

IN RE LIQUIDATION OF MERCANTILE BANK OF CHINA. TAN TIONG TICK, CLAIMANT AND APPELLANT, VS. AMERICAN APOTHECARIES CO., ET AL., CLAIMANTS AND APPELLEES.

G.R. No. 43682. March 31, 1938

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In the proceedings for the liquidation of the Mercantile Bank of China, the appellant presented a written claim alleging: that when this bank ceased to operate on September 19, 1931, his current account in said bank showed a balance of P9,657.50 in his favor; that on the same date his savings account in the said bank also showed a balance in his favor of P20,000 plus interest then due amounting to P194.78; that, on the other hand, he owed the bank in the amount of P13,262.58, the amount of the trust receipts which he signed because of his withdrawal from the bank of certain merchandise consigned to him without paying the drafts drawn upon him by the remitters thereof; that the credits thus described should be set off against each other according to law, and on such set off being made it appeared that he was still the creditor of the bank in the sum of P16,589.70. And he asked that the court order the Bank Commissioner to pay him the aforesaid balance and that the same be declared as a preferred credit. The claim was referred to the commissioner appointed by the court, who at the same time acted as referee, and this officer recommended that the balance claimed be paid without interest and as an ordinary credit. The court approved the recommendation and entered judgment in accordance therewith. The claimant took an appeal.

In his report the commissioner classified the claims presented under the following six groups: "(First) Current accounts, savings and fixed deposits. (Second) Checks or drafts sold by the Mercantile Bank of China and not paid by the correspondents or banks against which they were drawn. (Third) Checks or drafts issued by the Mercantile Bank of China in payment or reimbursement of drafts or goods sent to it for collection by banks and foreign commercial houses against merchants or commercial entities of Manila. (Fourth) Drafts for collection received by the Mercantile Bank of China to be collected from merchants and commercial entities in Manila, and which were pending collection on the date of the suspension of payments. (Fifth) Claims of depositors who are at the same time debtors of the Mercantile Bank of China. (Sixth) Various claims." And referring to the claim of the appellant, he states:

"Mr. Tan Tiong Tick claims from the Mercantile Bank of China the amount of P27,597.80, the total amount of the following sums which he has in his favor in said bank including the corresponding interests:

Balance on current account

P7,390.11

Balance of savings account No. 2266

20,000.00

Total

27,390.11

"Adding to this total the interest also claimed by Mr. Tan Tiong Tick, that is, P194.78 on the savings account and P12.91 on the current account, the amount claimed makes a total of P27,597.80.

"Notwithstanding the fact that the Bank Commissioner found the claim in accordance with the books of the Mercantile Bank of China, he declined to issue the corresponding certificate of proof of claim because the said claimant has pending in the said bank obligations for accepting drafts amounting to a total of \$6,631.29.

"At the hearing of this claim, the claimant admitted such pending obligations, alleging at the same time that to guarantee the payment of drafts accepted by him, he pledged his bank book No. 2266, which also answered for the payment of any credit which the said bank may extend to him.

"In Exhibit A presented by the claimant as evidence, consisting of a letter dated November 4, 1931, addressed by Mr. H. J. Belden to the then Bank Commissioner, Mr. Leo. H. Martin, it appears that the said savings account was constituted for the sole purpose of securing the payment of drafts against the claimant, the bill of lading of which were delivered to him upon trust-receipts, and that, according to the records of the bank, Mr. Tan Tiong Tick did not obtain any other accommodation from the bank except the trust-receipts.

"RECOMMENDATION

"Having, established the existence of such deposits in the name of Tan Tiong Tick and the latter having recognized the obligation in favor of the bank alleged by the Bank Commissioner, for the security of which he constituted the savings deposit in the amount of P20,000, it is recommended that from this amount there be deducted the amount of the obligation of P13,778.90 which the claimant acknowledges in favor of the Mercantile Bank of China, and that the difference, plus the other current account deposit of P7,390.11, be considered as ordinary credits subject to the equal division of the funds of the said bank.

"As to the interest on said deposits also claimed by Mr. Tan Tiong Tick, the rejection thereof is recommended in view of the fact that the Bank Commissioner has not credited any interest to the current and savings accounts of the Mercantile Bank of China, and it would be unfair that interest, not credited to the others, be allowed to this claimant."

It will be noted that in the report of the commissioner the credit of the claimant for the balance of his deposit on current account has been reduced to P7,390.11, instead of P9,657.50 alleged in his claim, the total balance recommended in favor of the appellant being P13,611.21, without including interest, instead of P16,589.70. In his brief the appellant admits the figures appearing in the report, with the exception of the interest on which we shall presently dwell.

- Resolving the claims under the first group of the report of the commissioner, the court rejected the recommendation of this official to the effect that they be declared ordinary credits only, and approved them as preferred credits. However, in considering the other claims, among them that of the appellant, classified under the fifth group, the court approved the recommendation of the commissioner that they be declared ordinary credits; in other words, the court considered and declared the claim of the appellant as an ordinary credit just because the latter is at the same time a debtor of the bank, notwithstanding the fact that his claim is of the same kind as those classified under the first group, inasmuch as they are also current account and savings deposits. To this part of the

decision is addressed the appellant's first assignment of error.

In truth, if the current account, savings, and fixed deposits are preferred credits for the reasons stated by the court in its decision, we see no reason why the preference should disappear when the depositors are at the same time debtors of the bank for amounts less than their credits. If the ground to declare them preferred credits is sound, the balances resulting after the set off should likewise be preferred, unless there be a law providing that a set off, when it takes place, produces such an effect, a law which does not exist as far as we know.

But we are of the opinion, for the reason presently to be stated, that current account and savings deposits are not preferred credits in the cases, like the present, involving the insolvency and liquidation of a bank, where there are various creditors and it becomes necessary to ascertain the preference of various credits.

The court held that these deposits should be governed by the Civil Code, and applying articles 1758 and 1768 of the said Code, ruled that the so-called irregular deposits being still in vogue, as Manresa, the commentator, maintains, and as held by this court in the case of *Rogers vs. Smith, Bell & Co.* (10 Phil., 319), the former are preferred credits because partaking of the nature of the irregular deposits.

In our opinion, these deposits are essentially mercantile contracts and should, therefore, be governed by the provisions of the Code of Commerce, pursuant to its article 2 reading:

"Art. 2. Commercial transactions, be they performed by merchants or not, whether they are specified in this Code or not, shall be governed by the provisions contained in the same: in the absence of such provisions, by the commercial customs generally observed in each place; and in the absence of both, by those of the common law.

"Commercial transactions shall be considered those enumerated in this Code and any others of a similar character."

There is cited in support of the application of the Civil Code to these deposits article 310 of the Code of Commerce providing:

"Art. 310. Notwithstanding the provisions of the foregoing articles, deposits made with banks, with general warehouses, with loan or any other associations, shall be governed in the first place by the by-laws of the same, in the second by the provisions of this Code, and finally by the rules of common law, which are applicable to all deposits."

But apparently there was a failure to consider that, according to the order established by the article, the Civil Code or the common law is mentioned after the Code of Commerce, which means that the provisions of the latter Code should first be applied before resorting to those of the Civil Code which are supplementary in character.

The Code of Commerce contains express provisions regulating deposits of the nature under consideration, and they are articles 303 to 310. The first and the second to the last of the said articles are as follows:

"Art. 303. In order that a deposit may be considered commercial, it is necessary—

"1. That the depositary, at least, be a merchant.

"2. That the things deposited be commercial objects.

"3. That the deposit constitute in itself a commercial transaction, or be made by reason or as a consequence of commercial transactions."

"Art. 309. Whenever, with the consent of the depositor, the depositary disposes of the articles on deposit either for himself or for his business, or for transactions intrusted to him by the former, the rights and obligations of the depositary and of the depositor shall cease, and the rules and provisions applicable to the commercial loans,

commission, or contract which took the place of the deposit shall be observed."

In accordance with article 309, the so-called current account and savings deposits have lost the character of deposits properly so-called, and are converted into simple commercial loans, because the bank disposed of the funds deposited by the claimant for its ordinary transactions and for the banking business in which it was engaged. That the bank had the authority of the claimant to make use of the money deposited on current and savings accounts is deducible from the fact that the bank has been paying interest on both deposits, and the claimant himself asks that he be allowed interest up to the time when the bank ceased its operations. Moreover, according to sections 125 of the Corporation Law and 9 of Act No. 3154, said bank is authorized to make use of the current account, savings, and fixed deposits provided it retains in its treasury a certain percentage of the amounts of said deposits. Said sections read:

"Sec. 125. Every such commercial banking corporation shall at all times have on hand in lawful money of the Philippine Islands or of the United States, an amount equal to at least eighteen per centum of the aggregate amount of its deposits in current accounts which are payable on demand and of its fixed deposits coming due within thirty days. Such commercial banking corporation shall also at all times maintain reserve equal in amount to at least five per centum of its total savings deposits. The said reserve may be maintained in the form of lawful money of the Philippine Islands or of the United States, or in bonds issued or guaranteed by the Government of the Philippine islands or of the United States. * * *

"The percentage of reserve to deposits in the case of the Philippine National Bank and the Bank of the Philippine Islands is hereby fixed at eighteen per centum of demand deposits and fixed deposits payable within thirty days and five per centum of savings deposits, in the same manner as is prescribed in this section for commercial banking corporations in general, which reserve against savings deposits may consist of Philippine Government or United States Government bonds."

"Sec. 9. Every bank organized under this Act shall at all times have on hand, in lawful money of the Philippine Islands or of the United States, an amount equal to at least twenty per centum of the aggregate amount of its deposits. The term 'lawful money of the Philippine Islands' shall include the Treasury certificates authorized by Act Numbered Three thousand and fifty-eight, and the term 'lawful money of the United States' shall include gold and silver certificates of the United States and bank notes issued by the Federal Reserve Banks."

Therefore, the bank, without the necessity of the claimant's consent, was by law authorized to dispose of the deposits, subject to the limitation indicated.

We, therefore, conclude that the law applicable to the appellant's claims is the Code of Commerce and that the current and savings accounts have been converted into simple commercial loans.

- The next point to decide is the applicable law, if any, to determine the preference of the appellant's credits, considering that there happens to be other creditors. Section V of Title I of Book IV of the Code of Commerce contains provisions relative to the rights of creditors in case of bankruptcy and to their respective gradation, but these provisions have been repealed by section 524 of the Code of Civil Procedure reading as follows:

"Sec. 524. No new proceedings to be instituted.—No new bankruptcy proceedings shall be instituted until a new bankruptcy law shall come into force in the Islands. All existing laws and orders relating to bankruptcy and proceedings therein are hereby repealed: Provided, That nothing in this section shall be deemed in any manner to affect pending litigation in bankruptcy proceedings."

The Philippine Legislature subsequently enacted Act No. 1956, also known as the Insolvency Law, which took effect on May 20, 1909, containing provisions regarding preference of credits; but its section 52 provides that all the provisions of the law shall not apply to corporations engaged principally in the banking business, and among them should be understood included the Mercantile Bank of China. Said sections provide:

"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:

"1. Dowry property inestimado and such property estimado which may remain in the possession of the husband where the receipt thereof is a matter of record in a public instrument registered under the provisions of sections twenty-one and twenty-seven of the Code of Commerce in force.

"2. Paraphernal property which the wife may have acquired by inheritance, legacy, or donation whether remaining in the form in which it was received or subrogated or invested in other property, provided that such investment or subrogation has been registered in the registro mercantil in accordance with the provisions of the sections of the Code of Commerce mentioned in the next preceding paragraph.

"3. Property and effects deposited with the bankrupt, or administered, leased, rented, or held in usufruct by him.

"4. Merchandise in the possession of the bankrupt, on commission, for purchase, sale, forwarding, or delivery:

"5. Bills of exchange or promissory notes without indorsement or other expression transferring ownership remitted to the insolvent for collection and all others acquired by him for the account of another person, drawn or indorsed to the remitter direct.

"6. Money remitted to the insolvent, otherwise than on current account, and which is in his possession for delivery to a definite person in the name and for the account of the remitter or for the settlement of claims which are to be met at the insolvent's domicile.

"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.

"8. Merchandise bought on credit by the insolvent so long as the actual delivery thereof has not been made to him at his store or at any other place stipulated for such delivery, and merchandise the bills of lading or shipping receipts of which have been sent him after the same has been loaded by order of the purchaser and for his account and risk. "In all cases arising under this paragraph assignees may retain the merchandise so purchased or claim it for the creditors by paying the price thereof to the vendor.

"9. Goods or chattels wrongfully taken, converted, or withheld by the insolvent if still existing in his possession or the amount of the value thereof.

"Sec. 49. All creditors, except those whose claims are mentioned in the next following section, whose debts are duly proved and allowed shall be entitled to share in the property and estate pro rata, after the property belonging to other persons referred to in the last preceding section has been deducted therefrom, without priority or preference whatever: Provided, That any debt proved by any person liable as bail, surety, guarantor,

or otherwise, for the debtor, shall not be paid to the person so proving the same until satisfactory evidence shall be produced of the payment of such debt by such person so liable, and the share to which such debt would be entitled may be paid into court, or otherwise held, for the benefit of the party entitled thereto, as the court may direct.

"Sec. 50. The following are the preferred claims which shall be paid in the order named:

"(a) Necessary funeral expenses of the debtor, or of his wife, or children who are under their parental authority and have no property of their own, when approved by the court;

"(b) Debts due for personal services rendered the insolvent by employees, laborers, or domestic servants immediately preceding the commencement of proceedings in insolvency;

"(c) Compensation due the laborers or their dependents under the provisions of Act Numbered Thirty-four hundred and twenty-eight, known as the Workmen's Compensation Act, as amended by Act Numbered Thirty-eight hundred and twelve, and under the provisions of Act Numbered Eighteen hundred and seventy-four, known as the Employers' Liability Act, and of other laws providing for payment of indemnity for damages in cases of labor accidents ;

"(d) Legal expenses, and expenses incurred in the administration of the insolvent's estate for the common interest of the creditors, when properly authorized and approved by the court;

"(e) Debts, taxes, and assessments due the Insular Government;

"(f) Debts, taxes, and assessments due to any province or provinces of the Philippine Islands;

"(g) Debts, taxes, and assessments due to any municipality or municipalities of the Philippine Islands;

"All other creditors shall be paid pro rata." (As amended by Act No. 3962.)

"ART. 52. * * * The provisions of this Act shall not apply to corporations engaged principally in the banking business, or to any other corporation as to which there is any special provision of law for its liquidation in case of insolvency."

It appears that even after the enactment of the Insolvency Law there was no law in this jurisdiction governing the order or preference of credits in cases of insolvency and liquidation of a bank. But the Philippine Legislature subsequently enacted Act No. 3519, amending various sections of the Revised Administrative Code, which took effect on February 20, 1929, and section 1641 of this latter Code, as amended by said Act, provides:

"SEC. 1641. Distribution of assets.—In the case of the liquidation of a bank or banking institution, after payment of the costs of the proceedings, including reasonable expenses, commissions and fees of the Bank Commissioner, to be allowed by the court, the Bank Commissioner shall pay the debts of the institution, under decree of the court in the order of their legal priority."

From this section 1641 we deduce that the intention of the Philippine Legislature, in providing that the Bank Commissioner shall pay the debts of the company by virtue of an order of the court in the order of their legal priority, was to enforce the provisions of sections 48, 49 and 50 of the Insolvency Law in the sense that they are made applicable to cases of insolvency or bankruptcy and liquidation of banks. No other deduction can be made from the phrase "in the order of their legal priority" employed by the law, for there being no law establishing any priority in the order of payment of credits, the legislature could not reasonably refer to any legislation upon the subject, unless the interpretation above stated is accepted.

Examining now the claims of the appellant, it appears that none of them falls under any of the cases specified by sections 48, 49 and 50 of the Insolvency Law; wherefore, we conclude that the appellant's claims, consisting of

his current and savings accounts, are not preferred credits.

- The commissioner set off the claims of the appellant against what the bank had against him. The court approved this set off over the objection of the appellant. The appellees contend that the set off does not lie in this case because otherwise it would prejudice them and the other creditors in the liquidation. We hold that the court's ruling is not error. "It may be stated as a general rule that when a depositor is indebted to a bank, and the debts are mutual—that is, between the same parties and in the same right—the bank may apply the deposit, or such portion thereof as may be necessary, to the payment of the debt due it by the depositor, provided there is no express agreement to the contrary and the deposit is not specifically applicable to some other particular purpose." (7 Am. Jur., par. 629, p. 455; *United States vs. Butterworth-Judson Corp.*, 267 U. S., 387; *National Bank vs. Morgan*, 207 Ala., 65; *Bank of Guntersville vs. Crayter*, 199 Ala., 599; *Tatum vs. Commercial Bank & T. Co.*, 193 Ala., 120; *Desha Bank & T. Co. vs. Quilling*, US Ark., 114; *Holloway vs. First Nat. Bank*, 45 Idaho, 746; *Wyman vs. Ft. Dearborn Nat. Bank*, 181 Ill., 279; *Niblack vs. Park Nat. Bank*, 169 Ill., 517; *First Nat. Bank vs. Stapf.*, 165 Ind., 162; *Bedford Bank vs. Acoam*, 125 Ind., 584.) The situation referred to by the appellees is inevitable because section 1639 of the Revised Administrative Code, as amended by Act No. 3519, provides that the Bank Commissioner shall reduce the assets of the bank into cash and this cannot be done without first liquidating individually the accounts of the debtors of said bank, and in making this individual liquidation the debtors are entitled to set off, by way of compensation, their claims against the bank.

- 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. Under articles 1101 and 1108 of the Civil Code, interest is allowed by way of indemnity for damages suffered, in the cases wherein the obligation consists in the payment of money. In view of this, we hold that in the absence of any express law or of any applicable provision of the Code of Commerce, it is not proper to pay this last kind of interest to the appellant upon his deposits in the bank, for this would be anomalous and unjustified in a liquidation or insolvency of a bank. This rule should be strictly observed in the instant case because it is understood that the assets should be prorated among all the creditors as they are insufficient to pay all the obligations of the bank.

- The last assignment of error has to do with the denial by the court of the claimant's motion for new trial. No new argument have been made in its support and it appears that the assigned error was inserted as a mere corollary of the preceding ones.

In view of all the foregoing considerations, we affirm the part of the appealed decision for the reasons stated herein, and it is ordered that the net claim of the appellant, amounting to P13,611.21, is an ordinary and not a preferred credit, and that he is entitled to charge interest on the said amount up to September 19, 1931, without special pronouncement as to the costs. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, and Horrilleno, JJ., concur.

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