

CARMEN VILLAMAR, IN HER CAPACITY AS ADMINISTRATRIX OF THE INTESTATE OF TY SENG, PETITIONER, VS. CONRADO BARRIOS, JUDGE OF FIRST INSTANCE OF ILOILO, AND ROQUE E. ESCAÑAN, ASSIGNE...*G.R. No. 46487. July 31, 1939*

Ponente: VILLA-REAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-46487/>**VILLA-REAL, J.:**

This is a mixed petition for mandamus and certiorari, filed by the petitioner, Carmen Villamar, in her capacity as administratrix of the intestate of the deceased, Ty Seng, against the Honorable Conrado Barrios, judge of First Instance of Iloilo, and Roque E. Escanan, as assignee appointed in insolvency proceedings No. 2380 of the general partnership "El 55 Boon Bieng Co.", praying this court, after proper proceedings, to compel the respondent judge to order the said assignee to immediately deliver to the petitioner the real properties mortgaged to said deceased Ty Seng; to fix the amount of the bond and to require the said assignee to file said bond in accordance with section 451 of the Code of Civil Procedure, as amended by Act No. 4108; to allow the petitioner to bring an action for foreclosure of the mortgage which is attached to the petition (Annex A) before a court of general jurisdiction against the said assignee; to order the segregation of the real properties subject to the said real estate mortgage (Annex A) from the mass of properties of the insolvent company and to preserve the same until the final determination of this petition; to annul the resolution of the respondent judge of October 22, 1938, issued by virtue of an incidental motion for the immediate delivery to the petitioner of the chattels mortgaged to the deceased Ty Seng, declaring void and without any legal effect the said chattel mortgage as well as the order of October 26, 1938 which authorized the respondent assignee to sell all the merchandise of the insolvent company, including the goods mortgaged to the deceased Ty Seng, inasmuch as the inclusion of the goods subject of the mortgage in the order of sale was made before the final determination of the motion for the immediate delivery thereof to the petitioner, which is the object of the present petition; and to order the respondents to abstain from distributing among the ordinary creditors the proceeds of the sale of the properties mortgaged to Ty Seng during the pendency of this petition, and that said proceeds be deposited and kept in the possession of the clerk of the trial court until the final determination of the present proceedings.

From the allegations of the petition and from the pleadings and documents attached thereto and made an integral part thereof are gathered the following:

On October 8, 1937, the partnership "El 55 Boon Bieng Co.", through its manager, Jao Gui, executed a chattel mortgage in favor of Ty Seng to secure the payment of the sum of P25,000 which the former owed to the latter. The goods and merchandise upon which the mortgage was constituted appear in the inventory attached to said deed and is marked as appendix B. The aforesaid deed of mortgage was ratified before notary public Mariano Serag Sesdoyro on October 28, 1937 and duly recorded in the office of the registrar of deeds of Iloilo on February 24, 1938.

On or about April 1, 1938, the provincial sheriff of Iloilo attached and seized all the properties of "El 55 Boon

Bieng Co.", including those mortgaged to Ty Seng, under a writ of attachment issued in civil case No. 11181 of the Court of First Instance of Iloilo upon petition of the plaintiff company in said case, Mitsui Bussan Kaisha. The mortgagee Ty Seng immediately filed a third-party claim (Annex C), asking that the goods covered by the chattel mortgage as shown by annexes A and B, which were included in the properties attached in the establishment of "El 55 Boon Bieng Co.", be released. As Mitsui Bussan Kaisha did not put up the indemnity bond of P50,000 required by the provincial sheriff of Iloilo, the latter notified the attorneys for said commercial company, Mitsui Bussan Kaisha, that at 1 o'clock p. m., on April 26, 1938, he would lift the attachment (Exhibit D) and would deliver the attached goods to Ty Seng. Mitsui Bussan Kaisha asked the court to fix the amount of the indemnity bond necessary to keep alive the attachment issued in civil case No. 11181, and the Court of First Instance of Iloilo set the petition for trial on April 30, 1938 and ordered the aforesaid sheriff, in the meantime, to keep the attached goods under his custody.

While the goods and merchandise which Ty Seng claimed were under the custody of the sheriff by order of the court and during the pendency of the trial of the petition for the fixing of the amount of the indemnity bond, the insolvency proceedings against "El 55 Boon Bieng Co." were commenced on April 27, 1938 in the Court of First Instance of Iloilo, having been docketed as case No. 2380.

In the meantime, the mortgagee Ty Seng died and Carmen Villamar, the herein petitioner, was named administratrix of his intestate.

On July 1, 1938, the petitioner filed a petition (Annex F) in the said insolvency proceedings, praying that the goods listed in annex B be segregated from the mass of attached properties and that the value thereof be fixed before proceeding with the election of an assignee to the end that she may file her claim for the balance belonging to the deceased Ty Seng and so that she may take part in said election. It seems that this petition was not acted upon, because the petitioner was not permitted either to prove any part of the mortgage credit claimed by her as administratrix of the intestate of Ty Seng, or to take part in the election of the assignee.

On July 26, 1938, the said petitioner filed in the insolvency proceedings a petition (Annex G) alleging that, as the properties mortgaged in favor of Ty Seng by the commercial firm "El 55 Boon Bieng Co." had not yet been sold, or voluntarily released, or delivered to Ty Seng, nor had the value thereof been fixed, for which reason said Ty Seng was not permitted to prove his claim, the assignee should deliver to her, as administratrix of the intestate of Ty Seng, all the properties on which the latter had a mortgage, in accordance with the provisions of section 59 of the Insolvency Act (Act No. 1956). To this petition the assignee filed an opposition (Annex H), alleging that the aforesaid chattel mortgage (Annex A) was null and void. Resolving these incidents, the insolvency court, presided over by the respondent judge, Conrado Barrios, rendered an order (Annex K) on November 22, 1938, declaring the said chattel mortgage deed (Annex A) null and void.

During the pendency of the hearing on said petition, the assignee, on September 6, 1938, asked the court for authority to sell all the goods of the insolvent company, which authority was granted by an order of October 26, 1938 (Annex M), thereby permitting said assignee to sell said goods either by private or public sale. On the same date, the petitioner filed a motion to reconsider the said order and to order the assignee to abstain from selling the goods mortgaged to Ty Seng (Annex N). On November 23, 1938, the insolvency court denied the said motion for reconsideration (Annex O). On December 3, 1938, Judge Jesus G. Barrera issued an order (Annex R), instructing the assignee that in effecting the sale of the properties of the insolvent company he should segregate the goods claimed by the petitioner, Carmen Villamar, and should sell them separately to the end that the proceeds thereof be deposited subject to the result of the present proceedings.

In its written memorandum, the petitioner raises only these two questions: (1) The insolvency court has no power to declare null and void a contract as the chattel mortgage annex A; and (2) "The assignee must deliver to the

administratrix of Ty Seng the proceeds of the sale of the goods mortgaged in favor of the latter.

In *Chase de Krafft vs. Velez* (34 Phil, 854), this court laid down the following doctrine:

"Where the property in dispute is in the actual possession of the court of bankruptcy, the same is thereby withdrawn from the jurisdiction of all other courts. The court having possession of the property has ancillary jurisdiction to hear and determine all questions concerning the title, possession or control of the same. The jurisdiction in such cases arises out of the possession of the property and is exclusive of the jurisdiction of all other courts."

(See also *Giberson vs. A. N. Jureidini Bros.*, 44 Phil., 216.)

If, according to the above-cited doctrine, once an insolvency court has acquired possession of the properties of an insolvent, it has jurisdiction to hear and decide all questions relative to the ownership, possession or control of the properties of an insolvent, and if, according to the doctrine laid down in *In re Du Tec Chuan* (34 Phil, 488), a chattel mortgage is a conditional sale of personal property to secure the payment of a debt or compliance with any other obligation specified therein, the respondent judge, in his capacity as an insolvency judge, had jurisdiction to hear and determine the question of whether the mortgagee Ty Seng had acquired the right of ownership or a valid lien over certain properties of the mercantile partnership, "El 55 Boon Bieng Co." which the manager of the latter had mortgaged to him to secure the payment of a credit for P25,000, and for this purpose he had to determine if said chattel mortgage, by virtue of which the delivery of said properties is claimed, was legal and valid or not. The law does not prescribe the procedure for the presentation of claims before the insolvency court, hence, for the purpose may be followed any of the forms allowed by the law of procedure in asking for any incidental remedy in an ordinary or special proceeding, such as a motion, petition, or application, without the necessity of commencing an independent action.

The respondent judge, therefore, did not exceed his jurisdiction or abuse his discretion in taking cognizance of the petitioner's motion to order the respondent assignee to deliver to her the part of the properties of the insolvent company which had been mortgaged to Ty Seng, and in denying the said motion, holding that such chattel mortgage was illegal and void and, therefore, said mortgagee Ty Seng had not acquired even conditional ownership or a valid lien over the personal property sought to be delivered.

If the respondent judge had authority and jurisdiction, any error of law committed by him may be corrected, not by certiorari, but by appeal under the provisions of section 82, case 3, of Act No. 1956, known as the Insolvency Act, to the effect that an appeal lies to the Supreme Court from an order allowing or denying a claim for goods belonging to another, under section 48 of the same Act (*Fagua vs. Del Rosario and Viuda de M. F. Cardenas*, 46 Phil., 59). The petitioner's motion sought the delivery of certain goods in the possession of the assignee and which she alleged to have been mortgaged by the insolvent company to the deceased Ty Seng, in reliance upon section 59 of the said Insolvency Act. This section assumes that the mortgage on which the mortgagee bases his claim is legal and valid, and it is not applicable where, as in the present case, the legality of the mortgage is impugned by the assignee. In this case it is not the ministerial duty of the assignee to deliver to the mortgagee the mortgaged goods found in his possession as such assignee, together with the other properties of the insolvent debtor.

In view of the foregoing, we are of the opinion and so hold: First, that the insolvency court has authority and jurisdiction to pass upon an incidental motion filed by an alleged mortgagee, praying that the assignee be ordered to deliver certain goods of the insolvent allegedly mortgaged, and to determine, upon hearing the parties, if the mortgage relied upon by the alleged mortgagee is legal and valid (*Chase de Krafft vs. Velez*, 34 Phil., 854, *Giberson vs. A. N. Jureidini Bros.*, 44 Phil., 216); second, that the order denying such motion—which is tantamount to a claim for goods not belonging to the insolvent—is appealable, under the provisions of section 82,

case 3, of Act No. 1956, known as the Insolvency Act (Paguia vs. Del Rosario and Viuda de M. F. Cardenas, 46 Phil., 59); and third, that there being a remedy by appeal, neither the petition for mandamus nor that of certiorari lies.

Wherefore, the mixed petition for certiorari and mandamus is denied and dismissed, with the costs to the petitioner. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.