

C.B. WILLIAMS, PLAINTIFF AND APPELLEE, VS. JOSE MCMICKING, DEFENDANT AND APPELLANT.

G.R. No. 6079. December 06, 1910

Ponente: TRENT, J.

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TRENT, J.:

The document which forms the basis of this action is as follows:

"Manila, February 12, 1909. —Sold to C. B. Williams the following articles of household furniture; 1 piano, No. 16510; 1 oak wardrobe; 1 Singer sewing machine; 1 chiffonier, B. E. maple; 1 double iron bedstead and spring; 1 writing desk, maple; 1 dresser, maple; 1 chest of drawers; 6 American willow chairs; 2 maple wood center tables; 1 oak chair.

"The above articles were sold for a consideration of six hundred pesos, and Miss Hunter reserved the right to redeem said articles within sixty days on payment to Mr. Williams of six hundred pesos, with interest. This amount covers the rent due Mr. Williams for the month of January, 1909. (Sgd.) A. Hunter. Witness: (Sgd.) Pablo Calderon. (Sgd.) M. Kahn."

On the date this document was executed Miss Hunter was the owner of the personal property described therein and owed the plaintiff P600 as rent for the month of January, 1909. In the execution of the said document no attempt was made to defraud creditors.

The possession of the personal property described in this private document was never delivered to the plaintiff, but remained in the possession of Miss Hunter and was in her possession when levied upon by the defendant sheriff. After the sheriff had levied upon this property to satisfy an execution which had been issued against Miss Hunter the plaintiff intervened, claiming to be the owner by purchase of the said property. Notwithstanding this claim of the plaintiff the sheriff proceeded to sell the said property at public auction.

Subsequently thereto, and on the 19th of May, 1909, the plaintiff commenced this action in one of the Courts of First Instance of the city of Manila to recover the possession of the said personal property, or its value. Judgment was rendered in favor of the plaintiff for the possession of this property or its value, which was fixed at P620.50. The defendant appealed.

The question to be determined is, whether or not the plaintiff became the owner of this personal property as against third parties by virtue of the document executed between him and Miss Hunter, inasmuch as the actual possession of the said property was never delivered to the plaintiff.

The private document executed by Miss Hunter in favor of the plaintiff can not be held to be a chattel mortgage in view of the provisions of section 4 of Act No. 1508, which section provides:

"A chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides at the

time of making the same, or, if he resides without the Philippine Islands, in the province in which the property is situated: Provided, however, That if the property is situated in a different province from that in which the mortgagor resides, the mortgage shall be recorded in the office of the register of deeds of both the province in which the mortgagor resides and that in which the property is situated, and for the purposes of this. Act the city of Manila shall be deemed to be a province."

It will be noted that this section provides two ways for executing a valid chattel mortgage which shall operate against third persons; first, the property mortgaged must be delivered to and retained by the mortgagee; or, second, the mortgage must be recorded in the office of the register of deeds.

Under the above provisions of law the recording of the mortgage has the effect of a delivery of the property; in fact it is a symbolical delivery of the possession of such property to the mortgagee, as the world is presumed to know what appears in the public records in the register's office. In the case at bar the private document was not recorded, neither was the personal property delivered to the plaintiff.

The private document executed by Miss Hunter in favor of the plaintiff does not constitute a contract of pledge for the reason that the thing sought to be pledged was not placed in the possession of the creditor or of a third person by common consent. (U. S. vs. Terrell, 2 Phil. Rep., 222; art. 1863, Civil Code.)

Evidently the parties attempted to execute what is known as a sale with a right to repurchase, as it appears in the document that the parties agreed that the personal property might be repurchased by the vendor within sixty days. The vendor did not part with the actual possession of this property until it was levied upon and taken out of her possession by the defendant sheriff by virtue of an execution. This contract entered into between Miss Hunter and the plaintiff, although evidenced by a private unrecorded document, was valid between the parties executing it, but such contract did not have the effect of vesting the title to the personal property described therein in the plaintiff as against third parties, for the reason, as we have said, that the document was not recorded in accordance with the provisions of the Chattel Mortgage Law, neither was the actual, manual possession of said property delivered to the plaintiff. (Fidelity & Deposit Co. vs. Wilson, 8 Phil. Rep., 51; Kuenzle & Streiff vs. Macke & Chandler, 14 Phil. Rep., 610.)

The doctrine laid down in the last case is, we think, decisive of the case at bar, as the facts in the one are almost identical with the facts in the other, with the exception that in the first the action was brought against the sheriff and the purchasers of the personal property at an execution sale, whereas in the case under consideration the action was brought against the sheriff for the return of the property or its value. Under these facts we see no difference between the position of the sheriff and that of a purchaser at an execution sale. The doctrine laid down in these cases is not in conflict with that announced in the cases cited in the brief of the plaintiff,

In the case of Bean vs. Cadwallader Company (10 Phil. Rep., 606), which is relied upon by counsel for the plaintiff, the action was brought by the administrator of one of the contracting parties against the other party to the contract. The interest of third parties was not involved. The contract was valid between the parties executing it and their administrators.

In the case of Alvarez vs. Montinola (1 Phil. Rep., 624), the facts were the same as in the case at bar, with the marked difference that the possession of the personal property was actually delivered to the purchaser and remained in his possession until it was attached at the instance of Montinola. If these animals had remained in the possession of the vendor the result of the case would have been different.

In the case of Olsen vs. Yearsley (11 Phil. Rep., 178), the defendant bought the cash register in good faith, and, "if he had bought it from the true owner he would have brought himself under the protection of article 1473 of the Civil Code, providing that when a thing is sold to different buyers the property goes to him who first obtains

possession." This clearly distinguishes this case from the one under consideration.

Counsel for the plaintiff raises a new question on appeal, which was evidently not brought out in the court below, and that is, that the plaintiff is entitled to judgment by reason of the fact that the debt incurred by Miss Hunter was for rents for the month of January, 1909, and under the provisions of paragraph 7 of article 1922 of the Civil Code he must be considered a preferred creditor. In order to do this it would be necessary to make Miss Hunter a party (McMicking vs. Martinez, 15 Phil. Rep., 204), and to convert this action of replevin into an action to determine the rights and preferences of creditors. All of the parties, including the court below, treated this action in that court as one of replevin only. The plaintiff based this action absolutely on the question of ownership. He raised no question, as far as this record shows, of preferential creditors. He relied upon the private document executed in his favor by Miss Hunter as fixing in him the title to this property and authorizing him to recover the same or its value. If he had been the owner of this property by virtue of this document he certainly could have recovered the possession of the same, or its value in case the actual possession could not have been had. He can not now convert his action into one determining the relative rights of creditors. If this were true, we are unable to see how, on this basis, the plaintiff could be classified or declared a preferred creditor and have the proceeds of the sale of this personal property applied to the payment of his debt for the reason that the record does not show that this debt of P600 in favor of the plaintiff was contracted by Miss Hunter as rents for the premises upon which the personal property was found when levied upon by the sheriff. The only proof in the record which tends to show the origin of this debt is one expression found in the private document above quoted, which is, "This amount covers the rent due Mr. Williams for the month of January, 1909." The trial court said, with reference to this point, that Miss Hunter was indebted to the plaintiff in the sum of P600 as rent covering the month of January, 1909, and that the plaintiff lived in the same house where the furniture was located. These facts are not sufficient to show that the P600 was due Williams for rent for the identical premises where Miss Hunter was living and where the property was when the sheriff took it into possession.

For these reasons the judgment appealed from is, therefore, reversed, and the defendant absolved, without any special ruling as to costs.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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