

**LUISA PEÑA, PLAINTIFF AND APPELLANT, VS. W. H. MITCHELL,
DEFENDANT AND APPELLEE.**

G.R. No. 3764. February 14, 1908

Ponente: CARSON, J.

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CARSON, J.:

MOTION FOR REHEARING; PREFERRED CREDITORS; LIENS.— From the Court of First Instance of Manila. Motion for a rehearing based chiefly on the contention of counsel for the intervenors that, notwithstanding the holding of this court that the contract of sale of the property in question from Florence to Peña was not invalid, as in fraud of Florence's creditors, yet under the provisions of article 1297 of the Civil Code these intervenors were entitled to judgment in their favor, because, as alleged, they had a lien on the property in question for rents due from Florence to the said intervenors, upon the building in which the property in question was found when attached. Held, That such a lien may not be created by decisions in American cases or for reasons of public policy, but must rest upon the provisions of law in force here; that the provisions of section 7 of article 1922, and other provisions of chapter 2 of title 17 of the Civil Code, are intended merely to provide rules for the ascertainment of the right of priority in payment of various classes of credits, when the property of the debtor is in course of distribution in a judicial proceeding and the creditor asserts his rights as a preferred creditor; that such rules do not create a lien in favor of the creditor upon the property of the debtor which attaches to the property and gives to the creditor a special interest therein, other than the mere right to a preference in the distribution of the proceeds of the sale, wherein the creditor is a proper party and duly asserts his right to a preference; that no lien having been created by law, and the property having been legally transferred to the plaintiff, the attachment was unlawful. Motion for rehearing denied.

Per Carson, J,

For appellant: C. W. O'Brien, and Ramon Salinas.

For appellee: Gibbs & Gale, and C. W. Ney.

[1] Original case, 9 Phil. Rep.,

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