

# The Problem Of Preferences In Insolvency

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With the statement of the legislative branch of the government to the effect that it will consider economic measures with precedences, the problem of preferences in case of insolvency might yet be finally settled by legislative enactment. This problem might be stated briefly this way: What is the effect of the Insolvency Law on the civil law preferences as classified and enumerated in Book IV Title XVII Chapter II of the Civil Code?

Altho it would seem that by virtue of the case of Philippine Trust Co. and Smith, Bell and Co. vs. Mitchell (1933, 59 Phil., 30) the law at present is that the provisions of the Civil Code on preferred claims have been supplanted not only by the Insolvency but even by the provisions of the Code of Civil Procedure, in force about more than eight years before Act 1959 the Insolvency Law took effect, the status of the law is not at all satisfactory considering the dissenting opinion of three justices to the majority opinion concurred in by six justices, and considering further, that up to the case of Philippine Trust Co. and Smith, Bell and Co. vs. Mitchell the almost uniform opinion of the Supreme Court of the Philippines has been otherwise. The practice in the United States has been to pass state statutes to express the legislative intent in matters not specifically provided by the Federal Bankruptcy Act of 1898. A law defining the legislative in-

ention in this respect is desirable because the majority opinion of the Philippine Trust Co. case states: "Freeing ourselves from the incubus of precedent, we have to look to legislative intention. The legislative purpose was as plainly indicated as words may convey it by the express repeal in the Code of Civil Procedure of all existing laws relating to bankruptcy. The legislative purpose was a second time evidenced by the passage of the Insolvency Law. That law was carefully framed with the purpose of covering the entire subject of bankruptcy and insolvency. In all material respects the law was meant to be and is complete in itself. Just as a provision in an insolvency law can not continue to be in force with provisions on the same subject in a later law, so is the former civil law codified by implication by the special statute without the necessity of an express repealing clause. Any attempt to fuse the elements of the Insolvency Law inspired by modern commercial practice, with the elements of the Civil Code intended to harmonize with the Spanish law, is impracticable. It has been taken for granted that the Code of Civil Procedure and the Insolvency Law swept away numerous parts of the Spanish Code of Commerce. If those laws did that, it needs no elaborate argumentation to prove that the same laws had a somewhat similar effect on the Spanish Civil Code." Yet, the dissenting opinion, like the majority

opinion invokes legislative intention but in this wise: "The Legislature has had occasion to review our rulings in the cases above cited and it could readily have amended the law had it been of the opinion that said policy was unsound or inadvisable." The stability of the law in this matter will benefit a large number of businessmen and resolve with finality doubts entertained both by the bench and the bar.

The difference in opinion can better be understood by examining the reasons in support of each side.

On the one hand is a group which believes that the civil law preferences still exist notwithstanding the Code of Civil Procedure and Act 1956. This group is "loathe to believe that it was the intention of the legislator to destroy all these valuable privileges, without substituting anything in their stead." (*Tec Bi and Co. vs. Chartered Bank of India*, 41 Phil., 827). Besides, "strong and compelling reasons of public policy, in this jurisdiction as elsewhere have resulted in the enactment of legislation providing special security in one form or another, for credits for construction, repair and preservation of personal property; transportation charges; seeds and other agricultural advances; rents; credit evidenced in solemn judgements; and the like. The security in such cases, furnished under statutory authority in the United States, in the form of liens on the property of the debtor, was not affected, nor intended to be affected by the enactment of the American prototypes of the provisions of our Insolvency Law and our Code of Civil Procedure; and we are satisfied that it was not the intention of the Legislature to destroy, without providing a substitute therefor,

the security in the form of 'statutory preferences' furnished in our Civil Code in like cases, and that the language of these statutes does not sustain such a contention." (*Tec Bi and Co. vs. Chartered Bank of India*, 41 Phil., 827-818.)

Another reason is that merchants, manufacturers, bankers and the public have been relying on these preferences under sec. 1922-1924 of the Civil Code on the strength of the long line of decisions, still the doctrine in the *Tec Bi* case. For this reason, the principle of *stare decisis et non quieta movere* is favored by the first group.

Incidentally, the committee reporting on a proposed insolvency law, on June 12, 1908, makes the observation that the bill sought to blend the American Laws of insolvency and bankruptcy with the Spanish Laws of bankruptcy.

The second group believes that the Insolvency Law is complete in itself. It is a modern law based on modern commerce. Hence, one availing himself of the Insolvency Law acknowledges its supremacy. (*Philippine Trust Co. vs. Mitchell* 59 Phil., 30).

It is claimed civil law preferences cannot exist by reason of sec. 524 of the Code of Civil Procedure which provides: "No new bankruptcy proceedings shall be instituted until a new bankruptcy law shall come into force in the Islands. All existing laws and orders relating to bankruptcy and proceedings therein are hereby repealed." Sec. 83 of Act 1956 repeals all Acts and part of Acts inconsistent with the provisions of the Act.

In the cases of *In re Vidal*, 233 Fed. 733, and *Gandia vs. Cadierno*, 233 Fed. 739, the doctrine has been laid down that the Por-

to Rican Civil Code in so far as the provisions on preferred claims are concerned are inconsistent with the provisions of the Federal Bankruptcy Act. By analogy, since the Civil Code of the Philippines is similar to that of Porto Rico and since the Federal Bankruptcy Act is one of the sources of our Insolvency Law, the same result should obtain in the Philippines.

Each side of the problem is supported with well grounded reasons. With these briefly summarized here, it is easy to perceive why the problem exists. In all probability the Supreme Court might go on dividing itself now for one doctrine, next for another, unless the situation is remedied. The only remedy is a statute.