

MARIETA J. ROTEA AND SANTIAGO ROTEA, PETITIONERS AND APPELLANTS, VS. LEVY HERMANOS, INC., ET AL., CLAIMANTS AND APPELLEES.

G.R. No. L-1358. August 31, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

On August 6, 1943, Marieta J. Rotea and her husband Santiago Rotea applied for voluntary insolvency in the court of First Instance of Manila.

On October 27, 1943, the court by an order subsequently amended, granted the petition, ordered the sheriff of Manila to take possession of and safely keep, until the appointment of an assignee, all the goods, papers, books of account, and all real and personal property of the debtors, except such as may be exempt from execution. It set December 11, 1943 as the day for the meeting of the creditors of the insolvent for the election of an assignee.

On the above designated day no creditors attended the meeting and no assignee was elected.

Upon motion of some creditors the court designated the Bank of the Philippine Islands as the assignee; but this institution declined the appointment for reasons which need not be mentioned. And so far as the record shows no assignee has up to this time qualified.

In the meantime certain creditors either filed their claims or joined the proceedings, namely, the Finance and Investment Corporation, the Ipekjdian Brothers, Inc., the Agricultural and Industrial Bank, the Levy Hermanos, Inc., and the Levy & Blum, Inc.

About the end of the year 1944, the insolvents, allegedly by "dint of hard work and through the help of relatives", acquired funds sufficient to cover their full indebtedness and made tender of payment. The first three creditors received the money. The last two refused payment. Wherefore the debtors purchased two manager's checks of the Philippine National Bank payable to the said two creditors in the amount of their credits and deposited such checks with the clerk of the court of first instance of Manila. That was on January 2, 1945. At the same time the debtors petitioned the court to order the said two creditors to collect and receive from the clerk their respective manager's checks in satisfaction of their claims. As the motion was not acted upon until January 22, 1945, the debtors with the permission of the court withdrew the checks from the clerk, cashed them and deposited the proceeds with the sheriff on the theory that he was acting in the place of the assignee who had not yet been selected.

Thereafter liberation came.

On October 31, 1946, the insolvent debtors submitted a petition for the arrest and final dismissal of the insolvency proceedings, because "with the full payment of three creditors mentioned in the schedule" and the payment to the sheriff of the claims of those who rejected the amounts tendered, all the credits against the petitioners had become fully paid, and there was no longer any necessity for the continuation of the insolvency proceedings. Levy

Hermanos, Inc. and Levy & Blum, Inc. opposed the petition, which was consequently denied by Judge Emilio Peña on December 27, 1946.

The petitioners appealed.

This appeal may not be entertained. In the first place, the petition for dismissal of the proceedings was filed under Section 81 of the Insolvency Law which clearly says that "if no creditor files written objections" the court may grant the application.

In the second place, the statute specifically mentions the cases in which appeal may be taken (Sec. 82), namely:

"1. From an order granting or refusing an adjudication of insolvency and, in the latter case, from the order fixing the amount of costs, expenses, damages, and attorney's fees, allowed the debtor.

"2. From an order made at the hearing of any account of an assignee, allowing or rejecting a creditor's claim in whole or in part, when the amount in dispute exceeds three hundred pesos.

"3. From an order allowing or denying a claim for property not belonging to the insolvent, presented under section forty-eight of this Act.

"4. From an order settling an account of an assignee.

"5. From an order against or in favor of setting apart homestead or other property claimed as exempt from execution.

"6. From an order granting or refusing a discharge to the debtor."

This appeal does not fall within any of the above classes. It may not be contended that it is an appeal from an order refusing a discharge; because the petition was specifically made under section 81 of the Insolvency Law, and because upon a petition for discharge (secs. 64-69 of the insolvency) other issues might be involved.

With the dismissal of this appeal, the insolvency proceedings will proceed in accordance with law. So ordered.

Moran, C.J., Ozaeta, Paras, Feria, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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