holding legal or contractual mortgages may abstain from attending the meeting and from voting therein; and it is further provided that "Such persons shall not be bound by any agreement determined upon at such meeting but if they should join in the voting they shall be bound in the same manner as are the other creditors." Therefore, it is evident that it is optional with the mortgage creditor of a debtor, who may have applied for suspension of payments, to take part in the respective proceedings; whether he should be bound or not, like the other creditors, by what is agreed upon in the meeting, pending said proceedings, depends absolutely upon him; and, finally, that at this stage of the proceedings, the court cannot suspend the course of the execution issued at the instance of the mortgage creditor against the property of the debtor especially mortgaged by him to secure his debt, although said debtor should so petition the court in the proceeding for suspension of payments.

One of the rights every creditor in involuntary insolvency proceeding has, and which are regulated by chapter 4 of said Act No. 1956, is that of voting at the election of an assignee, after filing his claim in the office of the clerk of the insolvency court at least two days prior to the time appointed for such election (sec. 29). By the exercise of this right, the creditor becomes a party to the involuntary insolvency proceeding. He acquires the right to be represented, with the other creditors in said proceeding, by the assignee elected, who also is the representative of the insolvent debtor and the administrator of the property pertaining to him. Said creditor also acquires the right to collect what the insolvent owes him, after the property of the insolvent is properly classified in accordance with the provisions of the same law.

Now, section 29 of chapter 5, dealing with assignees, provides that "No creditor or claimant who holds any mortgage, pledge, or lien of any kind whatever as security for the payment of his claim or attachment or execution on property of the debtor duly recorded and not dissolved under this Act shall be permitted to vote at the election of the assignee any part of his secured claim unless he shall first have the value of such security fixed as provided in section 59 of this Act, or shall surrender to the sheriff or receiver of the estate of the insolvent, if there be a receiver, all such property, or assign such lien to such sheriff or receiver," and "The surrender or assignment of such security or lien shall be for the benefit of all creditors of the estate of the insolvent."

Section 59, chapter 8, of said Act, above cited, which treats of proof of debts, provides as follows:

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

It is, therefore, clear and evident that the law recognizes and respects the right of a creditor holding a mortgage, pledge or lien of any kind, attachment or execution on the property of the debtor, recorded and not dissolved under said Act, to refrain from voting at the election of an assignee, and, consequently, to preserve said right; to refrain from taking part or intervening in the insolvency proceedings, and to retain the property mortgaged to him and the respective security or lien, the court having no power, even if the debtor is adjudged insolvent, to dispose of said property, security or lien and cede or transfer them to the sheriff or assignee by virtue of said adjudication; nor dissolve any attachment levied upon said properties in order to effect said transfer or assignment, as stated in sections 24 and 32 above mentioned,, so long as the creditor does not voluntarily deliver or assign said property, security or lien for the benefit of all the creditors of the insolvent. This is because that delivery or assignment converts the mortgagee or pledgee or creditor having an attachment levied upon the properties given as security for his credit,—who is allowed to refrain from intervening in the insolvency proceedings and exempted from the effect of the agreement reached therein,—into a party to the insolvency proceedings, but only with respect to the balance of the debt found to be due him after deducting therefrom the proceeds of the sale of said property, or the value fixed in the manner provided in said section 59, in which case, as stated in the last part of section 29, said creditor may prove his claim for any unsecured balance subject to the filing of exceptions as in all other claims.

If the creditor surrenders his security to the receiver or to the sheriff before the election of the assignee, or to the assignee if one has been elected, he may also be admitted to prove his whole credit with the same effect as if he were one of the creditors and a party to the insolvency proceedings; but even in this case the right which the law grants a creditor under these circumstances on account of the security he has in his favor is of such a nature that if, as stated in section 59, the value of the property assigned or surrendered by him exceeds the amount for which it is held as security, the assignee may release to the creditor the debtor's right of redemption on receiving such excess, or he may sell the property subject to the claim of the creditor, and in either case the assignee and the creditor, respectively, shall execute the deeds and documents necessary to consummate the transaction.

Therefore, if after payment of the value of the property mortgaged there remains a balance in favor of the debtor adjudged insolvent, said creditor ceases to be a party in the insolvency proceedings after receiving the full payment of his credit and the execution of the necessary documents. This again shows that it was not the intention of the law, and it could not have provided, that a creditor, holding a mortgage, pledge or lien of any kind to secure the payment of his credit or an attachment or execution upon the property of the debtor, duly recorded and not dissolved under the same Act, should be deprived or dispossessed of said property and of the security in his favor, so as to include it, against his will or without any application having been made by him to that effect, in the estate of the insolvent at any stage of the insolvency proceedings. The Philippine National Bank is such a creditor, Umberto de Poli having specially mortgaged to it the property that was attached at its instance, and it not appearing that the creditors, who are petitioners herein, or the assignee, had instituted any action for the annulment of said mortgage. This theory is clearly corroborated by the provision of the last paragraph of section 59 which directs the assignee to deliver the property to the creditor, in case it should not have been sold, delivered, or its value fixed, and consequently, to deliver or rather to return all said property on which he holds a mortgage, pledge or lien, or attachment or execution in case he was not permitted to prove any part of his credit. Thus the law runs, leaving no room for doubt that neither the creditors nor the assignee in insolvency may rely upon said property mortgaged or especially given as security to the creditor by the insolvent debtor, or attached or levied upon at the instance of the creditor, nor can the court, taking cognizance of the proceedings, interfere with them without a voluntary, manifest and clear petition of the creditor himself.

The petitioners, nevertheless, lay stress upon that part of section 60 of Act No. 1956 which we have heretofore discussed and which is inserted in their memorandum, and maintain that all suits which may have been commenced by a creditor of the insolvent, like that instituted by the Philippine National Bank against Umberto de

Poli for the recovery and consequent attachment of the effects and merchandise mortgaged to said bank, whose credit may be proved, according to said law, cannot prosecute said action to judgment as long as in the insolvency proceedings the question of the debtor's discharge has not been determined,—such suit or proceeding to be suspended at the instance of the debtor or assignee, until the decision of the court is rendered upon the question of discharge, unless the court, taking cognizance of the insolvency, should permit it, in order to determine the amount due, which, once fixed, may be allowed in the insolvency proceedings, although execution in that suit shall be suspended.

This is the concluding part of said section 60 and refers to the creditor whose credit may be proved in accordance with the law. Said section reads as follows:

"No creditor, proving his debt or claim, shall be allowed to maintain any suit therefor against the debtor, but shall be deemed to have waived all right of action and suit against him, and all proceedings already commenced, or any unsatisfied judgment already obtained thereon, shall be deemed to be discharged and surrendered thereby; and after the debtor's discharge, upon proper application and proof to the court having jurisdiction, all such proceedings shall be dismissed, and such unsatisfied judgments satisfied of record: Provided, That no valid lien existing in good faith thereunder shall be thereby affected. A creditor proving his debt or claim shall not be held to have waived his right of action or suit against the debtor when a discharge has been refused or the proceedings have been determined without a discharge. No creditor whose debt is provable under this Act shall be allowed, after the commencement of proceedings in insolvency, to prosecute to final judgment any action therefor against the debtor until the question of the debtor's discharge shall have been determined, and any such suit or proceedings shall, upon the application of the debtor or of any creditor, or the assignee, be stayed to await the determination of the court on the question of discharge: Provided, That if the amount due the creditor is in dispute, the suit, by leave of the court in insolvency, may proceed to judgment for the purpose of ascertaining the amount due, which amount, when adjudged, may be allowed in the insolvency proceedings, but execution shall be stayed as aforesaid."

It cannot be denied that the impression one receives from reading the last part of said section, which has been expressly cited by the petitioners and quoted in their memorandum, is favorable to their contention, especially if it is taken in connection with the provisions of sections 24 and 32 of the same law, also cited by them, but without including the preceding part of the same section which is above inserted. But to ascertain the correct meaning and make a proper interpretation of the various provisions of the Insolvency Law in force in these Islands, that is to say, Act No. 1956, and particularly of section 60 under examination, the rules laid down in various decisions of the American courts for the interpretation and proper understanding of the Bankruptcy Law of the United States, must be taken into account. Among said rules are the following :

"All Parts to be Construed Together and Harmonized.— It is among the elementary principles with regard to the construction of statutes, applicable to bankruptcy statutes as well as others, that every section, provision and clause of a statute shall be expounded by a reference to every other; and, if possible, every clause and provision shall avail, and have the effect contemplated by the legislature. One portion of a statute should not be construed to annul or destroy what has been clearly granted by another. The most general and absolute terms of one section may be qualified and limited by conditions and exceptions contained in another, so that all may stand together. Another most helpful rule governing the interpretation of legislative enactments and applicable to a bankruptcy act is to examine all its provisions and consider each in the light of the others, to the end that they may be given one harmonious operation. * * * Undoubtedly all the sections of the act must be construed together as means to effect its purpose, and some of its sections are closely related. It does not follow, however, that each section should not be given the meaning its language conveys, if clear and consistent. It does not follow because the terms of a section are defined elsewhere, and the consequences of its provisions are expressed elsewhere, that it becomes a nullity or that it is defective." (Ruling Case Law, vol 3, par. 8, page 172.)

"Meaning of Words and Phrases.—Section 1a of the Bankruptcy Act, consisting of clauses eleven to thirty, prescribes the construction for a multitude of words and phrases used in the act and in proceedings pursuant thereto, unless the construction be inconsistent with the context. Ordinary words in the Bankruptcy Act will be given their usual meaning in the absence of a good reason for a different meaning, and such an interpretation will not be made as will destroy the effect of plain provisions of the Act. (It goes on explaining the meaning of the several words contained in said article.) * * * A rule in the interpretation of statutes that a passage will be best interpreted by that which precedes and follows it, and that the meaning of a word may be ascertained by reference to the meaning of words associated with it, are rules which have been applied in construing bankruptcy acts. The general rule in the construction of statutes that general words preceded or followed by particular words, in the same or a subsequent clause, are qualified and restrained by the particular words, has also been recognized as applicable to a bankruptcy act." {Id., par. 10, pp. 173, 174.)

"Unreasonable or Absurd Constructions.—It is one of the primary canons of construction that all statutes should receive a reasonable interpretation, if the meaning of the statute is at all doubtful. This canon of construction has been applied in cases interpreting the Bankruptcy Act. * * * If the words of a statute are susceptible of more than one meaning, the absurdity of the result of one construction is a strong argument against its adoption. But where the phraseology admits of no doubt, the definitely expressed meaning must be recognized, notwithstanding the statute as thus construed may be deemed irrational legislation. * * *" (Id., par. 15, pp. 177, 178.)

"Distinctions without Difference.—When the legislature has clearly laid down a rule for one class of cases it is not readily to be supposed that, in the same act, a different rule has been prescribed for another class of cases within the same reason as the first. And it has been said that courts should strive to avoid imputation of a design to distinguish between cases upon a course of reasoning too unsubstantial and too finely drawn for the regulation of human action. * * *" (Id., par. 16, p. 178.)

"Provisos and Exceptions.—In many instances the introductory or enacting part of a section in the present Bankruptcy Act is followed by one or more provisos or exceptions. The usual and primary office of a proviso is to limit generalities and exclude from the scope of the statute that which otherwise would be within its terms. But it may sometimes mean simply additional legislation. A clear and unqualified purpose expressed in the opening statement of a section in the Bankruptcy Act comprising several subdivisions has been construed as controlling and limiting a proviso attached to one of the subdivisions, where the proviso, if segregated therefrom, would mean exactly the reverse of what it necessarily implied when read in connection with the limitation. An exception in a statute usually raises the implication that it consists of that which would otherwise be included in the category from which it is excepted. This principle of construction has sometimes embarrassed the courts in determining the relation between section 63a and section 17a. Where general words in a section of the Bankruptcy Act are followed by specified exceptions, these special exceptions exclude all other exceptions. Accordingly an exception of 'all judgments in actions for frauds' from the operation of a discharge indicated quite clearly that, as to frauds in general, Congress intended to except only such as had been reduced to judgment." (Id., par. 18, p. 179.)

Taking into account the rules above set forth, it is undeniable that the last part of said section 60, invoked by the petitioners, as well as the whole section should be understood and interpreted in connection and jointly with all the other provisions of the same law, and in the light of the preceding and subsequent provisions, giving a meaning to each word or expression in said section 60, as well as in the other sections included within chapter 8, which treats of proof of credits, but without ignoring the meaning of the provisions of the preceding chapters, in so far as they are related to the subject-matter of chapter 8.

Now, section 29 of the law gives the creditor or claimant, holding a mortgage, pledge or lien, as security for his debt, or an attachment or execution upon the property of the debtor, as herein before stated, the right to refrain from intervening or taking part in the insolvency proceedings, just as he is not obliged to take part in the election

of an assignee, unless he first surrenders or delivers to the receiver or assignee in insolvency the property subject to the mortgage in his favor, or the lien which he may have, which surrender or assignment according to the same section shall be for the benefit of all the creditors of the estate of the insolvent and shall give said creditor the same standing as any of the creditors in the insolvency proceedings with respect to the balance of the debt, after deducting therefrom the value of said property, as determined in the manner above stated. Now, it is beyond question that that right would be null and illusory if, under the provision of said section 60, said creditor could not prosecute to final judgment the suit instituted against the insolvent debtor before the adjudication of insolvency, or the attachment levied at his instance upon the property mortgaged, or given to him in pledge, or as security or subject to a lien. If said section 60 should be understood and interpreted without reference to said section 29 and others of said chapter 5, which treats of assignees and deals with said right, then the provisions of the preceding section, that is to say, section 59, which regulates the power or right of a creditor having such preferential rights to deliver or not to deliver to the assignee the property held by him as pledge or mortgage, or on which he has a lien as security for the payment of the amount due him by the insolvent, would also be null and meaningless. The attachment or the execution upon said property, as well as the duty imposed upon the assignee in the last part of said section 59 to return to the creditor the property if it is not sold or delivered up, or if its value is not fixed, would also be null, because the return or delivery of the property to the creditor or its retention by him would be without any effect, if he could not enforce the attachment procured by him upon said property, in accordance with the provisions of the Code of Civil Procedure as to attachment and manual delivery of personal property, in connection with Act No. 1508 on chattel mortgages, and prosecute the action instituted by him against the debtor, pending the determination of the question of the debtor's discharge. Lastly, it would be giving section 60 an absurd and unreasonable interpretation if, by virtue of its provisions, it be claimed that the right granted by it or, to be more exact, enshrined by the Insolvency Law in the preceding sections in favor of a creditor under the above circumstances, should be subject to the same rules as the other common creditors, that is to say, unsecured creditors of the insolvent, with respect to the collection of his credit and, if, during the pendency of the action brought by him, he is to wait and abide by whatever decision may be rendered in the insolvency proceedings as to the discharge of the debtor, because it would be a clear and manifest contravention of the provisions of the preceding sections and would result in the annulment or destruction of what is clearly granted by them.

Besides, the provisions of sections 59 and 60 are so clear that there can be no doubt whatever as to their meaning. The second of said sections refers to a creditor who proves his credit or claim and whose credit may be proved in accordance with said law, when it provides that, after the institution of the insolvency proceedings, no suit shall be entertained independently or separately from said proceedings, said suit and the judgment that may have been rendered therein being considered as withdrawn and abandoned by reason of such waiver, that said suit and the judgment therein rendered shall be dismissed and satisfied of record after the discharge of the debtor, and that no suit shall be prosecuted to judgment, pending the determination of the question of the discharge of the debtor, but the same shall be suspended at the instance of the latter, or of a creditor or of the assignee, to await said determination.

Among the debts that may be proved against the estate of the debtor, according to section 53 of said law, are all those due and owing from the debtor at the time of the adjudication of insolvency, and all debts then existing but not payable until a future date. It is true that those debts must be understood to include, in view of the general terms of their definition, those which are secured by a mortgage, pledge or lien of any kind, or attachment or execution upon the property of the debtor. But it is also true that a creditor of this class is obliged to prove his debt, and therefore may prove it, only when he surrenders or delivers to the sheriff, receiver, or assignee, for the benefit of all the creditors of the insolvent estate, the property mortgaged or pledged to him, or on which he holds a lien, in order that, after the value of said property, security, or lien is fixed, as already stated in section 59, he

may be admitted as a creditor only for the balance of the debt, after deducting said value, or in order that, if said value exceeds the debt, the property may be redeemed by the insolvent, the latter receiving the excess, or sold by the assignee, and the proper documents executed. Therefore, said section 60 refers to the ordinary or unsecured creditors of the insolvent and those who, holding a security, such as a mortgage, pledge, or lien, or attachment or execution, should have voluntarily taken part in the insolvency proceedings, releasing the property mortgaged or given as security, or on which they hold a lien, for the benefit of all the creditors of the insolvent estate, because the latter are obliged, just as the other creditors are, to prove their debt, or in the proper case, the value of said property, security, or lien, for the purpose of acquiring their right as creditors only as to the balance of the debt in their favor, after deducting the value of said property, as fixed in the manner heretofore stated. For this reason section 59 states that the creditor who may have surrendered the property to the sheriff, receiver, or assignee should be admitted to prove all his claim, and it is to be understood that only in that case may the creditor, holding a mortgage or pledge or some lien upon the property of the debtor, or attachment or execution thereon, not prosecute the suit which he may have instituted against the insolvent, nor commence a new suit against him for the recovery of his debt, after those proceedings had been instituted. He must, therefore, wait for the decision in said proceedings upon the question of the debtor's discharge, and the debtor, or any creditor of the insolvent, or the assignee may in such case ask for the suspension of such suit until the resolution of that question. It is quite clear that if section 60, cited by the petitioners, should be construed without reference to its first part and to section 59 and the other preceding sections, in which the creditor, who holds some security such as a mortgage, pledge, lien, attachment, or execution, is given the right to refrain from intervening or taking part in the insolvency proceedings, such interpretation would be absurd and unreasonable if said creditor would preserve his right and not take part in the election of the assignee, or surrender or assign the property delivered to him as security or said lien, for the benefit of all the creditors of the insolvent estate; it would not be in harmony with the other provisions of the same law; it would be a violation of that right and would defeat the object that the legislator had in mind in recognizing and respecting it.

The same law confirms this proposition when, in section 64 of chapter 10, which deals with discharge, it provides that before the determination of this question all the creditors who have proved their respective debts must be heard, upon previous notice, to show cause why such discharge should not be granted. In the same chapter 10, among the effects therein mentioned of discharge, one is the release of the debtor from all claims, debts, liabilities, and demands set forth in his schedule, or which were or might have been proved against the insolvent estate, with the exception, according to the first proviso of section 60 already referred to, that no valid lien existing in good faith thereunder shall thereby be affected, which exception shows that when the creditor holds such lien against the insolvent and has not taken part in the insolvency proceedings, or in the election of the assignee, or surrendered or assigned to the assignee the property given him as mortgage, pledge, or lien, and therefore has not been under the necessity of proving his debt, he does not have to wait for the resolution in said proceedings relative to the discharge of the debtor, because his right is not affected by the order of discharge and, consequently, if this proviso has any meaning at all within said section 60, it cannot be other than that the creditor may proceed with the suit he may have instituted, or with the attachment he may have levied, or the execution he may have obtained against the insolvent, notwithstanding said adjudication of insolvency and the proceedings thereunder, until he obtains final judgment in said suit, without awaiting the resolution of the court on the question of discharge.

The mortgage creditor in the insolvency proceedings which, as already stated, is a universal suit, has the same standing and enjoys the same rights as the mortgage creditor in testamentary or intestate proceedings, which are also universal in character. In these proceedings, according to section 708 of the Code of Civil Procedure, the creditor, who may have a debt against the deceased which is secured by a mortgage or any other security, may

waive such security and present his claim to the committee on claims and share in the general distribution of the hereditary estate; or he may institute the proper action for the recovery of the debt, or for the foreclosure of the mortgage, by suing the executor or administrator. If, after the sale of the property mortgaged or given as pledge, judgment is rendered in that suit for the recovery of the credit in favor of the plaintiff for the amount which may be found to be due and unpaid, he may present this judgment for the balance to the committee on claims against the estate; or he may rely only upon the mortgage or other security he may have, demanding the payment of the mortgage debt at any time before the action has prescribed; but in this case, he shall not be admitted as a creditor and shall receive no part whatever in the distribution of the inheritance. In just the same manner may the mortgage creditor act in an insolvency proceeding for the recovery of his debt against the debtor adjudged insolvent, and there exists complete parity and similarity between the right recognized in Act No. 1956 in the mortgage creditor and that granted him by the Code of Civil Procedure in testamentary or intestate proceedings, and just as in section 59 of the former law the assignee is authorized to allow the debtor to redeem the mortgage upon the property given by him to the creditor to secure his debt, receiving the excess of the value of said property, or to sell it subject to the claim of the vendor. Thus said section 708 of the Code of Civil Procedure provides that nothing stated in said section is to be interpreted as prohibiting the executor or administrator from redeeming the property mortgaged or pledged by paying, under the direction of the court, the amount for which it is held should the court consider it to be for the best interest of the estate. In short, in the insolvency as well as in the testamentary and intestate proceedings the mortgage creditor is not obliged to take part in said proceedings for the recovery of his debt against the insolvent or the decedent's estate; he may institute, maintain and prosecute a separate suit against the insolvent debtor in the first case, or against the executor or administrator in the second, for the recovery of his secured credit until he obtains a final judgment and he may enforce this judgment against the property mortgaged to him in the manner established by law. The proceedings instituted by said creditor in either case cannot be suspended during the pendency of these universal proceedings and he does not have to wait for the decision in those proceedings, or to abide by said decision, for the fundamental reason that the mortgage which the creditor holds as security for the payment of his debt constitutes a real right upon the property mortgaged. This is more evident with respect to chattel mortgages executed under Act No. 1508, as the one involved in the present case, inasmuch as, on the one hand, said mortgage, according to section 3 of said law, is a conditional sale of the property mortgaged, and the non-fulfillment by the debtor of the terms stipulated for the payment of the debt confers upon the mortgage creditor the right to sell the property mortgaged at public auction through a public functionary, as provided in section 14 of the same law, after the elapse of the period therein fixed, and after the proceedings therein prescribed have been complied with, to obtain the payment of his debt. And, on the other hand, the provisions of said Act No. 1956 in connection with the provisions of the Code of Civil Procedure, as to manual delivery of personal property, of which mention has been made in the beginning of this decision, would be useless and illusory if, upon the petition of the assignee in an insolvency proceeding, or of any creditor of the insolvent, the court might place obstacles in the way of exercising that right by suspending the suit instituted by the creditor to recover and obtain the delivery of said property, and might dissolve the attachment secured by the latter in order that said property may be transferred to the assignee in insolvency to become a part of the whole estate.

In support of the opinion to the contrary and with respect to the application of section 60 of Act No. 1956 to the case at bar, the petitioners have cited the doctrine laid down by the Supreme Court of the United States in *Hill vs. Harding* (27 Law. ed., 493), and by the District Court of Washington in *In re Oxley* (182 Fed., 1019).

In the syllabus of the decision in the first case, the Supreme Court of the United States the following:

"A state court, in which an action against a bankrupt upon a debt provable in bankruptcy is pending, must, on the bankrupt's application under section 5106 of the Revised Statutes, stay all proceedings to await the

determination of the court in bankruptcy on the question of his discharge, unless unreasonable delay on his part in endeavoring to obtain his discharge is shown, or the court in bankruptcy gives leave to proceed to judgment for the purpose of ascertaining the amount due; even if an attachment has been made in the action more than four months before the commencement of the proceedings in bankruptcy, and has been dissolved by giving bond with sureties to pay the amount of the judgment to be recovered. And if the highest court of the State denies the application and renders final judgment for the plaintiff, the bankrupt, although he has since obtained his certificate of discharge, may sue out a writ of error from this court, and the assignee in bankruptcy may be heard here in support of the writ."

And in the syllabus of the decision rendered in the second case, the District Court of Washington held as follows:

"An alleged bankrupt partnership, a year prior to the filing of the petition, executed a mortgage on its stock of merchandise which contained no after acquired property clause nor provision for substitution. A short time before the filing of the petition, the mortgagees on default by the bankrupt obtained a decree of foreclosure directing the sale thereunder of the entire stock, 75 per cent of which consisted of goods placed therein since the mortgage was given and so mingled with the old goods as to be incapable of separation. Held, that under Bankruptcy Act July 1, 1898, c. 541, 67 f, 30 Stat. 565 (U. S. Comp. St. 1901, p. 3450), providing that all levies, judgments, or other liens obtained through legal proceedings within four months prior, to the filing of the petition shall be null and void in case of adjudication, the court of bankruptcy had jurisdiction to, and should, enjoin the sale of such stock under the decree until the question of adjudication was determined."

Upon a careful examination of these two decisions it appears that none of them was rendered in a case identical or analogous to the case at bar.

The first case dealt with an attachment issued upon the petition of a lawyer against a person who owed him a certain sum for professional services, upon the ground that said debtor was about to conceal, assign, or otherwise fraudulently dispose of his property and effects, in order to delay and hinder his creditors. Said attachment was dissolved because the defendant gave bond to pay the plaintiff, within ninety days after judgment, such sum as he might be sentenced to pay after trial. But, said defendant having afterwards been adjudged insolvent under the Bankruptcy Law of the United States, the court denied the petition of the defendant to suspend the course of that suit and await the decision of the court in the bankruptcy proceedings upon the question of the discharge of the bankrupt. Said judgment having been appealed to the Court of Appeals for the First District of Illinois, which affirmed it, the defendant appellant brought the case by writ of error to the Supreme Court of the United States, which court reversed the judgment.

The second case, that is to say, the one decided by the District Court of Washington, dealt with a petition for an injunction commanding the Sheriff of Pierce County to refrain from selling or otherwise disposing of the stock of merchandise belonging to the insolvent partnership, Oxley & White, and mortgaged by it one year before the filing of the petition. The petition was opposed by the mortgagee for whose benefit said sale was to be effected, but was granted by said District Court.

In the first case the attachment was not procured nor levied on the ground that the property attached was mortgaged to the attorney applying for the attachment or that the payment of his credit was secured by said mortgage. It was merely a case of an attachment in which the debtor was about to defraud his creditors by concealing, alienating, or otherwise disposing of his property and effects, to the latter's prejudice.

Therefore, the person who secured said attachment was a creditor, without any special security upon the property attached, and the circumstance was furthermore present that, as stated in the syllabus and the body of the decision, the creditors of the insolvent who asked for the suspension of the proceedings in that case, pending the resolution of the bankruptcy court upon the question of the debtor's discharge, gave bond, binding themselves to pay the

amount which they claimed in case judgment should be rendered in favor of the debtor.

The decision in the first case states that it dealt with a debt that should have been proved in the insolvency proceedings, in order to establish its existence as well as to determine its amount and give to the assignee an opportunity to make a defense and test the truth of those facts and the validity of the preliminary attachment levied by the creditor upon the personal property mortgaged, or given to him as security, according to the provisions of sections 262 to 272 of the Code of Civil Procedure relating to manual delivery of personal property, in connection with the provisions of Act No. 1508 on chattel mortgages, in which case, as already shown, the mortgagee cannot be compelled to take part in the insolvency or bankruptcy proceedings, and, consequently, neither is he required to prove his credit in said proceedings, and the order of discharge granted the insolvent cannot affect the preferred lien which he may have on said property, according to section 60 of our Insolvency Law.

In the same decision of the Supreme Court of the United States, there is not a word about mortgage or pledge upon the property seized under a preliminary attachment issued at the instance of the attorney, the creditor, against the defendant in said case who was subsequently declared insolvent, nor that the attachment was levied on the ground that the credit, payment of which was claimed by the plaintiff, was secured by a mortgage or pledge. It cannot be denied that said case falls within section 60 of our Insolvency Law, that is to say, Act No. 1956, invoked by the plaintiffs, but this section cannot apply to the Philippine

National Bank in the case at bar, inasmuch as said bank holds a security for the payment of its credit, consisting of a special mortgage on the effects and merchandise of the debtor Umberto de Poli, which goods were seized in the action instituted by said bank for the recovery of said effects and merchandise and the sale thereof at public auction, according to the provisions of Act No. 1508. As no delivery or assignment was made to the assignee in insolvency of Umberto de Poli of said property for the purposes of section 59, and the bank, therefore, did not become a party to the insolvency proceeding for which reason its credit should not and need not be proved in said proceedings, it follows that the holding of the Supreme Court of the United States in *Hill vs. Harding*, supra, cited by the plaintiffs, does not apply to the case at bar.

In the second case, to wit, that decided by the District Court of Washington, the subject was indeed a mortgage given by a partnership, declared bankrupt shortly afterwards, upon its stock of merchandise, the sale of which was ordered at the instance of the mortgagee. But, in that case, as stated in the syllabus and the opinion of the court, it was alleged—and for the purpose of discussion it was accepted as true—that the contract of mortgage contained no stipulation that the mortgage should include the substitutes or accessions of the stock of merchandise, or whatever property may have been acquired afterwards by the partnership debtor, and said contract gave no authority to the mortgagee to sell the merchandise or any part thereof; that 75 per cent of the merchandise included in the stock at the time of the making of the mortgage was sold in the usual course of business, and other merchandise worth more than \$2,000 was added to the stock; that said merchandise substituted for the other was so mixed and confounded with that covered by the mortgage that it was impossible to distinguish and identify it; that the partnership, being insolvent, allowed and gave its mortgagees a preference by consenting, in judicial proceeding, to the order for the sale of the stock of merchandise in payment of the mortgage credit; and finally that said sale would be effected if said preference was not cancelled.

As may be seen, there is no parity or analogy between that case and the one at bar, although in both cases there was a mortgage executed in favor of the creditor upon merchandise deposited, for in that case the legality, validity, and even the existence itself of the mortgage were questioned and it was alleged that, according to the contract, the mortgagee was not authorized to sell the merchandise mortgaged or any part thereof. Furthermore, that said effects had been substituted with others and confused with those covered by the mortgage, their

identification being therefore impossible. These facts were admitted and taken as true for the purposes of the discussion and resolution of the case, and the preference given by the insolvent partnership to the mortgage creditors in order that the latter might be able to collect what was due them was attacked as fraudulent. . For this reason the court that took cognizance of the insolvency proceedings had jurisdiction, as stated in the syllabus of the decision, to forbid, upon the petition of the creditors or the assignee, the sale of the merchandise and effects in question, as it was its duty, until final judgment was rendered upon the rights of the parties; that is to say, with respect to the existence, validity, and legality of said mortgage, which could not be held to have conferred upon the mortgagee a right superior to that of the other creditors of the insolvent partnership, because the alleged ground of such preference was in question. Whereas, in the instant case, although in their motion filed in court and dated December 9, 1920, praying for the dissolution of the attachment, issued at the instance of the Philippine National Bank, and the suspension of all further proceedings in said case until the decision of the court was rendered as to the discharge of Umberto de Poli in the insolvency proceedings, the plaintiffs have alleged certain facts giving one to understand that the contract of mortgage between said debtor and said bank was not valid, aside from it not having been sworn to. Said facts, as well as those alleged by the other creditor Macleod & Co. in their motion of the 13th of the same month, were not admitted as true. Furthermore it does not appear that any of said creditors or the assignee in insolvency had presented any claim whatever and a bond with two bondsmen, as required by section 270 of the Code of Civil Procedure, to prevent the sale of the goods attached by the sheriff at the instance of said bank; nor does it appear that any of them has exercised his right as a third person, under the same section, by bringing the proper action for the recovery of said goods. Therefore, the grounds of the District Court of Washington for forbidding the sale under the attachment levied upon the effects and merchandise of the partnership mentioned in said case, which the creditor alleged were mortgaged, do not exist in the case before us. One of these grounds, which was stated in the decision, is therein given in the following terms:

"* * * It is admitted here that the goods upon which the lien was impressed by confession of judgment are so intermingled with those upon which the mortgage lien really existed that the two classes of goods cannot be distinguished. This renders it necessary that the entire sale be enjoined, as otherwise the confession of judgment made by the insolvent debtors within four months before the filing of the petition and resulting in the creation of a lien made void by the bankruptcy statute would stand unassailable. * * *"

It is, therefore, seen that the decision of the District Court of Washington cited by the plaintiffs in order to convince this court that the provisions of section 60 of the Insolvency Law, Act No. 1956, now in force in these Islands, should be interpreted in the sense urged by them, is of no avail.

The plaintiffs insist upon their interpretation of said law and cite the doctrines laid down by this court in the cases of *Bastida vs. Peñalosa* (30 Phil., 148), and *De Amuzategui vs. Macleod* (33 Phil., 80). In the syllabus of the decision in the first case this court laid down in general terms the following rule:

"The court having jurisdiction of a proceeding in insolvency has jurisdiction to hear and determine motions for the suspension of an action pending against the petitioner in voluntary insolvency proceedings or against the respondent in involuntary insolvency proceedings, at the time of the declaration of insolvency."

That case dealt with a motion presented by an appellant in this court asking for the suspension of all further proceedings in the appeal, on the ground that, after the appeal was filed, the appellant was declared insolvent and that at that time insolvency proceedings were being instituted according to the Insolvency Law. This court denied said motion on the following grounds:

"From section 69 it appears with fair clearness that the court in insolvency has full charge of all claims by and against the petitioner in insolvency. That court may determine whether an action pending against the petitioner at the time of the declaration of insolvency shall be prosecuted to final result or whether it shall be stayed; and

to that court is confided the power of dealing generally with the estate as well as with the debts of the insolvent. If other courts in which actions against the insolvent might be pending at the time of the order in insolvency were permitted to exercise their own authority and deal with the actions in the manner which to them seemed best, the proceedings in insolvency might be halted, final action therein indefinitely postponed, and the court in insolvency greatly hampered in the management of the insolvency proceedings. We think it the better practice to require applications of this sort to be made directly to the court in insolvency, that it may determine whether it desires the action stayed or whether it wishes that it proceed for the purpose of fixing the amount of the creditor's claim; and is the practice which seems to be established by the Insolvency Act."

As may be seen, there is in fact nothing in this decision that bears any relation to the question raised by the complaint of certiorari with injunction filed by the creditors of Umberto de Poli against Judge C. A. Imperial and the Philippine National Bank, for in the case above cited this court merely spoke in general terms of the jurisdiction of a court taking cognizance of an insolvency proceeding to try and determine the questions involved in said insolvency proceeding, among them that relating to the suspension of an action pending against the petitioner in said proceeding, or against the respondent in an involuntary insolvency proceeding at the time of the adjudication of insolvency. But this court did not say a word to the effect that the court, taking cognizance of an insolvency proceeding, may, according to law, order the suspension of a proceeding instituted by a creditor of the insolvent to recover the property that had been mortgaged or pledged to him as security for the payment of his credit, or upon which he had acquired a lien, or had obtained an attachment or execution, prior to the adjudication of insolvency, or that said court may dissolve the attachment that may have been levied upon said property.

The case of *De Amuzategui vs. Macleod*, supra, dealt with a petition presented by the former in the Court of First Instance of Manila, as a bankruptcy court, which took cognizance of the insolvency of the Chinaman Uy Yan, Macleod being the latter's assignee. The petition prayed that his credit (*De Amuzategui's*) which appeared, according to him, in an unregistered document of second mortgage on real property, be declared preferential and that the same be paid with certain funds in possession of the assignee, which were the proceeds of an insurance policy issued upon a building constructed on certain lands covered by the mortgage, which building was burned after the execution thereof. The insolvency court declared that said credit was not a preferred one, and denied the petition. The creditor did not appeal, but subsequently presented another petition in the insolvency court alleging, as a new issue, that after the filing of the previous petition he registered his mortgage. Then, without showing that a resolution had been made upon this petition, he also filed a complaint in the Court of First Instance of Manila, wherein he alleged that the amount due him by the insolvent Uy Yan secured by a said second mortgage on real property, duly registered, and that he had the right to collect the money due upon the insurance policy already referred to, and he therefore urged the court that he be declared entitled to recover the amount, as prayed for in the complaint, with the costs and other judicial expenses, from the estate of the insolvent, and that the assignee be ordered to pay him said amounts. The court, however, dismissed the complaint, on the ground that the plaintiff should have applied to the insolvency court for the remedy sought, instead of instituting a new and separate action in said court. The plaintiff then appealed from said resolution and this court affirmed the action of the court below. In that case, after citing the last part of section 60 of Act No. 1956 and the provision of section 18 thereof with respect to the effects of an adjudication of insolvency which reads "Upon the granting of said order all civil proceedings pending against the said insolvent shall be stayed," this court said:

"From these provisions it is clear that, with the declaration of insolvency, courts in insolvency obtain full and complete jurisdiction over all property of the insolvent and of all claims by and against him, with full authority to suspend, on the application of the debtor, a creditor, or the assignee, any action or proceeding then pending in any court, to await the determination of the court of insolvency on the question of the bankrupt's discharge.

* * *"

In that case this court also cited the doctrine announced in *Bastida vs. Penalosa*, above referred to, stating that the reasoning used in the latter case might as well be applied in the case then before it.

Above all, it must be remembered that when De Amuzategui presented his first application in the insolvency court, praying for a decree declaring his credit to be entitled to preference in the insolvency of Uy Yan, and ordering that the same be paid by the assignee with the funds in his possession, which were the proceeds of the policy already referred to, he did not hold any mortgage to secure the payment of his credit, as alleged by him, for the so-called second mortgage which, according to him, existed upon the property mentioned by him, was not registered in the registry, and was not, therefore, a mortgage, as it was not validly made, and, consequently, the court taking cognizance of the insolvency proceeding did right in declaring that said credit was not entitled to preference. Now, said mortgage was afterwards registered in the registry, that is, after Uy Yan had already been adjudicated insolvent and the assignee had already qualified, but the Court of First Instance in which said creditor presented the complaint for the payment of his claim with property of the estate of the insolvent, dismissed said complaint, on the ground that the plaintiff ought to have applied to the insolvency court for the purpose, instead of instituting a new and separate suit in said court, and said judgment was affirmed by this court. All this, far from showing that the meaning and interpretation we give to section 60 of Act No. 1956 is erroneous, proves that it is justified, inasmuch as in the complaint filed by De Amuzategui in the Court of First Instance to compel the assignee to pay his claim with property of the estate of the insolvent, he did not allege any preferential right whatsoever, for this does not appear in the decision itself. As a matter of fact, it could not have been alleged, because the registration of said mortgage was subsequent to the adjudication of insolvency; and even if it had been alleged, as this was a credit that was not secured with a mortgage, prior to the declaration of insolvency of Uy Yan, the provision applicable to said case was that of section 60, as was declared by this court, affirming the judgment of the lower court, for the creditor De Amuzategui should have proved his credit in the insolvency proceeding and the same should have been classified therein, in order that its payment might have been ordered, said payment to be made with property of the estate of the insolvent. Indeed, the citation made by the plaintiffs of the decision of this court in the case of *De Amuzategui vs. Macleod*, *supra*, above discussed, proves just the opposite of what they contend as to the interpretation and meaning that should be given to section 60 of Act No. 1956 and the sense and scope of its provisions.

It is true that the syllabus of said decision says:

"Bankruptcy; Jurisdiction of Court.—With the declaration of insolvency the courts in insolvency acquire jurisdiction over all the property of the insolvent, and of all claims by and against him, to the exclusion of every other court."

This statement, however, is necessarily connected, as should be the case, with the facts stated in the decision as the basis of the issues raised before this court at the trial of that case on appeal, and as the grounds upon which the same was rendered. In said syllabus the jurisdiction of the insolvency court, that is, of the Court of First Instance taking cognizance of the insolvency proceeding, over all the property of the insolvent and all his debts and credits, to the exclusion of all other courts, is established as a general rule; but it cannot be inferred from this that this court, in establishing said doctrine in such general terms, did not recognize or had rejected the exceptions to said general rule, one of which is that above stated and explained. The last part of the decision confirms what we have stated, which is as follows:

"We have frequently held that probate courts having once acquired jurisdiction of the estate of the deceased cannot be interfered with or deprived by any other court of the right to pass, on every question connected with the estate; and that, having acquired jurisdiction, they preserve it intact until the final settlement of the estate. The same rule, but with even greater rigor, should be applied to courts having jurisdiction of bankrupts and bankrupt's estates."

By this language of the court, it cannot be said to have forgotten or failed to take into account the provisions of section 708 of the Code of Civil Procedure, above cited, according to which a creditor who may have a claim against a deceased, secured with a mortgage or any other security, may waive the security and present his claim to the committee on claims and participate in the general distribution of the estate; or he may institute the proper action to recover his credit, or enforce the security which he may have, by suing the executor or administrator. It is evident that this being an exception to the general rule laid down in said decision with respect to testamentary and intestate proceedings, this court could not have failed to consider that there was an exception to the same general rule with respect to the jurisdiction of insolvency or bankruptcy courts, although it did not then mention it, because in that case the general rule was applicable and there was no need Of mentioning the exception.

The Philippine National Bank not having waived the right to refrain from taking part or intervening in the insolvency proceedings, granted by Act No. 1956, as an exception to the general rule above mentioned, to creditors whose credit is secured with a mortgage, pledge or lien or attachment or execution, but on the contrary, said bank having exercised said right, which has not been declared void in the proper proceedings, the Court of First Instance of Manila, presided over by Honorable C. A. Imperial, acted in accordance with said law and not without or in excess of its jurisdiction, in denying, by an order dated December 16, 1920, the motion of the creditors of Umberto de Poli of the 9th of said month, and in directing the sheriff to dispose of the property seized at the instance of said bank, subject to the provisions of the law on manual delivery of personal property; and in ordering that civil case No. 19235, instituted by said Bank against Umberto de Poli and others, wherein said seizure was ordered, should follow its course. And, finally, that the sheriff should deliver to said bank the property seized, if within the period fixed in the order said Umberto de Poli and others should not make use of the right given them by section 267 of the Code of Civil Procedure, and if no third person should present any claim in accordance with the provisions of section 270 of said law.

By virtue of what has been said, the complaint filed in this court by the Chartered Bank of India, Australia and China, Hongkong & Shanghai Banking Corporation, and W. F. Stevenson & Co., Ltd., against said Judge C. A. Imperial and the Philippine National Bank, in which the assignee in insolvency of Umberto de Poli was at his own instance included as a party, is dismissed, with costs against the plaintiffs, and the preliminary injunction issued against said defendants by order of December 17, 1920, is dissolved. So ordered.

Mapa, C. J., and Villamor, J., concur.

CONCURRING:

STREET, J.,

When the petition was filed in this case application was made to me for a temporary restraining order, to stay the repley in suit then pending before the respondent judge. As the matter was urgent and could not be at once referred to the court as a body I granted the order under the authority of section 517 of the Code of Civil Procedure. The result of this order is to tie up the proceedings in the court below until definitive action shall be taken by us.

The situation now presented is such as to make early determination of the matter desirable, and delay would probably be disastrous to all concerned. The case is one that can only be determined by the Tribunal en pleno; and this means that four votes are necessary, as the court is now constituted, either to dissolve the temporary restraining order or to deny the petition. This places me as author of the restraining order in a position of exceptional responsibility, and I have decided in view of all the circumstances to concur in the result, although my

personal views are not accordant upon all points with those expressed in the opinion of the court.

CONCURRING:

MALCOLM, J.,

The clear and unequivocal provisions of the Insolvency Law, (Act No. 1956), especially sections 18 and 60, as construed by this court in the case of *De Amuzategui vs. Macleod* ([1915], 33 Phil., 80), mean, if they mean anything, that every civil action or proceeding of whatever nature must, upon application of the debtor, or of any creditor or of the assignee of the estate be stayed, save and except only those actions in which the amount due the creditor may be in dispute, and even in those cases may only proceed to judgment for the purpose of ascertaining the amount due. Section 18 of the Insolvency Law in part provides that "Upon the granting of" the order adjudicating insolvency, "all civil proceedings pending against the said insolvent shall be stayed." Section 60 thereof in part provides that "No creditor whose debt is provable under this Act shall be allowed, after the commencement of proceedings in insolvency, to prosecute to final judgment any action therefor against the debtor until the question of the debtor's discharge shall have been determined, and any such suit or proceeding shall, upon the application of the debtor or of any creditor, or the assignee, be stayed to await the determination of the court on the question of discharge: Provided, That if the amount due the creditor is in dispute, the suit, by leave of the court in insolvency, may proceed to judgment for the purpose of ascertaining the amount due, which amount, when adjudged, may be allowed in the insolvency proceedings, but execution shall be stayed as aforesaid." This court in the case of *De Amuzategui vs. Macleod*, supra, in a decision handed down by Mr. Justice Moreland, after quoting sections 18 and 60 of the Insolvency Act, said:

"From these provisions it is clear that, with the declaration of insolvency, courts in insolvency obtain full and complete, jurisdiction over all property of the insolvent and of all claims by and against him, with full authority to suspend, on the application of the debtor, a creditor, or the assignee, any action or proceeding then pending in any court, to await the determination of the court of insolvency on the question of the bankrupt's discharge. * * * It is evident that if the various courts of the Islands may by action or other proceeding intervene in the affairs of an insolvent debtor and with the administration of the court in insolvency, great confusion would result and the termination of the insolvency proceeding might be delayed unduly. We believe it to be the policy of the Insolvency Law to place the insolvent debtor and all his assets and liabilities completely within the jurisdiction and control of the court in insolvency and not to permit the intervention of any other court in the bankrupt's concerns or in the administration of his estate. * * *"

The purpose of the Insolvency Law will be defeated if various legal proceedings in various courts, or for that matter in the same court, shall be permitted to go on notwithstanding the adjudication of insolvency. The remedy prayed for, considered as mandamus and injunction, should be granted.

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