

VOLUNTARY INSOLVENCY OF S. E. DIAZ. S. E. DIAZ, PETITIONER AND APPELLEE, VS. FELISA NUÑEZ VDA. DE CARDENAS, CREDITOR AND APPELLANT.*G.R. No. 25903. March 10, 1927*

Ponente: OSTRAND, J.

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It appears from the record that on June 16, 1925, the insolvent, S. E. Diaz, filed a petition for discharge in the insolvency proceedings against him. Felisa Nuñez Vda. de Cardenas opposed the petition on the grounds that the insolvent debtor had given fraudulent preferences contrary to the provisions of the Insolvency Law and that he had made fraudulent transfers, gifts, or conveyances of some of his property to an alleged creditor, Rafael Paguia. Judge Anacleto Diaz of the Court of First Instance of Manila, in an order dated February 24, 1926, granted the discharge and the opposing party, Felisa Nuñez, appeals from that order.

The alleged fraudulent preferences and transfers consisted in the execution of a chattel mortgage upon the household furniture of the insolvent in favor of Rafael Paguia on October 6, 1920, which chattel mortgage was not acknowledged and properly registered until June 27, 1921, two days before the filing of a complaint by M. F. Cardenas, the deceased husband of the herein appellant, for the recovery of the sum of P8,000, owed him by Diaz. The Court of First Instance rendered judgment in favor of Cardenas and execution was levied upon the property covered by the chattel mortgage, but Paguia having presented a third party claim to the property, the levy was dissolved and nothing further was done by Cardenas, who died shortly afterwards. Several years later, and after Diaz had been declared insolvent, the widow of Cardenas brought an action against Paguia and the assignee in insolvency for the annulment of the chattel mortgage on the ground of fraud and on December 7, 1925, the Court of First Instance, presided over by Judge Simplicio del Rosario, rendered a judgment setting the chattel mortgage aside. Paguia then appealed to this court, which, after some hesitation finally reversed the judgment and declared the chattel mortgage valid.[1]

A chattel mortgage executed by an insolvent for the purpose of giving undue preference to a creditor is, of course, a complete bar to the discharge of the insolvent (section 65, Insolvency Law), but in this case the mortgage was executed long before the insolvency proceedings were instituted and has been held valid by a decision of this court in another case in which the herein appellant was a party. In these circumstances, and inasmuch as the opposition to the discharge is based solely on the alleged fraud in connection with the chattel mortgage, the decision in the former case is decisive of the present.

The aforesaid order of discharge is, therefore, affirmed without costs. So ordered.

Johnson, Street, Malcolm, Villamor, and Villa-Real, JJ., concur.

[1] R.G. No. 25736, Nuñez vs. Paguia, promulgated February 19, 1927, not reported.

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