

IN THE MATTER OF THE INVOLUNTARY INSOLVENCY OF RAFAEL FERNANDEZ. CU UNJIENG E HIJOS, PETITIONER, VS. L. P. MITCHELL, RESPONDENT. DURAN, LIM & TUASON, APPELLANTS.*G.R. No. 37706. September 27, 1933*

Ponente: MALCOLM, J.

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This is an appeal from an order issued by the Court of First Instance of Manila adjudging Attorneys Duran, Lim & Tuason, counsel for Cu Unjieng e Hijos, guilty of contempt of court and imposing upon them a fine of P100.

While L. P. Mitchell was acting as assignee for the insolvent estate of Rafael Fernandez pursuant to authority conferred by the Court of First Instance of Manila and which accordingly had become the insolvency court, without the permission of this court Cu Unjieng e Hijos began an action in the Court of First Instance of Pampanga against the assignee to foreclose a mortgage executed by the insolvent Fernandez. Simultaneously with the filing of the complaint, upon an ex parte petition without notice to the assignee, the Court of First Instance of Pampanga named a receiver for the property. Thereafter, the presiding judge in Pampanga took no action disrespectful to the insolvency court, but counsel for Cu Unjieng e Hijos, although afforded an opportunity to follow the suggestion of the insolvency court, declined to do so. The order of contempt followed in due course.

The sole assignment of error relied upon in this court is predicated on two propositions. The first is addressed to the observation of the Manila Judge that the action of the attorneys for Cu Unjieng e Hijos in instituting the foreclosure suit in the Court of First Instance of Pampanga without first obtaining the leave of the insolvency court did not constitute contempt of court. The second proposition is predicated on the argument that a precedent having been established in what is known as the Teague case, an attorney who attempts to follow this precedent should not be charged with contempt of court. Relative to these propositions, we cannot agree with the trial court as to the first, and as to the second it can be accepted as disclosing the good faith of the attorneys and as partially purging their contempt. Considering the unsettled condition of the jurisprudence on the real issue, we prefer to base our decision on broader grounds and to decide that issue. The question is, if after a mortgage debtor has been declared insolvent and the insolvency court has acquired control of his estate, a separate foreclosure proceeding may be validly instituted to foreclose the mortgage without the knowledge and prior consent of the insolvency court. A decision on this question calls for the reexamination of the applicable decisions of this court.

The basic decision is found in *De Amuzategui vs. Macleod* ([1915], 33 Phil., 80). Therein, the court after quoting sections 18 and 60 of the Insolvency Law, laid down the following rules: (1) With the declaration of insolvency the courts in insolvency acquire jurisdiction over all the property of the insolvent, and of all claims by and against him, to the exclusion of every other court, and (2) an action begun in the Court of First Instance by a creditor of the insolvent either against the insolvent directly or against the assignee for the recovery of his claim or to compel payment thereof by the assignee will be dismissed on motion of the assignee, and (the plaintiff relegated to the insolvency proceedings for his relief. This doctrine was partially shaken and an exception was attempted to be

engrafted in the case of *Chartered Bank of India, Australia and China vs. Imperial and National Bank* ([1921], 48 Phil., 931). However, the holding of the majority in this case loses force when it is ascertained that it was a decision of only three members of the court, a fourth member giving a pro forma concurrence in the result in order that there might be an early determination of the matter, and the fifth member dissenting. Thereafter, in *Unson and Lacson vs. Abeto* ([1924], 47 Phil., 42), it was held in a decision written by Justice Street, the member of the court who had concurred in the result in the *Chartered Bank of India, Australia and China vs. Imperial and National Bank* case, with the concurrence of six other members, that upon the making of a declaration of bankruptcy against a corporation a damage suit pending against it should be stayed upon the application of the assignee or of any creditor until leave of the court of bankruptcy is obtained. It was said that this rule is not changed either by the fact that an attachment has been sued out by the plaintiff in the action against the corporation or that a cross-complaint has been filed for it in the cause. This latter observation has particular importance for it has had the effect of destroying whatever authority remained from the views expressed in the *Chartered Bank of India, Australia and China vs. Imperial and National Bank* case, *supra*. We have, therefore, to conclude that the decision in the *De Amuzategui vs. Macleod* case, *supra*, still speaks with undiminished force, and that the true rule is as therein stated and as confirmed in *Unson and Lacson vs. Abeto*, *supra*.

The same doctrine has been upheld by the Supreme Court of the United States in the recent case of *Isaacs vs. Hobbs Tie & Timber Co.* ([1931], 282 U. S., 734), wherein that court made use of the following language:

"Upon adjudication (of bankruptcy), title to the bankrupt's property vests in the trustee with actual or constructive possession, and is placed in the custody of the bankruptcy court. (*Mueller vs. Nugent*, 184 U. S., 1, 14; 46 Law. ed., 405, 411; 22 S. Ct., 269.) The title and right to possession of all property owned and possessed by the bankrupt vests in the trustee as of the date of the filing of the petition in bankruptcy, no matter whether situated within or without the district in which the court sits. (*Robertson vs. Howard*, 229 U. S., 254, 259, 260; 57 Law. ed., 1174, 1177; 33 S. Ct., 854; *T. E. Wells & Co. vs. Sharp*, 125 C. C. A., 609; 208 Fed., 393; *Galbraith vs. Robson-Hilliard Grocery Co.*, 133 C. C. A., 46; 216 Fed., 842; 32 Am. Bankr. Rep., 752.) It follows that the bankruptcy court has exclusive jurisdiction to deal with the property of the bankrupt estate. It may order a sale of real estate lying outside the district. (*Robertson vs. Howard*, 229 U. S., 254, 259, 260; 57 Law. ed., 1174, 1177; 33 S. Ct., 854, *supra*; *Re Wilka* [D. C.], 131 Fed., 1004.) When this jurisdiction has attached the court's possession cannot be affected by actions brought in other courts. (*White vs. Schloerb*, 178 U. S., 542; 44 Law. ed., 1183; 20 S. Ct., 1007; *Murphy vs. John Hofman Co.*, 211 U. S., 562; 53 Law. ed., 327; 29 S. Ct., 154; *Dayton vs. Stanard*, 241 U. S., 588; 60 Law. ed., 1190; 36 S. Ct., 695.) This is but an application of the well recognized rule that when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; and that the court originally acquiring jurisdiction is competent to hear and determine all questions respecting title, possession and control of the property. (*Murphy vs. John Hofman Co.*, 211 U. S., 562; 53 Law. ed., 327; 29 S. Ct., 154, *supra*; *Wabash R. Co. vs. Adelbert College*, 208 U. S., 38; 52 Law. ed., 379; 28 S. Ct., 182; *Harkin vs. Brundage*, 276 U. S., 36; 72 Law. ed., 457; 48 S. Ct., 268.) Thus, while valid liens existing at the time of the commencement of a bankruptcy proceeding are preserved, it is solely within the power of a court of bankruptcy to ascertain their validity and amount and (to decree the method of their liquidation. (*Ex parte City Bank*, 3 How., 292; 11 Law. ed., 451; *Houston vs. City Bank*, 6 How., 486; 12 Law. ed., 526; *Ray vs. Norseworthy*, 23 Wall., 128; 23 Law. ed., 116; *Re Wilka* [D. C.], 131 Fed., 1004, *supra*; *Nisbet vs. Federal Title & T. Co.*, 144 C. C. A., 54; 229 Fed., 644.) The exercise of this function necessarily forbids interference with it by foreclosure proceedings in other courts, which save for the bankruptcy proceeding would be competent to that end."

In the case of *Straton vs. New* ([1931], 283 U. S., 318), the Supreme Court of the United States again reaffirmed the principles of the *Isaacs vs. Hobbs* case, *supra*, in the following language:

"Though a lien be not discharged by bankruptcy, its owner may not, without the bankruptcy court's permission,

institute proceedings in a state court to enforce it, since his so doing might interfere with the orderly administration of the estate. Thus a mortgagee will be restrained from instituting or proceeding further in a foreclosure action, begun after the date of the petition in bankruptcy."

The precise ground for the lower court's order is likewise of moment. The action of counsel in securing the appointment of a receiver in the Pampanga court had the effect of dispossessing the assignee, an officer of the insolvency court, from retaining control over the insolvent estate. As the possession of the assignee is that of the court, any person who without leave intentionally interferes with such possession necessarily commits a contempt of court and is liable to punishment therefor. The principle carries over to the action of an attorney on whose advice the receiver's possession is in any way disturbed and makes the attorney equally guilty of contempt with his client.

Notwithstanding the foregoing pronouncements which are principally intended to clarify the status of Philippine jurisprudence, we are inclined to deal leniently with the respondent attorneys. They may have been misled by the Teague precedent in the lower court. The decision of this court in *Chartered Bank of India, Australia and China vs. Imperial and National Bank*, supra, may have induced them to think that a similar result might be obtained in this case. We entertain no doubt that the uncertainty regarding the proper rule having been cleared up, and the attorneys knowing that the insolvency court has exclusive powers which must be maintained, the attorneys found in contempt in ignoring the law as interpreted by this court will be the first to uphold the law. A nominal fine will serve the purpose of vindicating the authority of the insolvency court and will not be unfair to the respondent attorneys.

We rule that after the mortgage debtor has been declared insolvent and the insolvency court has acquired control of his estate, no separate foreclosure proceeding may be validly instituted to foreclose the mortgage without the knowledge and previous consent of the insolvency court. We further rule that Attorneys Duran, Lim & Tuason were properly found in technical contempt of court. Giving application to these two rules, the order of the trial court will be affirmed, except that the fine imposed will be fixed at P1, without special pronouncement as to the costs in this instance.

Avanceña, C. J., Villa-Real, Hull, and Imperial, JJ., concur.

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