ZOILO IBAÑEZ DE ALDECOA ET AL., PLAINTIFFS AND APPELLEES, VS. THE HONGKONG AND SHANGHAI BANKING CORPORATION ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6749. February 26, 1912

Ponente: TORRES, J.

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TORRES, J.:

This appeal was made, through a bill of exceptions, by counsel for The Hongkong and Shanghai Banking Corporation, from a judgment rendered on August 31, 1910, by the Honorable Judge Estanislao Yusay.

By a judgment pronounced in case No. 6087, prosecuted in the Court of First Instance of this city by Joaquin Ibanez de Aldecoa, Zoilo Ibañez de Aldecoa, and Cecilia Ibañez de Aldecoa, the latter attended by her husband, J. M. Ibañez de Aldecoa, against Aldecoa & Co., in liquidation, and Isabel Palet y Gabarro, the said company of Aldecoa & Co., in liquidation, were sentenced to pay to the aforenamed three plaintiffs the sum of P155,127.31 Philippine currency, in the proportion that pertained to each of them in accordance with the investment made in the said company by Isabel Palet y Gabarro, in February, 1897, of P204,184.74, in addition to 6 per cent interest per annum from May 16, 1908, until its complete payment, and to pay the costs, and the defendant Isabel Palet y Gabarro was absolved from the complaint, (Exhibit A.)

On November 30, 1909, counsel for the plaintiffs, the said Joaquin, Zoilo, and Cecilia Ibañez de Aldecoa, filed a written complaint, amended on January 4, 1910, against the company, The Hongkong and Shanghai Banking Corporation, Aldecoa & Co., in liquidation, and William Urquhart, the liquidator of the said company, Aldecoa & Co'., in liquidation, wherein he alleged that, by the judgment aforementioned of September 30, 1908, the said sum of P155,127.31, with interest and costs, was awarded to the said plaintiffs, a copy of which judgment was exhibited under letter "A" and its contents were made an integral part of the complaint; that, there having been issued the required writ of execution, by reason of the said final judgment, proceedings were had for the attachment of all the property owned by Aldecoa & Co., and that, as a result of the processes of execution counsel for the plaintiffs succeeded in collecting only the sum of P17,022.28, there still remaining a judgment debt in the latter's favor of P149,492.77, in addition to the 6 per cent interest per annum on this sum from August 10, 1909, the date of the last execution; that, on August 14, 1907, the defendant Aldecoa & Co., in liquidation, acquired, through its liquidator Urquhart, the ownership of certain shares or certificates of stock of the company "Pasay Estate Co., Ltd.," numbered 65 to 97, inclusive, in payment or satisfaction of a credit which Aldecoa & Co., had against Alejandro Macleod, the previous owner of the said certificates, all according to the public instrument executed by the parties on the said date of August 14, 1907, a copy of which, marked as Exhibit B, was attached to the record and its contents made an integral part of this allegation; that, according to the plaintiffs' information, the said certificates of shares of "The Pasay Estate Co., Ltd." the property of Aldecoa & Co., were then in the possession and custody of the defendant, The Hongkong and Shanghai Banking Corporation, which claimed a right of retention over the said certificates by virtue of a certain agreement between its director and manager and the liquidator of Aldecoa & Co., an agreement recorded in a public instrument, a copy of which, exhibited under

letter "C," was attached to the record and its contents formed an integral part of this allegation; that the power or authority by virtue of which the liquidator Urquhart apparently had the capacity to execute the said agreement, is specified in a record of proceedings containing the resolutions adopted by the company aforementioned, a copy of which record, exhibited under the letter "D," is attached to the papers in this case and its contents formed an integral part of the complaint; that the defendant, William Urquhart, lacked the express authorization of the members of the company and of the law, as well as the power and authority as liquidator to execute the said agreement, Exhibit C, which, on the contrary, was explicitly prohibited by the law, was a violation of the provisions thereof, and, consequently, was a contract null and void in itself, inoperative and without value or effect, because it tended to convert the defendant bank into an exceptionally privileged creditor with prejudice and fraud toward the other creditors of Aldecoa & Co., among whom were the plaintiffs. The latter, on these grounds, petitioned the court, in the supplementary proceedings of execution of that final judgment, to order the company, The Hongkong and Shanghai Banking Corporation, to deposit the said certificates with the court and that the same be sold at public auction in order to apply the product of the sale to the said judgment; but The Hongkong and Shanghai Bank opposed the said petition on the ground that, by reason of the contract, Exhibit C, the said certificates had been delivered by the liquidator of Aldecoa & Co. to the bank as an additional security to that previously given in behalf of the same by Aldecoa & Co. to guarantee the payment of a credit which the former, the defendant bank, held against the latter.

The court denied the plaintiffs' petition, but authorized them to bring the proper action for the recovery of the said certificates. Counsel for the plaintiffs, therefore, asked for a judgment in behalf of his clients, against the defendants, by finding: (a) That the agreement contained in the document, Exhibit C, executed by the liquidator Urquhart in favor of The Hongkong and Shanghai Bank, was in itself null and void; (b) that the certificates, Nos. 65 to 97, of The Pasay Estate Co., Ltd., belonged to Aldecoa & Co., and that the said bank did not acquire and did not have any title, right or interest whatever in the said certificates; and (c) that the sheriff of Manila should take possession of the said certificates and sell them in execution of the judgment rendered in the civil case No. 6087 of the Court of First Instance.

The demurrer interposed by counsel for The Hongkong and Shanghai Bank against the complaint having been overruled by an order of February 10, and an exception thereto taken by the said bank, counsel for Aldecoa & Co., in liquidation, in its answer to the previous complaint, denied each and all of the allegations therein contained.

Counsel for The Hongkong and Shanghai Bank, answering the previous amended complaint by a writing of February 17, 1910, set forth a general and special denial of each and all of the allegations contained in the said amended complaint and, by a second distinct and separate answer, stated and alleged that he admitted the allegations contained in paragraphs 1, 2, 3, and 4 of the amended complaint and denied each and all of the other allegations of the same; that, on January 24, 1907, a meeting was held of the members of the firm of Aldecoa & Co. for the purpose of deciding upon the ways and means of effecting the liquidation of the said company, in which meeting the members decided upon the matter of the liquidation, as shown by the minutes and the registration of the same in the mercantile registry book of the firm, a copy of the said minutes being attached, containing the resolution referred to, which, as Exhibit A, was made an integral part of the answer; that, subsequent to June 13,1907, on which date the said firm was in course of liquidation,; a certain agreement was made and executed by and between Joaquin and Zoilo Ibañez de Aldecoa y Palet, and Isabel Palet y Gabarro, the widow of Aldecoa, all parties of the first part, the firm of Aldecoa & Co., in liquidation, parties of the second part, and the firm of The Hongkong and Shanghai Banking Corporation, party of the third part, by which agreement the parties of the first and second parts stipulated that they would apply, in their totality to the payment pro tanto of the credit which Aldecoa & Co., in liquidation, was owing to the party of the third part, all the products of a certain suit which was about to be brought by Aldecoa & Co., in liquidation, against Alejandro S. Macleod re

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several shares of the company, "The Pasay Estate Co., Ltd.," which shares were those numbered 65 to 97, referred to in the complaint, a copy of the said agreement, marked as Exhibit B, being attached to and made a part of the answer; that, on August 14, 1907, after suit had been filed by Aldecoa & Co., in liquidation, against Alejandro S. Macleod re the said shares of "The Pasay Estate Co., Ltd.," a compromise was had, shown in a document executed between the parties on the said 14th day of August; that, on the same date, Aldecoa & Co. executed jointly with The Hongkong and Shanghai Bank a written agreement whereby it was expressly stipulated that nothing contained in the instrument of compromise should be considered or construed as a modification, novation, rescission or revocation of a contract duly executed on June 13, 1907, a copy of which, marked Exhibit B, was attached to the answer, by which contract or agreement Aldecoa & Co. recognized and confirmed its obligation to deliver the shares aforementioned, together with their dividends, to The Hongkong and Shanghai Bank in accordance with the terms of the said agreement, there being attached the instrument of agreement of August 14,1904, marked Exhibit C, and which was made an integral part of the said separate answer; that, on August 30, 1907, by virtue of the said agreements, Aldecoa & Co., in liquidation, executed an instrument whereby it pledged the said shares of the company "The Pasay Estate Co., Ltd.," numbered 65 to 97, to The Hongkong and Shanghai Banking Corporation, a copy of the said instrument being attached, under Exhibit D, and made an integral part of the answer; and that, at the date of the answer and at all times since August 30, 1907, The Hongkong and Shanghai Bank was holding and keeping, and had held and kept, in its possession the said shares, for the purposes of the mortgage contained in the instrument marked Exhibit D, which mortgage had never been formally cancelled, rescinded or revoked and was still valid and in force. Counsel for the defendant bank therefore prayed that judgment be rendered by absolving his client from the amended complaint and sentencing the plaintiffs to the payment of the costs of the suit.

On Apirl 11, 1910, counsel for the plaintiffs presented a written motion for an amendment to the complaint, previously amended on the 4th of January of the same year, by adding to paragraph 1 thereof the following statement: The plaintiff Zoilo Ibañez de Aldecoa was during the entire year 1907 a minor 23 years of age and had no guardian for his property nor was provided with any legal representation for the administration, alienation or disposal of his property and interests.

The defendant, The Hongkong and Shanghai Banking Corporation, interposed a demurrer to the second amended complaint, alleging that the facts set forth therein did not. constitute a right of action against it, and therefore prayed that it be absolved from the complaint, with the costs against the adverse party. This demurrer was overruled by an order of April 18 of the same year and an exception was entered by the defendant bank.

Counsel for the latter, in answer to the second amended complaint, set forth in a writing of April 18, 1910: that he generally and specifically denied each and all of the allegations contained in the said second amended complaint, and the latter in its entirety, and that, by a second separate and distinct answer, he denied each and all of the allegations contained in the first paragraph of the second amended complaint; and, answering particularly with respect to the subject matter of the said first paragraph, he alleged: that, prior to June 13, 1907, to wit, in 1903, the plaintiff Zoilo Ibañez de Aldecoa was duly and legally emancipated by his mother and was, by virtue of such emancipation, on the date aforesaid of June 13, 1907, qualified to manage his property, as if he were of age; that the defendant bank admitted the allegations contained in the second, third and fourth paragraphs of the said second amended complaint and denied all the other allegations of the latter; that, on January 24,1907, a meeting was held of the members of the firm of Aldecoa and Company for the purpose of determining upon the ways and means of effecting its liquidation, in which meeting such members passed various resolutions, as shown by the minutes of the meeting and the registered record of the same in the mercantile register of this city, a copy of which was attached to the original answer, marked as Exhibit A and made an integral part of this answer; that, subsequent to the date aforecited of June 13, on which the firm of Aldecoa & Co. was in the course of liquidation,

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a certain agreement was made and executed between Joaquin Ibanez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet, and Isabel Palet y Gabarro, the widow of Aldecoa, all parties of the first part, Aldecoa & Co., in liquidation, party of the second part and The Hongkong and Shanghai Banking Corporation, party of the third part, by which agreement it was stipulated by the interested parties of the first and the second parts that they would devote in their entirety to the payment pro tanto of the credit which Aldecoa & Co., in liquidation, was owing to the entity, the party of the third part, all the products of the suit which was about to be brought by Aldecoa & Co. against Alejandro S. Macleod re several shares of the company known as "The Pasay Estate Co. Ltd.," which were referred to in the complaint and marked as Exhibits Nos. 65 to 97, inclusive, a copy of the said agreement being attached, under Exhibit B, to the original answer and made an integral part of this answer to the second amended complaint; that, on August 14, 1907, after Aldecoa & Co. had instituted suit against Alejandro S. Macleod in re the said shares of "The Pasay Estate Co. Ltd.," a compromise therein was reached, according to an agreement made on the same date between the litigating parties; that, on the same date of August 14, 1907, Aldecoa & Co., in liquidation, made a written agreement with The Hongkong and Shanghai Banking Corporation, whereby it was expressly stipulated that nothing contained in the said instrument of compromise should be considered or construed as a modification, novation, rescission or revocation of the contract duly executed on June 13, 1907, a copy of which, as Exhibit B, was attached to this answer, in which contract Aldecoa & Co., in liquidation, recognized and confirmed its obligation to deliver the shares referred to and their corresponding dividends, to The Hongkong and Shanghai Bank, a copy of the said agreement of August 14, 1904, marked Exhibit C, being attached to the original answer and made an integral part of this one; and that, on August 30, 1907, by virtue of the aforementioned agreements, Aldecoa & Co., in liquidation, executed an instrument whereby it pledged the said shares of "The Pasay Estate Co. Ltd.," designated as Exhibits Nos. 65 to 97, inclusive, to the entity, The Hongkong and Shanghai Banking Corporation, a copy of the said instrument of August 30,1907, being annexed, as Exhibit D, to the original answer and made an integral part of this one. Counsel for the bank therefore asked that judgment be rendered by absolving his client from the second amended complaint and sentencing the plaintiffs to the payment of the costs of the suit.

The case having come to trial, the documents, papers and records of proceedings presented in evidence by the parties being attached to the record, the court, on August 31, 1910, pronounced judgment wherein he found that the agreement was null and void which on June 30 (it should be August), 1907, was executed by William Urquhart, as the liquidator of Aldecoa & Co., and by which a pledge, or mortgage as termed in the judgment, was, as an additional security for the credit of The Hongkong and Shanghai Banking Corporation against Aldecoa & Co., constituted upon the said shares of "The Pasay Estate Co. Ltd.;" declared and recognized to belong to the latter company by virtue of the instrument of compromise e'xecuted by Alejandro S. Macleod on August 14, 1907, which certificates or shares were delivered over to the said bank for their keeping and preservation. The judgment further ordered that the said bank should deliver the said certificates to the sheriff of Manila, as assets of Aldecoa & Co., in liquidation, susceptible of judgment execution, without prejudice to any right of preferred claim thereto which might be raised between the parties upon different and distinct grounds from those argued in the present suit. No special assessment was made of the costs. To this judgment an exception was entered by the defendant, The Hongkong and Shanghai Banking Corporation, which, by written motion,' prayed for the annulment of the said judgment and a new trial, on the ground that the former was not supported by the evidence, was contrary to law, and the findings of fact therein contained were openly and manifestly at variance with the evidence. This motion was overruled by an order of December 1st of the same year, and an exception thereto was saved by the defendant party who duly filed the proper bill of exceptions which was certified and forwarded, with a transcript of the evidence, to the clerk of this court.

Various are the questions of fact and of law which have been the subject matter of argument in this litigation, but,

restricting ourselves to the terms of the complaint and of the judgment appealed from, the main issue which this court is called upon to decide in this instance is that as to whether or not the agreement contained in the instrument designated as Exhibit C by the plaintiiff party and as Exhibit D by the defendant party, executed on August 30, 1907, by and between the liquidator of the firm of Aldecoa & Co. and the manager of The Hongkong and Shanghai Banking Corporation, should be annulled.

The said instrument sets forth as the reasons for its execution that on February 23, 1906, The Hongkong and Shanghai Banking Corporation and Aldecoa & Co. entered into a contractual agreement whereby the said bank bound itself to open and maintain in behalf of Aldecoa & Co. a credit in account current up to the sum of P475,000, in accordance with the conditions and securities detailed in an instrument of the said date; that, subsequently, the contracting parties also agreed that, should certain shares of the concern, "The Pasay Estate Co. Ltd.," be declared to belong to Aldecoa & Co., in liquidation, the same should be by the latter turned over to the creditor bank, as security; and that, in view of the fact that the said shares had come into the ownership of Aldecoa & Co., in liquidation, the contracting parties had stipulated that Aldecoa & Co., in liquidation, represented by William Urquhart, should transfer and mortgage to The Hongkong and Shanghai Banking Corporation, as mortgage creditor, the said shares delivered to it for their custody and preservation, which mortgage was executed as an additional security to the said creditor bank for the payment of any sums which Aldecoa & Co. might be found to owe it, by reason of the aforesaid credit in account current or of any other sums which Aldecoa & Co., in liquidation, might owe it; that the creditor bank was authorized to collect and receive all the dividends, bonuses or other distribution of the capital and profits of the said concern, "The Pasay Estate Co. Ltd.," until a total settlement of the said debt should have been made, but that, should the mortgage debtor, its heirs, successors in interest, or administrators pay to the creditor bank all the amount owed, this obligation would thereby become null and void; that the right was reserved to Aldecoa & Co. to sell the said shares, provided that the product of their sale be devoted to the payment of its debt; that The Hongkong and Shanghai Banking Corporation acknowledged receipt of the said shares for their keeping and preservation, and that this instrument was held by the contracting parties to be additional to each and all of tjiose already executed, on account of the debt of Aldecoa & Co., between the latter and The Hongkong and Shanghai Banking Corporation, which instruments were declared to be subsistent and in full force and effect.

Before proceeding to examine the agreement referred to and contained in the instrument of August 30, 1907, and to ascertain whether or not it complies with the conditions required by law, or whether it bears vices and defects productive of nullity and such as substantially affect the validity and force of the contract therein stipulated, it becomes necessary to determine whether the plaintiffs, Zoilo, Joaquin, and Cecilia Ibañez de Aldecoa, have or have not the personality and rights requisite to enable. them to claim the nullification of the aforementioned agreement made and entered into, according to the instrument of August 30, 1907.

Article 1300 of the Civil Code provides:

> "Contracts containing the requisites mentioned in article 1261 may be annulled, even when there should be no lesion, to the contracting parties, whenever they contain any of the defects which invalidate them according to law."

Article 1302 of the same code prescribes:

> "The action for nullity of contracts may be brought by those who are principally or subsidiarily obligated by virtue thereof. Persons with capacity can not, however, allege the incapacity of those with whom they contracted; neither those who caused the intimidation or violence, or employed deceit, or caused the error, can base their action on these defects of the contract"

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The provisions of the article just above quoted have connection with those of article 1257 of the same code which reads:

> "Contracts shall only be valid between the parties who execute them and their heirs, except, with regard to the latter, the case in which the rights and obligations arising from the contract are not transmissible, either by their nature, or by agreement, or by provision of law.
>
> "Should the contract contain any stipulation in1 favor of a third person, he may demand its fulfillment, provided he has given notice of its acceptance to the person bound before it may have been revoked."

From these legal provisions it is deduced that it is the interest had in a given contract, that is the determining reason of the right which lies in favor of the party obligated principally or subsidiarily to enable him to bring an action for the nullity of the contract in which he intervened, and, therefore, he who has no right in a contract is not entitled to prosecute an action for nullity, for, according to the precedents established by the courts, the person who is not a party to a contract, nor has any cause of action or representation from those who intervened therein, is manifestly without right of action and personality such as to enable him to assail the validity of the contract. (Decisions of the supreme court of Spain, of April 18, 1901, and November 23, 1903, pronounced in cases requiring an application of the, preinserted article 1302 of the Civil Code.)

He who is not the .party obligated principally or subsidiarily in a contract may perhaps be entitled to exercise ah action for nullity, if he is prejudiced in his rights with respect to one of the contracting parties; but, in order that such be the case, it is indispensable to show the detriment which positively would result to him from the contract in which he had no intervention.

It is evident that the plaintiffs, the Aldecoas, had no participation, nor are parties interested or obligated, principally or subsidiarily, in the contract recorded in the instrument of August 30, 1907. The two sole contracting parties who made the agreement contained in the said instrument, are Aldecoa & Co., through its liquidator, and The Hongkong and Shanghai Banking Corporation, represented by its agent arid director, as may be seen by a mere perusal of the Exhibit C D.

Neither is it shown that the said contract of August 30, 1907, is detrimental or prejudicial to the rights and interests of the plaintiffs, and the latter therefore, lack absolutely the personality and rights to have been enabled to prosecute the proper action in demand of the nullity of the contract in question executed between the liquidator of Aldecoa & Co. and the agent of The Hongkong and Shanghai Bank. .

It is alleged in the complaint, as a ground for the petition for nullity of the contract of August 30, 1907, page 48 of the bill of exceptions, that the said agreement was executed by the defendant William Urquhart, the liquidator of the firm of Aldecoa & Co., without the express authorization of the members of the latter, nor of the law, and without his having the power or authority to make the same, arid that, on the contrary, the said agreement is expressly prohibited by, and is a violation of, the law, and, consequently, is a contract in itself void, without value or effect, because it made The Hongkong and Shanghai Bank, the defendant, an exceptionally privileged creditor to the fraud and prejudice of the other creditors of Aldecoa & Co., among whom are the plaintiffs.

The latter entered into the contract of June 13, 1907, contained in an instrument of the same date (page 43 of the bill of exceptions), together with the liquidator of Aldecoa & Co., and the agent of The Hongkong and Shanghai Banking Corporation, by virtue of which contract they, the plaintiffs, excepting Cecilia Y. de Aldecoa, and the said liquidator stipulated with the representative of the bank that the products of the suit against Alejandro S. Macleod in re shares of "The Pasay Estate Co. Ltd." in the event of a favorable judgment being obtained by Aldecoa & Co., would be devoted in their totality to the satisfaction of the credit which the said firm was owing The Hongkong and Shanghai Bank, with the only deduction therefrom of the necessary expenses and the fees of

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its attorneys, and that in case the said bank should incur liability on account of the P50,000 bond given by it in the said suit, the obligation on the part of Aldecoa & Co. to indemnify the bank for such liability should constitute an additional debt to be aggregated to the amount of the credit which the former was owing the latter and the payment of which was secured by the mortgages drawn up in the instrument executed by the plaintiffs and Aldecoa & Co., on February 23, 1906.

It is strange that the plaintiffs, who authorized and subscribed the said instrument of June 13, 190.7, in which record was made of the aforementioned agreement and of the said obligations and liabilities, should now impugn and seek the nullification of the subsequent instrument of August 30 of the same year when The Hongkong and Shanghai Bank, renouncing the benefits of the agreement contained in the said instrument of June 13, wherein it was stipulated that the shares of "The Pasay Estate Co. Ltd.," should be delivered to it in payment or partial satisfaction of its considerable credit of P475,000, was satisfied, in the said subsequent instrument of August 30, to receive the said shares in pledge, for their custody and preservation as an additional security for the aforementioned credit and an amplification of the security given in the mortgage of February 23, 1906, executed by Aldecoa & Co. and by these very plaintiffs.

The latter have not impugned the agreement of June 13, 1907, into which they entered and became interested parties obligated to comply with the stipulations thereof, although the said agreement contains more positive advantages in behalf of The Hongkong and Shanghai Bank, and had it been carried out the plaintiffs would perhaps not have had so much as a hope of collecting their credit against Aldecoa & Co. out of the value of those shares, because then this firm would have ceased absolutely to be the owner of the said shares of "The Pasay Estate Co. Ltd." The plaintiffs seek the nullification of the subsequent contract of August 30, whereby the creditor bank was satisfied to keep as a pledge the said shares, and allege incalculable injury which has no reason for existence, for, though the right they have to collect the sum of P149,422.77 out of the assets of Aldecoa & Co. is founded on the final judgment rendered on September 30, 1908, in case No. 6087 prosecuted by them against Aldecoa & Co., in liquidation, and Isabel Palet y Gabarro, yet it must be taken into account that in the case just cited the representative of The Hongkong and Shanghai Bank was not a party and did not intervene, and that the mortgage credit of this latter concern against Aldecoa & Co. and the plaintiffs is set forth in an instrument of February 23, 1906—a prior date to that of the said judgment; aside from the fact that the credit held by the plaintiffs is not recorded in any instrument whatever of a public character.

The circumstance that the plaintiffs now hold a final judgment for the collection of their credit out of the assets of Aldecoa & Co., they having no duly executed mortgage or pledge on any determinate property of the debtor firm, can not give them a preferred right over The Hongkong and Shanghai Bank which has in its possession the shares in question, and holds them as a pledge and enlargement of security for its considerable mortgage credit of more preferred right than the said credit of the plaintiffs who, as aforesaid, had a recognition of this fact inscribed in the contract drawn up in the instrument of June 13, 1907, in which they intervened as one of the three contracting parties thereof.

In order that the plaintiffs may allege that they have been prejudiced by the contract contained in the instrument executed on August 30, 1907, it is indispensable for them to show that they had a preferred right especially to the said shares of "The Pasay Estate Co. Ltd.," and which was trampled under foot and defrauded by the contract of August 80, wherein they had no interest and were not parties obligated principally or subsidiarily; but since this latter contract or agreement is much less advantageous to The Hongkong and Shanghai Bank than the previous one of June 13, in which the plaintiffs intervened as one of the parties to the contract, conviction is acquired of the groundlessness and unreasonableness of the said plaintiffs' claim, precisely because they were unable to allege or to show that they had a better right than The Hongkong and Shanghai Bank and that, by the execution of the

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contract of August 30 between Aldecoa & Co. and the bank, they were prejudiced in their rights and interests.

In order that once for all it may appear what is and in what consists the right acquired by The Hongkong and Shanghai Bank to the said shares of "The Pasay Estate Co. Ltd.," it is necessary to consider that Aldecoa & Co., in liquidation, would not have succeeded in recovering these shares were it hot for the intervention of, and the P50,000 bond given by, The Hongkong and Shanghai Banking Corporation, as related in full in the instrument of August 14, 1907, found on page 9 of the bill of exceptions, from Which it appears that, through a compromise agreement made and entered into by and between the defendant Alejandro S. Macleod, the holder of the said shares, the party of the first part and the firm of Aldecoa & Co. and The Hongkong and Shanghai Bank, the parties of the second part, and for the purpose of compliance therewith, the condition had to be fulfilled that was required by the defendant Macleod, to wit, that both Aldecoa & Co. and The Hongkong and Shanghai Bank should desist from their claims and the latter should effect a dissolution of. the injunction which prevented Macleod and his wife from disposing of certain promissory notes referred to in the said compromise agreement.

As may be seen by the terms of the latter, all the property surrendered by Alejandro S. Macleod and his wife, such as the shares in question, the pro indiviso parcel of real estate, the credits against the widow and children of the deceased Escano and the balance owing Macleod, was transferred to Aldecoa & Co., without The Hongkong and Shanghai Bank having obtained either property or credits in compensation for the renunciation and surrender that it had made, and only in the instrument of the same date, August 14, executed by and between the liquidator of Aldecoa & Co. and the agent of the said banking corporation, was it covenanted that the stipulation of the contract set forth in the instrument of June 13th should be carried out, to the effect that the said shares with their corresponding dividend should be delivered to the bank aforementioned, without prejudice to the contract which the interested parties might subsequently make for the purpose of crediting their value in the balance, leaving the shares in question as an additional security for the debt of Aldecoa & Co. Such is the sole positive benefit obtained by The Hongkong and Shanghai Bank in the said transaction with Alejandro S. Macleod and his wife, according to the instrument of August 14, 1907, and in exchange therefor it had to give a bond of 50,000 pesos to guarantee the liability of Aldecoa & Co., in liquidation, before the courts.

With regard to whether the liquidator, William Urquhart, had or did not have the power to execute the contract drawn up on August 30, 1907—the plaintiffs deny that he had it and founded their petition for nullity on the alleged absence of such power—it is of the highest interest, for the elucidation of this point, first to proceed to examine the authority and power conferred upon the liquidator Urquhart by the members of the firm of Aldecoa & Co., in liquidation, as shown by the minutes of the meeting held by them in this city on January 24, 1907, and which as Exhibit A, are of record on page 39 of the bill of exceptions.

It appears in the said minutes that the liquidator Urquhart was authorized: (b) To treat with The Hongkong and Shanghai Banking Corporation in order that it might assist him in the liquidation by his obtaining the sum he might need for the payment of debts and the maintenance of the proceedings of liquidation, he being vested with the power to execute whatever public or private documents might be necessary or advantageous for the purpose of carrying out any agreement between Aldecoa & Co. and the said bank; (c) to sue the debtors of the firm to enforce immediate payment; (f) to compromise questions and suits, whenever thereby some advantage might accrue to the members and their creditors; (g) to award, in payment of debts, property, rights and shares of the firm of Aldecoa & Co.; (h) to sell real and chattel property belonging to the company, at the most suitable prices payable in cash or on time and secured by mortgages or by pledges; (i) to represent the liquidation before the courts by exercising all the proper actions and by performing and carrying out every necessary act and proceeding until the final determination of the litigation, it being understood that the authority and power conferred upon the said liquidator by resolution adopted by the members of the firm aforementioned, shall not be interpreted as limiting or

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restricting in any manner the power vested in him by the Code of Commerce.

The liquidator, availing himself of the authority granted him in clause (b) above cited, applied to The Hongkong and Shanghai Bank for a bond of fifty thousand pesos in order to recover from Alejandro S. Macleod the shares in question, by virtue of the powers (c), (d) and (f), aforementioned, find the bank, upon giving the said bond, required as a condition, at first, that set forth in the instrument of June 13, and afterward, the less onerous one stipulated in the instrument of August 30. It is therefore neither reasonable nor just to assert that the said liquidator in his acts overstepped his power and authority and was wholly unauthorized to mortgage the shares concerned to the bank, because he obliged himself in a lesser manner than he was authorized by clause (g), above, mentioned, and it is indisputable that he who may sell is authorized to give in pledge property of the firm for which he is the liquidator.

Is it possible to believe, in the natural course of things, that The Hongkong and Shanghai Bank would have been willing to an increase of the debt of Aldecoa & Co. or to have contracted in behalf of the latter, liabilities, without the safeguard of any security whatever? The plaintiffs know, of course, that it is not, as they were one of the three parties who executed the aforesaid instrument of June 13, 1907, in the second clause of which provision is made for the liability that might be incurred by the said banking corporation on account of the bond it had given.

If the liquidator had not employed due diligence to recover the said shares, the same would not have entered into the assets of Aldecoa & Co. and then, assuredly, he would have contracted liability through a failure to comply with his duty. However, all the efforts exerted by the liquidator to recover those shares would have been useless if The Hongkong and Shanghai Bank had not given the P50,000 bond.

Just as the judgment appealed from uselessly took up the nature and conditions of the contract ratified on June 13, 1907, between the plaintiffs Aldecoa & Co. and The Hongkong and Shanghai Bank, for the simple reason that said plaintiffs did not claim nullity thereof but of the contract of August 30 following, so this decision must not touch upon that contract of June 13; and if mention has necessarily been made thereof in the foregoing discussion it is due to the close relation that exists among the contracts recorded in the instrument of June 13, the two of August 14, one of which latter contains the transaction whereby the shares of "The Pasay Estate Co., Ltd." were recovered, and that of August 30, the only one impugned by the plaintiffs.

No just reason nor legal ground is offered whereby it may be affirmed that the contract duly executed on August 30, 1907, is, on account of its being a rectification of the prior one of June 13th of the same year, null and void in itself and of no legal value, since such rectification solely concerns the rights of The Hongkong and Shanghai Bank and in no wise affects the obligation contracted by the plaintiffs in the before mentioned instrument of June 13. On the contrary, the renunciation made by the creditor bank to collect, by the surrender of the said shares, a part of its credit, is favorable to Aldecoa & Co., which firm succeeded in reserving to itself the right to sell those shares and to apply their price, without dividends and profits, toward paying off its mortgage debt to the said bank, and this benefit stood likewise in behalf of the plaintiffs, as the mortgage bondsmen of the said firm in securing the debt to the bank, and also as creditors of the former, for, had not the bank made the said renunciation contained in the instrument of August 30 and had it collected a part of its credit, keeping the shares that had been surrendered to it by the contract of June 13, there would have been no dividends nor profits from the shares in litigation, alloted to the amortization and reduction of the debt of which the plaintiffs are sureties, and no hope of selling such shares at a price perhaps in excess of their present value.

Even on the hypothesis that the contract of August 30, 1907, the only one impugned by the plaintiff party, were held to be null and void, the other prior contract of June 13 of the same year would still subsist in full force and effect and whereby Aldecoa & Co. and the plaintiffs covenanted and agreed that The Hongkong and Shanghai

Bank should collect a part of its credit by applying to the amortization of the same the shares in question, an operation which the plaintiffs, who took part and obligated themselves in the said contract, can not repudiate or deny; therefore, once it is proved that the liquidator, in executing the contract of August 80, acted within and in accordance with the powers which were conferred upon him by the members of the firm of Aldecoa & Co., and it is not shown that the plaintiffs had a better right than the bank to the shares in litigation, or that they suffered detriment and damage as a result of the contract of August 30, it is not lawful nor can it be countenanced that there be a successful issue to the plaintiffs' demand, to wit, that, after a declaration of nullity of the said contract of August 30, the shares of "The Pasay Estate Co. Ltd.," be sold by the sheriff and the proceeds of the sale applied to the payment of the sum which Aldecoa & Co. owe the plaintiffs, because this, were it done, would be a complete violation of the prior contract of June 13, which was not broken by the bank, and of the renunciation made by the latter corporation to collect a part of its credit out of the Value of the said shares surrendered to it. If any injury was occasioned, it would not be to the plaintiffs, but to the creditor bank itself.

In the course of our reasoning in previous paragraphs of this decision, we maintained that the contract of August 30 shows no defect whatever of those which, according to the law, invalidate contracts executed pursuant to the requisites specified in article 1261 of the Civil Code, and that the plaintiffs had not the rights and the personality to have enabled them to prosecute the action for the nullity of the said contract of August 30. Let us see whether this contract is susceptible of recission and whether it may be comprised within any of the cases specified in the law, though it does not appear that an action for rescission was exercised in this suit.

Article 1291 of the Civil Code prescribes:

> "The following may be rescinded:
>
> "1. The contracts which may be executed by guardians without the authorization of the family council, provided the persons they represent have suffered lesion of more than one-fourth part of the value of the things which may have been the value thereof.
>
> "2. Those executed in representation of absentees, provided the latter have suffered the lesion referred to in the preceding number.
>
> "3. Those executed in fraud of creditors, when the latter can not recover, in any other manner, what is due them.
>
> "4. Contracts relating to things in litigation should they have been executed by the defendant without the knowledge and approval of the parties in litigation or of the competent judicial authority.
>
> "5. Any other contracts specially determined by law."

A mere perusal of the five paragraphs of the preinserted article shows that the contract of August 30, executed by and between Aldecoa & Co. and The Hongkong and Sanghai Bank, is not comprised within any of the cases of rescission specified in the code, nor does it appear to be specially determined by law as susceptible of rescission, inasmuch as the bank's having been satisfied to hold and keep in its possession the shares in question, as a pledge, instead of having applied them to the payment of a part of its credit, as it was allowed to do in the beginning, does not bring the case within the scope of those enumerated in the said article 1291 and which require rescission, and much less does it establish that that contract of August 30 was executed in fraud of the plaintiffs as creditors of Aldecoa & Co. because it must be taken into account that their credit, prior to the judgment of September 30, 1908, whereby Aldecoa & Co., in liquidation, were sentenced to pay the same, was of a common and simple character and was not recorded in any document of a public nature, while the credit of The Hongkong and Shanghai Bank against the aforesaid firm reaches an amount more than three times greater than that of the plaintiffs' credit and is recorded in a public instrument of the date of February 23, 1906, long prior to the said

judgment of the Court of First Instance, and is secured by mortgage upon several improved properties belonging to the plaintiffs and to their mother, Isabel Palet.

With respect to the nature and effects of the judgment before mentioned of September 30, 1908, in behalf of the plaintiffs and against Aldecoa & Co., we quote section 277 of the Code of Civil Procedure, which provides:

> "The rights of a party can not be prejudiced by the declaration, act or omission of another, except by virtue of a particular relation between them, as hereinafter stated; therefore proceedings against one can not affect another."

It has not been shown that there exists any special relation such as constitutes the exception provided for in the above section, between the plaintiffs, Aldecoa & Co. and The Hongkong and Shanghai Bank, in respect to the debt of Aldecoa & Co. to the plaintiffs; therefore, whatever may be the nature and effects of the judgment obtained by the latter against the former, that judgment can not affect The Hongkong and Shanghai Bank, nor produce, with respect thereto, the results derived from res adjudicata.

As to the lapse of the term fixed for the payment of the amount referred to in the mortgage instrument of February 23, 1906, although it is indifferent whether the said term has or has not expired and the credit were not demandable before the 24th of February, 1911, with respect to the contract of August 30, in view of the terms and conditions stipulated in this instrument, since it does not concern the surrender, as a payment, of the said shares of "The Pasay Estate Co., Ltd.," but merely their delivery in pledge as an additional security for the said credit of the Hongkong and Shanghai Bank; yet, withal, it is pertinent for the purposes of this decision to state that Aldecoa & Co., according to paragraph 7 of the said instrument of February 23, 1906, was obligated to amortize its debit balance by the payment of a minimum sum of P50,000 per annum on or before December 31, 1906, until its debt should be reduced on January 1, 1911, to P225,000, it being understood that the annuities for the amortization at the rate of P50,000 a year should begin to run from January 1, 1906, and be paid successively until December 31,1910, in such manner that on January 1, 1911, the debt should not exceed P225,000; the payments, therefore, as has been seen, were to be partial and were to fall due on successive dates, it having been stipulated , however, in clause 13, that in case of failure of payment the creditor bank should not demand the sale of the mortgaged properties until after the lapse of five years from the date of the contract. So that the term for the gradual payment of the credit of P475,000 is one of. successive installments and is distinct from the term fixed within which, for failure of payment, the sale of the mortgaged properties might be demanded; and, finally, upon the petition of the bank—the only party interested, as is logical, in having its interests safeguarded and secured—and not at the request of the liquidator, the plaintiffs intervened in the contract drawn up in the instrument of June 13, 1907, for the reason set forth in clause 2 thereof, to wit, that in case that the creditor bank should incur liability on account of the said P50,000 bond, the obligation assumed by Aldecoa & Co. to indemnify it, should be aggregated to the amount of the said credit and its payment to the bank secured by the same mortgages stipulated in the instrument of February 23, 1906; and as the mortgage sureties were, among others, the plaintiffs themselves, the representative of The Hongkong & Shanghai Bank rightly required that the defendants should take part, as they did, in the said instrument of June 13, whereby it was stipulated that the latter's bond should likewise respond for the liability which might be incurred by The Hongkong & Shanghai Bank on account of the bond given for the recovery of the said shares of "The Pasay Estate Co., Ltd."

For the foregoing reasons, it is proper, in our opinion, to decide, as we hereby do, with a reversal of the judgment appealed from of August 31, 1910, that there are no grounds upon which to hold that the contract contained in the instrument of August 30th is null and void, and the defendants, The Hongkong and Shanghai Banking Corporation and Aldecoa & Co., are absolved from the complaint, without special finding as to costs. So ordered.

Arellano, C. J., and Johnson, J., concur.

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CONCURRING

TRENT, J.:

In the judgment appealed from the trial court found that the shares of stock in question were the property of Aldecoa & Co. and directed the same to be turned over to the sheriff to be sold.

I am of the opinion that the court below committed no error in declaring null and void Exhibit C. But as the rights of the parties under Exhibit B have never been determined, I think the shares should remain in possession of the bank until these rights are fixed. To this extent, I concur in the reversal of the judgment.

CONCURRING

MORELAND, J.:

I vote for a reversal of the judgment upon the following grounds:

- In order that the plaintiffs show a right to nullify the offending contract, Exhibit C, it is necessary that they demonstrate by evidence not only that Urquhart had no authority to make it but also that said contract is in violation of their rights or against their interests. The injury to the plaintiffs resulting from said contract must be shown before they can recover in this action. This has not been shown.

- If Exhibit C is held void for any reason, then Exhibit B, the contract of June 13, 1907, in which the defendant bank agreed to apply the stock in question to the payment of the claim which it held against Aldecoa & Co., remains in full force and effect. All 6i the plaintiffs save one signed this document. Those who signed it are, of course, bound by its terms, not having in any way impugned its validity or binding force in this action. As to the other plaintiff, the contract is equally binding. Although said contract was made by the liquidator of Aldecoa & Co. for and on behalf of said company, no one has impugned its validity or binding force in this action, and it, therefore, stands as against the plaintiff Cecilia, although she did not sign it. This contract places the title to the stock in the defendant bank, it being authorized, and it agreeing, to apply said stock, immediately on receiving it, in reduction of the debt of Aldecoa & Co. Until this contract is set aside, and no such remedy is asked for in this action, plaintiffs can not be heard to ask, as they do in their complaint, that the title to said stock be turned over to Aldecoa & Co., then sold by the sheriff, and the proceeds applied to the payment of plaintiffs' debt against Aldecoa & Co.; nor are they entitled to the redress granted by the judgment before us, and for the same reason. This judgment is in violation of said agreement of the 13th of June, 1907, which is indisputably of binding force between the parties hereto so far as this action is concerned. The bank has fulfilled the terms of that agreement on its part, except the mere application of the payment which it can be compelled to make if Exhibit C is void. No rescission of that contract is asked for in, this action (Civil Code, articles 1290 to 1299), nor do the plaintiffs ask for a declaration of nullity (Id., articles 1300 to 1314).

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