

[G. R. No. 19207. December 21, 1922]

**W. R. GIBERSON, PLAINTIFF AND APPELLEE, VS. A. N. JUREIDINI BROS., INC.,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MALCOLM, J.:

This is an appeal from a judgment rendered by the Honorable Adolph Wislizenus, Judge of First Instance of Cebu, finding in favor of each of plaintiff's four causes of action, and authorizing the recovery by the plaintiff, the receiver in insolvency proceedings in civil case No. 3586, of various goods, wares, merchandise, credits, and money transferred by H. K. Motoomul & Co. to A. N. Jureidini Bros., Inc., on May 24, 1921, and June 13, 1921.

H. K. Motoomul & Co. was, at the times mentioned in the complaint, a partnership doing business in the cities of Cebu and Iloilo. Sometime prior to May 24, 1921, the company became financially embarrassed. A. N. Jureidini Bros., Inc., a large creditor of Motoomul & Co., became aware of the precarious condition of the latter, because of the diminishing payments on account of a debt. Ultimately, Motoomul & Co. delivered to Jureidini Brothers, on May 24, 1921, one of the debtor's Iloilo stores known as *Bazar Aguila de Oro*. On the same day also, credits receivable belonging to Motoomul & Co. were transferred to Jureidini Bros. Still later, on June 13, 1921, another stock of goods belonging to Motoomul & Co. passed to Jureidini Bros. The documents evidencing these transfers appear in the record.

Within thirty days after these assignments were made, or, to be exact, on June 22, 1921, a number of creditors of H. K. Motoomul & Co. initiated successfully involuntary insolvency proceedings against it. Later, action was brought by the receiver appointed by the court, with the result above related.

The above constitute the principal facts, which are accurately stated in the decision of the trial court. In so far as the ten assignments of error made in this court relate to questions of fact, we may say, generally, that we agree with the findings of the trial judge.

It would be possible to forego consideration of many of appellant's points, because he himself announces on page 46 of the bill of exceptions, "That the defendant has not filed the bond required by the court, because it agrees to the judgment being executed in accordance with law, except so far as concerns the second cause of action." We prefer, however, not to hold appellant to this allegation or admission in his own pleadings, and propose, therefore, to comment on the various assignments of error.

Addressing attention directly to appellant's third, fifth, sixth, and eighth assignments of error, the court clearly did not err in holding that the transfers or assignments must be revoked, because made for the purpose of giving A. N. Jureidini Bros., Inc., preference over the other creditors of H. K. Motoomul & Co. The provisions of section 70 of the Insolvency Law (Act No. 1956), were placed on the statute books to cover exactly such a situation, and to give equal rights to all of the creditors of the insolvent. The evidence discloses that A. N. Jureidini Bros., Inc. had reasonable cause to believe that H. K. Motoomul & Co. was insolvent.

With reference to appellant's first and seventh assignments of error, no one denies that H. K. Motoomul & Co. was indebted to A. N. Jureidini Bros., Inc., for a considerable sum of money. This reason, alone, however, gives the creditor no right to a preference. But, in this connection, appellant relies on Exhibit 1, which purports to be a chattel mortgage executed in the sum of P100,000 by H. Daldas Motoomul and A. N. Jureidini Bros., Inc., on December 1, 1919, but not registered until May 5, 1921. The operative words in the alleged mortgage make reference to the list A, and the only description of the property contained in this list is: "1. A store No. 79 on Magallanes Street, municipality of Cebu, formerly belonging to T. Thakurdas, with all the merchandise, effects, wares, and other bazar goods contained in the said store. 2. A store No. 19 on Real Street, Iloilo, Panay, P. I., formerly belonging to Guillermo Asayas, with all the merchandise, effects, wares and other bazar goods contained in the said store." The document contains no oath as required by our Chattel Mortgage Law.

The trial judge held, and properly, that Exhibit 1 was invalid because the oath required by law did not appear therein, and because the subject-matter was not described therein with sufficient particularity. The Chattel Mortgage Law, in its section 5, in describing what shall be deemed sufficient to constitute a good chattel mortgage, includes the requirement of an affidavit of good faith appended to the mortgage and recorded therewith. It has been held by reputable courts that the absence of the affidavit vitiates a mortgage as against creditors and subsequent encumbrancers. (People vs. Burns [1910], 161 Mich., 169; 137 A. S. R., 466, and notes; Deseret National Bank vs. Kidman [1903], 25 Utah, 379; 95 A. S. R., 856.)

Section 7 of the Chattel Mortgage Law provides that "The description of the mortgaged property shall be such as to enable the parties to the mortgage, or any other person, after reasonable inquiry and investigation, to identify the same." Identification of the mortgaged property would be impossible in this case.

Moreover, if there should exist any doubt on the questions we have just discussed, they should be thrashed out in the insolvency proceedings. Our constant ruling has been that the court having possession of the property of the insolvent has ancillary jurisdiction to hear and determine all questions concerning the title, possession, or control of the same. (De Amuzategui vs. Macleod [1915], 33 Phil., 80; De Krafft vs. Velez [1916], 34 Phil, 854; Mitsui Bussan Kaisha vs. Hongkong & Shanghai Banking Corporation [1917], 36 Phil., 27.)

With reference to the proper valuation of the merchandise, which is the subject of appellant's second and fourth assignments of error, we find sufficient evidence in the record to support the findings of the trial court. The documents of transfer did not accurately appraise the value of the property.

As to the credits amounting to P1 6,892.72, assigned by H. K. Motoomul & Co. to the defendant, the evidence discloses that with the possible exception of P1,117.06 paid by Florencio Espiritu and P400 paid by Panjoomul Fulsidas, none of the rest have been collected. Hence, appellant's ninth assignment of error should be sustained in part. The assignee takes the property in the same plight and condition that the bankrupt held it. (Winsor vs. McLellan [1843], 2 Story 492; Fed. Cas. No. 17887; Stewart vs. Platt [1879], 101 U. S., 739.)

Judgment is affirmed, with the sole modification that the defendant, under plaintiff's second cause of action, shall turn over to the plaintiff only such portions of the credits as have been realized, but the evidences of indebtedness shall pass to the receiver for such action as may be proper. Without special finding as to costs in this instance, it is so ordered.

Araullo, C. J., Street, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

Date created: June 06, 2014