

JOSE MCMICKING, PLAINTIFF AND APPELLEE, VS. MARIANO NUBLA CO PIACO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 8134. March 14, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This action was instituted by the sheriff of Manila against Mariano Nubla Co Piaco and Mariano Velasco, asking that they be required to appear and litigate their respective claims to the sum of P539.20 in his possession, the proceeds of a sale of certain property belonging to the defendant Que Biao Co, and sold by virtue of the execution issued on a judgment in case No. 16501 of the court of the justice of the peace of Manila, wherein Mariano Nubla, Co Piaco was plaintiff and Que Biao Co defendant.

The amount of the judgment rendered in favor of Mariano Nubla Co Piaco was P500 (and P7.12 costs), and this amount forms the basis of his claim herein.

Mariano Velasco has a claim of (P358 and costs and interest P378.48, with interest from the 13th of May, 1911, as evidenced by judgment in case No. 16507, court of the justice of the peace of Manila.

The defendant Tan Oco intervened and filed a claim amounting to P290.80.

Mariano Nubla Co Piaco and Tan Oco claim that they are preferred creditors by reason of the fact that they had sold to the defendant, Que Biao, certain of the goods, etc, from the sale of which the proceeds in the hands of the sheriff were derived, and that these goods have never been paid for.

Mariano Velasco asserts that his claim is to be preferred by reason of the fact that it is for rent due on the building in which the defendant, Que Biao Co, carried on business; that the property sold under execution by the sheriff was located and stored in the building in question during the time for which the rent is charged.

The claims of Mariano Nubla Co Piaco and Tan Oco fall under the first class of preferred credits in article 1922 of the Civil Code, while the claim of Mariano Velasco falls under the seventh class of this article.

The first judgment of the court was rendered on the 7th of March, 1912, distributing the fund pro rata between Mariano Nubla Co Piaco and Tan Oco, excluding Mariano Velasco entirely from any participation. Upon motion of the latter a new trial was granted and the case having again been submitted upon the same evidence, the court found that certain property, the proceeds of which amounted to P186, was not claimed by either Mariano Nubla Co Piaco or Tan Oco and that consequently they had no preferential right to this amount, and this sum was awarded to Mariano Velasco; the balance of the fund was distributed pro rata among Mariano Nubla Co Piaco and Tan Oco, and Mariano Velasco was excluded from any participation in this balance.

This appeal is now prosecuted by Mariano Velasco upon the following assignments of error:

- The trial court erred in conceding to the defendants and appellees, Mariano Nubla Co Piaco and Tan Oco, any preference whatsoever in the distribution of the fund in question.

- The trial court erred in not allowing the defendant and appellant, Mariano Velasco, to participate pro rata in the distribution of the balance of P353.20 in the possession of the sheriff in proportion to his credit.

In support of the first error alleged it is urged by the appellant that the two claimants, Mariano Nubla Co Piaco and Tan Oco failed to identify the particular items of property that had been sold by them to Que Biao Co, and from the record it was not possible to determine what articles had been sold by Mariano Nubla Co Piaco and what by Tan Oco. We find the following language in the decision of the court below on the first trial:

"But of the goods sold at public auction which remained in the store of Que Biao Co on the date of the attachment, the parts which were obtained from Mariano Nubla Co Piaco and Tan Oco, respectively, were not identified. There is no datum whatever nor proof in the trial record to show what goods were obtained from each of the two creditors, Mariano Nubla Co Piaco and Tan Oco.

"In face of the impossibility to determine what goods were sold that belonged respectively to each one of these creditors, and, consequently, the price obtained for the same at the public auction, particularly since such goods were not sold piece by piece, or separately, according to their respective original owners, the court finds no other, remedy than to award to each of the creditors, out of the sum obtained by the sheriff of the city of Manila, to wit, P539.20, a proportional part of their respective credits."

Thus, upon the first trial the court was unable to determine what goods had been sold by each and consequently did not know the sum which the alleged articles had realized on the public sale. The fund was, therefore, divided between Mariano Nubla Co Piaco and Tan Oco according to their respective claims. The second judgment was rendered upon the same evidence, and the only change we find is that it was held that the claimants, Mariano Nubla Co Piaco and Tan Oco, had not established any claim to P186, and this amount was awarded to Mariano Velasco. The balance was divided pro rata as in the first judgment. The property sold by Mariano Nubla Co Piaco and Tan Oco was of the same general character and, while the record does not inform us, we presume it had become so intermingled and mixed that it was not possible to determine the separate articles sold by each. It is evident that a part of this property had been sold by Que Biao Co prior to the attachment proceedings herein, for out of the property sold by the sheriff the court found that only P353.20 "had been derived from the goods sold by Mariano Nubla Co Piaco and TanOco, while the record shows that the amount of the goods sold to Que Biao Co by these two claimants was approximately P800.

The court appears to have been satisfied from the proof that the goods, the proceeds of which amounted to P353.20, were originally sold by Mariano Nubla Co Piaco and Tan Oco, but, as we have seen, was unable to determine what goods had been sold by Mariano Nubla Co Piaco and what by Tan Oco; and the fund was divided pro rata among them according to their respective claims; in other words, these claimants were unable to establish separately any preferred claim to any part of this fund, but they did establish what the trial court called a joint preferred claim as to said P353.20. The appellant contends that, under the provisions of paragraph 1 of article 1922, the claimant must identify, in order to establish a preferred claim of this nature, the specific property bought of the claimant; that such preference attaches only to the funds derived from property the identity of which as proceeding from the creditor is clearly established, and that consequently Mariano Nubla Co Piaco and Tan Oco have not established any preference to the fund in question.

Article 1922 enumerates seven kinds of preferred credits. The credits of Mariano Nubla Co Piaco and Tan Oco fall under number one, while those of Mariano Velasco fall under number seven. The lower court held that a credit falling in the first paragraph was entitled to preference over one falling in the seventh. We think that this was error. Article 1922 is nothing more than a general classification of preferred credits and has no reference to the order that preferred credits shall enjoy among themselves when several preferred credits exist against the same property. In a case like the one at bar where three creditors are claiming preferential rights in funds derived from

the same property, we must look to the provisions of article 1926 of the Civil Code. It says in part:

"* * * When two or more creditors claim preference in respect to certain personal property, the following rules shall be observed as to priority of payment:

"1. Credits secured by a pledge exclude all others, to the extent of the value of the thing given in pledge,

"2. In case there is a security, and it is lawfully constituted in behalf of more than one creditor, the priority amongst them shall be determined by the order of the dates of the execution of the guaranty.

"3. Credits for advances for seeds, expenses of cultivation and gathering, shall be preferred over those for rents and leases, in regard to the fruits of the crop for which they were incurred.

"4. In all other cases, the value of the personal property shall be distributed pro rata among the credits which enjoy special preference in regard to the same property."

The credits involved in the present case do not fall within any of the first three paragraphs of this article and it follows, therefore, that the court below was governed by the provisions of the fourth paragraph, which provides that the fund must be distributed pro rata among credits not embraced in the first three paragraphs.

The conclusion reached by the trial court is of course based on the assumption that the claimants Mariano Nubla Co Piaco and Tan Oco had established their preferential claim. If it be held that they have not established their preferential rights to the fund in question, then the whole of it would go to Mariano Velasco, for his claim is clearly established as a preferred claim, and as a result he would be the only preferred creditor as to the fund.

The language used in the case of McMicking vs. Tremoya (14 Phil. Rep., 252, see pp. 258 and 259) would indicate that a claimant such as we are discussing must show that the specific personal property found in the possession of the debtor was sold by him and that this particular property has not been paid for in order to establish his preferential rights.

The following is from the opinion in that case: "The mere fact that Lim Buanco owed Holliday, Wise & Co. a sum of money for goods sold and delivered would not justify the said company in entering the store and claiming any of the goods which were there found which they had sold. They must prove that the particular goods were not only sold to the debtor, but that the price of the particular goods selected had not been paid before they were entitled to the right of preference as provided in said article (1922) of the Civil Code."

The following is from the headnote: "The money claimed must be due to the alleged creditor as the selling price of the property from which it proceeds; the property must be capable of identification and must be identified as the same property whose selling price is unpaid; and the property upon which the selling price was due must be found in the possession of the debtor. (Torres et al vs. Genato, 7 Phil. Rep., 204; Banco Español-Filipino vs. Peterson, 7 Phil. Rep., 409, 413; Fidelity and Deposit Co., etc., vs. Wilson, 8 Phil. Rep., 51; Rubert & Guamis vs. Luengo & Martinez et al., 8 Phil. Rep., 554; Heinszen & Co. vs. Peterson, 10 Phil. Rep., 339, 345; International Banking Corporation vs. Corrales, 10 Phil. Rep., 435, 436.)"

In the case at bar, as we have said, apparently Mariano Nubla Co Piaco and Tan Oco have shown that certain goods, the proceeds of which amounted to P353,20, were the particular goods sold by them separately and that these particular goods have not been paid for; but they were unable to show what particular goods were sold by each. Paragraph 1 of article 1922 clearly intends that the claimant shall have a preference as to the specific property sold and unpaid for. In the present case the lower court gave each of the claimants a preference over the whole and distributed the fund pro rata according to the amount of their respective claims.

We do not regard this holding as correct. We do not forget, however, that in the present case only two vendors

present claims; that the court found that they had separately sold certain property to the debtor; that part of the property sold by the sheriff had come from one claimant and part from the other. The trouble is, however, that they have not shown what particular property came from each. The right to preference depends upon the ability to identify the property. That is a condition precedent to a legal right. If each of the two selling creditors had confronted Velasco separately, could he have maintained his alleged preference? Certainly not. The reason is that he could not identify, the primary essential. But is the identity of the property any more established when both confront him together? Can either one lay his hand upon a piece of property and say that he sold it to the debtor? They dealt with the debtor separately. They must deal with his creditors the same way. If this were not the rule a merchant would always have preferred creditors of this class who, in combination, would take all the assets.

The creditor Mariano Velasco is entitled to be paid first out of the funds. The other two creditors shall be paid next pro rata.

Judgment reversed, and trial court ordered to enter judgment in accordance herewith.

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

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