

IN RE INSOLVENCY OF CENTRAL CAPIZ. SMITH, BELL & CO. EL AL., PETITIONERS, VS. HONORABLE FRANCISCO SANTA- MARIA, JUDGE OF THE TWENTY-THIRD JUDICIAL DISTRICT, ET AL., RESPONDENTS.

G. R. No. 26483. December 24, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

The petitioners pray that a writ of mandamus issue to compel the respondent Judge of the Court of First Instance of Iloilo to approve, sign, and certify a record of appeal from an order dated September 24, X925, in the matter of the involuntary insolvency of the Central Capiz, in which said court declared the claims of Antonio Belo, Jose Altavas, and the spouses Timoteo Unson and Clara Lacson preferred, but denied preference to the claims of the herein petitioners. Exception was taken to said order on October 5, 1925, and on October 8, 1925, the petitioners filed a motion for new trial. This motion was denied and exception noted. The petitioners gave notice of appeal on October 24, 1925, and the court fixed the amount of the appeal bond.

On November 21, 1925, a record of appeal was presented to the court, but on the 8th of the following month, the respondent judge issued an order in which he refused to approve and certify said record of appeal on the grounds (a) that no appeal would lie from the order of September 24, 1925, inasmuch as it was not made at the hearing of an account of the assignee in insolvency, and (b) that the record of appeal tendered contained matters irrelevant to the appeal. The appellants, herein petitioners, excepted to this order and gave notice that they would apply to the Supreme Court for a writ of mandamus. Thereupon, on January 2, 1926, a motion for the reconsideration of the same order was presented. This motion was denied on July 9, 1926, and on July 16, 1926, another motion for reconsideration was filed, which was denied ten days later. Thereupon the present petition was filed in this court on September 1, 1926.

The court below erred in holding that the order of September 24, 1925 was not appealable. The question is fully discussed in our decision in the case of *Urquijo, Zuloaga y Escubi vs. Unson* (page 79, ante), and in which we held that orders determining the validity or priority of claims against the insolvent are appealable whether made at the hearing of an account of the assignee or not.

We also think that the court below erred in rejecting the record of appeal on the ground that it contained matters irrelevant to the appeal. It may be true that some of the documents included in the record of appeal have no direct connections with the petitioners' claims, but as the appeal relates to preferences among the various claims presented in the insolvency proceedings, matters which at first sight appear to be irrelevant, may in the course of the arguments on appeal be found to be of value in the determination of the questions at issue. The courts should exercise caution in ordering the exclusion from a record of appeal or a bill of exceptions of matters which the appellant has thought necessary for the proper development of his argument; he pays for the printing of the record and there is very little danger of his overburdening it with wholly irrelevant matter. On the contrary, he is more

likely to omit matter which ought to be included.

It will be noted that no motion for the reconsideration of the order of December 8, 1925, denying the approval of the record of appeal, was filed until January 2, 1926, twenty-five days after the order was issued. The respondents maintain that the order became final after twenty or twenty-one days from its issuance; that at the time the motion for reconsideration was filed, the court had lost its power to revoke or modify the order; that, consequently, the motion for reconsideration was useless and presented too late, and that no motion for reconsideration having been presented in time, a writ of mandamus should not issue. Though the point is very plausibly argued, we, nevertheless, do not think it well taken. The insolvency proceedings were still under the control of the court at the time the motion for reconsideration was presented and the court undoubtedly even then had the power to approve the record of appeal. If so, it must also have had the power to revoke the former order denying the approval.

For the reasons stated, the petition for a writ of mandamus is hereby granted, ordering the respondent judge to approve and certify to this court the aforesaid record of appeal. The respondents Unson, Belo, and Altavas will pay the costs. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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