

**INVOLUNTARY INSOLVENCY OF “CENTRAL CAPIZ.”
TIMOTEO UNSON, CLARA LACSON, ANTONIO BELO AND JOSE
ALTAVAS, CLAIMANTS AND APPELLEES, VS. URQUIJO, ZULOAGA
& ESCUBI, CLAIMANTS AND APPE...**

G.R. No. 26293. March 24, 1927

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

This appeal was taken by Urquijo, Zuloaga and Escubi from an order of the Court of First Instance of Iloilo, the dispositive part of which reads as follows:

"Wherefore, it is ordered that the assignee in this insolvency proceeding, as soon as possible after this judgment has become final, pay from the funds of the same which have been deposited, the following amounts:

"The sum of thirty thousand pesos (P30,000) to the claimants Timotea Unson and Clara Lacson;

"The sum of eight thousand pesos (P8,000) to the claimant Jose Altavas; and

"The sum of eleven thousand pesos (P11,000) to the claimant Antonio Belo.

"The balance of the said funds, after the payment of the said three claims which the court held should be given special preference in the order above-mentioned, shall be distributed pro rata among the other creditors of the insolvent whose claims have been admitted and approved, in accordance with section 50 of Act No. 1956 on insolvency."

In support of their appeal the appellants assign the following alleged errors as committed by the trial court in its order, to wit:

"I. The lower court erred in not holding that the attachment in favor of Timoteo Unson and Clara Lacson did not constitute a lien due to fatal defects in the levy thereof.

"II. The lower court erred in not holding that there is no sufficient evidence in the record of this case as to the levy of an attachment in favor of either Antonio Belo or Jose Altavas.

"III. The lower court erred in holding that the appellants cannot invoke in favor of their claim a vendor's lien as preference taking the ground that the property sold by the appellants to the Central Capiz were real property and not personal property.

"IV. The lower court erred in holding that the sale of all the property of the Central Capiz for a lump sum, including the personal property on which the appellants claim a vendor's lien, is fatal to their right to establish a preference.

"V. The lower court erred in not allowing the appellants to introduce evidence as to the value of the personal property on which they claim a vendor's lien, in proportion to what realized at the sale of all the property of the Central Capiz.

"VI. Assuming that the appellees had acquired a valid lien by attachment, the lower court erred in holding that said lien is superior to the preferred credit of the appellants."

The pertinent facts necessary for the solution of the questions raised in this appeal, and regarding which there is no question, are the following:

On July 14, 1919, Urquijo, Zuloaga & Escubi sold certain personal property described in Exhibit 10-D to the Capiz Central for the sum of P210,000 of which only P50,000 was paid.

On August 9, 1920, Urquijo, Zuloaga and Escubi filed a complaint in the Court of First Instance of Iloilo (civil case No. 1794) against the Capiz Central for the recovery of the sum of P160,000, plus interest, said amount being the unpaid balance of the price of the machinery. In that complaint the herein appellants prayed that their claim against the Capiz Central be given preference, but the lower court held that that was a matter for the insolvency court to decide.

On August 12, 1921, Timoteo Unson and Clara Lacson filed a complaint in the Court of First Instance of Capiz (civil cause No. 1475) against the Capiz Central for the recovery of P163,643.88 as indemnity for damages. On the same date a writ of attachment (Exhibit C) was issued in favor of the plaintiffs and levied upon all of the property of the defendant company.

Subsequently, Jose Altavas (civil cause No. 1543) and Antonio Belo (civil cause No. 1548) each filed a complaint against the Capiz Central praying for an attachment, which was issued, the same having been levied on the property of said Central on March 29, 1922 and April 26, 1922, respectively.

While the four aforementioned causes against the Capiz Central were pending, it was adjudged insolvent on September 5, 1922, an assignee having been appointed to whom, in accordance with the law, all of the property of the Capiz Central was conveyed.

Before Urquijo, Zuloaga and Escubi filed their claim in the insolvency proceeding, all of the property of the Capiz Central, including the personal property sold by the former to the latter, was sold to the Pilar Sugar Central for the sum of P80,000, plus interest, which amounted to P266. All of these sums were, by order of the court, deposited in the Iloilo Branch of the Bank of the Philippine Islands, in order to protect the interests of the preferred creditors, the assignee being enjoined from making any payment out of said funds without judicial authorization. The appellants were not notified of said sale.

On March 26, 1925, judgment was rendered in favor of Urquijo, Zuloaga and Escubi for the sum of P90,000, in accordance with an agreement entered into between the latter and the assignee.

On August 7, 1925, the plaintiffs Timoteo Unson and Clara Lacson, with the authorization of the Court of Iloilo in which the insolvency proceedings were being held, entered into a compromise agreement with Walter A. Smith, as assignee of the Capiz Central in which they agreed to petition the Court of First Instance of Capiz to render judgment in civil cause No. 1475 of said court in favor of the said plaintiffs Timoteo Unson and Clara Lacson for the sum of P30,000 as indemnity for liquidated damages, leaving it to the Court of First Instance of Iloilo to decide the question on the preference of said claim in view of the attachment on all the personal property of the Capiz Central secured by them on August 12, 1921, and considering the judgment to be rendered as a claim duly presented in accordance with the Insolvency Law. In view of said agreement and in accordance with the terms thereof, on August 10, 1925, the Court of First Instance of Capiz rendered judgment in favor of Timoteo Unson and Clara Lacson for the sum of P30,000.

On August 3, 1923, Jose Altavas and Walter A. Smith, as assignee of the Capiz Central, with the authorization of the competent court, entered into a compromise agreement by virtue of which they petitioned the Court of First

Instance of Capiz to render judgment in civil cause No. 1543, in which Jose Altavas was plaintiff and the Capiz Central the defendant, for the sum of P8,000 in favor of said plaintiff, reserving the right to the latter to raise in the Court of First Instance of Iloilo the question of preference of said claim in view of the attachment he had obtained in said case on the property of the Capiz Central, through the presentation of said judgment, which should be considered as a claim duly presented in the insolvency proceeding. In view of said compromise agreement and in accordance therewith, on August 11, 1925, the Court of First Instance of Capiz rendered judgment in favor of Jose Altavas for the sum of P8,000.

On the same date, that is, August 3, 1925, Antonio Belo and Walter A. Smith, as assignee of the Capiz Central, entered into a compromise agreement in civil case No. 1548 of the Court of First Instance of Capiz, in which Antonio Belo was the plaintiff and the Capiz Central the defendant, by virtue of which they petitioned said court to render judgment in favor of the said plaintiff for the sum of P11,000, as full payment of all his claims, reserving the right to said plaintiff to raise the question of preference in view of the attachment which had been obtained in said civil cause against the property of the Capiz Central, through the presentation of the said judgment which should be considered as a claim duly presented in the insolvency proceeding. In view of this agreement and in accordance therewith, the Court of First Instance of Capiz rendered judgment in favor of Jose Belo for the sum of P11,000.

The court holding the proceeding in insolvency approved all of said compromise agreements.

In accordance with the compromise agreement entered into between Timoteo Unson and Clara Lacson and the assignee, the former on August 11, 1925 presented their claim in the insolvency proceeding for the sum of P30,000, based upon the judgment in their favor above mentioned, claiming a right of preference by virtue of the first attachment secured by them and levied on the property of the insolvent company the "Central Capiz." Urquijo, Zuloaga and Escubi, in an objection dated August 15, 1925, opposed said claim of preference of Timoteo Unson and Clara Lacson.

On August 17, 1925, Urquijo, Zuloaga and Escubi filed a claim for the sum of P30,000, based on the judgment rendered in their favor, claiming a right of preference by virtue of their lien as sellers of certain movable property specified in the claim. On the same date, August 17, 1925, Timoteo Unson and Clara Lacson filed an opposition to this claim of preference.

On August 18, 1925, Jose Altavas filed a claim for the sum of P8,000, based upon the judgment entered in his favor, alleging that he had a preferential right though inferior to that of Timoteo Unson and Clara Lacson by virtue of the second attachment levied upon the property of the Capiz Central in his favor. Urquijo, Zuloaga and Escubi objected to this claim of preference at the hearing held on August 25, 1925.

On August 18, 1925, Antonio Belo filed a claim for the sum of P11,000, based on the judgment entered in his favor, alleging that he had a preferential right subordinate to that of Timoteo Unson and Clara Lacson by virtue of the third attachment levied on the property of the Capiz Central in his favor. At the hearing held on August 25, 1925, Urquijo, Zuloaga and Escubi also objected to this claim of preference.

The four, claims above-mentioned, together with others, were heard on August 25, 1925, and on September 24, 1925, the lower court issued an order from which this appeal was taken.

The first assignment of error raises the question of the validity of the attachment levied in favor of Timoteo Unson and Clara Lacson on the property of the Capiz Central, and the second assignment of error raises the question of the sufficiency of the evidence to establish the existence of the alleged attachments levied on the property of the Capiz Central in favor of Jose Altavas and Antonio Belo, respectively.

Aside from the substantial compliance with the law for the validity of the attachment issued in favor of Timoteo Unson and Clara Lacson and levied on the property of the Capiz Central, the assignee, who represents the creditors (Alexandria Bank vs. Herbert, 3 Law. ed., 479) entered into a compromise agreement with each of the creditors, impliedly acknowledging the existence of the respective liens in his favor and leaving, for the determination of the court in the insolvency proceeding, the question of the preferential right of said creditors. These compromise agreements entered into between the assignee and the respective creditors were approved by the competent court, and the appellants, as creditors, are bound by the acts of their legal representative, approved by the court. (32 C. J., par. 125, page 860.)

The third error alleged to have been committed by the trial court is the fact that it found that the appellants had lost their preferential right to the price of the machinery and the grinder which had been sold to the Capiz Central, from the moment that it was installed on the estate and became real property by destination.

The only question, then, to determine under this assignment of error is whether or not the vendor of personal property which has become real by destination loses his preferential right to the purchase price of the same.

Article 1922, paragraph No. 1, of the Civil Code, reads as follows:

"With respect to determinate personal property of the debtor, the following are preferred:

"Credits for the construction, repair, preservation, or purchase price of personal property in the possession of the debtor, to the extent of the value of the same."

The law gives the vendor a real right in the personal property sold for the price of the sale while said property remains in the possession of the purchaser. It certainly would be contrary to equity and justice if the owner of the article sold could not collect the purchase price of the same while it is in the possession of the purchaser.

Manresa, commenting on the article under consideration, says the following:

"And as to credits arising from the purchase price of personal property in the possession of the debtor, it is, of course, evident that the persons to whom such credits belong are, in a sense, creditors by reason of ownership, and it may be said as to them, as well as with respect to prior ones, that there is no person bound, but that a juridical relation exists between the creditor, rather than the debtor, and the object with which the credit must be paid. This is the reason why said preference is not absolutely, but relatively, granted, and limited only to those specific things which subject the obligation, from which said credits arise, directly to their performance." (Vol. XII, p. 679.)

If the personal property sold, while in the possession of the purchaser is subject to the payment of its price, and the vendor has a real right therein, whatever use the purchaser may make of it, so long as it does not lose its form and substance and conserves its identity, the vendor does not lose his right to said thing for its price. Not because it suits the purchaser's purpose to give it a destination that, according to article 334, case 5, converts it into real property must the vendor lose his right of preference, since the law gives him, this right while the thing sold remains in the possession of the purchaser in its entirety in order to protect his credit. To hold otherwise would be to violate the spirit of the law and to permit the right of, preference, which the law grants the vendor, to be subject to the will of the purchaser.

The eminent French jurist, 1, Troplong, first Chief Justice of the French Court of Cassation, commenting on the creditor's right of preference to the purchase price of personal property in possession of the debtor which becomes real by destination, says in his work entitled "Droit Civil Explique.—Privileges et Hypotheques," paragraph 113, p. 125, translated into English, the following:

"While the price is unpaid, the vendor has a real right to the thing. It cannot be admitted that the purchaser in

imparting to it a purely metaphysical character, and in changing its destination for his own convenience, has been able to alter the precise and intimate rights of the vendor and to deprive him of his compensation; it is not within his power to give to things sold but an imperfect destination subordinate to the rights of the vendor.

"It is a different thing when the acquirer has changed the species of the thing, and when by means of this transformation the thing delivered is no longer what it was. In this case, it is understood that the loss of the privilege is based on the loss of the thing itself.

"But in the present hypothesis, the thing subsists in all its parts, as it originally existed. There has been only one change,—that of its destination. This change, as it affects only the moral quality of the thing, is widely different from the change arising from the conversion of one species into another, and it would seem that it should not produce the same effects."

This opinion of the said French commentator merited the honor of being cited and adopted in various decisions of the Supreme Court and of the Circuit Court of Appeals of Louisiana.

In the case of *Lapene and Jacks vs. McCan & Son* (28 La. Ann., 749, 751), which dealt with steam boilers which were installed on a sugar-cane plantation, Mr. Justice Wyly, in his concurring opinion, said;

" 'I agree with the district judge that defendants, having judgment with vendor's privilege on the four boilers could enforce it by seizing and selling the said boilers separately from the plantation. When they were set up at the sugar-house the vendor's privilege was upon them, and I know of no law whereby the purchasers could destroy the privilege by using the property for the purpose it was adapted. I cannot consent that a vendor's privilege on a movable can be lost simply because the purchaser may use it on his plantation. If such were the case, the vendor's privilege would furnish but little security in an agricultural district. The law has not declared that the use of a movable by a purchaser shall destroy the vendor's privilege.' "

The foregoing opinion was cited with approval by the Supreme Court of Louisiana in the case of *Carlin vs. Gordy* (32 La. Ann., 1285). This was a case between a mortgagee and a subsequent vendor of a mill and machinery for the manufacture of sugar, who claimed a right of preference by virtue of the sale, and the court said:

" 'Defendant had a privilege on these movables, perfectly valid not only as between the parties but against all third persons. The purchaser subsequently set up this mill and machinery upon his plantation. They were thereby converted into immovables by destination; but this conversion did not and could not operate to the prejudice of the vendor's privilege existing thereon prior to their attachment to the plantation. * * * The evidence fully establishes, that the mill and machinery in this case can be removed without damage to the sugar-house; and the case falls fully within the facts and principles of the case of *Lapene and Jacks vs. McCan* (28 La. Ann., 749), the doctrine of which case is much more satisfactory to our minds than the contrary doctrine of *Gray vs. Burguières* (12 La. Ann., 227), where we think the court puts too narrow an interpretation upon the expressions of *Troplong*. The concurring opinion of Justice Wyly, in the case of *Lapene and Jacks vs. McCan*, while perhaps too broad in its general statements, we think is thoroughly correct so far as it applies to movables, which, though attached to a plantation, are capable of removal without damage to the structures in which they are contained, or with which they are connected. In such case there is no reason why the vendor's privilege which attached to them as movables prior to their being placed on the plantation should not continue in force and why they should not be separately sold in satisfaction thereof. The privileges resting upon movables are, in some cases, affected by the changes which may take place in the nature or destination of the things. But such changes must be so radical as to create a new species of things and destroy that species which originally existed—as, to use the illustration of *Cujas*, when a pine or cypress log is converted into a ship, or when wool is converted into a garment, or when marble is made into a statue. In the case at bar the mill and machinery have suffered no such change by the use which the vendee has made of them. They remain the mill and machinery which were sold; and the privilege subsists in all its force. Had their destination as immovables been effected in such manner as to preclude their detachment without injury to independent rights of ownership

in the soil or structures, the privilege might have been subjected to such limitation in its exercise as would prevent the separate sale or removal of the thing subjected to it. But where, as in this case, no such difficulty exists, or, if at all, to an inappreciable extent, we see no reason for imposing any restriction upon the rights of the privileged creditor. The privilege of the vendor is founded on the right of property. Payment of the price is essential to the vesting of an indefeasible title in the vendee. The vendor's right to, and securities for, the payment of the price have always commended themselves to the favorable consideration of our courts.' "

See also cases of *Baldwin vs. Young* (47 La. Ann., 1466); *Walburn-Swenson Co. vs. Darrell* (49 La. Ann., 1044); *Hall vs. Hawley* (49 La., Ann., 1046); *Association vs. Johnston* (51 La. Ann., 470); and *Swoop vs. St. Martin* (110 La., 237).

And, finally, in the case of the *State Trust Co. vs. De La Vergne Refrigerating Mach. Co.* (105 Fed. Rep., 468), the Circuit Court of Appeals of Louisiana, after citing with approval the doctrines laid down in the cases above cited, said the following: "This seems to be in accord with the equities of the case as they are regarded in *De L'Isle vs. Succession of Moss* (34 La. Ann., 166):

"The privilege accorded for the payment of the unpaid price of sale, is one of great value, resting" on considerations of the plainest equity. It would indeed be unjust to place an unpaid vendor on a footing of equality with the other creditors of the purchaser, and permit these to devour his substance; for it is only on the condition that the price of the thing sold has been paid, that the purchaser acquires indefeasible title of ownership to the property, and that his creditors can be paid. It confers rights of a high character, superior to those which flow from a mortgage. * * * It is the price which is protected by the privilege. By the sale the vendor increase the estate of the purchaser. It would be iniquitous to permit the property sold to become the prey of the creditors of the purchaser, without requiring, as a condition precedent, the payment of its cost. * * * The word "price" signifies the sum stipulated as the equivalent of the things sold, and also every incident taken into consideration for the fixing of the price, put to the debit of the vendee, and agreed to by him."

In view of the authoritative opinion of the distinguished French commentator on the matter, and of the doctrine laid down by the Supreme Court of Louisiana, whose Civil Code is based on the Code Napoleon, confirmed by the Circuit Court of Appeals of the same State, there cannot be the slightest doubt that in Civil Law, the vendor of personal property converted into real by destination but retaining its form, substance and identity, does not lose the privilege to the purchase price granted him, as against any other creditor, by article 1922, paragraph No. 1, of the Civil Code, notwithstanding said metaphysical change.

The fourth assignment of error raises the question as to whether or not after the sale of the Capiz Central for a lump sum without the machinery in question having been separated therefrom before the sale, appellants may still claim their preferential right to the purchase price of the machinery.

It is not disputed that the machinery in question, in spite of having been incorporated in the Capiz Central, conserves its form and substance, and its identity has not been altered in any manner whatsoever. Having reached the conclusion that the vendor's lien for the price of the personal property sold continues even when the latter is converted into real property by destination, the fact that the machinery was not separated from the Capiz Central to be sold apart does not deprive the vendor of such lien because even though said machinery was sold together with the Central for a lump sum, its proportional value in the sale may be determined.

In the case of *MoMicking vs. Tremoya* (14 Phil., 252), cited by the appellees, this court held that Holliday, Wise & Co. had no preferential right to the proceeds of the sale of the goods because they had not been able to prove that the goods selected and claimed by them, as sold on credit had not been paid for.

In the case of *McMicking vs. Co Piaco* (24 Phil., 439) also cited by the appellees, the goods sold by the sheriff came partly from one creditor and partly from another, and neither had been able to identify which came from

him; and due to the lack of identification, this court held that neither of the claimants had established his right of preference.

On the other hand, in the case of *Rubert & Guamis vs. Luengo & Martinez* (8 Phil., 554), in which the sheriff sold under a writ of execution issued in favor of Hubert and Guamis, for the lump sum of P500 not only the cinematographic films to which the plaintiffs had a preferential right for the unpaid purchase price, but also the cinematographic apparatus in which they had neither interest nor right this court held that notwithstanding that conjunction, said plaintiffs had a preferential right to a proportional part of the proceeds of the sale corresponding to the films, inasmuch as the proportional value of the same in the sale could be determined and deducted from the P500 received from the joint sale.

Briefly, then, since the machinery in question has not lost its identity either before, during, or after its sale as an integral part of the Capiz Central for the lump sum of P80,266 its proportional value in the sale can be determined and the appellants have a preferential right to said proportional value for the unpaid price.

The fifth assignment of error is a corollary of the former, and having arrived at the conclusion that the appellants have a preferential right to a proportional part of the proceeds of the sale of the Capiz Central, corresponding to the machinery in question, the lower court erred in not permitting the appellants to introduce evidence in order to determine such proportional part of the proceeds of the sale, which amounted to P80,266,

In regard to the sixth assignment of error, the lien established by article 1922, paragraph No. 1, of the Civil Code on personal property sold and in possession of the purchaser for the price thereof is superior to any real right, or lien, such as mortgage and attachment, and, as we have seen, it is recognized not only in this jurisdiction (*Hunter, Kerr & Co. vs. Murray*, 48 Phil., 499; *Roman vs. Herridge*, 47 Phil., 98; *Tec Bi & Co. vs. Chartered Bank of India, Australia and China*, 41 Phil., 819; *Kuenzle & Streiff vs. Villanueva*, 41 Phil., 611), but also in the State of Louisiana whose Revised Civil Code is based on the Code Napoleon, which has a similar provision to our Civil Code on the matter (*Carlin vs. Gordy*, 32 La., 1285; *De L'Isle vs. Succession of Moss*, 34 La. Ann., 166; *Baldwin vs. Young*, 47 La. Ann., 1466; *State Trust Co. vs. De la Vergne Refrigerating Mach. Co.*, 105 Fed. Rep., 468).

In the last mentioned case, *State Trust Co. vs. De la Vergne Refrigerating Machine Co.*, the Circuit Court of Appeals held that:

"Under the statute of Louisiana (Rev. Civ. Code, arts. 3271, 3273, 3274), as construed by the supreme court of the state, a vendor's privilege in respect to a movable which has been attached to realty is not lost as against a mortgagee of the realty by a failure to record the same, but the thing sold remains a movable, and subject to the privilege, so long as it has not lost its identity, and can be separated from the land, tenement, or building to which it has been attached without injury thereto."

Summarizing, we have:

- (a) That the right of preference established by article 1922, paragraph No. 1, of the Civil Code, in favor of the vendor to personal property sold and in the possession of the purchaser, for the price thereof is not lost by the mere fact that such personal property is converted into real property by destination, whenever the form and substance are not changed and it has not lost its identity.
- (b) That neither does the vendor lose such preference notwithstanding the fact that the personal property converted into real property, without having lost its identity, is sold with the real property to which it is attached, for a lump sum, and the vendor has not requested its separation before the sale.
- (c) That by article 1922, paragraph No. 1, of the Civil Code and the decisions of this court, interpreting it, as well as by the Revised Civil Code of Louisiana and the decisions of the Supreme Court and the Circuit Court of

Appeals of said State, the preference granted the vendor to the personal property sold and in possession of the purchaser for the price thereof, is superior to any other real right or lien, such as mortgage and attachment.

In view of the foregoing the order appealed from is reversed; the credit of the appellants Urquijo, Zuloaga and Escubi to the proportional part of the proceeds of the sale of the Capiz Central corresponding to the proportional part of the machinery not paid for is declared preferential, and it is ordered that the record be remanded to the court of origin for the determination of said proportional part to which the appellants have a preferential right. So ordered.

Johnson, Street, Villamor, and Romualdez, JJ., concur.

MALCOLM and OSTRAND, JJ., dissenting:

We regret very much to have to dissent from the learned opinion of the majority prepared by Mr. Justice Villa-Real, but duty compels us to do so.

In the first place, we are doubtful if, under the facts, the appellants can invoke in their favor a vendor's lien on the sugar machinery. The said machinery was sold by Urquijo, Zuloaga y Escubi to the Central Capiz for the manufacture of sugar. Thereafter the Central Capiz sold all the property of the central for a lump sum to another. The machinery thus became immobilized, and the vendor was charged with notice of immobilization by destination. Not only this, but the vendor now recognizing the futility of attempting to identify and segregate the machinery, only asks that he be allowed the value of the machinery in proportion to the sum realized from the sale of all of the property of the Central Capiz. Predicated on these facts, the decision of the United States Supreme Court in the case of *Valdes vs. Central Altagracia* ([1912], 225 U. S., 58), is in point. Citing *Aubry and Rau*, Mr. Chief Justice White draws a distinction between immobilization by the owner and immobilization by the lessee. Said Mr. Chief Justice White: "The machinery placed by the corporation in the plant, by the fact of its being so placed, lost its character as a movable, and became united with and a part of the plant as an immovable by destination." (See also *Bank of LeCompte vs. LeCompte Cotton Oil Co.* [1910], 125 La., 844).

Conceding, however, that the appellants have a preferential vendor's lien, yet under the Bankruptcy and Insolvency Law, said preferred credit is not superior to the lien by attachment of the appellees. Under the Bankruptcy and Insolvency Law, which should govern, the lien creditor is prior in right and prior in distribution. The doctrines announced in the series of cases, *Smith, Bell & Co. vs. Estate of Maronilla* ([1916], 41 Phil., 557); *Tec Bi & Co. vs. Chartered Bank of India, Australia and China* ([1917], 41 Phil., 819); *Kuenzle & Streiff vs. Villanueva* ([1916], 41 Phil., 611); and *E. Viegelmann & Company vs. Perez*, ([1918], 37 Phil., 678), offer little to commend them, and should be reexamined and revoked. (*Roman vs. Herridge* ([1924], 47 Phil., 98, 106.)

For all of the above reasons, we vote for the affirmance of the judgment.

DECISION ON MOTION FOR RECONSIDERATION

March 30, 1927

VILLA-REAL, J.:

This matter is before the court upon a motion for the reconsideration of this court's decision rendered on March 24, 1927, upon its merits, or, if that is not possible, an explanation of the dispositive part thereof.

The motion is denied in regard to the first part and granted in regard to the second, the dispositive part being

amended so as to read as follows:

"For the foregoing, it is adjudged:

"(a) That the right of preference of the appellants Urquijo, Zuloaga and Escubi is only on the value (art. 1922, par. No. 1, of the Civil Code), which must first be proven, of the machinery sold by them to the Capiz Central which has not been paid for and which was included among other property of the Capiz Central in the sale of the same; and that in no case must the preference exceed the sum of thirty thousand pesos (P30,000), the only amount on which they claim a preference.

"(b) That the claim of the appellees Timoteo Unson and Clara Lacson, Jose Altavas and Antonio Belo, by reason of the fact that the attachments secured by them were declared valid and held to constitute liens, are also preferential in character and must be paid in full out of the available funds of the insolvent estate after the extinction and payment of the credit of the appellants Urquijo, Zuloaga and Escubi, and with preference over, any and all other ordinary unpaid claims, following in the payment of the claims of the appellees, the order of the dates of the respective attachments."

In virtue whereof the judgment appealed from is hereby affirmed in so far as it is in harmony herewith and reversed in so far as it is not, and it is ordered that the record be remanded to the court of origin for further proceedings in accordance herewith. So ordered.

Johnson, Street, Villamor, and Romualdez, JJ., concur.

Malcolm and Ostrand, JJ., adhere to the dissent attached to the principal decision.

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