

## FRANCISCO BASTIDA, PLAINTIFF AND APPELLEE, VS. GREGORIO PEÑALOSA, DEFENDANT AND APPELLANT.

*G.R. No. 10490. March 19, 1915*

Ponente: MORELAND, J.

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### MORELAND, J.:

This is a motion by the appellant to suspend further proceedings on this appeal on the ground that, after the appeal was taken, the appellant was declared an insolvent and insolvency proceedings under the Insolvency Act are now in progress.

We are of the opinion that the motion must be denied on the ground that the application to suspend further proceedings in this case should be made to the court in insolvency.

Section 60 of Act No. 1956, known as the Insolvency Law, provides in part as follows:

"No creditor whose debt is provable under this Act shall be allowed, after the commencement of proceedings in insolvency, to prosecute to final judgment any action therefor against the debtor until the question of the debtor's discharge shall have been determined, and any such suit or proceedings shall, upon the application of the debtor or of any creditor, or the assignee, be stayed to await the determination of the court on the question of discharge: Provided, That if the amount due the creditor is in dispute, the suit, by leave of the court in insolvency, may proceed to judgment for the purpose of ascertaining the amount due, which amount, when adjudged, may be allowed in the insolvency proceedings, but execution shall be stayed as aforesaid."

Section 18 has the following provision with respect to the effect of the order declaring the petitioner insolvent:

"Upon the granting of said order all civil proceedings pending against the said insolvent shall be stayed."

Section 69 provides in part:

"A discharge, duly granted under this Act, shall, with the exceptions aforesaid, release the debtor from all claims, debts, liabilities, and demands set forth in his schedule, or which were or might have been proved against his estate in insolvency, and may be pleaded by a simple averment that on the day of its date such discharge was granted to him, setting forth the same in full, and the same shall be a complete bar to all suits brought on any such debts, claims, liabilities, or demands, and the certificate shall be prima facie evidence in favor of such fact and of the regularity of such discharge."

From section 69 it appears with fair clearness that the court in insolvency has full charge of all claims by and against the petitioner in insolvency. That court may determine whether an action pending against the petitioner at the time of the declaration of insolvency shall be prosecuted to final result or whether it shall be stayed; and to that court is confided the power of dealing generally with the estate as well as with the debts of the insolvent. If other courts in which actions against the insolvent might be pending at the time of the order in insolvency were permitted to exercise their own authority and deal with the actions in the manner which to them seemed best, the proceedings in insolvency might be halted, final action therein indefinitely postponed, and the court in insolvency

greatly hampered in the management of the insolvency proceedings. We think it the better practice to require applications of this sort to be made directly to the court in insolvency, that it may determine whether it desires the action stayed or whether it wishes that it proceed for the purpose of fixing the amount of the creditor's claim; and is the practice which seems to be established by the Insolvency Act.

The motion is denied, with costs.

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

Trait, J., dissents.

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### **DISSENTING**

**CARSON, J.,**

I think that the proceedings should be suspended by this court on the application of the defendant, upon a showing that "proceedings in insolvency" have been commenced against him, unless and until the plaintiff makes it appear that he has "leave of the court in insolvency" to proceed to judgment under the provisions of section 60 of Act No. 1956.

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