

CORNELIO CRUZ AND CIRIACA SERRANO, PLAINTIFFS AND APPELLANTS, VS. CHUA A. H. LEE, DEFENDANT AND APPELLANT.*G.R. No. 31018. November 06, 1929*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of the City of Manila by Cornelio Cruz and wife, for the purpose of recovering a sum of money from the defendant Chua A. H. Lee, representing the damages alleged to have been sustained by them from the lapsing of certain pawn tickets which they had pledged to the defendant under the circumstances hereinafter stated. Upon hearing the cause the trial court gave judgment in favor of the plaintiffs to recover of the defendant the sum of P1,141, with legal interest from December 16, 1927, and with costs. From this judgment both plaintiffs and defendant appealed.

It appears that prior to June 10, 1926, the plaintiff Cornelio Cruz had pledged valuable jewelry to two different pawnshops in the City of Manila, namely, the Monte de Piedad and Ildefonso Tambunting, receiving therefor twelve pawn tickets showing the terms upon which the articles pledged were held by the pledgees. On the date stated the plaintiff, being desirous of obtaining a further loan upon the same and other jewels, presented himself to the defendant Chua A. H. Lee and pledged to him six pawn tickets of the Monte de Piedad and a bracelet set with seventeen diamonds of different sizes. Upon receiving the bracelet and the six tickets Lee delivered to the plaintiff a sum of money, for which the plaintiff executed a receipt containing words to the effect that the amount of P3,020, therein stated, represented the value of the bracelet and pawn tickets and that it was understood that Lee would become the absolute owner of the articles pledged if Cruz should not return said sum of money within the period of sixty days. One week thereafter Cruz again presented himself at the place of business of Lee and received the further sum of P3,500, at the same time delivering two pawn tickets of the house of Ildefonso Tambunting and four pawn tickets of the Monte de Piedad. At the same time Cruz signed a further receipt containing a stipulation that the sale of the articles pledged would become absolute unless the amount stated in the receipt should be returned within sixty days.

The tickets which form the principal feature in these two pledges represented a pair of diamond earrings previously pledged to Ildefonso Tambunting for P7,000 and several other pieces of jewelry previously pledged to the Monte de Piedad for the aggregate amount of P2,020. All of these tickets were renewable, according to the custom of pawnbrokers, upon payment from time to time of the sums of money representing the interest accruing upon the debts for which the jewelry was pawned.

The right of repurchasing the jewelry, which was conceded to Cruz in the two receipts above mentioned, was never exercised by him; and on September 25, 1926, Lee filed a complaint against Cruz in the Court of First Instance of Manila (case No. 30569), in which it was alleged that the receipts above mentioned had been drawn in the form of a sale with stipulation for repurchase in sixty days but that it was understood between the parties that the transaction was a loan and that the jewelry and pawn tickets held by Lee constituted a mere security for the money advanced by him to Cruz. As a consequence Lee asked for judgment against Cruz in the amount of

P6,520. On March 31, 1927, judgment in said action was rendered in the Court of First Instance favorably to the plaintiff and, although an attempt was made to get the decision reviewed in the Supreme Court, the judgment was affirmed for failure of the appellants to cause a transcript of the oral testimony to be brought to said court.[1] After affirmance of the judgment in the Supreme Court the cause was returned to the Court of First Instance for execution, but as a result of certain proceedings not necessary to be here recounted, execution in that case was suspended to await the result of the judgment to be given in this case.

It appears that the defendant Lee on August 18, 1926, renewed the ten pawn tickets issued by the Monte de Piedad by paying the interest necessary to effect renewal, but these tickets all expired on October 18, 1926, and were never renewed. The pawn tickets issued by Tambunting's pawnshop on the diamond earrings were dated May 12, 1926, and remained good for one year, having expired on May 12, 1927. Although the pawn tickets issued by the Monte de Piedad expired on October 18, 1926, it is admitted that they could have been renewed or the jewelry redeemed at any time prior to actual sale at public auction, and these jewels were not sold by the Monte de Piedad until in the year 1927, when they were, at different dates, bought in by the appraiser of the Monte de Piedad for the amount then due upon the respective jewels. But the jewelry represented by one of these pawn tickets was not thus sold until August 10, 1928. From this it will be seen that all of the pawned jewelry was still subject to redemption when civil case No. 30569 was first called for trial on January 3, 1927, and apparently the right of redemption on only one piece of jewelry had been foreclosed by sale when the decision was rendered in the same case at the end of March. The record does not show whether or not the earrings pawned to Ildefonso Tambunting were in fact sold after the tickets lapsed on May 12, 1927, but it is proved that the jewelry was not forthcoming when an inquiry was made therefor by the present plaintiff with a view to redemption after judgment had been rendered in the case instituted by Lee against him.

The first two errors assigned in the brief of the defendant as appellant raise a question of a preliminary nature, which is, whether the present action can be maintained in view of the fact that the cause of action set out in the present complaint might have been—so the defendant supposes—used as a ground of defense or counterclaim in action No. 30569 of the Court of First Instance of Manila instituted by the present defendant against the present plaintiff. Upon this it is insisted that the trial court should have sustained the plea of *res judicata* interposed in this case by the defendant. This contention is untenable for the reason that the facts which serve as the basis of the present action were not in existence at the time of commencement of action No. 30569. Under section 97 of the Code of Civil Procedure the defendant is required to set up his counterclaim as a defense only in those cases where the right out of which the counterclaim arises existed at the time of the commencement of the action.

The principal question requiring decision in the case before us is one of law, namely, whether a person who takes a pawn ticket in pledge is bound to renew the ticket from time to time, by the payment of interest, or premium, as required by the pawnbroker, until the rights of the pledger are finally foreclosed. In this connection reliance is placed by the attorney for the plaintiff upon article 1867 of the Civil Code, which reads as follows:

"The creditor must take care of the thing given in pledge with the diligence of a good father of a family; he shall be entitled to recover any expenses incurred for its preservation and shall be liable for its loss or deterioration, in accordance with the provisions of this Code."

In applying this provision to the situation before us it must be borne in mind that the ordinary pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the ticket; and the contract of the pledge is, therefore, absolvable to bearer. It results that one who takes a pawn ticket in pledge acquires domination over the pledge; and it is the holder who must renew the pledge, if it is to be kept alive. Article 1867 contemplates that the pledgee may have to undergo expenses in order to prevent the pledge from being lost; and these expenses the pledgee is entitled to recover from the pledgor. From this it follows that

where, in a case like this, the pledge is lost by the failure of the pledgee to renew the loan, he is liable for the resulting damage. Nor, in this case, was the duty of the pledgee destroyed by the fact that the pledgee had obtained a judgment for the debt of the pledgor which was secured by the pledge. The duty to use the diligence of a good father of the family in caring for the pledge subsists as long as the pledged article remains in the power of the pledgee.

In this connection we quote as follows from a monographic note appended to *Griggs vs. Day* (32 Am. St. Rep., 718), in which it is said:

"As the holder of collateral security is entitled to its possession and to the extent of his interest is substantially the owner thereof, he must, to a certain extent at least, assume the duties of ownership, and furthermore must protect the interests of his pledgor as well as his own, because the latter, by giving the collateral security, has parted with the power to protect himself. 'The contract carries with it the implication that the security shall be made available to discharge the obligation': *Wheeler vs. Newbould*, 16 N. Y., 396. We apprehend that it carries with it the further implication that the property, no matter what its character, shall not be lost through the negligence or inattention of the pledgee."

In commenting upon article 1867 of the Civil Code, the commentator Manresa points out that the predecessor article in the Civil Code of 1851 limited itself to declaring that the creditor should take such care of the pledged thing as the good father of a family, and this led to a lively controversy among the civilians concerning the consequences of the duty of conservation or safekeeping imposed upon the creditor. But this controversy, says the learned author, has largely lost its interest because the authors of the Code put an end to such discussions by defining the responsibility of the creditor in a form so clear and explicit as to leave no room for doubt (Manresa, *Codigo Civil*, 426, 427). In the treatise of Colin and Capitant on the Civil Law, it is stated that the creditor who receives an article in pledge must bear all the expenses necessary to secure the conservation of the pledge and that the debtor is bound to reimburse him for such expenses. As an illustration of the duty of the pledgee to exercise diligence in preserving the pledge, he states that a pledgee who fails to renew at the proper time the inscription of a mortgage guaranteeing a credit will be liable for the damage resulting from its loss (*opus citat*, p. 77). To the same effect is a passage found in the pages of the French commentator Troplong, *Droit Civil Explique*, Du Gage, sec. 428.

The question of the extent of the duty of the pledgee in caring for the property pledged has often been discussed in connection with pledges of collateral security. In this case we find the following observation made by the author of the title "Pledge" in 21 *Kuling Case Law*, to wit:

"The rights and duties of parties to a pledge of securities for the payment of a debt may of course be fixed by agreement as to the manner in which they are to be collected, but as a general rule not only is it the right of the holder of collateral security to collect the money thereon and apply it to the principal debt but his duties in this respect are active and he is bound to ordinary diligence to preserve the legal validity and pecuniary value of the pledge, and if by negligence, wrongful act or omission on his part loss is sustained, it must be borne by him." (*Pledge*, sec. 30.)

The application of the doctrine above expounded to the case in hand leads to the conclusion that the defendant Chua A. H. Lee in the case before us is liable for the value of the securities lost by his failure to keep the pledges alive in the extent of their actual value over the amounts for which the same were pledged; and the trial court, in our opinion, committed no error in so holding.

There remains to be considered the question of the proper valuation of the jewelry sacrificed in the manner above stated. Upon this point we are of the opinion that the trial court was too conservative in its estimate; and we find, upon the testimony of Manuel Javier, appraiser of the La Insular Pawnshop, and Francisco Ferrer a jewelry

merchant of Manila, supplemented by that of the plaintiff, Cornelio Cruz, that the two diamond earrings represented by the tickets issued by Tambunting's pawnshop were fairly worth P14,000. It is true that Cornelio Cruz testified that these jewels cost him P11,000, but he at the same time stated that they were at the time of the trial in the court below worth at least P15,000. Again, we are of the opinion that the jewels represented by the ten pawn tickets of Monte de Piedad were worth, at a conservative estimate, the sum of P4,040. In fixing these values it must be remembered that it is not the practice of pawnshops to advance more than from thirty-five to fifty per cent of the true value upon pledges of jewels.

From the values of the jewelry, as estimated above, there is of course to be deducted the amounts which had been advanced upon the pledges with interest thereon at the stipulated rate of 18 per cent per annum until the date when the offer was made by the plaintiff Cornelio Cruz in writing to redeem the jewelry. But it should be noted that the sum of P3,500 which the defendant advanced to Cruz upon the pledge of the pawn tickets covering the earrings must not be deducted, because the defendant, in the prior action, has already recovered judgment for that amount.

Upon liquidation of the account between plaintiffs and defendant in conformity with the suggestion above made, it results that the plaintiffs herein were damaged by the sacrifice of the jewelry in question in the total amount of P6,687.56. Also, in order to clarify the appealed decision, it is declared that the plaintiff is entitled to recover the bracelet composed of seventeen diamonds, forming the additional pledge made by the plaintiff to the defendant, upon satisfaction of the judgment in civil case No. 30569.

The judgment appealed from is therefore modified to the extent above indicated, namely, that the plaintiffs, shall recover of the defendant the sum of P6,687.56, with legal interest from December 16, 1927, until the same shall be paid, as well as the bracelet of seventeen diamonds upon satisfaction of the judgment above mentioned. So ordered, without costs.

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

[1] Chua A. H. Lee vs. Cruz and Serrano de Cruz, G. R. No. 27985, promulgated October 29, 1927, not reported.

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