

**BEHN, MEYER & CO., LTD., PLAINTIFF AND APPELLANT, VS.
JOSE MCMICKING, SHERIFF OF MANILA, DEFENDANT AND
APPELLANT.**

G.R. No. 7762. March 25, 1913

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PER CURIAM:

The decision of the court below being in accordance with the facts and the law, it is hereby affirmed with cost.

Arellano, C.J., Torres and Trent, JJ.

CONCURRING

MORELAND, J.,

On the 2d day of September, 1911, in an action pending in the Court of First Instance of the city of Manila in which the Manila Trading and Supply Company was plaintiff and Tan Pian, doing business as Quim Liong Juat, was defendant, judgment was rendered in favor of the former and against the latter for P7,224.22 with interest and costs. On the 6th day of September the defendant gave notice of a motion for a new trial, and on the same day the plaintiff and the judgment creditor presented a motion praying that execution be issued on the judgment, notice of the said motion being given to Messrs. O'Brien & DeWitt, attorneys for defendant and judgment debtor. On the 9th of September the plaintiff and judgment creditor presented another motion, supported by affidavits, alleging that the judgment debtor was about to dispose of his property with intent to defraud his creditors and asked that a writ of attachment be issued against the property of said debtor. This mode of procedure was made necessary, says the judgment creditor, by the fact that the motion for a new trial was pending and execution could not be issued until it was disposed of, and certain creditors of the judgment debtor were availing themselves of the delay occasioned by the filing of defendant's motion for a new trial to purchase all of the property of the judgment debtor and to apply it on their indebtedness and thus prevent the judgment creditor from reaching it by ordinary legal process.

Upon the filing of plaintiff's petition for a writ of attachment the court, instead of granting the writ, found that good grounds existed for the immediate issuance of execution and so ordered, it being provided that execution be stayed on the presentation of a supersedeas bond by the judgment debtor. Execution was accordingly issued on the 9th day of September and immediately placed in the hands of the sheriff. While the execution of the judgment was in suspense, owing to the pendency of the motion for a new trial above referred to, and on the 8th day of September, 1911, Behn, Meyer & Co., Limited, Forbes, Munn & Co., and the judgment debtor, with full knowledge of the plaintiff's judgment and the efforts being made to collect it, came together and prepared a document by means of which the judgment debtor acknowledged himself indebted to Behn, Meyer & Co., Limited, in a certain sum, and for the purpose of paying and satisfying this debt, assigned and transferred all his property to Behn, Meyer & Co., Limited, it being stipulated that the said Tan Pian should be responsible for the

payment of all his obligations excepting only that referred to in the instrument. Forbes, Munn & Co. were not parties to this instrument and did not openly appear in the transaction, but there was some evidence that there was an agreement between this firm and the judgment debtor and Behn, Meyer & Co., Limited, that Forbes, Munn & Co. should participate in the proceeds of the property which the judgment debtor conveyed to Behn, Meyer & Co., Limited. The only property possessed by the judgment debtor was that so conveyed to Behn, Meyer & Co., Limited, and, consequently, the only remedy of the judgment creditor, if any, was to have the conveyance set aside and the debtor's property subjected to his judgment.

The sheriff in attempting to levy the execution issued on the Manila Trading and Supply Company's judgment found a representative of Behn, Meyer & Co., Limited, in possession, but proceeded nevertheless to levy upon the property and sell the same. The return made to the court after the sale showed a deficiency and the judgment creditor thereupon, by supplementary proceedings, brought Behn, Meyer & Co., Limited, and Forbes, Munn & Co. into court for the determination of the validity of the so-called sale from the judgment debtor to Behn, Meyer & Co., Limited. Behn, Meyer & Co., Limited, then brought this action against the sheriff. By order of court the two proceedings were consolidated and trial was had resulting in a judgment in favor of the plaintiff for P1,610.32, the trial court finding that the conveyance in question was valid. Both parties appealed.

The learned trial court stated the question before it as follows: "These two proceedings were by agreement tried together, both involving a bill of sale (Exhibit A) executed on September 8, 1911, by the defendant in cause No. 8544 to the plaintiff in cause No. 8977. On September 2 a judgment had been rendered in the original cause No. 8544 (of which the present is a mere supplementary proceeding) in favor of the plaintiff and against the defendant for P7,224.22. The judgment creditor now seeks to have said bill of sale set aside as fraudulent, invoking in his behalf the presumption imposed by article 1297 of the Civil Code. That said presumption arises in this case is unquestionable, but it is a presumption only and may be rebutted by evidence that the sale was in fact bona fide and valid."

It is undisputed that the judgment debtor owed the vendee about P28,000 and that the sale of the property in controversy was made in partial consideration of said indebtedness. As the goods are not claimed even in the complaint in cause No. 8977 to be worth more than P5,000, and as the judgment creditor contends that they were worth less, than one-third of that sum, it will be seen that the transfer which is sought to be set aside covered a very small part of the undisputed indebtedness upon which the property transferred was applied.

Under such circumstances was the bill of sale, so-called, of the goods here in controversy, given in satisfaction pro tanto of the said debt of P28,000, a fraud upon the creditors of the judgment debtor?

We are of the opinion that it was not. This case cannot be distinguished from that of Peña vs. Mitchell (9 Phil. Rep., 587). In that case the facts and the nature of the action sufficiently appear in the following quotation:

"As appears in the fourth finding of facts, judgment in the 'first instance' had been rendered against P. B. Florence prior to the date of the sale to the plaintiff, and the court properly held that the presumption of fraud attached to said sale by virtue of the above-cited provisions of article 1297 of the Civil Code. But it will be observed that these provisions raise no more than a presumption of fraud which may be overthrown by competent testimony. Under the second finding of facts, the trial court found that the valuable consideration passing from the plaintiff purchaser to P. B. Florence and wife was the cancellation of a lawful indebtedness existing at the time of the sale; that this indebtedness actually existed and amounted to considerably more than P12,000; and that the object of the plaintiff in making the purchase of the property in question, valued at not more than P15,000, was to secure herself from loss of the amount which the said P. B. Florence was indebted to her. If there were no other facts in the case, these facts would be amply sufficient to rebut the presumption of fraud.

"The trial court, however, was of opinion that the other facts proven at the trial tended to establish the fraudulent character of the sale, and sustain the presumption of fraud established by the provisions of article 1297. These facts may be summarized as follows:

"First. That at the time when the sale was made the vendor was insolvent, being indebted to other creditors than the plaintiff; that as a consequence the purchaser received payment in full for her debt while the remaining creditors received nothing. In other words, that the insolvent debtor by the terms of the contract with the plaintiff preferred one creditor over another in making the payment of his debts.

"Second. That the plaintiff, the preferred creditor, was the mother-in-law of the debtor.

"But there is no provision of existing law which forbids the preferring of one creditor over another by an insolvent debtor at his election, whether the preferred creditor be a relative or otherwise. Section 524 of Act No. 190 provides that:

" '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 * * *.' "

"Thus all those bankruptcy provisions of the Civil Code, whereby an insolvent debtor was prohibited from making discriminations in favor of or against particular creditors, are repealed. The language of this section of Act No. 190 is so sweeping in its terms that it leaves no room for doubt as to its meaning or its effect, wherever a question arises as to its application.

"We are not unaware of, the grave consequences entailed by a holding that there is no provision of law prohibiting an insolvent debtor from preferring one creditor over another in the payment of his debts; but this holding is a necessary consequence of the above-cited provisions of Act No. 190, enjoining the institution of bankruptcy proceedings 'until a new bankruptcy law shall come into force in the Islands.'

"It appears therefore that the sale of the property in question was made to the plaintiff by the lawful owner thereof; that the parties to the sale were competent to enter into the contract; that there is no provision of law which forbade the execution of the contract by the parties; that the vendor was lawfully indebted to the plaintiff, in an amount equal to or nearly equal to the value of the property sold; and that this indebtedness was the consideration which passed to the vendor, and was an adequate and a valuable consideration therefor.

"The presumption of fraud attaching to the sale of the property in question being overthrown by the evidence of record, the plaintiff is clearly entitled to the possession of the property in question."

From this quotation it is clear that there is no distinction between the case at bar and that one except, possibly, that, in the case at bar, there is more evidence of an intent to prevent the plaintiff in this case from collecting his judgment; or, perhaps it is more nearly correct to say that there is in this case clearer evidence of knowledge on the part of the persons engaged in the transfer as to the existence of other creditors and the effect which the transfer would have on them, particularly the judgment creditor; and there was a little sharper competition for the prize in this case than in that. But, under that case, we do not regard the intentions of the parties, good or bad, if they are properly called intentions, with respect to the other creditors of the vendor, or the fact that the competition between the contestants for the payment of their respective claims was extremely sharp, as having any bearing upon the validity of the transfer, provided it is clear that the property was really transferred for the purpose of satisfying, or of partially satisfying, the debt which the vendor owed to the vendee at the time and said debt was actually wholly satisfied or satisfied to the extent of the value of the property. If there was a debt actually existing, and if the transfer from the debtor to the creditor was real in the sense that the title actually passed and that the debt to that extent was extinguished, then, under the case of *Peña vs. Mitchell*, the intention of the transferor and the transferee to deprive other creditors of any recourse or recovery against the vendor is of no consequence. The same result is obtained whatever be the intentions of the parties with respect to the other

creditors. If the transfer was real and the title passed, if there was a real debt and by the transfer it became extinguished pro tanto, the transaction was legal no matter what the effect may have been on other creditors.

The case of Peña vs. Mitchell was carefully considered and the question involved thoroughly discussed not only upon the original decision but also upon a motion for a rehearing. The question as to the preference of creditors, of bankruptcy and all of the other elements which, under law entirely Spanish, might have had their influence upon the question before the court, was there fully considered and decided. We, therefore, have nothing to do but to follow that decision.

The case of Oria vs. McMicking (21 Phil. Rep., 243), cited by the appellant in this case, is not applicable. That was a sale rather than a payment—a sale instead of a preference of one creditor over another. There the sale was not only without proper consideration but was simulated. Here the transfer as well as the consideration is unquestioned. In that case the question of preference did not arise. It is clear that even though there be, apparently, a valuable and adequate consideration for a sale, if there is no sale in reality, but the parties simulate one for the purpose of covering a situation, there is no sale at all and that the transaction is not only fraudulent as to consideration but simulated as to fact. There was no bona fides as to any part of the transaction.

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