

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS.
VIUDA E HIJOS DE ANGEL JOSE, JOSE CASIMIRO, SHERIFF OF THE
CITY OF MANILA, AND FIDELITY AND SURETY COMPANY OF THE
PHILIPPI...**

G. R. No. 43117. December 14, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

The plaintiff Philippine National Bank appealed from the judgment of the Court of First Instance of Manila dismissing its complaint, cancelling the bond filed by the defendants Viuda e Hijos de Angel Jose and Fidelity and Surety Company of the Philippine Islands, Inc., in favor of the defendant sheriff of the City of Manila, and sentencing it to pay the costs of the suit. In this instance it seeks the reversal of said judgment on the ground that:

- The lower court erred in not holding that appellant has a better right to the P1,948.03, part of the proceeds of the gasoline imported by Coleman Petroleum Products Co., Inc., and covered by the Trust Receipt agreement Exhibit A-1 executed by it in favor of appellant, than that of appellee Viuda e Hijos de Angel Jose at whose instance the same was subsequently garnished.
- The lower court erred in holding that appellant has lost whatever lien or preference it might have over the gasoline covered by the 'Trust Receipt' contract Exhibit A-1 from the moment it gave its approval and consent for the sale of the same to the Manila Railroad Company.
- The lower court erred in not rendering judgment in favor of appellant, in dismissing appellant's complaint, and in denying its motion for a new trial."

The pertinent facts proven at the trial, which should be taken into account in order to decide the questions raised by the appellant by means of the three alleged errors attributed by it to the lower court, may be summarized as follows:

Upon petition of Coleman Petroleum Products Co., Inc., which is a mercantile company established in the City of Manila, Export Petroleum Company of California, Ltd. sent from California to Manila one thousand drums of gasoline valued at \$6,227.50, United States currency, addressed to said Coleman Petroleum Products Co., Inc., consigning them to the plaintiff and appellant Philippine National Bank. This bank received the merchandise about the middle of July 1933, together with the bill of lading covering it and the draft Exhibit A-2 for \$6,227.50 representing the price thereof. Export Petroleum Company of California, Ltd. requested the appellant to collect the amount of the draft from Coleman Petroleum Products Co., Inc. and to deliver the merchandise in question thereto only after it has been paid the price thereof. Inasmuch as Coleman Petroleum Products Co., Inc., then had no money to pay the draft, it asked the plaintiff to pay in its stead in order to enable it to take delivery and dispose of the merchandise. The plaintiff acceded to the petition on condition that Coleman Petroleum Products Co., Inc., executed, as it in fact executed, the "Trust Receipt" Exhibit A-1 in favor of the former. Under the terms of this contract, Coleman Petroleum Products Co., Inc. bound itself, among other things, to the following:

"* * * to hold said merchandise in storage as the property of said bank, with the liberty to sell the same for cash for its account and to be handed the proceeds thereof to the said bank to apply against its acceptance on account of the undersigned and/or under the terms of the letter of credit noted below; and further agrees to hold said merchandise and the proceeds thereof in trust for the payment of said acceptance and of any other indebtedness of the undersigned to the said bank.

"The said bank may at any time cancel this trust and take possession of said merchandise or of the proceeds of such the same as may then have been sold, wherever the said merchandise or proceeds may then be found, and all the provisions of this trust receipt shall apply to and be deemed to include said above mentioned merchandise if the same shall have been made up or used in the manufacture of any other goods, or merchandise, and the same said bank shall have the same rights and remedies against the said merchandise in its manufactured state, or the product of said manufacture as it would have had in the event that such merchandise had remained in its original state, and irrespective of the fact that other and different merchandise is used in completing such manufacture. In the event of any suspension or failure of the assignment for the benefit of creditors on the part of the undersigned, or of the non-fulfillment of any obligation, or of the non-payment at maturity of any acceptance made under said credit issued by the said bank on account of the undersigned or of the non-payment of any indebtedness on the part of the undersigned to the said bank, all obligations, acceptances, indebtedness and liabilities whatsoever shall thereupon without notice, mature and become due and payable.

"The undersigned further agrees to keep said merchandise insured against fire to its full value, loss of any, payable to the said bank, at the proper cost and expense of the undersigned, who hereby agrees to pay all charges for storage on said merchandise, or any and all other expenses incurred thereon.

"It is further agreed that any failure on the part of the undersigned to fully carry out any of the provisions, terms or conditions of this trust receipt or agreement under which the said bank issued the letter of credit by which said merchandise was purchased, even if known to the said bank, shall not be deemed a waiver of performance of any such provision, term or condition or otherwise by said bank, or a waiver of any of its rights or remedies under either said trust receipt or agreement under which the said bank issued the letter of credit noted below; and any waiver in order to operate as such, must be in writing and also indorsed hereon and properly signed by the said bank and nothing in this agreement contained shall in any way affect, vary or impair any of the provisions of the letter of credit under which said merchandise was purchased, and of term, conditions or provisions of the agreement under which said letter of credit was issued.

"The undersigned hereby agrees to deliver to the said bank, upon demand, collateral security to its satisfaction should the market value of the merchandise referred to herein suffer any decline and also gives to the said bank a lien on all property given unto or left in the possession of or hereafter given or left in the possession of the said bank, by or for the account of the undersigned, and also upon any present or future balance on the deposit account of the undersigned with the said bank, for the amount of any liability hereunder or otherwise of the undersigned to the said bank."

To better secure the payment of the plaintiff's credit stated in the said trust receipt (Exhibit A-1), Coleman Petroleum Products Co., Inc., bound itself to have all the merchandise or the 1,000 drums of gasoline deposited in said plaintiff's warehouses so that not a single drum could be withdrawn therefrom without its knowledge. After these arrangements had been made and also after Coleman Petroleum Products Co., Inc., had executed the trust receipt above-stated in favor of the plaintiff, the former entered into a contract with the Manila Railroad Company to supply it with gasoline at P0.42 a gallon f. o. b. This latter contract of Coleman Petroleum Products Co., Inc. became effective about the end of July 1933. The gasoline with which said company expected to supply the Manila Railroad Company was no other than that sent to it by Export Petroleum Company of California, Ltd., the same gasoline the proceeds of which was paid by the plaintiff by virtue of the understanding it had with Coleman Petroleum Products Co., Inc. and which culminated in the execution of the aforesaid trust receipt.

In consonance with the stipulations and contract entered into between Coleman Petroleum Products Co., Inc. and the plaintiff regarding the payment of the sum of \$6,227.50 advanced by the latter for the one thousand drums of gasoline in question, it was agreed between both and the Manila Railroad Company that the payments to be made by the latter to Coleman Petroleum Products Co., Inc. would be made directly to the plaintiff; and so had it been done thereafter until October 16, 1933.

Such was the state of things when the defendant Viuda e Hijos de Angel Jose, which had filed an action against Coleman Petroleum Products Co., Inc. in civil case No. 44709 of the Court of First Instance of Manila for the recovery of a certain credit, obtained a judgment against said company on August 23, 1933. By virtue of a writ of attachment and of execution issued in said civil case on October 13 and 26, 1933, respectively, the sheriff garnished the sum of P1,948.03 in the possession of the Manila Railroad Company as proceeds of the gasoline supplied to it by Coleman Petroleum Products Co., Inc., which sum should have been paid to the plaintiff by virtue of the arrangements or understanding had between the latter and the said two companies. Notwithstanding the opposition of the herein plaintiff which had filed a third party claim therein, the sum in question was applied to the payment of the judgment rendered in favor of Viuda e Hijos de Angel Jose in the aforesaid civil case No. 44709, the latter having filed the above-stated bond of P2,200 through the Fidelity & Surety Co. The plaintiff brought the action dismissed by virtue of the judgment from which it has appealed, for the purpose of recovering the sum in question.

As stated in the case of *People vs. Yu Chai Ho* (53 Phil., 874, 876), citing with approval the case of *In re Dunlap Carpet Co.* (206 Fed., 726), " 'By this arrangement (of trust receipt) a banker advances money to an intending importer, and thereby lends the aid of capital, of credit, or of business facilities and agencies abroad, to the enterprise of foreign commerce. Much of this trade could hardly be carried on by any other means, and therefore it is of the first importance that the fundamental factor in the transaction, the banker's advance of money and credit, should receive the amplest protection. Accordingly, in order to secure that the banker shall be repaid at the critical point—that is, when the imported goods finally reach the hands of the intended vendee—the banker takes the full title to the goods at the very beginning; he takes it as soon as the goods are brought and settled for by his payments or acceptances in the foreign country, and he continues to hold that title as his indispensable security until the goods are sold in the United States and the vendee is called upon to pay for them. This security is not an ordinary pledge by the importer to the banker, for the importer has never owned the goods, and moreover he is not able to deliver the possession; but the security is the complete title vested originally in the bankers, and this characteristic of the transaction has again and again been recognized and protected by the courts. Of course, the title is at bottom a security title, as it has sometimes been called, and the banker is always under the obligation to reconvey; but only after his advances have been fully repaid and after the importer has fulfilled the other terms of the contract.' "

It is reasonable that contracts contained in trust receipts, as the one entered into between the plaintiff-appellant and Coleman Petroleum Products Co., Inc., should be recognized and protected by the courts because they are permitted by law, all the more so because there is a cardinal principle that the contracting parties may establish any agreements, terms and conditions they may deem advisable, provided they are not contrary to law, morals, or public order (article 1255, Civil Code); and certainly the agreements, terms and conditions of the trust receipt agreement, Exhibit A-1, under consideration are not contrary to law, morals, or public order. In a certain manner, they partake of the nature of a conditional sale as provided by the Chattel Mortgage Law, that is, the importer becomes absolute owner of the imported merchandise as soon as he has paid its price. The ownership of the merchandise continues to be vested in the owner thereof or in the person who has advanced payment, until he has been paid in full, or if the merchandise has already been sold, the proceeds of the sale should be turned over to him by the importer or by his representative or successor in interest.

Furthermore, under the very provisions of the Civil Code, the appellant's credit enjoys preference over any other credit of any other creditor of Coleman Petroleum Products Co., Inc. and its right to the sum of P1,948.03 garnished by the defendant sheriff from the Manila Railroad Co., is superior to that of the defendant Viuda e Hijos de Angel Jose, which was a mere judgment creditor, on the ground that said sum was the proceeds of the sale of a part of the one thousand drums of gasoline which gave rise to the aforesaid trust receipt agreement, Exhibit A-1. This is so by virtue of the provisions contained in articles 1921, 1922 and 1926 of the Civil Code, the pertinent parts of which read as follows:

"Art. 1921. Credits shall be classified for their graduation and payment in the order and manner specified in this chapter.

"Art. 1922. With respect to determinate personal property of the debtor, the following are preferred:

"2. Credits secured by a pledge in the possession of the creditor, with respect to the thing pledged and to the extent of its value.

* * * * *

"Art. 1926. Credits which enjoy preference with respect to certain personal property shall exclude all others to the extent of the value of the property to which such preference relates.

"When two or more creditors claim preference with respect to the same specific personal property, the following rules shall be observed as to priority of payment:

"1. Credits secured by a pledge shall exclude all others to the extent of the value of the thing pledged."

* * * * *

The credits referred to in the above-cited articles are the so-called specially privileged credits, or those which, according to Manresa (12 Civil Code, 4th ed., page 639), enjoy preference with respect to determinate property of the debtor.

The credit of Viuda e Hijos de Angel Jose as judgment creditor, does not enjoy the same privilege enjoyed by that of the appellant, which is singular and special. It is mentioned third only in article 1924 of the Civil Code referring to credits which, while having preference among themselves, have none over the specially privileged ones enumerated in articles 1922 and 1923.

For the foregoing reasons, it is declared that the first error assigned by the appellant is well taken.

As to the second error, the Philippine National Bank contends that the lower court's conclusion that said appellant lost every preference it had to the gasoline in question from the time it permitted the sale and delivery thereof to the Manila Railroad Company, is unfounded, because article 340 of the Code of Commerce upon which it is based is not applicable to the case in question. In fact the above-cited article recognizes the vendor's right of preference to the articles sold to obtain payment of the price thereof, during the time they are in his possession even though they be in the nature of deposit.

The lower court, however, has lost sight of the fact that the appellant's purpose in authorizing the delivery to the Manila Railroad Company of said merchandise, of the price of which the sum of P1,948.03 in question formed part, was precisely to enable Coleman Petroleum Products Co., Inc., to comply not only with the terms of its contract with the Manila Railroad Company (Exhibit 1), but also and more principally, with those of the trust receipt (Exhibit A-1) entered into between it and the appellant. It should be borne in mind that one of the conditions of said contract was: "***** to sell the same—meaning the gasoline—, for cash for its account and to be handed the proceeds thereof to the said bank to apply against its acceptance on account of the undersigned and/or under the terms of the letter of credit noted below; * * *."

Even granting that Coleman Petroleum Products Co., Inc., may be considered the vendor of the gasoline, its preferential right to claim the price of said merchandise from the Manila Railroad Company, which is the thing attached by the appellee Viuda e Hijos de Angel Jose to be applied later to satisfy or pay its judgment credit, was, however, expressly and specially subject to the appellant's right to claim said price for the purpose of applying it to the amount it had advanced in payment of the draft, Exhibit A-2, of Export Petroleum Company of California, Ltd., which was the determining cause of the execution of the trust receipt Exhibit A-1 by said Coleman Petroleum Products Co., Inc. For all purposes, the appellee Viuda e Hijos de Angel Jose was not a third person in connection with the contract entered into between Coleman Petroleum Products Co., Inc. and the appellant. Its right was merely that of said Coleman Petroleum Products Co., Inc. singularly and specially subject, as already stated, to the appellant's credit, admitting now that the appellant was the vendor of the gasoline in the sense of said article 340 of the Code of Commerce. This court is of the opinion that the second error is likewise well founded.

The third error, being a mere corollary of the former two errors, should be declared as well founded as those.

For all the foregoing, this court holds that the appellant's appeal from the judgment of the lower court is well taken; reverses, as a consequence, the appealed judgment; sentences the appellee Viuda e Hijos de Angel Jose to pay and turn over to the appellant the sum of P1,948.03 with legal interest thereon from October 27, 1933, until fully paid; and orders that in default of payment of the sum in question with the interest thereon by said appellee Viuda e Hijos de Angel Jose, it be paid to the appellant by the other appellee Fidelity and Surety Company of the Philippine Islands, Inc., with the costs of both instances to the appellee Viuda e Hijos de Angel Jose. So ordered.

Avancña, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Conception, JJ., concur.

RESOLUTION UPON MOTION FOR RECONSIDERATION

February 25, 1937

DIAZ, J.:

In its motion for reconsideration, the defendant-appellee Viuda e Hijos de Angel Jose again insists in its desire to prove to this court that, being clearly a third person with respect to the trust receipt agreement, Exhibit A-1, entered into between Coleman Petroleum Products Co., Inc. and the appellant bank, it should not be affected in the least by the conditions and stipulations contained therein on the ground that, as said document is not a public instrument, it is binding only upon the parties who executed it, that is Coleman Petroleum Products Co., Inc. and the appellant. In support of its contention, it invokes articles 1257 and 1526 of the Civil Code which read as follows:

"ART. 1257. Contracts shall be binding only upon the parties who execute them and their heirs, excepting, with respect to the latter, cases in which the rights and obligations arising from the contract are not transmissible, either in consequence of their nature, or by agreement, or by provision of law.

"Should the contract contain any stipulation in favor of a third person, he may demand its fulfillment, provided he has given notice of his acceptance to the person bound before the stipulation has been revoked."

"Art. 1526. The assignment of a credit, right, or action shall produce no effect as against third persons except from the time its date may be deemed fixed, in accordance with articles 1218 and 1227.

"If such assignment involves real property, from the date of its record in the Registry of Deeds."

The appellee Viuda e Hijos de Angel Jose is not a third person in the eyes of the law because its right to the sum in question is the same as that which Coleman Petroleum Products Co., Inc. had at the time of the execution

therein of the judgment obtained by it in its favor in a separate case, and it has already been stated that the latter's right was subject to that of the appellant bank by virtue of the conditions stipulated in the trust receipt, Exhibit A-1, which is supported by the documents appearing in the record as Exhibits R and T. Viuda e Hijos de Angel Jose is merely a successor in interest of Coleman Petroleum Products Co., Inc., which has been subrogated in place of or has substituted the latter in its rights to the sum in question by virtue of the judgment obtained by it in its favor. A successor in interest is not a third person who may be benefited by the terms of either article 1526 or article 1227 of the Civil Code because he is bound, in the same manner as the person executing the private document from whom he derives his right, to that to which the latter bound himself therein. The law provides that a private document, legally acknowledged, has the same weight as a public document between the parties thereto and their successors in interest (article 1225, Civil Code).

The appellee, Viuda e Hijos de Angel Jose, contends that it enjoys preference to collect its judgment credit in the amount in question because, inasmuch as Coleman Petroleum Products Co., Inc. failed to reveal the name of the person for whom it acted, it must necessarily be considered the owner of the gasoline the proceeds of the sale of which are now in dispute, it being claimed for themselves adversely to one another by the appellant bank and the appellee Viuda e Hijos de Angel Jose, the former basing its claim upon its trust receipt, Exhibit A-1, and the latter upon its judgment against Coleman Petroleum Products Co., Inc. The appellee Viuda e Hijos de Angel Jose invokes articles 246 of the Code of Commerce and 1717 of the Civil Code in support of its contention.

The argument offered by it is not new, being a repetition of that already adduced by it in its brief, and does not convince this court for the reasons already stated in the judgment Coleman Petroleum Products Co., Inc. neither a commission merchant nor an agent in the sense these words are used in articles 246 et seq. of the Code of Commerce and 1717 of the Civil Code. The true relation that existed between the appellant bank and Coleman Petroleum Products Co., Inc. was no more nor less than that of an importer and a banker referred to in the considerations made by the court, which decided the case cited in the judgment (People vs. Yu Chai Ho [1928], 53 Phil., 874, 876), in the case of *In re Dunlap Carpet Co.* (206 Fed., 726).

For all the foregoing, and inasmuch as the motion for reconsideration of the appellee, Viuda e Hijos de Angel Jose, is without merit, this court resolves to deny it as it is hereby denied. So ordered.

Avanceña, C J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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