

INVOLUNTARY INSOLVENCY OF MARIANO VELASCO & CO., ET AL. TAN CHICO, CLAIMANT AND APPELLANT, VS. VICENTE NEPOMUCENO, ASSIGNEE AND APPELLEE.

G.R. No. 32797. November 05, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

In 1927 the registered partnership of Mariano Velasco & Co. was declared insolvent on petition of the creditors. Tan Chico filed a claim against the insolvent for the sum of P16,457.29 alleged to be a deposit and, as such, a preferred claim under paragraph 3 of section 48 of Act No. 1956. The assignee of the insolvency opposed the claim and maintained that the sum claimed was not a deposit but an ordinary loan. Upon trial the Court of First Instance held that the claim in question was not entitled to preference and rendered judgment in favor of the assignee. The claimant thereupon appealed to this court.

We agree with the court below that the transaction upon which the claim is based was not in reality a deposit.

The testimony of Paulino Tan, alleged to be the attorney-in-fact of Tan Chico, is of little value; he did not know definitely whether Tan Chico drew interest on the money, and he stated that the "deposit" was made during the Spanish regime before he was born. It is not likely that Tan Chico would have let the money lay idle and without interest during that period.

As documentary evidence the claimant presented a copy of the ledger of the account books of Mariano Velasco & Co., containing a part of the account of Tan Chico, but no mention of deposit is there made. The inventory presented by Jose Velasco and in which he stated that the sum of P16,457.29 was a deposit, was prepared after the declaration of the insolvency and is of no weight; the fact that a credit is given the name of a deposit does not necessarily make it so. (See *Gavieres vs. De Tavera*, 1 Phil., 71; *Rogers vs. Smith, Bell & Co.*, 10 Phil., 319; *Javellana vs. Lim*, 11 Phil., 141.) The claimant presented no other evidence, and considering the circumstances, we cannot hold that she has sufficiently established her contention that the transaction in question is a deposit.

The appealed judgment is affirmed, with the costs against the appellant. So ordered.

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

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