

CHINA INSURANCE & SURETY COMPANY, INC., AND C. KELLING, ASSIGNEE OF THE INSOLVENCY OF YU GUIOC LO & CO. AND YU PING KUN, PETITIONER, VS. THE JUDGE OF THE FIRST BRANCH OF THE COURT...*G. R. No. 45128. August 18, 1936*

Ponente: RECTO, J.

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The China Insurance & Surety Co. Inc., and C. Kelling, assignee of the Insolvency of Yu Guioc Lo & Co. and Yu Ping Kun, ask for the issuance of a writ of mandamus addressed to the presiding judge of the First Branch of the Court of First Instance of Manila ordering him to approve, certify and give due course to a certain bill of exceptions presented by them in said insolvency proceedings. The respondent judge has not answered the petition while the respondent company the Far Eastern Surety & Insurance Co., Inc., so did. The latter admits the truth of the allegations contained in the petition but claims that the remedy should be denied, and prays that it be so ordered on the ground that the order referred to in the bill of exceptions which the respondent judge has refused to certify to this court is not appealable.

The record shows: that in the insolvency proceedings of Yu Guioc Lo & Co. and Yu Ping Kun, pending in the First Branch of the Court of First Instance of Manila, an order dated March 28, 1935, was issued denying a petition presented by the China Insurance & Surety Co., Inc., and the assignee of the insolvency in question for the approval by the court of a certain agreement entered into by them assigning to the China Insurance & Surety Co. Inc., for a certain consideration, two pieces of property belonging to the insolvent Yu Ping Kun, described in transfer certificates of title Nos. 41123 and 15201, precisely on condition that all the attachments and liens thereon be dissolved and annulled; that the China Insurance and Surety Co., Inc., on the 19th of the following June registered its exception thereto but did not proceed with its intended appeal, and in lieu thereof it filed a motion on October 29th of said year praying the court to issue an order directing the sheriff of Manila to dissolve the attachment levied on said property upon petition of the Far Eastern Surety & Insurance Co.; that this motion was denied by the court in an order of November 5, 1935, on the ground that it had been implicitly denied in the order of May 23 1935; that a motion of the same tenor filed by the assignee on November 16, 1935, as likewise denied in an order against which the herein petitioners registered their exception and presented the bill of exceptions that gave rise to the filing of this petition because of the court's refusal to certify it.

It being admitted in the petition as well as in the answer that the Insolvency Law grants no right to appeal from an order of this nature, the only question to be decided is whether or not Article VIII of the Constitution and Act No. 3 of the Commonwealth which became effective on February 1, 1935, assuming that they have modified the Insolvency Law by granting said right—a point which does not now demand resolution—, should have affected a judicial order issued prior thereto in the sense of making it appealable, not being so on the date of the issuance thereof.

We are decidedly of the opinion that they did not. Said order, being unappealable, became final on the date of its issuance and the parties who acquired rights thereunder cannot be deprived thereof by a constitutional provision enacted or promulgated subsequent thereto. Neither the Constitution nor the statutes, except penal laws favorable to the accused, have retroactive effect in the sense of annulling or modifying vested rights, or altering contractual obligations.

"Provisions (of the Constitution) * * * creating or abrogating rights of appeal, * * * do not affect the rights of parties to pending actions at the time such provisions take effect, unless an intention to the contrary is clearly shown." (12 C. J., 724.)

No clause showing such intent will be found in our Constitution. On the contrary so careful were, the authors thereof in avoiding the possibility of any doubt being harbored of what they desired to enact on this point that they expressly declared in one of its transitory provisions that all cases, civil and, criminal, pending in the courts at the time of the adoption of this Constitution were to be heard, tried, and determined under the laws then in force.

It is argued that the provision of Act No. 3 of the Commonwealth which vests this court with authority to review and revise final judgments and decrees rendered in cases in which only errors or questions of law are involved, is procedural in nature and must be given a retroactive effect so that the right of appeal granted thereby for the first time be understood as applicable to orders or judgments rendered prior thereto. We find no merit in this contention. The laws defining the jurisdiction of the various courts are not procedural but substantive in nature, as they do not refer to the manner of trying cases but to the authority of the courts to hear and decide certain and definite cases in the various instances of which they are susceptible. The purpose of section 138 (sec. 2) of Act No. 3 of the Commonwealth was not simply to confer a new right of appeal but to extend the appellate jurisdiction of this court.

It may be contended that the order for the review of which the appellate jurisdiction of this court is invoked is dated November 23, 1935, and was rendered after Article VIII of the Constitution became effective. Section 2 of this article, as claimed, grants the remedy of appeal therefrom, which is not recognized by the Insolvency Law. Neither is this argument of any account. The order of November 23rd is nothing but a reiteration of the order issued on the 5th of said month, and both a reiteration of the order of the 28th of the preceding May. It happens in this case that the China Insurance & Surety Co., Inc., and the assignee of the Insolvency of Yu Guioc Lo & Co. and Yu Ping Kun, for the third time on November 16th, petitioned the lower court for what they had vainly sought therefrom on October 29th and March 29th, without having become discouraged or admonished by the former refusals. But not because the third and last attempt was made shortly after Article VIII of the Constitution became effective can it be correctly said that the benefit of the new right allegedly granted by the Constitution extends to the order rendered in consequence thereof reiterating the former two orders. The courts in their mission to administer justice must consider the merits of the controversies, not the form thereof, particularly when the form does not serve to maintain a legal right duly vested but to destroy it. The motions of November 16th and October 29th are essentially the same as that of March 29th and the judicial order of November 23rd, as to its merits, is the same as those of November 5th and May 28th. An attempt was twice made to change the form of the original motion but the essence thereof has remained unaltered. Were we to give weight to the argument advanced on this point the result would be to reopen records already finished and filed so that the parties, who had been affected by similar orders from which they could not appeal—because it was not then allowed by the law—could file the proper motions in the lower courts and be able, upon the denial thereof, to bring to this court the corresponding appeal of the authors of the Constitution.

On more than one occasion we have held that when a motion is filed, which, although entitled a motion for a new trial, is essentially nothing but a motion for reconsideration based substantially on grounds already alleged in a

former motion for reconsideration which had already been denied, the time that elapsed while the court had the second motion under advisement does not suspend the period fixed by law for the various proceedings for perfecting the appeal. The court, in so holding, has taken into account the fact that the second motion was identical to the first and the filing thereof was merely prompted by one of these two motives, none of which is praiseworthy, namely: either to delay the suit, or to speculate on a possible change of opinion of the court.' The same thing may be said in the case under consideration.

Lastly we are of the opinion that even if the order of November 23rd did not retro-act to the prior dates of the issuance of other orders having the same scope and effect, and even if it were considered as a new order and not a reiteration of former ones, the same ruling would have to be laid down in accordance with Article XV, section 3, of the Constitution which provides that all cases, civil or criminal, pending in the Philippine courts at the time of the adoption of the Constitution would be heard, tried, and determined under the laws then in force. It will be noted that this section immediately follows as qualifying and restricting section 2 of said article, which provides that all laws of the Philippine Islands shall continue in force until the inauguration of the Commonwealth of the Philippines; thereafter, such laws shall remain operative, unless inconsistent with the Constitution, until amended, altered, modified, or repealed by the National Assembly.

Therefore said provision of section 2 of Article XV had to be inserted in anticipation of the existence,—upon the adoption of the Constitution—of some provision in the laws then in force, which might conflict with a provision of the Constitution, because if no such conflict occurred the transitory provision in question would be without any purpose and absolutely useless. While the words "although in conflict with the Constitution" are not stated, they are understood in said section 2.

The decision of this court in *People vs. Linsangan* (62 Phil., 646), cannot be invoked as a precedent. In said case a retroactive effect was given to the constitutional provision against the imprisonment for nonpayment of cedula tax, notwithstanding the fact that the violation charged had been committed prior to the adoption of the Constitution, because it involved a criminal offense and it happened that the provision in question was favorable to the accused.

The petition is dismissed with the costs to the petitioners. So ordered.

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

CONCURRING

VILLA-REAL, J.:

I concur with the majority in the dispositive part of their opinion on the ground that the order of June 19, 1935, denying the joint motion filed by the assignee of the Voluntary Insolvency of Yu Guioc Lo & Co. and Yu Ping Kun, and China Insurance & Surety Company, Inc., praying for the approval of the assignment made by said receiver to said China Insurance & Surety Company, Inc., of two pieces of property belonging to Yu Ping Kun which were mortgaged to said China Insurance & Surety Co., Inc., precisely on condition that all the attachments and liens thereon be dissolved and annulled, is not appealable either under the provisions of section 123 of Act No. 190, or under section 89 of Act No. 1956, otherwise known as the Insolvency Law, as amended, or under Article VIII, section 2, paragraph (5), of the Constitution of the Philippines, said order not being final but interlocutory.

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