

43 Phil. 394

[G. R. No. 17836. May 29, 1922]

**INVOLUNTARY INSOLVENCY OF DY POCO. TE PATE, CLAIMANT AND APPELLEE,
VS. FRANK B. INGERSOLL, ASSIGNEE AND APPELLANT.**

D E C I S I O N

MALCOLM, J.:

On April 28, 1919, a Chinese merchant by the name of Dy Poco executed a private document in the presence of two witnesses in favor of Te Pate, of the following tenor:

“Received from Mr. Te Pate the sum of fifteen thousand pesos (P15,000), securing the payment of this sum with the six hundred piculs of hemp, more or less, which I have in Daet marked D. S. O. Should I be unable to pay the sum above mentioned, Mr. Te Pate will have the right to sell the six hundred piculs of hemp and to turn over to me the remainder of the proceeds of the sale.”

A petition in involuntary insolvency was filed against Dy Poco on June 7, 1919, and he was adjudged insolvent on June 23, 1919. Dy Poco died on July 10, 1919. Three or four weeks before the death of Dy Poco; that is, subsequent to the filing of the petition in involuntary insolvency, Te Pate acquired possession of the hemp pledged in the private document herein quoted.

By petition dated August 7, 1919, Te Pate asked the Court of First Instance of Manila to give him preferential rights over the hemp, the subject-matter of the pledge. This petition was granted by the Honorable Pedro Concepcion, Judge of First Instance. Thereafter, the hemp was sold, and the proceeds turned into court.

Frank B. Ingersoll, the assignee in the insolvency proceedings, has appealed' from the

judgment of Judge Concepcion, making as his sole assignment of error the finding of the trial court that the claimant Te Pate was entitled to a preference in the distribution of the assets of the insolvent.

The mind of the trial judge was undoubtedly influenced by the decision of this court in the case of Mitsui Bussan Kaisha vs. Hongkong & Shanghai Banking Corporation ([1917], 36 Phil., 27). The facts in the cited case and in the instant case are, however, different. In the first case, the property was surrendered to the pledgee prior to the institution of bankruptcy proceedings. Such, likewise, was the situation in the case of Mahoney vs. Tuason ([1919], 39 Phil., 952), relied upon by counsel for appellee, for the delivery of the security took place long before the commencement of the insolvency proceedings, and before the thirty-day period referred to in the Bankruptcy and Insolvency Law. In the instant case, on the contrary, actual delivery of the property was not made until after insolvency.

A pledge, to be valid against third persons, must be evidenced by a public instrument. This is a mandatory condition prescribed by article 1865 of the Civil Code, which must be met in order to constitute the contract of pledge. An assignee is a "third person" within the meaning of this article of the Civil Code.

When goods or merchandise have been pledged to secure the payment of a debt of a particular creditor, the other creditors of the pledgor are "third persons" with relation to the pledge contract and the pledgor and pledgee. This is so because the insolvency proceedings operate to vest in the assignee all of the estate of the insolvent debtor not exempt by law from execution. This is true, also, because the assignee is the representative of the creditors and not of the bankrupt. (Civil Code, article 1865, in relation to articles 1863 and 1226; Bankruptcy and Insolvency Law, Act No. 1956, sec. 32; *Tec Bi & Co. vs. Chartered Bank of India, Australia and China* [1916], 41 Phil, 596; 12 Manresa, *Comentarios alCodigo Civil*, pp. 416, *et seq.*; *Ocejo, Perez & Co. vs. International Banking Corporation* [1918], 37 Phil., 631.)

We conclude, therefore, that, following¹ the institution of the insolvency proceedings, the contract of pledge was not enforceable against the assignee as representative of the creditors of the insolvent, and that the claimant Te Pate was not entitled to a preference in the distribution of the assets of the insolvent.

Judgment reversed, without special finding as to costs in either instance. So ordered.

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

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