

ANTONIO DE LA RIVA, PLAINTIFF AND APPELLEE, VS. RAFAEL MOLINA SALVADOR ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 10106. November 23, 1915*

Ponente: MORELAND, J.

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In the year 1905 the defendant Rafael Molina Salvador began an action against the plaintiff for the recovery of about P42,000, and, in that action, secured the appointment of Joaquin Navarro, another of the defendants in this action, receiver of real and personal property owned by De la Riva in the Island of Catanduanes. The receiver took possession of the property and gave a bond in the sum of P50,000 conditioned for the faithful performance of the duties of his office, the other defendants, Juan Garcia and Fernando Martinez, becoming sureties thereon. The receiver was appointed in August, 1905, and in January, 1907, the Supreme Court set aside the order appointing a receiver on the ground that, under the provisions of law relative to receiver-ships, there was no authority for the appointment of a receiver in the action named. (*Molina vs. De la Riva*, 7 Phil. Rep., 302).

The property was inventoried at the time possession was taken by the receiver and the value, as set out in the inventory, was something more than P231,000. After the reversal by the Supreme Court of the order appointing the receiver the latter began a proceeding to account. Objections were presented to certain phases of the account, but none touching the condition of the property. The record does not disclose what became of this proceeding or of the objections presented therein and we find nothing further in connection therewith. It appears, however, that the property, both real and personal, which the receiver had in his possession at the termination of the receivership was seized by the sheriff of Albay under executions issued on judgments against De la Riva, in favor of Gibbs, Gale & Carr and Enrique F. Somes, and was duly sold at public sale under said executions. It further appears that the proceeds of the sale of such property were not sufficient to pay the judgments under which the levies were made.

The present action was begun in 1908. In the first cause of action the plaintiff seeks to recover P8,000 for the deterioration of the property, during the receivership, due to the negligence of the receiver; the sum of P30,000 for the negligent failure of the receiver to continue the business which, it is alleged, was in operation at the time the receiver was appointed; and P50,000 damages resulting from an alleged conspiracy between the receiver and the defendant Rafael Molina Salvador, whereby the latter was permitted to appropriate to himself, in part at least, the business of De la Riva, and by which the use of a considerable portion of the property in the hands of the receiver was permitted to said Molina without compensation, or with a compensation very inadequate.

The second cause of action is based on the wrongful appointment of the receiver, it being alleged that the appointment was procured by Molina without just cause. The complaint, so far as this cause of action is concerned, was dismissed by the trial court and no appeal was taken from that dismissal.

The defendants demurred to the complaint on the ground that there was a misjoinder of parties defendant and the demurrer was overruled and exception taken. If the demurrer had been well framed, we would have no hesitation

in saying that it was improperly overruled. There is clearly a misjoinder of parties defendant and, on proper objection, the court should have remedied that condition. The demurrer having been dismissed, however, we are bound to sustain the court's action if there is any legal ground on which it may be done, whether it be specifically stated by the lower court as a ground or not. Under the decision of this court in the case of Lizarraga Hermanos vs. Yap Tico (24 Phil. Rep., 504, a demurrer, to be a proper pleading, must not only set out the "objections to the complaint," but it "must distinctly specify the grounds upon which any of the objections to the complaint * * * are taken." The demurrer in this case simply states the objections to the complaint without specifying the grounds of the objection; and, in that condition, it was defective and was subject to dismissal on objection, or could be dismissed by the court on its own initiative. However, that question is academic in view of the fact that we have come to the conclusion that the plaintiff cannot recover.

Concerning the cause of action based on the ground that the defendant Molina had procured the appointment of the receiver without sufficient cause, we have already said that it was, in effect, dismissed and that no appeal was taken from the order of dismissal. We might add, however, that the facts which must be found to exist before an action will lie under section 177 of the Code of Civil Procedure were not present in the case before us. The application for the receiver was not ex parte and no bond was given to protect the defendant from the effects of an appointment without cause; and no bond having been given no liability existed. (Molina vs. Somes, 24 Phil. Rep., 49.) Moreover, if damages were to be sought for such appointment, they should have been demanded in the action in which the receiver was appointed and not in an action begun separately for that purpose. (Yap Unki vs. Chua Jamco, 14 Phil Rep., 602.) In spite of all this, however, in sustaining plaintiff's alleged right to recover as set out in certain other allegations of the complaint, the court says in part: "The defendants, Rafael Molina and Joaquin Navarro, are liable for all the damages arising to plaintiff from the appointment of a receiver, caused by the improper performance of his duties by the receiver; even though Molina had given no bond himself directly, there was an implied contract in obtaining the appointment of a receiver, under which he was obligated to pay the defendant in that action the damages which he might suffer from such appointment, no matter how they came about, that appointment being improper." It is apparent that the trial court confused the damages resulting from the appointment of the receiver, where the appointment was procured without just cause, and the damages which arise after the receiver has been appointed, due to his negligence or mismanagement. The liability in these two cases rests on different principles. The right to damages for procuring the appointment of a receiver without just cause (there being no malicious prosecution) is statutory (177, Code Civ. Proc.), while the right to damages based on the negligence or misconduct of the receiver arises under the general principles of the law. (Molina vs. Somes, 24 Phil. Rep., 49). In the former case the damages, or part of them, may be caused before the receiver qualifies or takes possession of the property, while in the latter, the injury occurs only after the receiver has qualified and taken possession of the property. In the former case the liability rests on statute while in the other it rests on the negligence or misconduct of the receiver. In the former the person obtaining the appointment of the receiver is responsible for the damages, if he has signed the bond described in section 177 of the Code of Civil Procedure. (Molina vs. Somes, 24 Phil. Rep., 49.) In the latter he is not responsible in any event. The bond is given by the receiver, and not by the person procuring his appointment, and the liability of the receiver, if any, arises from his own negligence, and involves in no way the person who obtained his appointment. For the acts of the receiver after his appointment no one is responsible but himself and his sureties. Molina cannot, in this action, therefore, be made to respond for the acts of the receiver, it not having been demonstrated that he exercised control over or that he connived with the receiver.

Taking up the cause of action based on an alleged conspiracy between the defendant Molina and the receiver, the trial court was "unable to find that an actual conspiracy existed to exploit and get all of plaintiff's business away;" but, while it found that the evidence was insufficient to establish the conspiracy, it nevertheless held that "the

action of defendants taken altogether caused great injury to plaintiff's property rights, and was in violation of the obligation of each one of the defendants in connection with their relation to the appointment of the receiver."

It is somewhat difficult to harmonize these two positions unless we assume that the court, by the two statements, abandoned the theory of a conspiracy, but held, nevertheless, that the receiver did not properly perform his duties for the reason that he favored Molina at the expense of the receivership, thus combining the different elements of the first cause of action and founding them on the negligence of the receiver in handling the property and managing the business, instead of basing that cause of action, as did the plaintiff, on an active conspiracy between him and Molina.

Dealing, then, with the action as based solely on the negligence of the receiver in the performance of his duties, we are met at the outset with a failure of proof on the part of the plaintiff, both with respect to the negligence of the receiver and the amount of damages which the plaintiff alleges he sustained by reason thereof.

It has been shown, there is no doubt, that some of the property deteriorated, both in form and value, during the time that the receiver held it in his possession, and that some of it was considerably damaged; but it also appears, by the weight of the evidence, that such deterioration and damage were due to forces over which the receiver had no control and concerning which he was in no way responsible. Some of the warehouses and buildings were injured by typhoons and some of the property deteriorated or was rendered useless by ordinary wear and tear. It was proved that the launch, which is referred to frequently in the evidence, foundered before it was delivered to the receiver and was never raised; while the smaller boats were in bad condition at the time the receiver was appointed, many of them being under water.

As to the value of the property, speaking generally, there is no reliable evidence. The inventory made at the time the receiver took possession shows the value of the property and bills receivable, as inventoried, to have been about P231,000. Of this sum about P110,000 was bills receivable. It does not appear in the record how the value of the property was fixed in the inventory or whether that was the market value thereof at the time the inventory was made. On that subject there is no evidence except the inventory itself. In the same way, there is no evidence before us of the value of the property at the time the receivership terminated, or at the time the receiver presented his account in 1907, or when the property was seized under the executions issued on the judgments in favor of Gibbs, Gale & Carr and Enrique F. Somes. What its value was at that time we have no means of knowing. Whether the property in general had deteriorated or had been damaged we are not informed from any source, particularly as the record is silent with respect to damages caused to said property by reason of acts or omissions of the receiver. Substantially all the testimony there is in the record as to the value of the property in question at any time is that given by the plaintiff himself. With respect to his evidence it must be noted that he did not see the property from 1905 until about the year 1910. What its condition was in 1907, when it was seized under the executions referred to, plaintiff does not know. It had been taken out of the hands of the receiver and had been in the hands of the purchasers under the execution sale for nearly, if not quite, three years before the plaintiff saw it. Evidence of its value at that time would be worth very little in an action against the receiver based on its values in 1905 and 1907. Moreover, plaintiff testified in 1910 that the value of the property in question at that time was about P150,000. Of that amount P50,000 was the value of the property and P100,000 bills receivable. This statement should be taken in connection with plaintiff's complaint in the present action, which was begun in 1908, in which, as we have seen, it is alleged that, at the time of the dissolution of the receivership, the property and business were of very little value.

As to the allegation that the plaintiff suffered damages on account of the fact that the receiver did not continue the business as he found¹ it, the record shows that, at the time of the appointment of the receiver, there was very little business; and what there was was not profitable. It appears, however, that the receiver did continue the business as

best he could for such time as he deemed advisable and for the best interests of the receivership. That the business was not in a flourishing condition may, in a measure, be inferred from the fact that the action in which the receiver was appointed was commenced by Molina against De la Riva to recover P42,000 or thereabouts which was a part of the purchase price of the property and business which was the object of the receivership. De la Riva had bought the property and business of Molina some time before the beginning of the action referred to and had failed to make the payments required by the contract of purchase.

Finally, we are of the opinion that an action against the receiver and his sureties cannot be maintained under the circumstances shown to have existed in this case. When this action was brought there was pending before the court in the action in which the receiver was appointed a proceeding wherein the receiver was accounting for the property which he had in his possession. There had been certain objections presented to such account by the plaintiff herein but based on grounds entirely apart from the negligence or misconduct of the receiver. That proceeding is still pending, so far as we know. We do not believe it to be the policy of the law to permit actions to be brought against a receiver based on his management of the receivership property without leave of the court which appointed him. As we have already intimated, a receiver is to be regarded as the arm, officer, or representative of the court appointing him. The custody of the receiver is the custody of the court. His acts and possession are the acts and possession of the court, and his contracts and liabilities are, in contemplation of law, the contracts and liabilities of the court. As a necessary consequence, a receiver is subject to the control and supervision of the court at every step in his management of the property or funds placed in his hands. On the other hand, it is the duty of the court to protect the possession of its receiver and to prevent all interference with him in the performance of his official functions and duties. So thoroughly is this recognized, that it is well settled that any unauthorized interference with a receiver's possession of the property committed to his charge, or with the receiver in the discharge of his official duties, is a contempt of the court by which he was appointed. It is the relationship which exists between the court and the receiver which has led to the general rule, followed in jurisdictions where statutes have not been passed to the contrary, that no action can be brought against a receiver without leave of the court appointing him. And this rule applies as well where suit is brought to recover a money judgment merely as where it is to take from the receiver specific property whereof he is in possession by order of the court. (See generally Cys., Receivers and authorities.) If actions against him are permitted indiscriminately, the interests of those concerned in the property held by the receiver will suffer and the court will be hampered and limited in its control over him. One who feels himself sufficiently aggrieved by acts of a receiver to warrant active intervention should take the matter into the court which appointed the receiver and ask either for an accounting or take some other proceeding, and ask for the consequent judgment of the court on the acts complained of, or for leave to bring action directly. If, under the facts presented, it is the judgment of the court that the interests of all concerned will be best observed by such a suit or by any other proceeding, permission will be given to bring it.

For these reasons the judgment appealed from is reversed and the action dismissed on the merits, without costs to either party in this instance. So ordered.

Arellano, C.J., and Torres, J., concur.

Carson, J. concurs in the result.

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