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Rizal Surety & Insurance Co., Plaintiff-Appellee, vs. Marciano de la Paz, et al., Defendants-Appellants and Appellees. Marciano de la Paz and Domingo Leonor, Defendants-Appellants, G. R. No. L-6463, May 26, 1954, Paras, C.J.

1. OBLIGATIONS AND CONTRACTS; PREFERENCE OF CREDITS; INSOLVENCY. — Where the debtor is insolvent, article 1924 of the old Civil Code is not applicable, since it is considered repealed insofar as it referred to cases of bankruptcy and estates of deceased persons.

2. ID.; ID.; LAW ON ATTACHMENT AND LAW ON PREFERENCE OF CREDITS APPLIED TOGETHER. — The law on attachment and the law on preference of credits under article 1924 of the Civil Code had heretofore been applied hand in hand.

3. ID.; ID.; ID.; AMUSEMENT TAXES, SUPERIOR LIEN.— The claim of the Collector of Internal Revenue for amusement taxes on the theater insured, constitutes a lien superior to all other charges or liens, not only on the theater itself but also upon all property rights therein, including the insurance proceeds.

4. ID.; ID.; ORDER OF PREFERENCE UNDER ARTICLE 1924 OF CIVIL CODE. — The order of preference under article 1924, paragraph 3, of the Civil Code, is, first, in favor of credits evidenced by a public instrument and, secondly, in favor of credits evidenced by a final judgment, should they have been the subject of litigation, the preference among the two kinds of credits being determined by priority of dates.

5. ID.; ID.; ID.; PUBLIC INSTRUMENT; DATE IN BODY IS DATE OF ACKNOWLEDGMENT BY REFERENCE. — Where an instrument is dated in the body, and said date is referred to in the notarial acknowledgment, the date of the latter is deemed to be the date appearing in the body of the instrument.

6. ID.; ID.; ID.; CREDIT EVIDENCED BY PUBLIC INSTRUMENT NEED NOT BE REDUCED TO JUDGMENT. — A credit evidenced by a public instrument, though not reduced to a judgment, is entitled to priority, because article 1924 of the Civil Code distinguishes credits evidenced by a final judgment.

7. ID.; ID.; ID.; ID.: PREFERENCE UNDER PUBLIC INSTRUMENT NOT LOST BY REDUCTION THEREOF INTO JUDGMENT. — The preference under a public instrument is not lost by the mere fact that the credit is made the subject of a subsequent judicial action and judgment.

8. ID.; ID.; ID.; FINAL JUDGMENT; ABSENCE OF STAY OF EXECUTION. — A judgment upon which execution has not been stayed under the provisions of section 14 of Act 190, is entitled to the preference provided for in article 1924 of the Civil Code.

9. ID.; ID.; ID.; PREFERENCE DUE TO NOTICE OF ATTACHMENT OR GARNISHMENT. — A credit made the subject of notice of attachment or garnishment is entitled to preference as of the date of said notice, subject only to the priority of credits provided for by article 1924 of the old Civil Code.

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sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: provided nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature; "and [according to Amendment 58 ratified and adopted November 5, 1918] provided also that the governor, with the consent of the council, may after due notice and hearing retire them because of advanced age or mental or physical disability. Such retirement shall be subject to any provisions made by law as to pensions or allowances payable to such officers upon their voluntary retirement." The exception mentioned relates to justices of the peace and has no bearing upon the present question. The tenure of office of judges as thus settled by the Constitution is imperative and final. It cannot be enlarged, limited, modified, altered or in any way affected by the General Court.

In conformity to this provision of the Constitution the commissions of judges of the courts named in the proposed bill state in substance that the appointee is to hold said trust during his good behavior therein unless sooner removed therefrom in the manner provided in the Constitution.

The provision as to the tenure of all judges of the United States, both of the Supreme and of the inferior courts, in art. 3, sec. 1 of the Constitution of the United States, is in the same words as those in c. 3, art. 1 of the Constitution of this Commonwealth, viz., that they "shall hold their offices during good behavior." Respecting such inferior courts of the United States, it was said in Ex parte Bakelite Corp., 276 U.S. 438 at page 449 S. Ct. 411, 412, 73 L. Ed. 789: "They * * * have judges who hold office during good behavior, with no power in Congress to provide otherwise."

The inevitable effect of the part of sec. 4 of the proposed bill touching compulsory retirement of certain judges is to make something else than good behavior an element in judicial service. It is no evidence whatever of evil behavior or of want of good behavior to pass the age of three scores and ten. Age and good behavior are unrelated subjects. There is no connection between the two. And yet, under the proposed bill the compulsion of half-time service and half-time pay for judges of the designated courts arises when the age of seventy comes, regardless of every other circumstance or consideration.

Tenure of office during good behavior imports not only the length of the term but also the extent of service. The Constitution in this particular means that judges "shall hold their offices during good behavior," not that they shall hold half of their offices after a certain age and such other fractional part as some other person may determine. The Constitution itself, in the words already quoted, makes two provisions to relieve the judicial service of judges no longer competent to render efficient service. It contains a specific clause in art. 58 of the Amendments affording the means of retiring a judge "because of advanced age or mental or physical disability." The proposed bill adds another and diverse method to the same end. It would deprive such judge against his will of the right to render full-time service for full-time pay. That is beyond the power of the legislative department of government. When the Constitution has made definite provision covering a particular subject, that provision is exclusive and final. It must be accepted unequivocally. It can neither be abridged nor be increased by any or all of the departments of government.

It is our opinion that the provisions of the bill concerning permissive retirement of the judges of the serveral courts are not in conflict with the Constitution, but that all its provisions for compulsory retirement and for compulsory or voluntary retirement of the chief or presiding judges are in conflict with part 2, c. 3, art. 1, as amended by art. 58 of the Amendments of the Constitution.

Amelito R. Mutuc for the plaintiff and appellee.

Tolentino & Garcia for the defendant and appellant.

Padilla, Carlos & Fernando for the defendant and appellant D. Leonor.

F. A. Rodrigo for the interpleader-appellee Pablo Roman.

Solicitor General for the Collector of Internal Revenue.

Tanjuatco & Del Rosario for the appellees Jose Santos and D. Nepomuceno.

Alfonso G. Espinosa for S. D. Yñigo.

DECISION

PARAS, *C.J.*:

On March 22, 1950, the plaintiff Rizal Surety and Insurance Company filed a complaint in the Court of First Instance of Manila, alleging that the sum of ₱20,000.00 was due and payable to the Federal Films, Inc., as proceeds of fire insurance covering a theater situated in Marikina, Rizal, which was destroyed by fire on February 1, 1947; that as several creditors of the insured, namely, Marciano de la Paz, Domingo Leonor, Jose Santos and Dominador Nepomuceno, Pablo Roman, Serapion D. Yñigo, and the Collector of Internal Revenue, were claiming said proceeds from the plaintiff, the latter had no means of knowing definitely the order of preference among the various claimants; and praying that said creditors, named defendants in the complaint, be ordered to interplead and litigate their conflicting claims, and that the sum of ₱20,000.00 be ordered paid to the court for delivery to the proper parties, after deducting the costs of the suit. After the defendants had filed their respective answers, the Court of First Instance of Manila rendered a decision the dispositive part of which reads as follows:

> "WHEREFORE, judgment is hereby rendered in favor of the defendants, and the plaintiff is ordered to pay said defendants out of the ₱20,000.00 minus the costs in its favor, in the following order: first, the Collector of Internal Revenue to be paid the sum of ₱3,216.08; second, Jose Santos and Dominador Nepomuceno to be paid the sum of ₱10,000.00; third, the defendant Pablo Roman to be paid the sum of ₱9,000.00, with six per centum interest per annum from the date of the filing of complaint in Civil Case No. 73256 and his costs in said case out of the remaining balance; fourth, the defendant Domingo E. Leonor to be paid the sum of ₱20,000, with interest of six per centum per annum from the date of the filing of the complaint in Civil Case No. 1749, should there be any balance; and fifth, the defendant Marciano de la Paz to be paid the sum of ₱6,001.50 with interest of six per centum from February 5, 1947, the date of the demand, plus ₱545.00 as costs and Sheriff's fees should there by any balance left."

From this judgment, which applied section 315 of the National Internal Revenue Code and article 1924, paragraph 3, of the old Civil Code, the defendants Marciano de la Paz and Domingo Leonor appealed. Briefly the contention of appellant Marciano de la Paz is that his claim for ₱6,001.50 should enjoy first priority, because on February 5, 1947, he caused to be garnished the proceeds in question, said garnishment being prior to all other liens. The appellant Domingo Leonor in turn contends that his claim for ₱2,300.00 is superior, except with regards to the tax lien of the Collector of Internal Revenue, because it is evidenced by a public document dated July 19, 1946, in addition to the fact that he garnished the disputed insurance proceeds on February 17, 1947. Incidentally it is insisted for both appellants that, where priority of attachment is involved, article 1924 of the Civil Code is not applicable. Appellant de la Paz further argues that article 1924 may be invoked only when there is a showing of the debtor's insolvency.

In the first place, we may point out that, where the debtor was insolvent, article 1924 was held not applicable, since it was considered repealed insofar as it referred to cases of bankruptcy and estates of deceased persons. (Peterson vs. Newberry et al., 6 Phil. 260.)

In the second place, we find that the law on attachment and the law on preference of credits under article 1924 of the Civil Code had been applied by this Court hand in hand, as may be gleaned from the following pronouncements in the case of Kuenzle & Streiff vs. Villanueva, 41 Phil. 611, 614-615:

> "In other words, the question for consideration is whether an attachment levied on specific property gives to the attaching creditor a lien or a right to a preference in the nature of a lien, superior to the statutory right to a preference which is recognized in article 1924 of the Civil Code in favor of the owner of an after-acquired judgment.
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> "In a long and unbroken line of decisions, running through our reports from the first volume down to the last, we have uniformly and steadfastly sustained and recognized the statutory preferences created by the provisions of title 17 of the Civil Code, save only in so far as they have been expressly or by necessary implication repealed or modified by Acts of the Commission or the Legislature.
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> "Upon full consideration of the provisions of the new Code of Civil Procedure by virtue of which levies of attachments are authorized, and of the circumstances under which that Code was enacted by a commission the majority of whose members were American lawyers, we are satisfied that it was the intention of the legislature to give an attaching creditor a lien or at least a right in the nature of a lien in the attached property; but we see no reason whatever for holding that this lien, or right in the nature of a lien, rises superior to any statutory preferences with which the property is affected at the time of its attachment."

We shall therefore proceed to determine the order of preference herein, in the light of priority both by reason of attachments and by reason of article 1924 of the Civil Code, subject however to the superior lien of the Collector of Internal Revenue in virtue of section 315 of the National Internal Revenue Code which provides as follows:

> "Every internal revenue tax on property or in any business or occupation, and every tax on resources and receipts, and any increment to any of them incident to delinquency, shall constituute a lien superior to all other charges or liens not only on the property itself upon which such tax may be imposed but also upon the property used in any business or occupation upon which tax is imposed and upon all property rights therein"

We are of the opinion that the trial court correctly ordered that the claim of the Collector of Internal Revenue be paid first. Said claim being for amusement taxes on the theater insured, constitutes a lien superior to all other charges or liens not only on the theater itself but also upon all property rights therein, including the insurance proceeds.

Under article 1924, paragraph 3, of the Civil Code, the order of preference is, first, in favor of credits evidenced by a public instrument, and, secondly, in favor of credits evidenced by a final judgment, should they have been the subject of litigation, the preference among the two kinds of credits being determined by priority of dates.

The trial court was also correct in placing the claim of Jose Santos and Dominador Nepomuceno second in the list of creditors, because their credit is evidenced by a public document dated May 23, 1946. Appellants, with appellee Pablo Roman, argue that said document cannot be classified as public, because its acknowledgment is not dated. This contention is not tenable, since an examination of the instrument shows that the body is dated at Manila on May 23, 1946, and in the acknowledgment the following appears: "Witness my hand and official seal in the date and placed above mentioned." This recital logically refers to the date and place specified in the preceding body of the document. There is no point in the observation that the credit of Santos and Ne-

pomuceno, not being reduced to a judgment, should not be entitled to any preference binding against the Federal Films, Inc., which is not a party hereto, because article 1924 of the Civil Code as a matter of fact distinguishes credits evidenced by a public document from those evidenced by a judgment. At any rate, in so far as the absence in this case of the common debtor is concerned, all the defendants are on equal footing.

The next in preference, in our opinion, is the credit of appellant Domingo Leonor because, although he caused a notice of garnishment to be served upon the plaintiff on February 17, 1947, or subsequent to the notice of garnishment of appellant Marciano de la Paz on February 5, 1947, the former's credit is none the less evidenced by a public instrument dated July 19, 1946, duly presented as exhibit. Preference claimed under a public document is not lost by the mere fact that the credit is made the subject of a subsequent judicial action and judgment. Even appellee Pablo Roman admits this proposition.

The next preferred credit is that of defendant-appellee Pablo Roman, evidenced by a judgment which became final on September 26, 1946. It is contended on the part of appellant Domingo Leonor that said judgment was not yet final then, because an appeal was taken therefrom to the Supreme Court which resolved it in favor of appellee Pablo Roman only on May 27, 1947. However, as correctly observed by counsel for the latter, the judgment of September 26, 1946, was not appealed, and the petition filed before the Supreme Court was one for certiorari against order of the trial court dismissing the appeal; and, indeed, two writs of execution had been issued during the pendency of the certiorari proceeding, one on December 24, 1946, and another on January 9, 1947. In McMicking vs. Lichauco, 27 Phil. 386, it was held that "a judgment upon which execution has not been stayed, under the provisions of section 144 of Act No. 190, is entitled to the preference provided for in article 1924 of the Civil Code."

The remaining credit to be paid is that of appellant Marciano de la Paz, whose notice of garnishment was served on the plaintiff of February 5, 1947, the appealed decision being correct on this phase of the case. Serapion D. Iñigo failed to present any evidence in support of his claim.

It being understood that the various claimants should be paid in the order indicated in this decision, and that none of them is entitled to receive any interest (as the plaintiff-appellee cannot be deemed as having defaulted in paying out the insurance proceeds in question), the appealed judgment, as thus modified, is hereby affirmed. So ordered without costs.

Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador and *Concepcion, J.J.*, concur.

II

Republic of the Philippines, Plaintiff-Appellant, vs. Jose Leon Gonzales, et al., Defendant-Appellants, G. R. No. L-4918, *May* 14, 1954, *Bengzon, J.*

1. CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION, HOW DETERMINED. — In determining just compensation or the fair market value of the property subject of expropriation proceedings, evidence is competent of bona fide sales of other nearby parcels at times sufficiently near to the proceedings to exclude general changes of values due to new conditions in the vicinity.

2. ID.; ID.; ID.; RESALE TO INDIVIDUALS. — Whether, in expropriations for resale to individuals, a more liberal interpretation of "just compensation" should be adopted, *quaere.*

3. ID.; ID.; ENTRY OF PLAINTIFF UPON DEPOSITING VALUE; OWNER ENTITLED TO INTEREST. — In condemnation proceedings the owner of the land is entitled to interest, on the amount awarded, from the time the plaintiff takes possession of the property.

Angel M. Tesoro, Ramirez & Ortigas, Alberto V. Cruz, Guillermo B. Ilagan, Filemon I. Almazan and *Fortunato de Leon* for defendants and appellants.

Solicitor General Pompeyo Diaz and *Solicitor Antonio A. Torres* for the plaintiff and appellant.

DECISION

BENGZON, *J.*:

In January 1947, in the Court of First Instance of Rizal, the Republic started this proceedings under Com. Act No. 539 for the purpose of expropriating an extensive tract of land — over 87 hectares — for resale to the tenants thereof. Situated within the Maysilo Estate, Caloocan, and originally covered by Transfer Certificate of Title No. 35486 the property is now represented by seven Transfer Certificates of Title, numbered and owned respectivley: 1373 by Jose Leon Gonzalez; 1378 by Juan F. Gonzalez; 1369 by Maria C. Gonzalez-Hilario; 1372 by Concepcion A. Gonzalez-Virata; 1370 by Consuelo Gonzalez-Precilla; 1371 by Francisco Felipe Gonzalez; and 1374 by Jose Leon Gonzalez, et al.

Eight kilometers north of Plaza Santa Cruz, 1.7 kilometers east of Rizal avenue, and 2 kilometers above Highway 54, the estate is bounded by the Araneta Institute property, the Victoneta Inc., the Balintawak Estate Subdivision, the Seventh Day Adventists' land, and the Piedad Estate. It lies within the sites of the University of the Philippines and the Capitol and within the field of expansion of the City of Manila.

All the defendants at first opposed the compulsory sale; but subsequently they waived the objection, recognizing the social-justice aims of the Government, (there were about two-hundred tenants) and agreed to the designation of commissioner to determine the reasonable market value of the property to be taken. Wherefore, in June 1948, the court appointed the following commissioners: Atty. Erasmo R. Cruz, recommended by defendants, Assistant Fiscal Sugueco, suggested by plaintiff, and Deputy Clerk Benito Macrohon, selected by the judge.

In the performance of their duties, the Commissioners received oral and documentary evidence, inspected the premises, and thereafter submitted one majority report, plus one minority report by Commissioner Sugueco. The first divided the property into two parts: one portion previously occupied by the U. S. Army with roads, playground, water and sewerage system, and valued at 5 pesos per sq.m.; and another consisting of rolling lands and rice fields priced at fifteen centavos per sq.m. The report thereby fixed ₱1.75 per sq.m. as the average compensation for the entire estate. On the other hand Sugueco's minority opinion rated the whole parcel at ten centavos per square meter only.

The two reports provoked objections from both sides, whose oppositions were seasonably filed in writing. On May 6, 1949, obeying orders of the trial judge, Clerk of Court Severo Abellera repaired to the premises, made inquiries, and reported afterwards that the realty was fairly worth ₱1.90 per square meter.

Then on March 29, 1950, the Hon. Gabino Abaya, Judge, rendered his decision appraising the estate at ₱1.50 per square meter. It should be explained, in this connection, that all defendants agreed the entire property should be evaluated as a whole, for the purpose of facilitating the award.

The parties petitioned for reconsideration. Denial thereof motivated this appeal both by the plaintiff and by the defendants.

The plaintiff, in a series of assignments reaches the conclusion, and submits the proposition, that "there is no reliable standard for determining the reasonable worth of the defendants' land except the tax declaration Exh. B which puts its value at ₱28,850.00 x x x. Taking into account, however, that the assessed value is usually lower by 1/3 of 1/2 of the real market value, the defendants should be given an additional 30% of ₱28,850 or ₱8,655.00."

Such position is clearly untenable. The declaration was made