

**BEHN, MEYER & CO., PLAINTIFF, VS. J. S. STANLEY ET AL.,
DEFENDANTS. AND LAZARUS G. JOSEPH AND A. N. JUREUDINI & BROS.,
APPELLANTS, VS. JOHN BORDMAN, J. M. MENZI, AND THE
BANK OF...**

G.R. No. 22537. December 08, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

There is practically no dispute as to the facts in this case. On January 23, 1917, Behn, Meyer & Co., Ltd., a foreign corporation with a branch in the Philippine Islands, brought an action against the Collector of Customs to recover the possession of certain merchandise imported into the Islands and then in the hands of the Collector. A. N. Jureidini & Bros, intervened in the case and claimed title to the merchandise under a sale of the same ordered by the British Admiralty Court of Alexandria, Egypt, in prize court proceedings.

The Court of First Instance on February 28, 1918, rendered judgment in favor of Behn, Meyer & Co., Ltd., on the ground that the title to the merchandise originally rested in Behn, Meyer & Co., Ltd., and that no record of the prize court proceedings showing that Behn, Meyer & Co., Ltd., had been divested of the title had been presented in evidence. On appeal to the Supreme Court the judgment was reversed and the case remanded to the court below with instructions to allow Jureidini & Bros, a reasonable time within which to obtain a duly certified copy of the decision of the Admiralty Court of Alexandria, in which that court declared that the merchandise constituted lawful prize.[1] A new trial was held on February 24, 1922, after which a judgment was entered in favor of A. N. Jureidini & Bros. and against Behn, Meyer & Co., Ltd., for the sum of P1,988 in damages and for the further sum of P1,988 for the value of the merchandise in default of delivery to Jureidini & Bros.

In the meantime, on the 16th day of February, 1918, all the business, property, and assets of every nature of the firm of Behn, Meyer & Co., Ltd., were taken over by the Alien Property Custodian of the United States under the provisions of the Trading with the Enemy Act and by direction of the said Alien Property Custodian, one W. D. Pemberton was appointed receiver and placed in full charge of the business and assets of the firm.

During the month of January, 1919, the business of the Philippine branch of Behn, Meyer & Co., Ltd., was liquidated and the property and assets of the corporation in the Philippine Islands, including the goodwill, trade-marks, accounts receivable, together with all vouchers, entries, and other proofs of the indebtedness, such as the books of account, etc., were sold to one of the intervenors herein, John Bordman, by the direction and under the supervision of the said Alien Property Custodian, in accordance with the provisions of the Alien Enemy Act, for the sum of P660,000, as shown by the letters and bills of sale, Exhibits B, C, D, and E.

The intervenor herein, the Bank of the Philippine Islands, advanced to Bordman the sum of P660,000, with which to purchase the said business, property, and assets of the said Behn, Meyer & Co., Ltd., which sum was turned over to W. D. Pemberton, the receiver appointed by the Alien Property Custodian.

On the 21st of February, 1919, Behn, Meyer & Co., Ltd., was declared by the Alien Property Custodian to be an enemy not holding a license granted by the President, and on the same date demand was made on the receiver to convey, transfer, assign, deliver, and pay over to the Alien Property Custodian the net proceeds of the sale and liquidation of the business, property, and assets aforesaid, and by virtue of that demand, the said net proceeds in the sum of P392,674.96 was on February 28, 1919, delivered to the managing director of the office of the Alien Property Custodian in the Philippine Islands, as shown by Exhibits F and G, which sum, as far as the record shows, is still in possession of the Alien Property Custodian.

Execution of the judgment of February 24, 1922, in favor of A. N. Jureidini & Bros, having been issued and returned unsatisfied, Jureidini & Bros, on August 8, 1922, filed an ex-parte petition in the same case praying that a receiver be appointed by the court to take charge of the estate and effects of Behn, Meyer & Co., Ltd., and on August 10, 1922, the Court of First Instance issued an order appointing Lazarus G. Joseph receiver of the property, assets and estate of the said firm, upon giving a bond in the sum of P1,000.

On the 4th of September, 1923, the said Lazarus G. Joseph, as such receiver, commenced an action in the Court of First Instance of Manila against the Bank of the Philippine Islands and J. M. Menzi, being civil case No. 24892 of said court, to annul the aforesaid sale of the business, property, and assets, etc., of the said Behn, Meyer & Co., Ltd., to John Bordman and to recover back the property sold as property of the said Behn, Meyer & Co., Ltd., and for an accounting and other relief.

On the 5th of September, 1923, the said Lazarus G. Joseph, in his capacity of receiver, appeared in the present case in the Court of First Instance and obtained an order directed to the said J. M. Menzi citing him to appear before the court on a certain date to show cause why he should not turn over to the said receiver the books of account of the said Behn, Meyer & Co., Ltd.

On September 14, 1923, John Bordman, J. M. Menzi, and the Bank of the Philippine Islands filed in the same case a motion for permission to intervene in the receivership proceedings solely for the purpose of vacating the order of August 10, 1922, appointing a receiver for the property, assets, and estate of the said Behn, Meyer & Co., Ltd., and alleging in support thereof that they had a legal interest in the subject-matter of said receivership and an interest against that of the parties to said proceedings.

At the same time the intervenors filed a verified motion setting forth the facts hereinbefore stated and asking that the said order of August 10, 1922, appointing the said Lazarus G. Joseph, receiver of the said Behn, Meyer & Co. Ltd., be vacated and set aside on the ground that Jureidini & Bros., under the facts and circumstances stated, had no legal right to such receivership and that the court had no jurisdiction to make such an appointment, and that consequently its order to that effect was null and void.

Upon hearing, the Court of First Instance, under date of September 26, 1923, entered an order, the dispositive part of which reads as follows:

"For the foregoing and the interests of J. M. Menzi, John Bordman and the Bank of the Philippine Islands in this proceeding having, in the opinion of the court, been shown, that of Bordman consisting in his having acquired through purchase for the sum of P660,000 all the interests, rights, choses in action, books, vouchers of the herein plaintiff; that of J. M. Menzi in his having been designated by said Bordman to take charge of said properties and books in his name; and that of the Bank of the Philippine Islands in its having furnished the sum of money with which said Bordman made the purchase, it is hereby adjudged to permit said parties, as they are hereby permitted and authorized, to intervene in this case; and-the court having reached the conclusion that it has not, and did not have, any jurisdiction to appoint a receiver in view of the fact that all of the properties of the said plaintiff had been sold by the Alien Property Custodian in accordance with the Act of Congress hereinbefore mentioned; it is hereby adjudged that the order of this court of August 10, 1922, appointing

Lazarus G. Joseph, receiver, should be, as it hereby is, set aside. Let the bond given by said receiver to secure the faithful performance of his duties be cancelled, and J. M. Menzi is held to be under no obligation to deliver to the aforesaid Lazarus G. Joseph, the books under said Menzi's charge which formerly belonged to the plaintiff Behn, Meyer & Co., Ltd."

No exception was taken to this order neither by the receiver nor by Jureidini & Bros., but on October 1, 1923, their counsel filed the following motion for reconsideration:

"Come now the Receiver and A. N. Jureidini & Bros. in the above entitled case and move this court that the court reconsider the resolution of this court dated September 26, 1923, and, thereafter order the delivery of the books to the said receiver."

On December 3, 1923, the motion for reconsideration was denied, exception duly taken and the case is now before us upon appeal from the two orders last mentioned.

The appellants contend that the court below erred in permitting the appellees to intervene inasmuch as (a) a final judgment had been entered in the case and (b) the appellees had no legal interest in the matter in litigation. Neither one of these points is, in our opinion, well taken. The appellees intervene only in the receivership proceedings which still were an open issue and did not attempt to interfere in the part of the case which was covered by the final judgment. They claimed no interest in the controversy between Jureidini & Bros, and Behn, Meyer & Co., Ltd., but that Bordman and the Bank of the Philippine Islands had a vital interest in the subsequent receivership is clearly shown by the fact that one of the first actions of the receiver appears to have been the institution of an action against them to annul the sale made by the Alien Property Custodian to Bordman, thus disturbing the latter in his property rights and threatening the lien held by the bank upon the property sold. As to the appellee Menzi, it is sufficient to say that he was brought into the present case by the receiver himself on the order to show cause why he did not turn over and deliver to said receiver the books of account of Behn, Meyer & Co., Ltd. We fail to find any error or abuse of discretion on the part of the court below in permitting the intervention.

Appellants further maintain that the court erred in holding that the appointment of the receiver was in excess of its jurisdiction. This contention is also untenable. As soon as Behn, Meyer & Co., Ltd., was declared an "enemy not holding a license granted by the President of the United States," it became the duty of the Alien Property Custodian to take possession of its business and all its assets within United States territory, and we must presume that this duty was duly performed and that all such assets are now either actually or constructively in the possession of the Alien Property Custodian and under his control. If so, they are beyond the jurisdiction and control of the Philippine Courts. Section 7 of the Trading with Enemy Act as amended provides as follows:

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States"

Section 9 of the Act provides that anyone "not an enemy or ally of enemy" claiming any interest, right, or title in any money or other property so sequestered and held, may give notice of his claim and institute a suit in equity against the Custodian or the Treasurer, as the case may be, to establish and enforce his claim; and where suit is brought, the money or property is to be retained by the Custodian or in the Treasury, to abide the final decree. The same section further provides:

"Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian shall not be liable to lien, attachment, garnishment, trustee, process, or execution, or subject to any order or decree of any court."

Section 17 of the same Act provides:

"That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled 'An Act to codify, revise, and amend the Laws relating to the judiciary.'"

The only jurisdiction given to the Courts of First Instance of the Philippine Islands is in regard to criminal offenses under said Act, as shown by section 18 thereof. Had it been the intention of Congress to give the Philippine courts jurisdiction over civil litigation in regard to property under the control of the Alien Property Custodian, the Act would, of course, have so stated. The orders appealed from are affirmed, with the costs against the appellants. So ordered.

Johnson, Street, Malcolm, Avancena-, Villamor, Johns, and Romualdez, JJ., concur.

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