

**VOLUNTARY INSOLVENCY OF “CENTRAL CAPIZ.”
TIMOTEO UNSON ET AL., CLAIMANTS AND APPELLEES, VS. SMITH,
BELL & CO. ET AL., CREDITORS AND APPELLANTS.***G.R. No. 27178. September 10, 1927*

Ponente: STREET, J.

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This appeal has been brought by Smith, Bell & Co. and others, as ordinary creditors of the Capiz Central, a voluntary insolvent now in course of liquidation in the Court of First Instance of Iloilo, for the purpose of reversing an order of said court dated September 24, 1925, admitting the claims of Timoteo Unson and wife in the amount of P30,000; of Jose Altavas, in the amount of P8,000; and Antonio Belo, in the amount of P11,000; declaring that said three credits are preferential claims, and ordering that they shall be first satisfied out of the assets of the insolvent before payment of any part of the claims of other simple creditors.

A part of the same order that is now under appeal in this case was the subject of consideration in a previous appeal prosecuted to this court by another creditor (Voluntary Insolvency of the Capiz Central. Unson vs. Urquijo, Zuloaga & Escubi, R. G. No. 26293.)[1] It is therefore unnecessary to repeat the facts set forth in the opinion of this court upon that appeal; and we shall limit our discussion to such features of the case as seem to be necessary to the proper understanding of the decision.

It appears that when this insolvency proceeding was instituted by the Capiz Central in the Court of First Instance of Iloilo, there were then pending against it, in the Court of First Instance of Capiz, three damage suits instituted by the claimant-appellees, Unson and wife, Jose Altavas, and Antonio Belo. Each of the plaintiffs in these cases had obtained an attachment against the property of the Capiz Central, which attachments were sued out in the sequence of the order of their names as above written. The institution of the insolvency proceeding in the Court of First Instance of Iloilo had the effect of temporarily stopping the proceedings in the three damage suits; but the assignee in insolvency presently obtained permission from the court of insolvency in Iloilo for the continuation of the proceedings in the Capiz court. The latter court accordingly resumed proceedings in the cases mentioned, but no contentious trials were had, owing to the fact that the respective plaintiffs and the assignee in insolvency compromised the cases. By the terms of the compromise agreements the claims of the plaintiffs were recognized as just, in the respective amounts mentioned in the order which is now under appeal. Said compromise agreements were accordingly approved by the Capiz court, with the reservation in each case that the determination of the question whether the credits of the three plaintiffs were entitled to preference by reason of the attachments which they had respectively sued out should be left to the court of insolvency in Iloilo. Accordingly, the three claims, which had now been reduced to judgment in the Capiz court, were presented to the court in Iloilo in order that the latter court might give recognition to the compromise judgments and pass upon the question of the preferential right. In determining these points the Iloilo court entered the order now under appeal, recognizing the three credits in the amounts adjudged by the Capiz court and declaring that they are entitled, successively, to preference over claims of unpreferred creditors.

There are three propositions which appear to cover all controversial ground in this appeal. These will be dealt with in what appears to be their most natural order.

In the first place, it is contended for the appellants that an assignee in insolvency has no authority to enter into a compromise agreement in litigation to which he is a party and that consequently the judgments of the Capiz court, approving these agreements, were erroneous. We are of the opinion that this contention is not well-founded. The assignee in insolvency represents the mass of creditors, and the Insolvency Law recognizes his authority to prosecute an action on behalf of the insolvent and to defend any action pending at the time of the adjudication "in the same manner and with like effect as it might have been defended by the insolvent" (Act No. 1956, sec. 33). This authority naturally involves the right to enter into accord with the creditor with respect to the amount due and to make concessions by compromise. As long as the assignee acts in good faith, his authority to control the litigation seems to us unquestionable. Of course, if in any case it should be discovered that the assignee has acted collusively with the adverse party or has used bad faith in the performance of the trust reposed in him, the court, upon proper proceedings, at the instance of any creditor, would not be without power to give relief. In the case before us, no criticism is made of the assignee on the ground that he has acted in bad faith.

In the second place, it is contended that the Iloilo court erred in declaring that the credits pertaining to Unson, Altavas and Belo are entitled to preference by virtue of the attachments that had been sued out by them more than thirty days before the insolvency proceedings were begun. In the appeal of Urquijo, Zuloaga and Escubi (R. G. No. 26293, supra) we held that the attachments now under criticism had been regularly issued, that is, had been obtained in compliance with legal requirements. This means that the attaching creditors acquired provisional liens which must be given effect in the absence of a judicial finding that the writs were sued out upon false allegations of fact. We are unable to discover from this record that the Capiz Central, or the assignee who succeeded it as defendant in the litigation instituted in the Capiz court, ever made any issue in that court upon the point of the falsity of the grounds of attachment. In combating an attachment the debtor party occupies substantially the position of an active litigant, and in order to be rid of the attachment or to obtain damages for the wrongful suing out of the writ, it is necessary for him to tender an issue and obtain a judicial declaration to the effect that the ground stated in the plaintiff's affidavit upon which the writ was procured was non-existent. When it appears, as here, that an attachment has been regularly sued out, and there is nothing to show that the truth of the ground of attachment has ever been challenged by the defendant in the attachment, the lien must be given effect.

In the third place, as against the preferential claims of Joise Altavas and Antonio Belo, it is pointed out that they took part in the election of the assignee. It is therefore insisted that they have thereby waived their attachment lien, or should be considered estopped from asserting it. In this connection attention is directed to section 29 of Act No. 1956, wherein it is, among other things, declared that no claimant having an attachment on property of the debtor, duly recorded and not dissolved under the Act, shall be permitted to vote any part of his secured claim, at the election of the assignee, though after valuation of the security he may vote the residue. Again, in section 59 of the same Act it is, among other things, declared that a creditor having an attachment on property of the debtor shall be admitted as a creditor for the balance of the debt only, after deducting the value of the security.

These provisions do not seem to us to have the effect attributed to them by the appellants. The provision in section 29 undoubtedly prohibits the attaching creditor from voting his claim in the election of the assignee in so far as it is secured; and if a lienholder attempts to vote at such election, his right to do so can be challenged by any other creditor, and the ruling of the court upon his right to vote can thus be obtained. But the law does not declare that the voting of a claim by a creditor contrary to the provision cited shall have the effect of depriving him of his lien. A consequence of this kind cannot be deduced by mere implication. Forfeitures are not favored, and will not be raised by the court in the absence of express provision.

In conclusion we observe that the contentions made by the appellants in this case have been considered as if they had presented open questions in this litigation. Whether they should be so considered is an extremely debatable point, if reference be had to the issues involved in the appeal of Urquijo, Zuloaga and Escubi, in the same insolvency (R. G. No. 26293, *supra*), already decided by this court. In that case Urquijo, Zuloaga and Escubi had a claim for a large amount of money, which claim was found to be in part of a preferential nature and in part unsecured, and upon appeal to this court they combated the preferential right of the same three claimants who are now appellees here. As regards the unsecured part of their claim Urquijo, Zuloaga and Escubi were clearly in precisely the same right as the present claimant-appellants. But this court overruled the appeal in that case in so far as the appellants attacked the preferential right of the appellees, with the result that the preferential right was upheld. Does it not necessarily follow that the present appellants are concluded by the decision then made? We are not unmindful of the fact that some of the considerations urged upon the court in the present case for denying the preferential right in question were not presented in the appeal of Urquijo, Zuloaga and Escubi, but it is nevertheless true that the same preferential right was the subject of controversy there that is drawn in question in the present appeal, and the court had ample jurisdiction to determine the right. Although the appellants are different in the two cases, it would yet seem that the decision made in the first appeal should be decisive in the second, since the appellants in the first appeal were really prosecuting the appeal not only in their own behalf but substantially as representatives of all other creditors in the same Tight. However, having reached the conclusion on other grounds, that the present appeal is not maintainable, we are content to pass without decision the point with reference to the effect of the former judgment.

The judgment appealed from will be affirmed, and it is so ordered, with costs against the appellants.

Avanceña, C. J., Johnson, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

[1] P. 160, ante.

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