

**BENITO AFRICA, PETITIONER, VS. KURT W. GRONKE, ASSIGNEE,
TOMASA MASONSONG ET AL., WIFE AND CHILDREN OF THE
INSOLVENT BENITO AFRICA, APPELLANTS.***G.R. No. 10649, March 01, 1916*

Ponente: MORELAND, J.

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On February 24, 1914, Benito Africa filed in the Court of First Instance of Batangas a petition in voluntary bankruptcy. The judge assigned to hold the Court of First Instance in that province was absent from the province and the petition was presented to the justice of the peace of the capital of the province under the provisions of section 68 of Act No. 136, as amended. The justice of the peace took cognizance of the case and, on the 24th of February, 1914, the same day on which the petition was filed, made the order provided for in section 18 of Act No. 1956, known as the Insolvency Law. On the 24th of August, 1914, a motion was made by the wife of the insolvent on her own behalf and as guardian ad litem of one of her minor children, and by Patrocinio Africa, a daughter of the insolvent, in her own behalf, for the dismissal of the insolvency proceedings on the ground that the justice of the peace was without jurisdiction to make the order referred to. This motion was denied; and on the 9th of October a motion was made for reconsideration which was denied. To the denial the moving parties duly excepted and gave notice of appeal from the order denying the motion as well as the order denying the motion for reconsideration.

We are of the opinion that the motion should have been granted. It is clear to us that the justice of the peace had no jurisdiction to make the order complained of.

The appellee relies on that provision of section 68 of Act No. 136 already referred to which reads as follows:

"Justices of the peace in the capitals of provinces organized under the Provincial Government Act, and the governors of provinces not organized under said Act acting as ex officio justices of the peace, in the absence of the judge of the district from the province may exercise within the province like interlocutory jurisdiction as the Court of First Instance, which shall be held to include the hearing of all motions for the appointment of a receiver, for temporary injunctions, and for all other orders of the court which are not final in their character and do not involve a decision of the case on its merits, the hearing of petitions for a writ of habeas corpus, and all questions which may arise concerning the appointment of inspectors of election, or the inclusion in or exclusion from the register of voters of the names of electors."

It is conceded that the judge of the district was absent from the province when the justice of the peace made the order complained of; so that we have before us squarely the question of whether a justice of the peace has jurisdiction under this section to make an order declaring a person a bankrupt. It is contended that a declaration of insolvency made by a judge or court in insolvency proceedings is an interlocutory order not final in its character and does not involve a decision of the case on its merits; and that consequently it is one of the acts which the section referred to gives a justice of the peace jurisdiction to perform. We do not believe that the section authorizes a justice of the peace to make an order declaring a person a bankrupt. It should be noted in considering

the wording of the section that the orders which a justice of the peace is authorized to make are strictly interlocutory in their character from which the law permits no appeal. It should also be noted that they are urgent in their nature, a delay in procuring them resulting in loss of property or personal liberty. The appointment of a receiver or temporary injunction, petitions for writs of habeas corpus, and the appointment of inspectors of election or inclusion in or exclusion from the register of voters of the names of electors, are matters which, by their very nature, cannot wait for an indefinite time without great damage to property, injury to personal rights or to the public interest. It is clear from the wording of the section that the intention of the legislature was simply to expedite matters of urgency where great loss to person or property or to the public would result from delay; and where the decision of the justice of the peace thereon would be temporary in character and subject to immediate revision by the Court of First Instance on its return to the province. If this was in fact the intention of the Legislature, then a justice of the peace has, under the section, no jurisdiction over an application for a declaration of insolvency, whether voluntary or involuntary. An order of insolvency is both final and on the merits. It is final because it adjudicates a status which cannot subsequently be changed and divests and transfers property from one person to another. Besides, the order is made appealable by the statute (sec. 82). If such an order is not final in what part of the proceedings in bankruptcy shall we find a final order? If it is not an order on the merits in what part of the proceedings can such an order be found? After that order the greater part of the remainder of the proceedings is administrative.

Moreover, the jurisdiction of an inferior court will not be presumed; it must appear clearly from statute or it will not be held to exist. While the presumption of jurisdiction in a given case exists as to superior courts the contrary presumption prevails with respect to inferior courts. A justice's court will not be presumed to have jurisdiction but it will be held to have only such jurisdiction as is expressly conferred upon it by statute or which is necessary to make effective the jurisdiction expressly conferred. Section 68 of Act No. 136 does not expressly confer on justices' courts jurisdiction in bankruptcy cases nor is such jurisdiction necessary to render effective that expressly conferred. While the phrase, "may exercise within the province like interlocutory jurisdiction as Court of First Instance" and that jurisdiction shall be held to include "the orders of the court which are not final in their character and do not involve a decision of the case on its merits," are broad in their scope, they will be held to cover only such cases as are expressly mentioned in the section, or those strictly of the same character. Declarations of insolvency are generally not urgent nor are they interlocutory. They are the corner stones of the proceedings. All of the other steps are taken by the creditors and the assignee, unless special conditions arise; and all matters are in the hands of the assignee for administration after his appointment. Except where some contests arise over property or claims the court has nothing to do until the time comes for the discharge in bankruptcy. Moreover, such an order is necessarily appealable for it would be a denial of justice if persons interested in the insolvent's assets were obliged to go through the whole bankruptcy proceeding, including the conversion of the insolvent's assets into money, the payment thereof to claimants, and the final order of discharge, before an appeal could be taken.

The character of the declaration of insolvency is such and it involves the exercise of powers so high and important as to exclude it from the jurisdiction of the justices of the peace. It declares the insolvency of the petitioner; it orders the sheriff to take possession of all the property, deeds, vouchers, books of account, papers, notes, bonds, bills and securities of the debtor, and all his real and personal property, estates and effects, except such as may be by law exempt from execution; it forbids the payment to the debtor of any debts due him and prohibits the delivery to the debtor or to any one for him of any property belonging to him; it prohibits the transfer by the debtor of any property; it fixes a time and place for a meeting of the creditors to choose an assignee of the estate; it designates a newspaper of general circulation published in the province if there be one, and if there be none, in a newspaper which in the opinion of the judge will best give notice to the creditors, in which the order shall be published as often as may be prescribed by the court or judge; it provides that all civil proceedings then pending

against the insolvent shall be stayed. In other words, it requires the exercise of powers which have rarely if ever been conferred by a legislature on justices of the peace; and that being the case we will not by construction or interpretation or by presumption declare that such power exists in the justices of the peace in the Philippine Islands.

Furthermore, if a justice of the peace has power to make a declaration of insolvency it can decide all questions which may be raised and what must be litigated prior to such declaration. Such questions may involve title to real estate and may require the exercise of the highest powers of superior courts. And it must not be forgotten that if a justice of the peace may make such a declaration in voluntary proceedings he may make it in involuntary proceedings, where it is generally necessary to decide rights of the highest quality and import before such a declaration can be made.

For these reasons, we are of the opinion that the justice of the peace of the capital of Batangas had no power, authority, or jurisdiction to make the order complained of and it is therefore declared null and void and of no effect.

The order appealed from is vacated and set aside and the proceedings had thereon of no force or effect. So ordered.

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

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