

**IN THE MATTER OF THE VOLUNTARY INSOLVENCY OF THE CAPIZ
CENTRAL. URQUIJO, ZULOAGA Y ESCUBI, PETITIONER, VS.
TIMOTEO UNSON AND HIS WIFE, CLARA LACSON, JOSE ALTAVAS,
ANTONIO BELO, ...**

G. R. No 25044. March 27, 1926

Ponente: STREET, J.

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STREET, J.:

This is an application for a writ of mandamus to compel the respondent Judge of the Court of First Instance of Iloilo to approve, sign, and certify a record on appeal from an order dated September 24, 1925, in the matter of the voluntary insolvency of the Capiz Central, whereby his Honor recognized the claims of the respondents, Timoteo Unson and his wife, Clara Lacson, Jose Altavas, and Antonio Belo, as preferential claims against the estate of said insolvent and further admitting the claim of the petitioner, Urquijo, Zuloaga y Escubi, as an ordinary unpreferred debt against said insolvent, but nevertheless denying the preferential character of said latter claim. Upon presentation of the petition in this court the usual order requiring the respondents to appear and show cause, if any there be, why the remedy prayed for should not be granted was issued, in obedience to which the various respondents appeared and answered. Upon the submission of the cause for the determination of the matters involved it was found that the respondents were insisting upon more than one point as grounds for denial of the relief sought, and one of these points appeared to be of a preliminary character. It was accordingly disposed of by this court in a resolution of December 21, 1925; and as the point embodied in this resolution appears to be of some importance as a matter of practice, it will be here stated.

In this connection it appears that the petition, as tendered, did not set out substantially the record on appeal to which the signature of the respondent judge was desired, nor was any affidavit attached to the complaint containing the required verification by the attorney of the truth of the record on appeal, as tendered by the party or his lawyer, the oath appearing thereon merely reciting that the attorney for the petitioner was informed of the facts alleged in the petition and that the same were true to the best of his knowledge and information. Objection having been made in behalf of the respondents to the sufficiency of the petition in the respects mentioned, this court, in the resolution above-mentioned, sustained the objection and ordered the cause to be dismissed, unless within fifteen days after notification of the order the petitioner should submit to the court a properly verified record on appeal, consistently with the practice observed in applications for mandamus to compel the signing of a bill of exceptions. This order having now been complied with, we now proceed to consider the other grounds relied on as constituting a justification of the position taken by the trial judge in refusing to certify the record on appeal.

The first proposition which the attorney for the respondents propounds is that under existing law mandamus does not lie to compel a judge of a Court of First Instance to sign and certify a record on appeal; and attention is directed to the fact that section 499 of the Code of Civil Procedure, which provides for the remedy of mandamus to compel a judge to certify a bill of exceptions is not applicable to the certification of a record on appeal. The reason for this, as pointed out in the argument of the attorney for respondents, is that when that section was

enacted into law the record on appeal was not required to be approved, signed, or certified by the judges from whose judgment or order the appeal was intended to be taken. As the law then stood the record on appeal was prepared in this court from certified copies of the orders, decrees, or judgments of the court below, and the trial judge had no intervention in the matter. By rule 16 of Courts of First Instance, effective January 1, 1919, it was prescribed by this court for the first time that the record on appeal should be approved by the trial judge. From this circumstance, as well as from the circumstance that section 499 specifically refers only to bill of exceptions, the inference is drawn that section 499 cannot be invoked as a ground for allowing a writ of mandamus to compel the judge to approve and certify a record on appeal. The argument is no doubt correct in so far as respects the application of section 499 of the Code of Civil Procedure. But it must be borne in mind that under section 515 of the same Code this court is given original jurisdiction over Courts of First Instance and the judges thereof whenever said court or judge "unlawfully neglects the performance of a duty which the law specifically or especially enjoins as a duty imposed upon such court or judge." Now the rules of this court, adopted pursuant to law, have the force of law; and when it is required by rule 16 that the judges of the Courts of First Instance shall approve the record on appeal before transmission to this court, the writ of mandamus undoubtedly lies to compel the performance of this duty. It was not necessary that any special provision should be made granting the writ of mandamus for negligence in the performance of this duty.

In the second place it is contended that no appeal whatever lies from the order from which appeal is sought to be taken in this case for the reason that the order complained of was not made at the hearing of an account of the assignee in insolvency.

Section 82 of the Insolvency Law (Act No. 1956) in the part here material to be quoted, reads as follows:

"SEC. 82. An appeal may be taken to the Supreme Court in the following cases:

"1 * * * * *

"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."

It should be noted that the order from which the petitioner here seeks to appeal involved an adjudication of a claim far in excess of the P300 limit specified in the statute, amounting in fact to many thousands of pesos. No question therefore can be made as to the sufficiency of the amount in controversy. But the point upon which reliance is chiefly placed by the respondents is that the order complained of was not made at the hearing of an account of the assignee in the sense intended by the statute. The situation with respect to this feature of the case appears to be that after the various claimants with which this petition is concerned had filed their claims in the court of insolvency, that court especially set a day, namely, August 25, 1925, as the date for "the hearing of any and all claims against the insolvent." Subsequent to said hearing, his Honor, Judge Rovira, who was then presiding, made the order of September 24, 1925. On the date mentioned no account of the assignee, requiring the court to pass upon debits or credits of the assignee, was in fact heard; and the order complained of was determined upon the issue raised by the several claimants wherein preferential rights with respect to their claims were asserted by them. It is insisted that no account of the assignee having been heard or discussed at the hearing referred to no appeal will lie.

Although the position taken by the attorney for the respondents finds some support in the strict letter of the statute, we are of the opinion that the contention against the appealable character of the order in question is not well founded; and the right of appeal must be respected. It may be admitted that the right of appeal in insolvency cases is governed by the Insolvency Law; but it should be remembered that provisions of this character are of a remedial nature and should be liberally interpreted in furtherance of the right of appeal. The statute above quoted

undoubtedly assumes that an order allowing or rejecting a creditor's claim will be made at some hearing of the accounts of the assignee. But the words "made at the hearing of any account of an assignee" do not in our opinion state a condition precedent to the maintenance of an appeal. Those words are rather descriptive of the conditions under which orders allowing or rejecting the claims are supposedly made; but it was not intended that if a court departs from this practice and allows or rejects a creditor's claim at some other stage of the proceeding than upon the hearing of an account of the assignee, the right of appeal shall not exist. The purpose, we think, was that the right of appeal should exist from orders allowing or rejecting claims in whole or in part, when the amount in dispute exceeds P300; and the circumstance that the statute supposes such orders to be made at the hearing of an account of the assignee does not defeat the right of appeal when the order is made at some other time or stage of the proceedings; It is a well-known fact that our Insolvency Act is an adaptation from the obsolete Insolvency Law of the State of California, which in turn was based upon the United States Bankruptcy Act of 1867. We note that in the Bankruptcy Act now in force in the United States the provision has been changed, with the result that the embarrassment created by the words mentioned has been done away with. We are of the opinion, however, that even as the law stands in our Insolvency Law the right of appeal exists under the circumstances existing in this case. A contrary interpretation of the law on this point would lead to the result that a court could completely frustrate the right of appeal from orders affecting claims by simply passing upon them at some other stage than at the hearing of an account of the assignee. This could not have been intended by the lawmaker.

Another contention put forth in behalf of the respondents and argued by their attorney with much vigor has reference to the fact that the petitioner is not attempting to appeal from so much of the questioned order as recognizes the validity of the claims of the petitioner and of the creditor respondents, but only from so much of said order as concedes priority to the claims of said respondents and denies priority to the claim of the petitioner,—all of which appears from the exception taken to said order by the attorney for the petitioner on September 25, 1925. The contention is that in order to be appealable an order must be one allowing or rejecting a creditor's claim in whole or in part with respect to the amount of the claim and not with respect to the declaration of its preferential or nonpreferential character. In this connection it will be well to state that the property of the insolvent appears to consist chiefly of the proceeds of the machinery and the grinder, which has already been sold for the sum of P80,266. The claim of the respondents Unson and wife is in the amount of P30,000; that of Altavas is in the amount of P8,000, while that of Belo is in the amount of P11,000. The claim of each of these creditors was allowed in the respective amounts stated, and they were declared to be entitled to preference in the order stated, owing to liens acquired by said creditors by virtue of attachments obtained by them respectively in connection with certain civil actions previously instituted by them. The claim of the petitioner, Urquijo, Zuloaga y Escubi, is in the amount of P90,000; but with respect to P30,000 of this claim the petitioner asserts a priority, claiming a vendor's lien under article 1922 of the Civil Code. The trial court admitted the petitioner's claim in its entire amount in the character of an ordinary credit but rejected the claim to any preference with respect thereto. Now the petitioner desires to put an issue in the appellate court only so much of the order referred to as relates to the allowance of preference in favor of the claims of the respondent creditors and to the denial of the preference with respect to the claim of petitioner.

It is insisted for the respondents that the descriptive words "in whole or in part" which appear in subsection 2 of section 82 of the Insolvency Law immediately following the words "allowing or rejecting a creditor's claim" refer to the amount of the claim allowed or rejected and not to its preferential or nonpreferential character. It is therefore supposed that the exception taken by the attorney for the petitioner is not broad enough to justify the appeal, or rather that the appellate court has no jurisdiction to entertain an appeal with respect to the feature mentioned. We are of the opinion that this proposition is based upon too narrow an interpretation of the language of the statute. We think that in allowing or rejecting a claim to a preference the court allows or rejects a claim in

whole or in part within the meaning of the statute. In support of the narrower interpretation proposed by the attorney for the respondents certain decisions from American Bankruptcy courts are cited which hold that under the existing Bankruptcy Act of 1898 an order allowing or disallowing a preference is not appealable. But we note that the statute provides another way for securing the review of such an order, which is by petition to revise. This refinement of procedure is not in harmony with our statute, which we consider broad enough to justify an appeal not only with respect to the amount but with respect to the preferential or nonpreferential character of the claim. If a preference is disallowed in a case where the assets are not sufficient to satisfy all creditors, the effect of the order is to deprive the creditor asserting such preference of a part of the amount of his claim to the same extent as if a part of the amount of the claim had been expressly disallowed; and similarly the allowance of a preference in favor of one creditor deprives the other ordinary creditors of a part of the proceeds which might have been distributed among them.

Lastly it is contended that the order from which the petitioner attempts to appeal was correct and that the writ of mandamus, even if obtained, would be of no practical benefit to him. We are of the opinion that this point is one not proper to be considered upon application of the character now before us, since it deals with the merits of the case,—a matter appropriate to be ventilated when the cause reaches this court upon appeal.

It results from the foregoing that the petitioner is entitled to a writ of mandamus and the same will be granted, with costs against the respondents other than the respondent judge.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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