

**MANUEL LOPEZ Y VILLANUEVA, PLAINTIFF AND APPELLANT, VS.
EVARISTO ALVAREZ Y PEREZ., J. H. GRINDROD, AND JUAN
THOMSON OASBLLS, DEFENDANTS AND APPELLEES.**

G.R. No. 3438. October 12, 1907

Ponente: TORRES, J.

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TORRES, J.:

On the 16th of March, 1905, counsel for the plaintiff, Manuel Lopez y Villanueva, filed an amended complaint with the Court of First Instance of Iloilo praying that judgment be entered in his favor in this case for the sum of P5,973, with interest thereon at the rate of 10 per cent per annum from the 5th of April, 1904; that a declaration be made that the defendants J. H. Grindrod and Juan Thomson Caseils are partners in the credit claimed in the matter of Evaristo Alvarez y Perez; and that their right to the mortgage credit against the testate succession of the late Vicente Lopez y Alvarez is subsequent and secondary to that of the plaintiff, ordering the execution of the judgment on the mortgaged estate denominated Bunglas, with costs.

The plaintiff, in support of his claim, alleged that on the 24th of April, 1901, Vicente Lopez y Alvarez executed a mortgage deed in favor of the defendant Evaristo Alvarez y Perez for the sum of 13,300 pesos and a fraction on his estate named Bunglas, situated in Ooncepcion, in the municipality of Sara, Iloilo, the area and boundaries of which are stated in the complaint, together with 20 castrated carabaos, 10 female carabaos, an 8-horsepower steam engine, and a furnace with fittings; that the term expired without the debt or any part thereof being paid, and Vicente Lopez y Alvarez died at Iloilo on the 2d of August, 1901; that in order to secure the payment of the lease of the hacienda Estrella owned by the plaintiff, Manuel Lopez, the defendant Evaristo Alvarez mortgaged, by means of a public instrument executed on the 19th of October, 1901, the lien he held on the testate succession of the late Vicente Lopez; that by a deed dated April 5, 1904, the defendant Evaristo Alvarez assigned, conveyed, and transferred to the plaintiff part of his said lien on the aforesaid testate succession to the amount of 5,973 pesos, Mexican currency, total amount of his indebtedness to the plaintiff, for several sums received from him in cash, and on account of the lease of the said hacienda; that he further assigned to him all his rights and actions to and in the estate of the deceased, with power to ask for the judicial execution of the mortgage on the hacienda Bunglas, which debt had not yet been paid by the defendant, for which reason the latter further owed him the interest agreed upon at the rate of 10 per cent per annum from the 5th of April, 1904; that the other defendant, J. H. Grindrod, had claims on the lien, but that all of his interest thereon was and is subsequent to that of the plaintiff; that in consequence of the complaint filed, without any right whatever, by the said J. H. Grindrod against Evaristo Alvarez, and notwithstanding the intervention by the plaintiff, Manuel Lopez, Grindrod pretended to dispose by public auction of the rights of the defendant Evaristo Alvarez over the hacienda Bunglas in favor of the other defendant, Juan Thomson Casells, on the 7th of October, 1904, although the rights which the latter had over said hacienda were subsequent and subject to those of the plaintiff, Manuel Lopez. It should be noticed that the defendants Grindrod and Casells were and are partners in the lien and judgment rendered in the case against Evaristo Alvarez, and in the purchase of the rights of the latter on the 7th of October aforesaid.

In his amended answer the defendant J. H. Grindrod asked that the complaint be dismissed with costs against the plaintiff, and to this end he denied all and each of the allegations contained in the amended complaint, with the exception of such as were admitted in his present answer, admitting in fact that the credit by reason of which Evaristo Alvarez was made defendant in case No. 503, together with the judgment rendered therein, belonged to the copartnership long before established at Iloilo between the said Juan Thomson Casells and J. H. Grindrod; that as a special defense he alleged that at the liquidation of accounts on the 26th of June, 1900, Evaristo Alvarez appeared as owing the defendant Grindrod a balance of 5[^]15,722.16, which he acknowledged and confessed under a deed dated July 7, 1900, in favor of the creditor, Grindrod, the debtor engaging to pay the said sum with interest thereon at the rate of 15 per cent per annum from the date of the deed by delivering all the sugar that could be produced by the hacienda Esperanza, which he had leased from its owner, Julita Villanueva, on condition that after the sugar was sold, deducting the expenses of delivery, freight, and commission of 1 per cent, the creditor, Grindrod, would pay one half of the proceeds over to Evaristo Alvarez, and the other half was to be credited to the latter's account until the same was settled in full; that for the purpose of operating the hacienda Esperanza he obtained money and goods from J. H. Grindrod to account of one-half of the value of the sugar without ever having covered the amounts so advanced, and that for said reason the debt of Evaristo Alvarez amounted on the 31st of March, 1904, to 34,510.81 pesos, Mexican currency, and that in view thereof Grindrod endeavored to protect his credit as best he could under the law, inasmuch as he had noticed that the debtor had lost his zeal in working the hacienda and was greatly discouraged, for which reason the hacienda Esperanza yielded less sugar every year, and he was therefore obliged to file a complaint against the debtor, claiming payment of the said amount. He then obtained a preliminary attachment of all the property of the debtor, Alvarez, which was executed on the 5th of August, 1904, and included all the rights which Alvarez had or might have over the hacienda Bunglas, especially over the mortgage of Vicente Lopez y Alvarez, with all the buildings, furnaces, machinery, labor animals, and other appurtenances and easements belonging thereto. Said attachment was duly recorded in the register of property of Iloilo on the 12th of August, 1904.

Evaristo Alvarez, the defendant, not having appeared in court, judgment was entered in the case on the 27th of the said month and year sentencing him to pay P32,867.44 and the costs of the proceedings.

In consequence of the foregoing decision all the rights which Alvarez had or might have over the hacienda Bunglas, particularly over the mortgage executed by Vicente Lopez on said hacienda, were sold at public auction in accordance with the law, and Juan Thomson Casells being the highest bidder they were adjudicated to him on the 7th of October, 1904, for the sum of P13,237, the same being recorded in the registry of property on the 29th of the said month of October, and inscribed therein on the 21st of March, 1905.

Evaristo Alvarez, having been summoned to appear as the executor of the estate of Vicente Lopez, and in reply to the original complaint of Manuel Lopez, stated that the facts therein set forth were true, particularly the assignment of part of the credit claimed by the plaintiff.

Evidence having been adduced by both parties, the judge rendered his decision on the 14th of November, 1905; holding that the plaintiff had failed to establish his right, and decided the case in favor of the defendant and to recover costs. Against this decision the plaintiff excepted and in order to sustain his appeal gave notice of his intention to file a bill of exceptions and in addition moved for a new trial on the ground that the weight of the evidence did not justify the judgment of the court and that the same was contrary to law; upon the denial of the motion for a new trial the plaintiff took exception and asked the approval of the bill of exceptions.

The action taken herein, though apparently an intervention based upon superior rights, is actually an intervention based upon ownership, because its purpose was to release the lien legally transferred to the plaintiff from the attachment levied upon request of a merely personal creditor, and thus avoid the sale and adjudication thereof in

favor of some purchaser.

By virtue of the contract executed in a public instrument dated April 5, 1904 (Exhibit 2), the plaintiff, Manuel Lopez, acquired indisputable dominion over the credit for K,973, and a fraction, transferred or assigned to him by its owner, Evaristo Alvarez y Perez, having the character of a mortgage according to the deed dated April 24, 1901, on the hacienda Bunglas pertaining to the estate of the late Vicente Lopez. The assignment or transfer of said portion of the credit is in accordance with the provisions of article 1878 of the Civil Code, which reads:

"A mortgage credit may be alienated or assigned to a third person, wholly or partially, with the formalities required by law."

The fact that such assignment was not registered in the property register is no obstacle to the transfer of the dominion or ownership of said credit in the sum therein stated in favor of the plaintiff, Lopez, inasmuch as the assignment or alienation of a credit, made by the owner thereof in favor of another, is prior to the act of its registration, and entirely independent of such formality to such an extent that, if any question should arise over the contract between the assignor and the assignee, it would have to be decided according to common law without need of previous registration of the title, which shows that a credit secured by a mortgage may be assigned or alienated, and is a perfectly valid contract even if it were not registered.

Article 152 of the Mortgage Law requires that the alienation or assignment in favor of a third party of the whole or any part of a credit secured by mortgage shall be done by means of a public instrument, that the debtor be informed thereof, and that the same be recorded in the register, the assignee being subrogated to all the rights of the assignor; but in order that the transfer may be effective as against a third party it is indispensable that it be recorded in the registry of property, although the lack of such registration will not invalidate the assignment or transfer of the credit in favor of the assignee. Article 1526 of the Civil Code provides that—

"The assignment of a credit, right, or action shall produce no effect against a third person but from the time the date is considered fixed, in accordance with articles 1218 and 1227.

"If said assignment involves real property, from the date of its entry in the registry."

The assignment of the credit referred to was effected by means of a public instrument; therefore, in accordance with article 1218, it is evidence, even against a third person, of the facts which gave rise to its execution and of the date of the latter; and the transfer of the credit must be held to be valid and efficient in view of the authenticity of the document, which precludes all suspicion of fraud with respect to the date when the transfer was made.

Notwithstanding the fact that the credit held by John Henry Grindrod, which amounted to 15,722 pesos and 16 cents, Mexican currency, against the common debtor, Evaristo Alvarez, is of anterior date to the assignment of the credit for 5,973 pesos and a fraction, according to the deed of July 7, 1900, nevertheless, the right which Grindrod acquired by virtue of the said deed is merely a personal right with none of the characteristics of a mortgage, and for this reason the creditor, Grindrod, can not claim the rights of a third person referred to in article 27 of the Mortgage Law in connection with the contract of transfer or assignment of the credit made by the common debtor, Alvarez, in favor of the plaintiff, Manuel Lopez. In spite of the fact that John Henry Grindrod took no part in the contract or assignment of the said mortgage credit in favor of Lopez, and although the same was not recorded in the registry of property, Grindrod, the personal creditor, can not be considered as a third person nor invoke in support of his right the provisions of article 27 of the Mortgage Law. This latter provision is for the purpose of securing the dominion over real property and rights in rem, such as that of the mortgage constituted thereon, and as the creditor is merely a personal one he has no right in rem over the credit assigned to the plaintiff, Lopez, by Alvarez, the common debtor.

The supreme court of Spain, applying provisions of law almost identical to those in force in these Islands to lawsuits pending in cassation, has, by a decision dated June 20, 1888, established the doctrine that he who does not possess a registered title can not be considered as a third person for the effects of the Mortgage Law, as would be the case with a mere bidder at a public sale for account and risk of his principal. The decision of the 25th of October, 1888, establishes the doctrine that—

"Where the dominion over real property is concerned the creditor who obtained a preliminary attachment for the safety and security of his credit can not be considered as a third person, because article 44 of the Mortgage Law, in conformity with article 1923 of the Civil Code, grants him the right of preference only in respect to property recorded, and simply as regards subsequent credits."

In that of the 17th of May, 1898, the court says:

"Third persons are only those whose respective title to property or rights under litigation have been previously recorded."

The attachment levied at the instance of Grindrod on the credit secured by the mortgage which the common debtor, Evaristo Alvarez, held upon the hacienda Bunglas, even if it had been recorded in the registry of property, would not confer on the creditor, J. H. Grindrod, any right in rem, at least over the credit for 5,973 pesos and a fraction which had already become the property of Manuel Lopez, nor did it improve his personal right to recover his credit, as regards the assignee, from a portion of the credit secured by mortgage, because when the attachment was carried out that part of the mortgage credit had already been alienated, and it no longer belonged to Evaristo Alvarez, the common debtor. Article 1923 of the Civil Code prescribes that—

"With regard to determined real property and property rights of the debtor, the following are preferred:

"4. Credits, of which a cautionary notice has been made in the registry of property by virtue of a judicial mandate, by reason of attachments, sequestrations, or execution of judgments, with regard to the property entered therein and only with regard to subsequent credits."

The plaintiff is not a mere personal creditor, but the owner of a credit secured by a mortgage which was lawfully transferred to him by the original owner thereof.

The supreme court of Spain in its decisions of March 20, 1874, and June 17, 1875, laid down the rule which has since become a settled doctrine:

"The preliminary recording of an attachment, as the result of an order of court and intended only to secure the consequences of the action, does not create nor declare any right, nor alter the nature of the obligations or convert into real and hypothecary that which did not have this character previously, nor does it injure the rights in the property that may be claimed by others."

It is a fact, and has been admitted by the appellee, that when the attached mortgage credit of Alvarez, the debtor, was sold on the 7th of October, 1904, Manuel Lopez had already filed his complaint in intervention on the 14th of September previous; therefore, upon true principles of procedure, the sale should have been suspended, inasmuch as it was not a question of which of the creditors had a better right to recover, but whether the personal right of creditor J. H. Grindrod could prevail over the right of ownership of Manuel Lopez to a certain part of the mortgage credit legally transferred to him by its former owner.

When the sheriff undertook the sale of the said mortgage credit in its totality, a part of the same, to the value of 5,973 pesos, was no longer owned by the debtor, Evaristo Alvarez, but belonged to the assignee Manuel Lopez, and as the latter was not in any way obligated in favor of the said Grindrod, it is evident that a thing which belonged to another person was sold, and in respect to which the creditor, who asked for the sale, had no right.

Hence such a sale is null and void, and produced no effect with respect to that part of the credit owned by the plaintiff, Manuel Lopez, nor could it deprive him of his property by means of a process which, under no consideration, could have been based on any provision of law.

In its decision of the 12th of July, 1904, the same supreme court said that—

"It has been repeatedly held by the supreme court that article 1280 of the Civil Code is not so far reaching as to require that, in order to prove dominion, the same should be set forth in a public instrument, because in accordance with article 1278 all contracts are binding, provided the essential conditions referred to in article 1261 exist, without prejudice to the right of the contracting parties to require the execution of a written instrument, as provided in article 1279; the absence thereof, however, can not be taken advantage of by either of the parties, and much less by a third person, to deny the existence and reality of a contract when it is substantiated by proof admissible in laAv. That the lack of registration of the documents with which the intervening party could justify his claim as the real owner of the subject-matter of intervention, is no obstacle to the acknowledgment of this right as opposed to that which corresponds to the defendant in the suit by reason of the preliminary attachment recorded, because this fact can only produce its logical consequences where the thing that has been attached belongs to the person against whom the attachment is levied.

"It being conditional in attachments of all kinds that the thing attached must be the property of the debtor, from no provision of the Mortgage Law can a conclusion be derived contrary to such principle, simply because the name of the debtor appears in the registry as the owner of property Avhich does not actually belong to him, and much less when it happens that the entry in his name was made in order to record the attachment after the property wag no longer owned by him."

Article 83 of the Mortgage Law provides that—

"The record of instruments or contracts which are null in accordance with the law are not validated thereby."

If the sale of that part of the credit owned by Manuel Lopez is null and can not be sustained, the recording of the same in the registry of property can in no way validate it nor produce any effect against the real owner thereof who, contrary to law, was deprived of what pertained to him at the instance of a third person, Avith Avhom he Avas not in any manner connected, without being previously heard or defeated in an action at laAV, nor yet without due process of law, as provided in section 5 of the Philippine Bill.

Therefore, by virtue of the considerations set forth, it is our opinion, and Ave so hold, that the judgment appealed from should be reversed, that the credit secured by the mortgage upon the hacienda Bunglas, amounting to 5,973 pesos, to which the deed of the 5th of April, 1904 refers, is of the exclusive Ownership of Manuel Lopez y Villanueva as assignee, and that the sale of such part of the credit is null and void and the plaintiff is entitled to recover from the proceeds of the sale of the said hacienda, in preference to the testate or intestate succession of J. H. Grindrod, the amount of his aforesaid credit together with the interest agreed upon, without prejudice to the subordinate rights of the said succession of the deceased creditor over the rest of the mortgage credit not assigned to the plaintiff. No special ruling is made as to costs in either instance. So ordered.

Arellano, C. J., Willard and Tracey, JJ., concur.

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