

**RUBERT &#038; GUAMIS, PLAINTIFFS AND APPELLEES, VS. LUENGO &#038; MARTINEZ ET AL., DEFENDANTS AND APPELLANTS.***G. R. No. 3067. September 17, 1907*

Ponente: WILLARD, J.

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The appellees make the point in their brief in this court that although the appellants made a motion for a new trial, in the court below on the ground of the insufficiency of the evidence, yet no order was made by the court upon that motion, and of course no exception was taken to any order denying such motion, and that, therefore, this court can not review the evidence. An examination of the record shows that this point is well taken.

The defendants having denied all of the allegations of the complaint, our examination must be confined to the facts stated in the decision. Among other facts therein stated are the following:

"That the plaintiffs sold and delivered to the defendants, Emilio Palomo and Enrique Bota, who were partners and had established a cinematograph, certain accessories for the same amounting to \$1,343.13, United States currency. That said Emilio Palomo acknowledged the receipt of said accessories, by means of a document signed by him on the 14th day of April, 1904, which reads as follows: 'I acknowledge having received from Messrs. Eubert & Guamis some accessories for a cinematograph, to my entire satisfaction, amounting to \$1,343.13, United States currency, which amount I will pay in cash at Messrs. Eubert & Guamis's residence within the period of four months; during said period of time and while the above amount is not paid, I shall not have the right to sell, dispose, or convey the cinematograph and the accessories belonging to me, which will first guarantee the fulfillment of this obligation.—Manila, P. I., April 14, 1904.— (Signed) E. Palomo,' (with Eubert & Guamis's signature at the bottom).

"Further, that the defendants Luengo & Martinez were in friendly relations with the plaintiffs and were aware of the sale of said accessories, as above stated, and were likewise informed of the making of the said document by Emilio Palomo, as also stated, and knew that the plaintiffs claimed a right over the said goods herein described, as well as upon the purchase price of the goods sold by them to the defendants Emilio Palomo and Enrique Bota, and that the said Luengo & Martinez knew that the value of the said goods, as above stated, had not yet been paid; and that in a suit commenced by them against the defendants Emilio Palomo and Enrique Bota (in which the former obtained a judgment in their favor and for which judgment an order was issued), they ordered the sheriff of the city of Manila to attach the said cinematograph and the accessories sold by the plaintiffs, as already stated. That the plaintiffs, in consequence of this, claimed the said goods from the sheriff, and the defendants Luengo & Martinez, who gave bond to the sheriff, ordered him to proceed with the sale. That the sale by public auction was effected on the 19th day of January, 1905, by the sheriff of Manila, and the said goods were sold to the defendants Luengo & Martinez for the sum of P500, the latter having been the highest bidders, and that the value of the above goods at the time of the sale was at least P2,686.26."

Judgment was rendered in the court below against Emilio Palomo and against Luengo & Martinez, jointly, and against the defendant Martinez, separately, for the sum of 2,686 pesos and 26 centavos, with interest and costs. From this judgment Luengo & Martinez appealed. Palomo did not appeal.

The judgment in favor of the plaintiffs and against Luengo & Martinez is based upon the first paragraph of article 1922 of the Civil Code.

That paragraph is as follows:

"With regard to specified personal property of the debtor, the following are preferred:

"1. Credits for the construction, repair, preservation, or for the amount of the sale of personal property which may be in the possession of the debtor to the extent of the value of the same."

The plaintiffs, having sold the films to the defendant Palomo, by the terms of this article are to be preferred over other creditors for the payment of their debt so far as the goods sold are concerned.

The question is, When and how is that preference to be secured? It is apparent that the provisions of Title XVII of Book IV of the Civil Code, including articles 1911 to 1929, are intended to apply to cases of bankruptcy and to the settlement and liquidation of the estates of deceased persons, but these are not the only cases to which the provisions of this title are applicable. Following the decisions of the supreme court of Spain, this court has held that these articles are applicable to what was called in the Spanish law of civil procedure *terceria de mejor derecho*. In the case of *Olivares vs. Hoskyn & Co.* (2 Phil. Rep., 689) it is said (p. 691) :

"Had the conflicting claims of these parties been presented in a proceeding in bankruptcy, there is no question but that the above result would have been reached. It is said, however, that article 1924 is applicable only to such cases and to the settlement of the estates of deceased persons, and can not be applied to a suit like this between two persons as to their rights of preference in the distribution of the proceeds of the sale of a specific piece of real estate. There is nothing in the Spanish law of civil procedure, under which this proceeding was commenced, to indicate that the intervention by a creditor could not be made, whether he had any lien on the property in question or not. A general creditor, who claimed that in the distribution of any of the property of the common debtor he had a better right than the plaintiff in the executive action, could intervene therein. And the supreme court of Spain, in allowing such intervention, has applied, for the purposes of determining the priorities, the provisions of article 1924 and the provisions of the *Partidas*, which were substantially the same. (Judgment of October 6, 1886, and judgment of January 4, 1894.)

"In the case of *Martinez vs. Holliday, Wise & Co.* (1 Phil. Rep., 194), we adopted the rule thus laid down and applied the provisions of article 1924 in a case which can not be distinguished from this one."

The same principle was applied in the case of *Peterson vs. Newberry et al.* (6 Phil Rep., 260).

The plaintiffs in this case, therefore, had a right, by the proper action, to assert their preference and secure the payment of their claim from the proceeds of the property in question before other creditors were paid from such proceeds. That the action maintained by them was a proper one, so far as Luengo & Martinez are concerned, is very clear.

That it was brought in time is also clear. From the very nature of the cases to which the provisions in regard to preference are applied namely, bankruptcy and the settlement of the estates of deceased persons, it is apparent that the preference can not be made effective until the property has passed out of the hands of the debtor. In the case of bankruptcy, we do not apprehend that a creditor, with the rights of the plaintiffs in this case, would lose such rights by the transfer of the possession of the property to the assignee in bankruptcy. Nor in the case of the settlement of the estate of a deceased person would he lose such rights by the transfer of the property to the executor or administrator.

It is important to determine the exact nature of the right declared by this article 1922, paragraph 1. We do not think that it gives any lien to the creditor upon the property itself. It simply provides that when the proceeds of the

property are distributed, the preferred creditor shall be paid first. Not having any lien upon the property, the plaintiffs in this case had no right to the possession of these films. They had no right to prevent a seizure of the films upon an attachment or execution issued at the suit of another creditor, but they did have a right to secure from the proceeds of the sale made under such seizure the payment of their claim before the claims of other creditors were paid. It is apparent that in this case, and in other cases, there must necessarily be a sale of the property before the rights of the creditors can be adjusted. In this case it was necessary that the films be sold before it could be determined how much of the proceeds Luengo & Martinez were entitled to receive after the plaintiffs had been paid. If the films sold for less than the claim of the plaintiffs, the plaintiffs would be entitled to all the proceeds; if for more, Luengo & Martinez would be entitled to the surplus after the plaintiffs were paid.

It follows, from what has been said, that the judgment of the court below against Luengo & Martinez can not be sustained. The property was duly sold under an execution at public auction. There is no allegation that the sale was not conducted in accordance with the law and was not fairly made. It is from the proceeds of that sale that the plaintiffs have the right to be first paid and the liability of Luengo & Martinez can not extend beyond the sum of 500 pesos, the amount realized thereat.

As we construe the findings of the court above quoted, the property that was sold for 500 pesos consisted not only of the films but also of the cinematograph itself. The latter was not sold by the plaintiffs to Palomo. As to the proceeds arising from its sale, they had no right of preference over the defendants. Their right of preference existed only as to the proceeds arising from the sale of the films. What part of the 500 pesos should be applied to, the films and what part to the cinematograph we have no way of determining.

It is true that Palomo undertook to create some kind of a lien upon the cinematograph by the document quoted in the opinion, but it is very clear that that attempt was entirely futile and that the document did not give to the plaintiffs any lien or claim upon the cinematograph, and we do not understand that the court below upon this point held to the contrary.

The defendants, Luengo & Martinez, demurred to the complaint on the ground, among others, that there was a defect or misjoinder of parties defendant. To an order overruling this demurrer they excepted, and they have assigned this order as error in their brief in this court. The amended complaint asks for a judgment against Palomo upon the document quoted above in the opinion, and also that the plaintiffs may be declared to be preferred creditors with respect to Luengo & Martinez.

The claim of the appellants is that there is no juridical relation between themselves and Palomo; that the liability of Palomo upon the document executed by him is entirely separate and distinct from any liability imposed upon them by their seizure of the property in question, and that the joinder of Palomo as defendant with them in the suit was improper. We find nothing in the Code of Civil Procedure declaring what causes of action may be joined in a complaint. Such provisions are generally found in similar codes in the United States. The only section upon the subject which has been called to our attention, in addition to paragraph 4 of section 91, which allows a demurrer for a defect or misjoinder of parties, is section 114, which declares who shall be made parties plaintiff and defendant.

That the complaint states a cause of action against Luengo & Martinez is not questioned. We think, moreover, in an action to determine the respective rights of the plaintiffs and Luengo & Martinez in regard to this property, that Palomo, the owner of the property, while not perhaps a necessary party, was at least a proper party. By the provisions of the Spanish Law of Civil Procedure, an intervention founded upon a preferential right was necessarily directed against both the other creditor and the common debtor. In view of the provisions of our Code of Civil Procedure, and the absence of any express statement as to what causes of action may be joined, and

limiting ourselves to this particular case, we hold that in such an action as this the common debtor is a proper party thereto. Being a proper party thereto by reason of the controversy between the two creditors, the fact that the judge ordered a personal judgment against the common debtor in favor of the plaintiffs furnishes the defendants, Luengo & Martinez, no ground for complaint. Palomo, the common debtor, has not appealed from such judgment.

Section 451 of the Code of Civil Procedure, cited by the appellants, has no bearing upon the question, (Waite vs. Peterson,[1] No. 3636, decided August 29, 1907.)

The judgment of the court below, so far as it relates to Luengo & Martinez, is reversed, without costs to either party in this court, and the case is remanded to the court below with directions to determine what part of 500 pesos, the proceeds of the sale, represents the expenses of the sale, and what part represents the value of the films, and to order judgment against the defendants, Luengo & Martinez, and in favor of the plaintiffs, for the latter amount, with the costs of that court, if it appears that Luengo & Martinez did not pay to the sheriff at the time of the sale the said 500 pesos. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

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[1] Page 449, supra.

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