

CHINESE GROCERS' ASSOCIATION, MANILA LUMBER MERCHANTS ASSOCIATION, BENITO GONZALEZ AND MARCOS G. SY CHIAM, CLAIMANTS AND APPELLANTS, VS. AMERICAN APOTHECARIES CO. ET AL., CLAIMA...

G.R. No. 43667. March 31, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The present case is before us upon an appeal by the Chinese Grocers' Association, Manila Lumber Merchants Association, Benito Gonzalez and Marcos G. Sy Chiam from that part of the decision of the Court of First Instance of Manila declaring preferred credits the claims of other creditors of the Mercantile Bank of China, who are not depositors of the same but merely holders of drafts or checks issued by said bank as reimbursement of the amounts of the bills of exchange and other documents of value sent by foreign banks or foreign business houses to the aforesaid Mercantile Bank of China for collection from local business houses, and also from that part of the decision awarding to the said appellants only the balance of the capital of their respective deposits but not the interest earned by such deposits up to the date the Mercantile Bank of China was placed in the hands of a receiver, assigning the following errors allegedly committed by the trial court in its decision:

"1. The trial court erred in declaring preferred credits the claims classified under Group III by the arbiter, Mr. Fulgencio Borromeo, in his report.

"2. The court a quo erred in not awarding to the claimants and appellants herein the interest which have accrued on their respective deposits up to the time the bank was placed in the hands of the receiver.

"3. The court a quo erred in not awarding in favor of the herein appellant, Benito Gonzalez, the deposit of Francisco Chua Yap (alias Francisco Chua Hiap) with the Mercantile Bank of China as evidenced by receivers' certificate of proof of claim No. 141.

"4. The court a quo erred in not granting the motion for new trial filed by the herein appellants."

As to the first assignment of error, the referee, Fulgencio Borromeo, in his report of May 8, 1933, classified the claims against the Mercantile Bank of China into six groups, as follows:

"1. Claims for deposits on current account, savings or fixed.

"2. Claims for checks or drafts sold by the Mercantile Bank of China and not paid by its correspondents or banks against which they were issued.

"3. Claims for checks or drafts issued by the Mercantile Bank of China in payment of or as reimbursement of bills of exchange or merchandise sent to it by foreign banks or foreign business houses for collection from merchants or commercial entities in Manila.

"4. Claims for drafts or merchandise for collection received by the Mercantile Bank of China for collection

from merchants or commercial entities of Manila and which were pending collection at the date of the suspension of payment.

"5. Claims of depositors who were at the same time debtors of the Mercantile Bank of China.

"6. Miscellaneous claims."

Said referee, with the exception of a few isolated cases, recommended that claims falling under Group III be considered as preferred and those classified under Groups I, II, IV, V, and VI as mere ordinary credits.

In support of their first assignment of error, the claimants-appellants contend that the claims classified under Group III in the report of the referee, Fulgencio Borromeo, should be considered as ordinary credits.

The claimants-appellants state the following on page 9 of their brief:

"We agree with the finding of the arbiter to the effect that the claimants under Group III, whether drawers, holders or owners of negotiable instruments endorsed said instruments and sent them to the Mercantile Bank of China together with the bills of lading, invoices and insurance policies of the merchandise to which they refer, with instructions to the Mercantile Bank of China to collect their value and remit the proceeds to the claimants. (B. of E., pp. 422, 423.)

"In compliance with said instructions, the Mercantile Bank of China effected the collection and remitted the proceeds thereof to the claimants by means of drafts or bills of exchange drawn against the correspondents of the Mercantile Bank of China in the locality where the claimants reside. Said correspondents, however, refused to honor and pay said drafts on the ground that the Mercantile Bank of China has suspended payments."

The facts above stated and admitted by the claimants-appellants are identical with those in G. R. No. 43426, *In re Liquidation of the Mercantile Bank of China, The Fletcher American National Bank of Indianapolis et al., claimants-appellants, vs. Ang Cheng Lian et al., claimants-appellees*. In that case, this court, through the Honorable Chief Justice Ramon Avanceña, held the following:

"The relation between the claimant and the insolvent bank with respect to the amount claimed is, under the facts stated, that of principal and agent, the agency consisting merely in the collection by the Mercantile Bank of China of the amount of the draft and remitting it to the claimant. The ownership of the draft has not been transferred to the insolvent bank and it continued to be the property of the principal, Pan Pacific Oil Co. This relation of principal and agent between the claimant and the insolvent bank had not ceased when the insolvency was declared, hence, the amount of the draft was until then the property of the claimant.

"This is in accordance with the provision of section 48, No. 7, of the Insolvency Law, No. 1956, reading:

"Sec. 48. Merchandise, effects, and any other kind of property found among the property of the insolvent, the ownership of which has not been conveyed to him by a legal and irrevocable title, shall be considered to be the property of other persons and shall be placed at the disposal of its lawful owners on order of the court made at the hearing mentioned in section forty-three or at any ordinary hearing, if the assignee or any creditor whose right in the estate of the insolvent has been established shall petition in writing for such hearing and the court in its discretion shall so order, the creditors, however, retaining such rights in said property as belong to the insolvent, and subrogating him whenever they shall have complied with all obligations concerning said property.

" The following shall be included in this section:

* * * * *

" '7. Amounts due the insolvent for sales of merchandise on commission, and bills of exchange and promissory notes derived therefrom in his possession, even when the same are not made payable to the owner of the

merchandise sold, provided it is proven that the obligation to the insolvent is derived therefrom and that said bills of exchange and promissory notes were in the possession of the insolvent for account of the owner of the merchandise to be cashed and remitted, in due time, to the said owner; all of which shall be a legal presumption when the amount involved in any such sale shall not have been credited on the books of both the owner of the merchandise and of the insolvent. '

"Resolving this same question in case G. R. No. 43689, we said:

""* * * The appellants being the owners of the amounts of the drafts, inasmuch as the Mercantile Bank of China merely acted as their representative or agent and the title to said drafts did not pass to it, it is obvious that any amount which may be collected on account of said drafts and their interest should be turned over to the appellants in satisfaction of their credits. "As a general rule, checks and other papers deposited in a bank for collection remain the property of the depositor, and the bank performs the service of collection as his agent, even though it is authorized to apply the proceeds on a debt of the owner." (7 C. J., sec. 245, pp. 597, 598; Richardson vs. New Orleans Coffee Co., 102 Fed., 785; Philadelphia vs. Eckles, 98 Fed., 485; Commercial Nat. Bank vs. Armstrong, 148 U. S., 50; St. Louis, etc. R. Co. vs. Johnston, 133 U. S., 566; Ward vs. Smith, 19 Law. ed., 207; Carpenter vs. National Shawmut Bank, 187 Fed., 1.) "In collecting drafts and other instruments deposited with specific instructions to collect and remit the proceeds to the depositor, the bank acts as agent throughout the undertaking; and such instructions bind those to whom they are addressed or who know of them, but no other parties." (7 C. J., sec. 256, p. 605; Boone County Nat. Bank vs. Latimer, 67 Fed., 27; Crown Point First Nat. Bank vs. Richmond First Nat. Bank, 76 Ind., 561; 40 Am. Rep., 261.)"

The theory of the claimants-appellants in support of their first assignment of error is, therefore, untenable.

As to the second assignment of error, this court, in G. R. No. 43682, In re Liquidation of the Mercantile Bank of China, Tan Tiong Tick, claimant and appellant, vs. American Apothecaries Co., et al., claimants and appellees, through Justice Imperial, held the following:

"4. The court held that the appellant is not entitled to charge interest on the amounts of his claims, and this is the object of the second assignment of error. Upon this point a distinction must be made between the interest which the deposits should earn from their existence until the bank ceased to operate, and that which they may earn from the time the bank's operations were stopped until the date of payment of the deposits. As to the first class, we hold that it should be paid because such interest has been earned in the ordinary course of the bank's business and before the latter has been declared in a state of liquidation. Moreover, the bank being authorized by law to make use of the deposits, with the limitation stated, to invest the same in its business and other operations, it may be presumed that it bound itself to pay interest to the depositors as in fact it paid interest prior to the dates of the said claims. As to the interest which may be charged from the date the bank ceased to do business because it was declared in a state of liquidation, we hold that the said interest should not be paid."

With respect to the third assignment of error, the depositor Chua Yap (alias Francisco Chua Hiap) having transferred to Benito Gonzalez all his right, interest and participation which he might have in the Mercantile Bank of China by virtue of a notarial document executed on July 11, 1932, the latter should be substituted in place of the former and notified of any decree, order or judgment which may be rendered in favor of the assignor.

In view thereof, and with the sole modification that interest earned and unpaid on current account deposits up to the date the receiver took charge of the assets and liabilities of the Mercantile Bank of China should be credited in favor of the depositors, and that the depositor Chua Yap (alias Francisco Chua Hiap) should be substituted by Benito Gonzalez, the appealed judgment is affirmed in all other respects as to the herein claimants and appellants, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, and Horrilleno, JJ., concur.

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