

SMITH, BELL & CO., PLAINTIFF AND APPELLANT, VS. THE ESTATE OF MARIANO MARONILLA, DECEASED, VICENTE VELASCO, ADMINISTRATOR, AND VENANCIO CAVADA DIAZ, A CREDITOR OF SAID ESTATE, D...

G. R. No. 8769. February 05, 1916

Ponente: CARSON, J.

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CARSON, J.:

Appellant is, a creditor of the estate of Mariano Maronilla, who died in the year 1908, in the sum of P36,475.55; the appellee, Venancio Cavada Diaz is also a creditor, in the sum of P8,985.48; both claims were allowed in the court below, but the administrator of the estate was ordered to give appellee's claim a preference over that of the appellant in the distribution of the funds of the estate, on the ground that the claim of the appellee is evidenced by a public document bearing date of August 29, 1904, and thus entitled to a preference in the distribution of the assets of decedent's estate while that of the appellant is merely a general claim against the estate, unsecured by any lien or mortgage, as to which no claim of preference is advanced under the provisions of the Civil Code or otherwise.

The ruling of the court below was based on the provisions of articles 1921, 1924, and 1925 of the Civil Code. These articles are as follows:

"Credits shall be classified for their graduation and payment according to the order and manner specified' in this chapter."

"With regard to the other personal and real property of the debtor, the following credits are preferred:

"1. Credits in favor of the province or municipality for the taxes of the last year, due and unpaid, not included in No. 1 of article 1923.

"2. Those due:

"A. For judicial expenses and those of administration of the bankruptcy for the common interest of the creditors, made with the proper authorization or approval.

"B. For the funeral expenses, of the debtor, according to the customs of the place, and also those of his wife and of his children, under their parental authority should they have no property of their own.

"C. For expenses of the last illness of said persons, incurred during the last year, counted up to the day of their death.

"D. For daily wages and salaries of employees and domestic servants for the last year.

"E. For advances made to the debtor for himself and his family, constituted under his authority, in provisions, clothing or shoes, for the same period of time.

"F. For income for support during the proceedings in bankruptcy unless they are based on mere beneficence.

"3. Credits which without a special privilege appear:

"A. In a public instrument.

"B. In a final judgment, should they have been the object of litigation.

"These credits shall have preference among themselves, according to the priority of dates of the instruments and of the judgments..

"Credits of any other kind or for any other consideration not included in the preceding article shall have no preference."

The contention of the appellant is that article 1924 of the Civil Code was repealed by the enactment of sections 735 and 736 of the new Code of Civil Procedure and that, under the terms of these latter sections, appellant and appellee, as well as all other creditors of the estate not included in subsections 1, 2, 3, 4, and 5 of section 735 should be placed upon an equal footing as to preferences, and that the claims of all alike should be paid pro rata to the extent of the assets of the estate.

Articles 735 and 736 of the Code of Civil Procedure are as follows:

"SEC. 735. Order of Payment if Estate Insolvent.—If the assets which can be appropriated for the payment of debts are not sufficient for that purpose, the executor or administrator shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order:

"1. The necessary funeral expenses;

"2. The expenses of the last sickness;

"3. Debts due to the United States,;

"4. Taxes and assessments due to the Government, or any branch or subdivision thereof;

"5. Debts due to the province;

"6. Debts due to other creditors.

"SEC. 736. Dividends to be paid in proportion to claim.—If there are not assets sufficient to pay the debts of any one of the aforesaid classes, after paying the preceding ones, each creditor within the class for which there are not sufficient assets for payment in full, shall be paid a dividend in proportion to his claim. No creditor of any one class shall receive any payment until those of the preceding class, are paid."

Counsel for appellant contend that "The section just quoted provides that after the debts of the first five classes are paid, the appellant and the appellee, and others embraced in the sixth class, shall be paid each a dividend in proportion to his claim. This provision is obviously inconsistent with the preference established in article 1924 of the Civil Code, and therefore repeals the Civil Code provision in so far as the estates of deceased persons are concerned."

We cannot agree with this contention in so far as it relates to the preferences established in subsection 3 of article 1924 of the Civil Code.

It is undoubtedly true that in so far as the provisions of that article are in necessary conflict with the provisions of section 735 of the new Code of Civil Procedure, they must be held to have been repealed by implication; and there can be no doubt that with relation to the distribution of the assets of insolvent estates, of deceased persons, the classification and preferences set out in subsections one and two of article 1924 have been repealed by the

enactment of section 735 of the later Act. From a comparative analysis of these statutes, it is impossible to escape the conclusion that it was the intention of the lawmaker to provide a new and a substantially different classification of the credits and the preferences mentioned in these subsections (1 and 2) of the earlier statute; but we find nothing in the later statute which is necessarily in conflict with the provisions of subsection 3 of the earlier statute, except that under the later statute these preferences must be held to be subordinated in the distribution of the assets of the estates of deceased persons, to classes 1, 2, 3; 4, and 5 of section 735 of the Code of Civil Procedure, instead of classes 1 and 2 as set forth in article 1924 of the Civil Code.

"Repeal by implication are not favored and will not be indulged, unless it is manifest that the legislature so intended. As laws are presumed to be passed with deliberation and with full knowledge of all existing laws on the subject, it is but reasonable to conclude that in passing a statute it was not intended to interfere with or abrogate any former law relating to the same matter, unless the later act is either repugnant to the earlier one, or fully embraces the subject-matter thereof, or unless the reason for the earlier act is beyond peradventure removed.

"Hence every effort must be used to make all acts stand, and the later act will not operate as a repeal of the earlier one, if by any reasonable construction, they can be reconciled." (26 Am. and Eng. Encyc. of Law, pp. 721, 726, and cases there cited.)

There is nothing in the language of section 735 of the Code of Civil Procedure which would justify us in holding that it was the intention of the legislator to provide that upon the death of the owner of an insolvent estate, the mere fact of his death has the effect of destroying all Hens or preferences (except those mentioned in that section), created by statute or by act of the parties, and already in existence and affecting all or any part of his property at the time of his death.

It is urged that the language of the statute, prescribing that creditors within each of the classes mentioned in section 735 shall be paid a dividend in proportion to his claim must be held to have this effect, since, as it is said, class 6 includes all debts due to creditors other than those mentioned in the first five classes, whether such debts are secured or not.

We are of opinion, however, that the classification and order of payment set out in section 735 was intended to include merely debts against the estate not otherwise secured and not to include debts otherwise secured, except perhaps in so far as the security proves to be insufficient to secure payment in full; and that it was not the legislative intent to prescribe that the death of a debtor will deprive his creditor of any existing security he may have had by way of lien or preference.

But it is said that the language of the statute contains no exception in favor of debts secured by lien or preference, and that the court should not read such an exception into the statute.

To this we answer: First, that the language of the statute must be construed with relation to the subject-matter with which it deals, and it is evident that it was intended only to deal with assets of the estate which (in the opening language of section 735) "can be appropriated for the payment of debts;" and assets affected by liens or duly asserted preferences cannot properly be said to be "available" for the payment of debts, at least so far as a particular creditor has a right to have them applied to the payment of a particular claim against the estate; second, that it is very clear that the sixth class of debts does not include all the debts due by the deceased, for provision is expressly made elsewhere in the Code for the enforcement of mortgage debts, wholly independent of the classification of the debts mentioned in section 735; and third, that, by extending the meaning of the word debts, as used in sections 735 and 736 of the Code, so as to include all debts secured by liens of asserted preferences,

and thus destroy all such liens or preferences, we would impute to the legislator the wholly unreasonable, unjust, and oppressive intent to deprive the creditors of the deceased of acquired rights in and to their debtor's property by virtue of the mere fact of the death of the debtor.

No valid or sufficient reason has been suggested which would justify or necessitate the enactment of a statutory rule, depriving a creditor by the mere death of his debtor of an acquired statutory preference securing a duly recorded judgment; or a mechanic's claim for service rendered; or the claim of a vendor of specific property for the purchase price; or a credit for transportation; or a credit for agricultural advances; for rents; or the like. On the contrary, to expose the security upon which such credits are made to the risk of the debtor's death would tend very substantially to destroy the very purpose for which the law authorizes or prescribes the creation of such preferences.

We conclude therefore that the enactment of sections 735, and 736 of the new Code of Civil Procedure was not intended to destroy or affect, and that it does not destroy or affect any recorded or statutory liens or preferences affecting property at the time of the death of the owner, save only that the statutory preferences, which formerly attached to such property on the death of the owner in the order set out in subsections 1 and 2 of article 1924 of the Civil Code, are abolished and replaced by the statutory preferences created in subsections 1, 2, 3, 4, and 5 of section 735 of the Code of Civil Procedure.

It follows that mortgage liens and the like, and the statutory preferences which have attached to specific property of a debtor at the time of his death, are in no wise affected by the classification in section 735 of the Code of Civil Procedure of "assets which can be appropriated for the payment of debts" in the event of the insolvency of the estate of a deceased person, and may be asserted and enforced without reference to that classification; and that statutory preferences securing the payment of debts evidenced by "public instruments" and "final judgments" affecting the property of the deceased at the time of his death under the provisions of subsection 3 of article 1924 of the Civil Code, continue in full force and effect; but subordinated, in the order of classification for payment, to the preferences established in subdivisions 1, 2, 3, 4, and 5 of section 735 of the Code of Civil Procedure, in like manner to that in which they were subordinated to the preferences arising at the death of the debtor established in subsections 1 and 2 of article 1924 of the Civil Code, before those later statutory preferences were abolished and the preferences mentioned in 1, 2, 3, 4, and 5 of the Code of Civil Procedure substituted in their place.

Articles 735 and 736 of the Code of Civil Procedure were borrowed from American statutory law (of sections 2503 and 2504 of the Vermont Statutes 1894), and the conclusions at which we have arrived, as to their force and effect with relation to liens and statutory preferences affecting property at the time of the death of the owner, are supported by both textbook and judicial authority in the United States.

In the case of *Milward vs. Shields* [(Ky., 1897) 39 L. R. A., 506], in which it was held that a mortgage lien was entitled to priority over funeral expenses, the court said:

"The statute has no reference to, nor any effect upon, bona fide liens secured to creditors of the decedent under the general law, such as liens by mortgage, or liens acquired—like attachment liens—by operation of law but regulates priorities in reference only to unsecured liabilities, gives certain liabilities and expenses priority, and then puts all other debts and liabilities on equal footing * * *."

In *Ryker, administrator, vs. Vawter* (117 Indiana, 425), it was held that a mortgage lien has preference over a claim for costs of administration, funeral expenses, and expenses of last sickness.

In Pennsylvania, where judgment liens are not expressly subordinated to the statutory liens for funeral expenses and the like, as is the case in this jurisdiction, the court said in *Wade's Appeal* (29 Pa. St., 328):

"It has been the uniform policy of our law to encourage the public ascertainment of liens, and to give him the preference who first spreads his claim on the record, without regard to the date or the quality of the debt. Accordingly those preferences created by our intestate laws in favor of funeral expenses, medical attendance, &c., have never been permitted to postpone record liens * * *. It has been correctly said, and the observation illustrates the policy of our lien laws, that a man dying the owner of ample real estate might have to be buried at public expense as a pauper, if he had no personal property, and his realty was encumbered by liens to its full value."

For a general discussion of the doctrine see also 18 Cyc., 557, 558, 559, and cases there cited; Black on Judgments, pp. 399, 401, 419, 443; Black on Insolvency, chaps. 20 and 30; The American Law of Administration, Woerner, pp. 369, 371, 404, and 408.

Counsel for the appellant, in support of contentions contrary to these rulings, cites us to the following remark made in the course of our opinion in the case of Peterson vs. Newberry. (6 Phil., 260.)

"It has been said that the provisions of this article were wholly repealed by the enactment of the Code of Civil Procedure, and it would appear that 'so far as this article is applicable to cases of bankruptcy and estates of deceased persons it has been rendered obsolete as to the former by section 524, which repeals bankruptcy laws; and repealed as to the latter by section 735, which sets forth the order of payment in the settlement of such estates,' but we are of opinion that its provisions are not limited to such cases and that it remains in full force and effect when by intervention or otherwise a judgment creditor is a proper party to distribution proceedings of the funds or estate of his judgment debtor and duly asserts his right as a preferred creditor."

But it will be observed, first, that the language used clearly discloses that the court did not intend to make an express holding of the propositions set forth in this quotation. The use of the introductory phrase—"and it would appear that"—clearly indicated that the court did not desire nor intend to rule definitely upon the propositions set forth in the quotation; second, that in the broad sense in which the quotation was used, article 1924 of the Civil Code was, in fact, repealed by section 735 of the Code of Civil Procedure with relation to the distribution of the assets of estates of deceased persons. As shown above, all the provisions of subsections 1 and 2 of article 1924 are abrogated in that connection, and in their stead a new classification of debts due by such estates is prescribed by the later statute; and, further, the debts mentioned in subsection 3 of article 1924 are subordinated under the new statute, not to the two classes of indebtedness set forth in subsections 1 and 2 of article 1924 of the Civil Code, but to the first-five classes of indebtedness contained in the classification set forth in section 735 of the new Code of Civil Procedure; and, third, that so far as the broad general proposition set forth in the citation from the former opinion may properly be said to be subject to exceptions not there mentioned, it must be deemed to be modified by our rulings in this decision. An examination of the former opinion clearly discloses that the remarks in the course of which the quotation was introduced were mere obiter dicta, not absolutely necessary to the adjudication of the issues raised by the former appeal, and, as such, not binding upon us in the present case, wherein we have been compelled to examine the precise nature and effect of the enactment of sections 735 and 736 of the Code of Civil Procedure with relation to the provisions of subsection 3 of article 1924 of the Civil Code. The ruling in the former case was not that the later statute had repealed the former statute, but that, although it appeared to be true that with relation to the distribution of the assets of the estates of deceased persons the later statute had worked a repeal of the provisions of the earlier statute, nevertheless such repeal had no effect upon the disposition of the case then under consideration, in which the debtor was still living. As we have shown in this opinion, while it is true as a general proposition that the enactment of the later statute worked a repeal of the former statute, nevertheless, when we come to consider the precise scope and effect of the repeal, the general statement must be qualified in the manner and form hereinbefore indicated. What has been said as to the scope and effect of the provisions of sections 735 and 736 of the Code of Civil Procedure makes it clear that the judgment entered in the

court below should be affirmed with the costs of this instance against the appellant. It is so ordered.

Arellano, C. J., Torres, Trent, and Araullo, JJ., concur. Johnson, J., did not take part.

DISSENTING

MORELAND, J.:

This case, together with that of Kuenzle & Streiff vs. Villanueva (p. 611, post), shows to what extent the court has gone in extending the operation of the preference. Twice, in my humble judgment", the Legislature has attempted to destroy the preference or limit its application; and as often the Supreme Court, if I read its decisions correctly, has not only maintained it in its original position but has enlarged its scope and influence. While, as I interpret the statutes, the Legislature has been trying to destroy or limit the application of the law of preferred credits, the court has, in my opinion, not only refused to permit its destruction or limitation but has, by its decisions, so extended its operation and effect as to have changed the essential nature of the preference. Although the Legislature has made several attempts to destroy or to limit, nevertheless, the fact remains that, under the decisions of the court, the so-called preference occupies a larger field than ever before.

As we saw in the dissenting opinion in the case of Kuenzle & Streiff vs. Villanueva, above cited, the law of preference, so often spoken of by the court in its various opinions, is nothing more or less than a law regulating the order in which credits or claims against a given insolvent debtor shall be paid. We also saw, in that case, that, generally speaking, there are two kinds of preferred credits: (1) Those which refer to and are a charge upon specified property, real or personal, clearly described and identified in the instrument recognizing or creating, the credit, and expressly charged therein with an incumbrance or lien to secure the payment of the credit; and (2) those which do not affect property of any kind; i. e., those in which the instrument recognizing or creating the obligation does not describe or even refer to property of any kind; which do not expressly or impliedly charge or incumber property; which by their express terms create or recognize a personal obligation only.

In the first-class the property is, in legal effect, incumbered—has a lien upon it which follows it wherever it may go. The creditor has an interest in the property itself. When the instrument creating this class of credits is duly registered or recorded as required by law, both as to time and place, the debtor cannot transfer the property free from the charge. All persons dealing with it, by purchase or otherwise, do so subject to the rights of the person holding the incumbrance.

There is nothing of this in the second class. There is no charge on property. No property of the debtor is affected in any way. The creditor has absolutely no interest in the debtor's property. None of his property is even mentioned in the obligation. Notwithstanding the creation of a credit belonging to this class., the debtor may dispose of or incumber any of his property or all of it as fully and as freely as if no such obligation existed. He is entirely free in this regard; and all persons dealing with his property do so in absolute security.

It is obvious from the foregoing that, while the credits falling in the second class are really preferred credits, that is, preferences in the strict sense of the term, those within the first class are not only preferences but are much more than preferences. They are charges, liens, incumbrances, on specific property. They are, in the main, the charges, liens or incumbrances which American and English law everywhere recognizes and which all American and English lawyers, recognize at a glance. (See dissenting opinion in the Kuenzle & Streiff case.) They have a dual character. They are not only an incumbrance on the property, but the debt which the incumbrance secures is, from the standpoint of the creditor, a preferred credit. That fact, however, that the credit is a preferred one adds nothing, in reality, to the value of the incumbrance as such. The property itself is always subject to the payment of

the obligation; and it can be seized and sold for that purpose by the creditor. Indeed, under the Philippine law, that is the only source from which it can be paid in the first instance. But this is so by virtue of the lien or charge and not by virtue of the preference strictly so called. All that the law of preferred credits, as found in the Civil Code, does is, in case of the insolvency of the debtor (we have seen in *Kuenzle & Streiff vs. Villanueva* that the law of preferred credits as set out in the Civil Code was a part of the general bankruptcy law and operated exclusively in bankruptcy cases), to furnish a method of paying the obligation without requiring the creditor to foreclose his lien. By virtue of express provisions (Civil Code, articles 1926, 1927, 1928, 1929) the fund obtained from the sale in bankruptcy proceedings of the incumbered property, which was sold separately and by virtue of the lien although without a real foreclosure, was set aside by the assignee in bankruptcy and held for the satisfaction of the obligation to secure the payment of which the property was incumbered; and the obligation must be paid out of that fund. That method of paying the incumbrance added nothing to the lien which already existed. It gave it no new elements and conferred no new privileges on the holder. That this is so is clear not only from what has already been said but also from the fact that it is provided (article 1928, last par., Civil Code) that, where the property sold was insufficient to discharge the obligation in full, the deficit "shall be paid * * * in the order and place pertaining thereto, according to their respective characters;" and article 1929 says that those credits "which have a preference for the amount not collected * * * shall be paid according to the following rules: (1) In the order established in article 1924. (2) Those preferred by dates, according to their order, and those which have a common date, pro rata. * * *" That is to say, that if the property charged is insufficient to satisfy the incumbrance, the residue shall not constitute a credit payable out of other property of the debtor ahead of every other creditor, but shall be paid in accordance with the provisions of article 1924 which deals exclusively with credits which have no relation to and in no way affect any of the property of the debtor. The deficit is regarded as a credit and not as a lien, and takes its place in the class of credits to which it belongs by virtue of its nature as a credit. If it appeared in a public document it fell within subdivision A of paragraph 3 of article 1924; if it had been reduced to a judgment it fell in subdivision B of paragraph 3 of that article, and so on.

It is, therefore, clear that the essential element of the credits of the first class is the lien or incumbrance on specific property; and that the preference given to it as such is, substantially speaking, valueless; while, if we may be allowed the expression, the essential characteristic of the second class is the entire absence of a lien, charge or incumbrance on property—the fact that it does not affect property at all. I bring out the fundamental difference between the two classes of preferred credits, in order to lay the foundation of the criticism which I shall make of the decision in this case. When these distinctions are clear the error of the court in giving a credit which does not affect property the same value and legal effect as one that constitutes a charge on specific property, and the grave results necessarily following such a fundamental error, are evident. This distinction brings out with a clearness especially striking the impossibility, legally speaking, of giving, as the court in this and the *Kuenzle & Streiff* case has given, to the credits of the second class that attribute which is so essentially and distinctively an attribute of the first, namely, the quality of charging or incumbering property. For, certain it is that, if the deficit resulting from the application of the property to pay the incumbrance in the first class takes the same position with respect to the debtor's other property as, credits of the second class, as it does under articles 1928 and 1929, the credits of the second class cannot be equal to credits of the first class as originally constituted. They are equal to the deficit only; and the deficit has lost the essential and distinctive element of the original credit, namely, the lien, the interest in the specific property charged. Nevertheless, the court, in this and the *Kuenzle & Streiff* case, gives, the credits of the second class precisely the same attributes and qualities as those of the first class—that of "affecting" or charging specific property to the extent of supplanting other liens on the same property.

We have seen, in the dissenting opinion in the *Kuenzle & Streiff* case, how the decision resulted in a fundamental modification, if not a partial destruction, of both the attachment and the preferred credit as they had theretofore

been known. The decision in the present case goes still further. It not only reiterates the principles, enunciated in the former but declares that credits of the second class are not alone charges on specific property of the debtor, although the instrument creating or recognizing the debt refers to and charges the payment of the debt on no property whatever, but declares that all the property of the debtor is, in effect, pledged as security for the payment of the credit. Not only this: it again refuses to permit an Act of the Legislature (section 735, Code of Civil Procedure) to operate in the very field which, in my humble opinion, it was intended to occupy and thereby repeals it pro tanto. Ordinarily it is useless to make an argument to demonstrate the difference between a credit which, by its very definition, is a charge on specific property, and one which by its very definition is not a charge on any property, specific or otherwise. But the court having again declared them to be in their main features the same, I have found it necessary in his opinion to adduce additional reasons against confounding the two credits.

The facts of this case are these: Mariano Maronilla died owing a number of debts. His property was insufficient to pay them. Both Smith, Bell & Co., appellant, and Venancio Cavada Diaz were creditors. On the settlement of the estate, in view of the fact that decedent's property was not sufficient to pay both Smith, Bell & Co. and Diaz in full, there was engendered a controversy between them as to which was entitled to be paid first. The probate court found that Cavada Diaz should be first paid; and the Supreme Court affirms that order. Both decisions are based exclusively and solely upon the provisions of the Civil Code dealing with preferred credits and not on section 735 of the Code of Civil Procedure, it having been held not applicable.

My contention is that the Civil Code has nothing to do with the determination of the question presented as the Code of Civil Procedure is applicable and governs. Chapters 29 to 41 of the Code of Civil Procedure have to do with the estates of deceased persons and contain not only the procedural but the substantive law covering every phase of the administration of such estates from the probate of the will or the application for the appointment of an administrator to the final judicial settlement. Among the many chapters is found that dealing with the "Payment of Debts," Chapter 38. This chapter contains 15 sections all touching the payment of the debts of the decedent. Section 734 requires that, if the property is sufficient, the debts must be paid in full. Sections 735 provides for those cases where the estate is insolvent and is as follows:

"If the assets which can be appropriated for the payment of debts are not sufficient for that purpose, the executor or administrator shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order:

- "1. The necessary funeral expenses;
- "2. The expenses of the last sickness;
- "3. Debts due to the United States;
- "4. Taxes and assessments due to the Government, or any branch or subdivision thereof;
- "5. Debts due to the province;
- "6. Debts due to other creditors."

Section 736 also provides:

"If there are not assets sufficient to pay the debts of any one of the aforesaid classes, after paying the preceding ones, each creditor within the class for which there are not sufficient assets for payment in full, shall be paid a dividend in proportion to his claim. No creditor of any one class shall receive any payment until those of the preceding class are paid." The court has refused to apply these sections to the case at bar holding that the provisions of the Civil Code relating to preferred credits govern. I contend that this is error; that it is a repeal of the sections quoted; and is an extension of the provisions of the Civil Code far beyond their plain meaning.

"What is the reason given by the court for refusing to apply sections 735 and 736 of the Code of Civil Procedure? It is simply this: That the credit of Diaz is a lien, a charge, an incumbrance, on all the property of the common debtor, while that of Smith, Bell & Co. is not, and that the sections mentioned do not refer to or include credits secured by incumbrance or charge. Why does the court hold that Diaz's credit is one secured by an incumbrance or charge on property? Simply and solely because his credit appears in a public document. That this, is the position is clear. It is shown in every line of the opinion and. the nature of the question involved in the suit permits no other conclusion. The court says in the opinion:

"We are of opinion, however, that the classification and order of payment set out in section 735 was intended to include merely debts against the estate not otherwise secured and not to include debts otherwise secured, except perhaps in so far as the security proves to be insufficient to secure payment in full; and that it was not the legislative intent to prescribe that the death of a debtor will deprive his creditor of any existing security he may have had by way of lien or preference.

"But it is said that the language of the statute contains no exception in favor of debts secured by lien or preference, and that the court should not read such an exception into the statute.

"To this we answer: 1st. That the language of the statute must be construed with relation to the subject matter with which it deals, and it is evident that it was intended only to deal with assets of the estate which (in the opening language of section 735) 'can be appropriated for the payment of debts;' and assets affected by liens or duly asserted preferences cannot properly be said to be 'available' for the payment of debts, at least so far as a particular creditor has a right to have them applied to the payment of a particular claim against the estate; and, that it is very clear that the sixth class of debts does not include all the debts due by the deceased, for provision is expressly made elsewhere in the code for the enforcement of mortgage debts, wholly independent of the classification of the debts mentioned in section 735; and, 3d, that, by extending the meaning of the word debts, as used in sections 735 and 736 of the code, so as to include all debts secured by liens or asserted preferences, and thus destroy all such liens or preferences, we would impute to the legislator the wholly unreasonable, unjust and oppressive intent to deprive the creditors of the deceased of acquired rights in and to their debtor's property by virtue of the mere fact of the death of the debtor.

"No valid or sufficient reason has been suggested which would justify or necessitate the enactment of a statutory rule, depriving a creditor by the mere death of his debtor of an acquired statutory preference securing a duly recorded judgment; or a mechanic's claim for services rendered or the claim of a vendor of specific property for the purchase price; or a credit for transportation; or a credit for agricultural advances; or for rents; or the like. On the contrary, to expose the security upon which such credits are made to the risk of the debtor's death would tend very substantially to destroy the very purpose for which the law authorizes or prescribes the creation of such preferences.

"We conclude therefore that the enactment of sections 735 and 736 of the new Code of Civil Procedure was not intended to destroy or affect, and that it does not destroy or affect any recorded or statutory liens or preferences affecting property at the time of the death of the owner, save only that the statutory preferences, which formerly attached to such property on the death of the owner in the order set out in subsections 1 and 2 of article 1924 of the Civil Code, are abolished and replaced by the statutory preferences created in subsections 1, 2, 3, 4, and 5 of section 735 of the Code of Civil Procedure.

"It follows that mortgage liens and the like, and the statutory preferences which have attached to specific property of a debtor at the time of his death, are in no wise affected by the classification in section 735 of the Code of Civil Procedure of 'assets which can be appropriated for the payment of debts' in the event of the insolvency of the estate of a deceased person, and may be asserted and enforced without reference to that classification; and that statutory preferences securing the payment of debts evidenced by 'public instruments' and 'final judgments' affecting the property of the deceased at the time of his death under the provisions of subsection 3 of article 1924 of the Civil Code, continue in full force and effect; but subordinated, in the order

of classification for payment, to the preferences established in subdivisions 1, 2, 3, 4, and 5 of section 735 of the Code of Civil Procedure, in like manner to that in which they were subordinated to the preferences arising at the death of the debtor established in subsections 1 and 2 of article 1924 of the Civil Code, before those latter statutory preferences were abolished and the preferences mentioned in 1, 2, 3, 4, and 5 of the Code of Civil Procedure substituted in their place."

This quotation tells the whole story. It is an argument directed against the application of the Code of Civil Procedure to the case at bar based exclusively on the theory that Diaz's credit is a secured credit, secured by an incumbrance or lien on all of the decedent's property, and that sections 735 and 736 of the Code of Civil Procedure do not refer to debts secured by incumbrance or charge. This being so it is clear that, if the "public document" in which the credit of Cavada Diaz appears is not a lien or incumbrance on the property of the decedent, the whole argument of the court is baseless and falls. Let us see what this public document is -which the court declares to be an incumbrance not on any specific property but on all, on the general, property of the decedent. It appears from the record that, in the year 1904, the common debtor, Mariano Maronilla, gave a mortgage to the defendant Diaz on a specific parcel of land to secure the payment of a debt of P6,200. The debtor died in 1908 still owing the debt. An administrator was duly appointed. In 1910, the mortgage was foreclosed, and the mortgaged land sold. There remained a deficiency of P7,889.50. This sum, with interest added, is the claim presented by Diaz in this case, and this is the debt which this court holds takes precedence over the debt owing to Smith, Bell & Co. because it is evidenced by a public document.

The claim of preference by Diaz is not based on a judgment for the deficiency. So far as the record shows, there was none. But if there were it would not alter the situation as this court has held on several occasions that a judgment is not a lien on property but, like debts recognized in public documents, falls within article 1924 of the Civil Code. (See cases cited in the Kuenzle & Streiff case.) Nor is it based on the mortgage as a lien or incumbrance. On the contrary, it is founded exclusively in the fact that the mortgage instrument executed in 1904 recognized the debt; that the mortgage instrument was a public document; and that, therefore, the debt in question is one evidenced by a public document and falls within article 1924, paragraph 3, subdivision A, of the Civil Code, which gives it preference over a debt, like that of Smith, Bell & Co., which has no element which entitled it to preference, it falling within article 1925.

Starting, then, with the fact that the claim of Cavada Diaz against the decedent is simply the amount of the deficiency arising on the foreclosure of a mortgage, let us see what position the court has placed itself in by holding that such a claim is a lien or charge on the decedent's property, and, for that reason alone, does not fall within the provisions of sections 735 and 736 of the Code of Civil Procedure, but is governed by article 1924 of the Civil Code, and must, therefore, be paid ahead of the claim of Smith, Bell & Co.

To begin with, we have in this case the unique holding that a deficiency arising from a mortgage foreclosure is almost if not quite as good security as the mortgage itself. As I have already shown the court gives as the only reason for not applying sections 735 and 736 to the case at bar and thereby treating both claims alike that they do not apply to "statutory liens or preferences affecting property at the time of the death of the owner" and "that statutory preferences securing the payment of debts evidenced by 'public instruments' * * * affecting the property of the deceased at the time of his death, under the provisions of subsection 3 of article 1924 of the Civil Code, continue in full force and effect." This being so it necessarily follows that the deficiency, that is, the claim' of the defendant Diaz in this case, is a lien, a charge, in short, an incumbrance on the property of the deceased; for if it were not sections 735 and 736 of the Code of Civil Procedure would be applicable and the two claims would be on precisely the same footing, the only reason given by the court for holding them inapplicable being that they do not include debts secured by a lien or incumbrance. Accepting what the court says, it is an unavoidable conclusion that the deficiency resulting from a mortgage foreclosure is a charge on the property of the debtor—an

incumbrance which secures the payment of the deficiency ahead of the other debts of the decedent.

And startling as this doctrine as stated is, the strangest part is still before us. Not only does the court hold that the deficiency is an incumbrance, but it also holds that it is an incumbrance on all the property of the deceased. It is not, like the mortgage itself, a charge on a specified piece of property, but it is a charge on all the property of the decedent, of every kind, nature, and description. It is not, like the mortgage, a charge on real property exclusively, but is one which covers personal property as well—everything that the decedent owned at the time of his death is covered by this strange thing which the decision of the court has brought into existence; and so thoroughly does it cover everything and with such effect, that every other claim must give way to it.

What is a deficiency that it produces such astonishing results? It is not the mortgage given to secure the debt of which the deficiency is a part. The mortgage was extinguished and disappeared when it was foreclosed and the land on which it was a charge sold. It no longer exists. Is this deficiency an instrument? No. Did anybody sign or execute it? No. Does it describe land or property of any kind? No. Does it charge land or property of any kind? No. What is it then? Why, it is simply a debt; simply a personal obligation, having not the remotest relation or connection with property of any kind. How, then, does it become a charge, a lien, an incumbrance on property so as to take precedence over other personal obligations of the decedent? And especially, how can it be an incumbrance on all the property of the debtor? I do not know. I could not understand why in the case of *Kuenzle & Streiff vs. Villanueva*, above, and I cannot understand why in this case. If it were a lien, a charge, or incumbrance on property, it could be foreclosed on failure to pay, could it not? Certainly. Can this deficiency be foreclosed? Of course not. If it were a lien or incumbrance, the debtor could not sell his property free and clear of the lien or incumbrance, could he? No. But can the debtor, as matter of fact, sell his property regardless of the lien or incumbrance of the deficiency and give a good title to the purchaser? Certainly he can. To be legally effective as a lien or incumbrance it would have to be registered or recorded and public notice thereof given as required by law, would it not? Yes. But as a matter of fact, is the deficiency registered or recorded and public notice thereof given as required by law? No. Is it notice, then, to any body of anything? No. Well if it lacks every known element and characteristic of a lien or incumbrance, how can it be a lien or incumbrance? I do not know. The court says it is; but I do not know why. I did not understand why in the case of *Kuenzle & Streiff vs. Villanueva* and I do not understand why in this case. Has the court ever decided heretofore whether an ordinary debt recognized in a public instrument, or a judgment even, is a lien or incumbrance? Yes, several times. What did it hold? It held in each case that neither was. (See cases cited in *Kuenzle & Streiff vs. Villanueva*.) Why does not the court hold the same now? I do not know. I did not know in the *Kuenzle & Streiff* case and I do not know in this case. In thus changing the doctrine did the court refer to the cases previously decided? Some of them; and overruled them. (See majority opinion in the *Kuenzle & Streiff* case.) What reasons did it give for overruling them? None.

If the sole reason given by the court for its refusal to apply section 735 of the Code of Civil Procedure fails, then that section is applicable, is it not? Yes, Why, then, did the court not apply it? I can see no reason why it did not. But did not the court give a reason? It says it did; but I cannot understand it. Why not? The reason it gives is based wholly upon the same confusion between the so called preference which expressly charges or incumbers specific property and the preference which by its very definition has no relation to or connection with any property whatever, that is found and which I discussed in the *Kuenzle & Streiff* case; and such confusion existing in the fundamental basis of the court's position, it is impossible to accept the reasoning by which the final conclusion is reached.

Do not sections 735 and 736 of the Code of Civil Procedure occupy the same field and cover the same subject matter as article 1924 and corresponding articles, 1928 among them, of the Civil Code which the court applies in

this case? Yes. I have already shown that chapters 29 to 41 of the Code of Civil Procedure deal with the estates of deceased persons in every aspect and in every relation; and that, among those chapters, is chapter 28 which has to do with the payment of the debts of a decedent, whether the estate be solvent or insolvent. I have also shown that section 735 of that chapter treats expressly and exclusively of the order in which debts shall be paid when the estate is insolvent. But, when a later statute occupies the same field and covers the same subject-matter as prior statutes, does not the later repeal or substitute the prior? Yes. Why then, did the court not hold that the provisions of the Code of Civil Procedure repealed or substituted like provisions in the Civil Code? It did not do so, as I have before stated, for the false reason that the debt in the case at bar was a secured debt and that section 735 did not apply to secured claims. Why is that reason not sound? I have already given one reason why it is not, namely, that the debt in question is not a secured debt. Is there no other reason? several. One is that, even if we admit that it is a secured debt, the court is in no better position than before the admission as the Code of Civil Procedure has provisions fully and specifically covering the payment of secured debts, which take the place of like provisions of the Civil Code. Then these latter are repealed also? Yes. The Code of Civil Procedure covers fully and completely every case that can possibly arise with respect to the estate of a deceased person from the moment of his death to the final judicial settlement thereof; and, as a necessary consequence, all prior laws dealing with the same subject-matter are repealed. Is there any other reason? Yes. The court is in serious error in making a distinction between the payment of secured debts and payment of unsecured debts. Why? Because neither the Code of Civil Procedure nor the Civil Code makes such distinction. All debts paid in pursuance of sections 734 and 735 are unsecured debts. All secured debts pay themselves out of the property charged for such purpose. If the property so charged pays the incumbrance in full, that is all there is to it. If it is insufficient and there is a deficiency, such deficiency is an unsecured debt against the estate. Where is that law found? Section 708 of the Code of Civil Procedure provides:

"A creditor holding a claim against the deceased, secured by mortgage or other collateral security, may abandon the security and prosecute his claim before the committee, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by ordinary action in court, making the executor or administrator a party defendant; and if there is a judgment for a deficiency, after the sale of the mortgage premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may prove his deficiency judgment before the committee against the estate of the deceased; or he may rely upon his mortgage or other security alone, and foreclose the same at any time, within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged by paying the debt for which it is held as security under the direction of the court, if the court shall adjudge it to be for the best interest of the estate that such redemption shall be made."

Under this section it is clear that a secured creditor has one of three courses to follow: (1) He may abandon his security and share in the general distribution. In that case his debt is unsecured debt. (2) He may foreclose his security and present and prove the deficiency before the commissioners as any other claim is presented and proved. In such case the deficiency is an unsecured debt. The sum which he receives from the sale of the property incumbered is not considered as paid on a debt under section 734 or section 735. He simply takes the property under the incumbrance and pays himself with its value. (3) He may rely exclusively on his security and waive his right to be "admitted as a creditor." In such case he presents no claim.

It is thus clear that a secured claim is not considered in the first instance as a debt against the estate. The creditor has to make it such by his own act. But the instant he makes it such it ceases to be a secured debt, and becomes an unsecured debt payable as are all others. It will be observed that the subject of secured claims is not dealt with by the Code of Civil Procedure in the chapter relating to "claims against the estate" or in that which deals with

"payment of debts;" but in the one treating of "suits by and against executor and administrator." A secured debt is not considered a debt against the estate but one against the property incumbered. It becomes a claim against the estate only by virtue of the affirmative act of the creditor; and when he acts and thereby makes it a claim against the estate, it is, by that very act, reduced to the status of an unsecured debt. (Section 708 above.)

Is it not, then, a necessary conclusion that sections 734 and 735 cover every claim which, under the law, can possibly be presented against an estate, whether it be called a secured or unsecured claim? Absolutely every one. Then there is no provision of law whereby a secured claim can be presented against an estate? None whatever. In order to be a claim presentable to the estate it must lose its character as a secured claim. Only unsecured claims can be presented against an estate under the law. So that section 735 covers every possible claim that can be presented against an estate? Absolutely every one. But if it covers every possible claim, how can the court say that it does not cover secured claims? It cannot legally say so. It so decides by reason of the distinction between secured claims and unsecured claims, without realizing that there is no justification in law for such a distinction, and that it is, therefore, wholly unfounded. But, suppose it was well-founded; what would be the result? The result would be the same. As I have already shown, section 708 and other sections of the Code of Civil Procedure fully and completely cover the payment of secured debts—admitting for the moment that secured claims are really considered debts—as fully and completely as the court admits that sections 734 and 735 cover the payment of unsecured debts. That being so they repeal all prior provisions covering the same subject-matter. The court admits that, if the claim at bar were an unsecured claim, it would be covered by section 735 and would have to be paid in accordance with its provisions as it repeals all provisions of the Civil Code relating to that subject. But if section 708 and other sections deal as fully and completely with the payment of secured debts as section 735 does with the payment of unsecured debts, and if section 735 deals so fully with unsecured debts as to repeal all prior provisions of the Civil Code in the same subject, why does not section 708 repeal all provisions of the Civil Code dealing with secured debts? It does unquestionably.

As with the Code of Civil Procedure so with the Civil Code. Under the latter a secured credit was not considered, in real sense, a debt against the estate of the deceased debtor. The property charged with the payment of the debt was considered the property of the creditor to the amount of his claim; and he must look to it first of all for payment. It was only when the property was insufficient to pay the debt that it became a claim against the estate, and then only to the extent of the deficiency. All of the provisions of the Civil Code as well as the Code of Civil Procedure relating to the payment of debts against the estate refer to unsecured debts only. The court has, therefore, made a distinction between the Civil Code and the Code of Civil Procedure where none exists. They are in all essential respects the same so far as the payment of unsecured debts is concerned. They part company only in their provisions relating to the payment of deficiencies. The Code of Civil Procedure declares that a deficiency arising on the foreclosure of a lien is a common debt with no preference of any kind over the other debts of the deceased debtor; while the Civil Code declares that the deficiency in such case is not a common debt but is entitled to a preference by virtue of having been recognized in a public instrument, etc. Where the court errs so strongly is in claiming that the deficiency is still a secured debt. It was only that portion of the debt actually paid from the proceeds of the foreclosure that was secured. The balance, by the very nature of things, was not secured. Moreover, the security disappeared with the foreclosure. That is precisely what was foreclosed and, by the foreclosure, extinguished. The security having become extinguished it is nonsense to say that the deficiency still remains a secured debt. What secures it?

It necessarily follows that sections 735 and 736 repeal article 1924 and related articles of the Civil Code and should be applied in this case.

Had not the Supreme Court, prior to the decision in this case, expressed an opinion as to whether section 735

repealed those provisions of the Civil Code which the court applies in this case? Yes. In what case, and what did it say? In the case of Peterson vs. Newberry (6 Phil., 260). At page 262 the court, speaking by Mr. Justice Carson, said with respect to the status of article 1924 of the Civil Code, the very article which the court applies in this case:

"It has been said that the provisions of this article were wholly repealed by the enactment of the Code of Civil Procedure, and it would appear that 'so far as this article is applicable to cases of bankruptcy and estates of deceased persons it has been rendered obsolete as to the former by section 524 which repeals bankruptcy laws, and repealed as to the latter by section 735, which sets forth the order of payment in the settlement of such estates. * * * ' "

One paragraph of the head notes to that case reads:

"While article 1924 of the Civil Code was repealed by the enactment of the Code of Civil Procedure in so far as it is applicable to cases of bankruptcy and estates of deceased persons, its provisions are not limited to such cases and it remains in full force and effect when by intervention or otherwise a judgment creditor is a proper party to distribution proceedings of the funds or estate of his judgment debtor and duly asserts his rights as a preferred creditor."

Judge Willard in his "Notes to the Spanish Civil Code" expresses the same opinion, the quotation in the portion of the opinion of the court just set forth being the language used by him.

Why has the court changed its opinion on this question? I do not know. Does it not give a reason or reasons for so doing? Not what I consider a reason. If the court did not intend to have it understood that it held squarely that section 735 repealed article 1924 of the Civil Code why did it include that declaration in the head notes as one of the propositions decided by the court in that case? I do not know. The court is silent on that subject.

Did the court, prior to the decision in this case, express its opinion on this subject on any other occasion? In the case of Santos vs. Manarang (27 Phil., 209), the court at page 216, Mr. Justice Trent writing the opinion, speaking of the debts of a decedent, said:

"In case his estate is sufficient they must be paid. (Sec. 734, Code Civ. Proc.) In case the estate is insolvent they must be paid in the order named in section 735."

Was article 1924 of the Civil Code forgotten or over-looked in that case or was it thought to be repealed?

That the court in this case ignored the difference between a secured debt and an unsecured debt, between a mortgage and the debt which it secures, between a pledge and a naked promise to pay, between security and no security, is clear from the quotation made from the opinion. Persisting in ignoring this difference the court has in this case declared that the two great classes of preferences are substantially the same in that both charge and encumber property. In spite of the fact that the debt under consideration is a mere unsecured personal promise to pay, note the confusion which exist in the following paragraph between a secured and an unsecured claim, and between that class of preference in which there is an incumbrance, a charge on specific property and that class where there is no such charge or incumbrance but a personal obligation only:

"No valid or sufficient reason has been suggested which would justify or necessitate the enactment of a statutory rule, depriving a creditor by the mere death of his debtor of an acquired statutory preference securing a duly recorded judgment; or a mechanic's claim for services rendered; or the claim of a vendor of specific property for the purchase price; or a credit for transportation; or a credit for agricultural advances; or for rents; or the like. On the contrary, to expose the security upon which such credits are made to the risk of the debtor's death would tend very substantially to destroy the very purpose for which the law authorizes or prescribes the creation of such preferences."

The mere preferences given by article 1924 of the Civil Code is here put on precisely the same footing as a lien or charge on specific property created by articles 1922 and 1923 of the same code; whereas they are as distinct and different as language can make them. Let me quote these articles so that we may have them before us. They deal with the classification of credits:

"ART. 1922. With regard to specified personal property of the debtor, the following are preferred:

"1. Credits for the construction, repair, preservation, or for the amount of the sale of personal property which may be in the possession of the debtor to the extent of the value of the same.

"2. Those secured by a pledge which may be in the possession of the creditor, with regard to the thing pledged and to the extent of its value.

"3. Those guaranteed by a security of goods or securities constituted in a public or commercial establishment with regard to the security and for the value of the same.

"4. Credits for transportation, with regard to the goods transported, for the amount of said transportation, expenses and rates of carriage and preservation, until the time of the delivery and for a period of thirty days afterwards.

"5. Expenses of boarding with regard to the personal property of the debtor remaining in inns.

"6. Credits for seeds and expenses of cultivation and harvesting, advanced to the debtor, with regard to the fruits of the crops to which they were applied.

"7. Credits for rents and leases for one year with regard to the personal property of the lessee existing on the estate leased and on the fruits thereof.

"If the personal property, with regard to which the preference is allowed, has been surreptitiously removed, the creditor may claim it from the person who has the same, within the term of thirty days counted from the time it was so removed.

"ART. 1923. With regard to determined real property and property rights of the debtor, the following are preferred:

"1. The credits in favor of the State, with regard to the property of taxpayers for the amounts of the last annual assessments, due and not paid, of the taxes which burden the same.

"2. The credits of insurers, with regard to the property insured, for the insurance premium for two years, and should the insurance be mutual for the last two dividends declared.

"3. Mortgage and agricultural credits (refaccionarios) entered and recorded in the registry of property, with regard to their property mortgaged, or which has been the object of the agricultural loan (refaccion).

"4. Credits, of which a cautionary notice has been made in the registry of property by virtue of a judicial mandate, by reason of attachments, sequestrations, or execution of judgments, with regard to the property entered therein and only with regard to subsequent credits.

"5. Agricultural credits not entered nor recorded with regard to the real estate to which the agricultural loan (refaccion) relates, and only with, regard to other credits different from those mentioned in the four preceding numbers.

"ART. 1924. With regard to the other personal and real property of the debtor, the following credits are preferred:

"1. Credits in favor of the province or municipality for the taxes of the last year, due and unpaid, not included

in No. 1 of article 1923.

"2. Those due—

"A. For judicial expenses and those of administration of the bankruptcy for the common interest of the creditors, made with the proper authorization or approval.

"B. For the funeral expenses of the debtor, according to the customs of the place, and also those of his wife and of his children, under their parental authority should they have no property of their own.

"C. For expenses of the last illness of said persons, incurred during the last year, counted up to the day of their death.

"D. For daily wages and salaries of employees and domestic servants for the last year.

"E. For advances made to the debtor for himself and his family, constituted under his authority, in provisions, clothing, or shoes for the same period of time.

"F. For income for support during the proceedings in bankruptcy unless they are based on mere beneficence.

"3. Credits which without a special privilege appear—

"A. In a public instrument.

"B. In a final judgment, should they have been the object of litigation.

"These credits shall have preference among themselves according to the priority of dates of the instruments and of the judgments.

"ART. 1925. Credits of any other kind or for any other consideration not included in the preceding article shall have no preference."

Most of the cases referred to in articles 1922 and 1923 are those of liens which are familiar to all students of the common law. Some of them are, perhaps, peculiar to the Spanish law. But they are all with the exception of the preferences mentioned in article 1924, liens, charges or incumbrances on specific property. They create in favor of the creditors an interest in the property to which his credit relates. The property is expressly reserved to the payment of the creditor and, in the first instance, to nothing else. The owner cannot, except by payment, rid his property of the charge. It is an incumbrance which follows the ownership wherever it goes. The credit enjoys what the Civil Code calls a "special privilege" with regard to the particular property to which it refers. Now let us look at paragraph 3 of article 1924, which I mentioned¹ as an exception, and which is the paragraph which the court applies in the case before us for the purpose of proving that the credit is a secured credit, i. e., a charge or lien upon the debtor's property and takes preference for that reason. That paragraph speaks, not of credits which enjoy a "special privilege" with regard to "specified" property, i. e., the privilege of a lien or incumbrance, but those which do not enjoy such a privilege. It says:

"3. Credits which without a special privilege appear—

"A. In a public instrument.

"B. In a final judgment, should they have been the object of litigation."

Note that this is the very paragraph which the court applies in the case at bar, and is the very preference which the court says is equal, in legal effect, to the charges and incumbrances created by articles 1922 and 1923. It is the thing which the court says is equal to a credit which has a "special privilege with regard to the specified property," both real and personal, although the express provision of the law is that it shall be "without a special privilege" as

to property of any kind. Whether the credit of Diaz be called "a final judgment" or a credit which appears "in a public instrument" it still falls within paragraph 3 of article 1924, and, accordingly, is not charge or incumbrance on property. Therefore, when the court, in the paragraph of its opinion last quoted, gives to Diaz's credit the high sounding title of a "duly recorded judgment," it added absolutely nothing to its legal significance. And, besides, the phrase "duly recorded judgment" is not only meaningless, but misleading, when applied to the credits at bar as there is no law of the Philippine Islands providing for the "recording" of money judgments, no law permitting such judgment to be recorded, no place provided in which they may be recorded and no law giving the recording of such a judgment any effect whatever. A money judgment in the Philippine Islands has absolutely no effect on property. That has been held uniformly by this court. (*Rubert & Guamis vs. Luengo & Martinez*, 8 Phil., 554; *Molina Salvador vs. Somes*, 31 Phil., 76; *Peterson vs. Newberry*, 6 Phil., 260.) It is simply a credit "without a special privilege" (par. 3, article 1924) as to property. Indeed, as a credit it is inferior to one which appears "in a public instrument," which has never even been sued upon. How much more inferior must it be to those credits mentioned in the preceding articles which are charges and incumbrances on specified property either real or personal? How, then, is that portion of the opinion of the court justified which maintains that the credit mentioned in paragraph 3 is a secured credit?

Let us now look at those articles of the Civil Code immediately following those governing the classification of credits—those which relate to the order of payment of credits;

"ART. 1926. Credits which enjoy preference with regard to certain personal property exclude all the others to the extent of the value of the personal property to which the preference refers.

"When two or more creditors claim preference with regard 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, should the latter be legally constituted in favor of more than one creditor, the priority between 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 harvesting, shall be preferred over those for rents and leases, with 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 with regard to the same property.

"ART. 1927. Credits which enjoy preference with regard to certain real property or property rights exclude all others for their amounts to the extent of the value of the real estate or property rights to which the preference refers.

"If two or more credits affecting certain real property or property rights should concur, the following rules shall be observed with regard to their priority:

"1. Those mentioned in Nos. 1 and 2 of article 1923 shall be preferred, according to their order, to those included in the other numbers of the same article.

"2. Mortgages and agricultural credits entered or recorded, mentioned in No. 3 of said article 1923, and those included in No. 4 of the same, shall enjoy priority among themselves according to the priority of the respective entries or record in the registry of property.

"3. Agricultural credits not recorded or entered in the registry, referred to in No. 5 of article 1923, shall enjoy preference among themselves in the inverse order of their priority.

"ART. 1928. The residue of the estate of a debtor, after the credits which enjoy preference with regard to certain property, personal or real, have been paid, shall become part of the free property which he may possess for the payment of the other credits.

"Those which enjoy preference with regard to certain property, personal or real, and which should not have been totally paid with the amount of such property, shall be paid with regard to the deficit in the order and place pertaining thereto, according to their respective characters.

"ART. 1929. Credits, which have no preference with regard to certain property, and those which have preference for the amount not collected, or when the right of preference should have prescribed, shall be paid according to the following rules:

"1. In the order established in article 1924.

"2. Those preferred by dates, according to their order, and those which have a common date, pro rata.

"3. Common credits, referred to in article 1925, without consideration of their dates."

These articles, constituting chapter third of the Civil Code, may be studied, so far as the case at bar is concerned, with two purposes. In the first place, they deal with the order of payment of the debts of a person, dead or alive. In this connection they cover the same ground as sections 734, 735, and 736 of the Code of Civil Procedure, and also those provisions of that code which have to do with the payment of secured obligations, notably section 708. This fact presents the reason why I maintain that the sections of the Code of Civil Procedure referred to repeal the articles of the Civil Code quoted.

In the second place, these articles show affirmatively and expressly that the credit in the case under consideration is not a secured claim as the court holds it to be, or one which "affects" any property of the debtor, as the court holds it does. Article 1927 provides for and gives the order in which credits shall be paid "which have no preference with regard to specified property." That is, it provides the order of payments of credits which are not secured. All the articles of chapter third which immediately precede article 1929, deal with secured credits—those which are a charge on the property of the debtor' and which require that the property charged shall be dedicated to the payment of the credit which gives rise to the charge. Articles 1926-1928 having dealt completely with the order of payment of secured credits, article 1929 was reserved for the treatment of unsecured credits; and it treats of them exclusively. Now, the credit in the case at bar is, by language and definition, excluded from the credits treated in articles 1926-1928. It therefore falls in article 1929. And, strange to say, the credit at bar is named by name in that article. It is one of those credits "which have preference for the amount not collected." The condition which might arise in case the property mortgaged, for example, should be insufficient to pay the credit in full is anticipated in the last paragraph of article 1928 where it is provided that "those (credits) which enjoy preference with regard to specified property, personal or real, and which should not have been totally paid with the amount of such property, shall be paid with regard to the deficit in the order and place pertaining thereto, according to their respective characters." The "order and place pertaining thereto" is mentioned and described in article 1929 where it expressly names those credits, "which have a preference for the amount not collected;" and states in what order they shall be paid. The credit in suit was "the amount not collected" when the mortgage held by Diaz was foreclosed. Article 1929 provides for the payment of such a credit in express terms, as we have seen. It shall be paid "in the order established in article 1924," the very article and the only article which establishes the order of preference among unsecured credits—credits which do not charge or incumber or "affect" property of any kind.

With those articles before me, I am unable to justify the opinion of the court to the effect that the credit at bar is a secured credit. Even admitting that the Civil Code and not the Code of Civil Procedure is applicable to the case in hand, the court is wrong in its interpretation and application thereof.

The same confusion referred to as existing in the paragraph of the opinion last quoted is found all through the opinion. (See dissenting opinion in the Kuenzle & Streiff case.) Can any one give me a definition of "any recorded or statutory lien or preference," so often mentioned by the court in its opinion, or tell me where such a thing may be found in the law of the Philippine Islands? What statute is it which creates a "recorded or statutory lien or preference? Has the court called attention to any? No such thing exists. It is a nondescript—a combination of words which expresses no legal idea or conception. Such expressions, as this and others, such as "statutory preference securing the payment of debts," "statutory preference securing a duly recorded judgment," "statutory liens or preferences affecting property," "statutory preferences which formerly attached to such property" "debts secured by liens or asserted preferences," "statutory preferences which have attached to specific property," all show, as I view the law, a failure to grasp the subject either as a whole or in its parts, or to obtain a clear conception of what a preference or a lien or incumbrance really is.

I believe also, that the failure of the court to distinguish between the subject matter of chapters second and third of the Civil Code assisted the court to the error which I believe it has committed in this case. Chapter second has to do exclusively with the "classification of credits;" while chapter third deals as exclusively with the "order of payment of creditors." The court, for the purpose of arriving at what should be the order of payment in the case at bar, confines its consideration of the Civil Code to that chapter which deals, not with the order of payment, but to that which relates, to the classification of credits. For this reason it missed article 1928 which, if [it] had been taken into account, would have demonstrated to the court not only the nature of the very credit which is the subject-matter of this appeal but also in what order it should be paid. If any part of the Civil Code is applicable to this case it is chapter third and not chapter second, and article 1928 and not 1924 except in so far as the former article is reached through and by virtue of the latter.

I am of the opinion, therefore, that the credits at bar are on an equal footing by virtue of the provisions of article 735 of the Code of Civil Procedure, and that they should be paid in pursuance of that section and section 736, the provisions of the Civil Code touching the same matter having by said sections been repealed, as the court has already held, effect, in two cases.

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