

TEAL MOTOR CO., INC., A CORPORATION ORGANIZED UNDER THE LAWS OF THE PHILIPPINE ISLANDS, AND E. H. TEAL, PETITIONERS, VS. COURT OF FIRST INSTANCE OF MANILA, E. M. BACHRACH AND TH...*G.R. No. 29119. February 18, 1928*

Ponente: JOHNS, J.

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The original complaint in which the receiver was appointed alleges that the Teal Motor Company, Inc., is a domestic corporation, with a capital stock of P1,000,000 divided into 10,000 shares of the par value of P100 each, of which 8,000 shares have been issued, 3,999 of which are in the name of Bachrach and one in his nominee, and 3,998 in the name of Teal and two in the name of his nominees. That on August 28, 1926, Teal represented to Bachrach that he had subscribed and paid in full for P500,000 or 50 per cent of all the capital stock of the corporation. That payment therefore had been made by the transfer and delivery to the company of certain assets which were of the fair and reasonable value of that amount. That said representations were false and were known to be false at the time they were made, and were made by Teal for the purpose of inducing Bachrach to subscribe to the capital stock of the company, and to render it financial assistance and to cause him to enter into the agreement, which he did. That relying thereon on August 28, 1926, plaintiff entered into the contract and subscribed to, and paid for, P300,000 of the capital stock of the company, and the defendant Teal then transferred to plaintiff P100,000 of the capital stock then standing in his name, thus apparently making the stock of the Teal Motor Company fully paid to the amount of P800,000, of which one block of P400,000 was held by the plaintiff and his nominee, and the other by the defendant Teal and his nominees, it being the agreement and intention of the parties that Bachrach and Teal "were virtually to become partners in the form of a corporate organization, each to have fifty per cent of its capital stock." That they further agreed that Bachrach should have two members on the board of directors out of the five, and that Teal should have the remaining three, "with an undertaking to pass resolutions in regard to any matters coming before any meeting of the board of directors upon the approval of" Teal and Bachrach, all of which was made a part of the agreement. That since that date the corporation has been under the control of Teal, who has "so managed and conducted the business of the corporation, as to dissipate and misapply its assets and otherwise has neglected the management of its business and affairs; that said defendant corporation, Teal Motor Co., Inc., is in imminent danger of insolvency, and the dissipation and loss of its assets and business." That by virtue of the agreement, the promissory notes transferred to the defendant Teal Motor Co., Inc., by the defendant Teal, amounting to P168,870.81 in part payment of his original subscription to the capital stock, were thereafter discounted by the company to the plaintiff, and that from and out of the amount of said notes, at least P45,000 was not paid by the original makers at their maturity, by reason of which Bachrach made a demand upon the defendant Teal and the company as endorsers, and that Teal, taking advantage of his authority as President of the company, caused checks to be drawn on the account of the company and payments thereof to be

made to Bachrach, who in turn redelivered the notes to the company "where most of them still remain unpaid and uncollected." That Bachrach made a demand upon the defendant Teal to make good to the defendant company the amount of the notes, for which he was personally liable to the company. That notwithstanding such repeated demands "the defendant Teal has failed and refused and still fails and refuses to make good said notes, or any part thereof, to the defendant Teal Motor Co., Inc., to the injury and prejudice of the latter, and, without the relief hereinafter prayed for, it will be impossible for the Teal Motor Co., Inc., to enforce against E. H. Teal its rights in the premises, to the injury, damage and prejudice of said company and of its stockholders."

It is further alleged that on or about July 10, 1926, it was the custom in the Philippine Islands to sell automobiles by the taking of an initial partial payment, the balance of the purchase price to be evidenced by a series of promissory notes secured by a chattel mortgage upon the automobile. The notes of this nature have been discounted from time to time by the company to plaintiff in the aggregate amount of P582,950.54, of which there remains due and unpaid at least P298,274.08, upon the undertaking of the company to keep in its possession the said chattel mortgages taken as security for the payment of the notes. That Teal, as President and without the knowledge or consent of plaintiff or the authority of the board of directors, and by an arrangement with the purchasers of such automobiles, upon which the mortgages were given, has cancelled the mortgage securities, and caused the purchasers to sign new notes secured by new mortgages, which new notes in turn he has discounted to Bachrach or other persons "for the purpose of concealing the true precarious financial condition of the defendant, Teal Motor Co., Inc., to the damage and prejudice of its stockholders, and to the damage and prejudice of the plaintiff." "That said notes so doubly discounted, remaining unpaid on July 31, 1927, exceeded P100,000, of which amount a large portion is still outstanding and unpaid," all of which is a fraud upon the creditors of the corporation. That on July 31, 1927, Teal was overdrawn in the amount of P6,845.30 without authority of the board of directors, and has refused to make good the amount of the overdraft. That about October 15, 1926, the Negros Transportation Company executed its certain promissory note for P13,950 and delivered it to the defendant Teal, who in the same month sold it to plaintiff for P13,252.50, and it is then alleged that on August 18, 1927, Teal, as President, collected the amount of the note from the Negros Transportation Company and issued a receipt therefor. That plaintiff never knew of this until October, 1927, when he promptly made a demand for the payment of this note, which was not paid until November 12, 1927. Like allegations in substance are made as to the sale of a fire engine to one Arsenio Escudero. It is then alleged that the defendant Teal caused a Buick automobile to be sold to his wife and charged to his personal account.

That as a result of an inventory of the assets of the corporation made as of July 31, 1927, it appears that the original inventory was grossly and fraudulently made by false inventory values, so that there was a resulting loss during that period of P248,394.03. Further allegations are also made as to the sale of two motor-buses amounting to P16,918.60. It is then alleged "that the defendant, E. H. Teal, taking advantage of his position as the president of the defendant, Teal Motor Co., Inc., has secretly and fraudulently, as aforesaid, otherwise conducted the business of the defendant, Teal Motor Co., Inc., to his own benefit and to the great damage and prejudice of this plaintiff as a stockholder and creditor thereof, and the remaining property and funds of the defendant, Teal Motor Co., Inc., is in danger of being lost or materially injured unless a receiver shall be appointed to guard and preserve the same until this case can be finally disposed of; and that in any case the appointment of a receiver is the most convenient and feasible means of preserving and administering the property of said defendant, Teal Motor Co., Inc., during the pendency thereof." "For the above reasons, plaintiff respectfully alleges that in order to obtain an application of the property and interests in property of the defendant, Teal Motor Co., Inc., to and upon the claims of this plaintiff and other creditors of said defendant corporation, and in order to prevent the depreciation of said property and the loss and destruction of the value thereof as a going concern, it is necessary that this court shall appoint a receiver for the purpose of taking possession of and conducting the business of the defendant, Teal

Motor Co., Inc., and to sell said property and business, or so much thereof as may be necessary to satisfy the debts and claims against the same, and that under the said circumstances the appointment of such a receiver by this court, for the protection of the value of said property and of the interests of all concern, is an imperative necessity.

"Wherefore it is prayed—

(1) That a receiver be appointed, etc."

A copy of the agreement in question between the respective parties is attached to, and made a part of, the complaint, and marked Exhibit A.

Based upon that complaint, the plaintiff applied to the lower court for the appointment of a receiver, pending which the defendant applied to this court for a writ of certiorari, upon which a hearing was had, and on December 17, 1927, the application was denied in the following order:

"After a full consideration of the petition for the writ of certiorari and injunction, the return, the answer, demurrer, arguments and citation of authorities of the respective parties, the court is of the opinion that the allegations, that the respondent Judge is without jurisdiction in the premises, is not supported thereby.

"The petition for the writ of certiorari is, therefore, hereby denied and the temporary injunction heretofore issued is hereby dissolved.

"And without any finding as to costs, it is so ordered."

The lower court then made an order appointing a receiver, and the instant case is another and a different petition for a writ of certiorari, to which a copy of the original complaint, in which a receiver was appointed, is attached to, and made a part of, the petition, in which it is alleged that "in issuing the said order of December 19, 1927, appointing a receiver, the said defendant, the Court of First Instance of the City of Manila, exceeded its jurisdiction and attempted to confer powers upon the said receiver, which are improper, illegal, and in excess of the jurisdiction of the said Court of First Instance of Manila, and which were not under consideration by this Honorable Supreme Court in the said action for certiorari G. R. No. 28816," following which is a complete copy of the order of the lower court appointing Theodore G. Davis as receiver, with a full and detailed statement of all of his powers and duties.

It is then alleged that pursuant to the order of such improper and illegal powers, the receiver notified the attorneys for Teal and the company that they were discharged, and the attorneys for the receiver then entered "their appearance on behalf of Teal Motor Co., Inc., in substitution of said Ross, Lawrence & Selph; to all of which said Ross, Lawrence & Selph filed their objection in said case No. 32777." That on December 27, 1927, Chas. E. Tenney, with the approval of Ross, Lawrence & Selph, entered his appearance as one of the attorneys for Teal and Teal Motor Co., Inc., and the attorneys for the receiver "challenged the right of the undersigned to appear as attorney for said Teal Motor Co., Inc." It is then alleged that:

"On the 29th day of December, 1927, said Theodore G. Davis, receiver, filed in said case No. 32777, a petition, of which a copy of which is attached hereto, made part hereof and marked 'Exhibit D,' praying as follows:

"Now thereupon your receiver respectfully prays that an order be entered herein substituting the receiver as party defendant for and in place of Teal Motor Co., Inc., in the above cause; approving the substitution of the attorneys of your receiver in the place and stead of the attorneys of record for said corporation, and an order commanding the defendant E. H. Teal to be and appear before this Honorable Court at a time certain to be fixed by the court then and there to show cause, if any he has, why he should not be punished for contempt for violation of the said order of this Honorable Court of December 19, 1927, and upon hearing of this petition

your receiver be given such further instructions in the premises as this Honorable Court may deem meet and proper.

"At a hearing of said case No. 32777 on December 31, 1927, before said Court of First Instance of Manila, pending the resolution of said petition of the receiver, filed on December 29, 1927, the said Court of First Instance through Hon. Antonio M. Opisso, acting Judge of said Court, refused to recognize the undersigned as attorney of the said Teal Motor Co., Inc., or to permit him to appear as such attorney, in spite of due and formal demand by the undersigned that he be so recognized, to which refusal due exception was made.

"On the 16th day of January, 1928, the said E. H. Teal and Teal Motor Co., Inc., filed in said case No. 32777 of the Court of First Instance of Manila, a motion to set aside the said order appointing a receiver, dated December 19, 1927, for the reason that the said order conferred upon the receiver powers which are improper, illegal, and in excess of the jurisdiction of the said Court of First Instance, a copy of which motion is attached hereto made part hereof and marked 'Exhibit E.'

"On the 18th day of January, 1928, the said Court of First Instance of Manila denied the said motion to set aside the order appointing a receiver; and the said E. H. Teal and Teal Motor Co., Inc., defendants, duly excepted to the denial of said motion."

And that on January 19, 1928, the receiver, relying upon his illegal, improper and excessive powers, presented to the court an ex parte application for authority to pay obligations, among which is the following:

"(SCHEDULE D)

"TEAL MOTOR COMPANY, INCORPORATED

"MANILA, P. I.

"ACCOUNTS PAYABLE—DUE JANUARY 20TH, 1928

"HASKINS & SELLS, C. P. A..... P4,500

"I hereby certify that the foregoing statement is true and correct according to the books of the Teal Motor Company, Inc.

"TEAL MOTOR CO., INC.

"By THEO G. DAVIS

"Receiver

"As the said defendant, Theodore G. Davis, receiver, well knew, the claim of Haskins & Sells, mentioned in said 'Schedule D,' was denied and contested by the said E. H. Teal and Teal Motor Co., Inc., as not a just claim against Teal Motor Co., Inc., on the ground that any claim of Haskins & Sells was against the said E. M. Bachrach, personally, and not against the said Teal Motor Co., Inc.; and the said Theodore G. Davis, receiver, in said 'Schedule D' certified that the said claim was due according to the books of the company, although said receiver well knew that the entry in the books of the company referring to the said claim did not appear in any book of the company at the time when said receiver took charge thereof, and was only put on the books of the said Teal Motor Co., Inc., about two weeks after such time on the direction of said Haskins & Sells with the authority of the said Theodore G. Davis, receiver.

"On the presentation of said ex parte application, dated January 19, 1928, the said Court of First Instance of Manila, granted the same without the knowledge of or notice to the said E. H. Teal and Teal Motor Co., Inc.; and the said E. H. Teal and Teal Motor Co., Inc., and the undersigned attorney, being informed of this fact thru the daily newspapers of Manila, did, on January 20, 1928, request the said Court of First Instance of Manila to suspend the order approving such application in so far as it referred to the said claim of Haskins & Sells, in order to give the said E. H. Teal and the said Teal Motor Co., Inc., an opportunity to oppose the said claim; and

the said Court of First Instance of Manila, granted the said request of the said E. H. Teal and Teal Motor Co., Inc., and notified the said receiver not to pay to the said Haskins & Sells the said sum of four thousand five hundred pesos (P4,500) on account of said claim.

"Petitioners pray:

"That an order be issued to the said Court of First Instance of Manila, to certify to this Honorable Supreme Court, at the time and place to be specified by this court, the transcript of the record and proceedings in the said case entitled E. M. Bachrach, plaintiff, vs. E. H. Teal and Teal Motor Co., Inc., defendants, No. 32777 of said Court of First Instance of Manila, that the same may be reviewed by this court; and requiring the said defendants herein in the meantime, to desist from further proceedings in the matter to be reviewed; that, on final hearing, judgment be rendered setting aside and annulling the said order dated December 19, 1927, appointing a receiver in said case No. 32777; and for such further relief as may deem equitable and for the costs of this action."

It will thus be seen that the petitioners not only challenge the legal right of the lower court to appoint a receiver, but they also claim and assert that the powers and duties of the receiver, as defined in his order of appointment, are "illegal, improper and excessive."

JOHNS, J.:

It will be noted that the original suit in which the receiver was appointed was not brought to dissolve the corporation or to terminate its existence. It is there specifically alleged that to obtain an application of the property and interests of the defendant corporation to and upon the claims of the plaintiff and other creditors, and to prevent the depreciation of its property and the loss and destruction of the value thereof as a going concern, it is necessary that a receiver be appointed to sell its property and business, or so much thereof as may be necessary to satisfy the debts and claims against the same, and that the appointment of a receiver "for the protection of the value of said property and of the interests of all concerned, is an imperative necessity." In other words, the plaintiff prays for the appointment of a receiver pendente lite to protect and preserve the assets of the corporation pending the litigation, and in the end to have them applied to the satisfaction of plaintiff's claim and those of other creditors, and it was upon such grounds and for such purposes, that the plaintiff asked the lower court to appoint a receiver.

High on Receivers is recognized as standard authority in the United States, in particular, and in the fourth edition, on page 12, paragraph 7, the author says:

"Discretionary character of the jurisdiction; discretion defined. The appointment of a receiver pendente lite, like the granting of an interlocutory injunction, is to a considerable extent a matter resting in the discretion of the court to which the application is made, to be governed by a consideration of the entire circumstances of the case. And since the appointment of a receiver is thus a discretionary measure, the action of the lower court in appointing or denying a receiver pendente lite will not be disturbed upon appeal unless there has been a clear abuse. But the discretion thus vested in the chancellor in the matter of appointing receivers pendente lite is not an absolute or arbitrary one but it is a sound judicial discretion in view of all the circumstances of the case, to be exercised for the promotion of justice where no other adequate remedy exists."

In view of the allegations made in the original suit and of the hearing that was had in this court on the first petition for a writ of certiorari, we cannot say, as a matter of law, that the lower court abused its discretion in the appointment of a receiver.

The attorney for the petitioners cites and relies upon the following decisions of this court: *Arey vs. Wislizenus* (26 Phil., 625); *Rocha & Co. vs. Crossfield and Figueras* (6 Phil, 355); *Bonaplata vs. Ambler and McMicking* (2 Phil.,

392); *Strong & Trowbridge vs. Van Buskirk-Crook Co.* (10 Phil., 190); *Molina vs. De la Riva* (7 Phil., 302), in which it was held, in substance, that "A receiver cannot be appointed for the purpose of assisting in the collection of debts secured by no lien on the property to be administered."

The legal principles laid down in those decisions are good law, and if the original complaint in this case was confined and limited to the sole and exclusive purpose of collecting a debt, which is not secured by a lien, the contention of the petitioners would have to be sustained.

Section 174 of the Code of Civil Procedure provides that a receiver may be appointed:

"1. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights;

"2. Where it is made to appear by the complaint or answer, and by such other proof as the judge may require, that the party making the application for the appointment of receiver has an interest in the property or fund which is the subject of the action and it is shown that the property or fund is in danger of being lost, removed, or materially injured unless a receiver shall be appointed to guard and preserve it."

The original complaint in this case specifically alleges that the defendant corporation "is insolvent, or is in imminent danger of insolvency," and that Bachrach "has an interest in the property or fund, which is the subject of the add-on, and it is shown that the property or fund is in danger of being lost, removed or materially injured, unless a receiver shall be appointed to guard and preserve it" Hence, under such allegations, it must follow that the court had jurisdiction to appoint a receiver, which was a matter largely in its discretion, and in the absence of an abuse of discretion, the order must be sustained. But the question of the illegal, improper and excessive powers vested in the receiver is another and a very different question.

As stated, the authority for the appointment is found in section 174 of the Code of Civil Procedure.

Section 175 says:

"General Powers of a Receiver.—The receiver shall have, under the control of the court in which the action is pending, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property in controversy; to receive rent, to collect debts due to himself as receiver, or to the fund, property, estate, person, or corporation of which he is receiver; to compound for and compromise the same; to make transfers; and generally to do such acts respecting the property as the court may authorize."

The sole purpose and intent of having a receiver appointed was to protect and preserve the property Dendina the litigation arising out of the original suit, and to prevent its alleged fraudulent disposal, so that in the end the assets of the corporation would be kept intact and applied to the payment of the amount of any judgment which the plaintiff might recover and to the claims of any other creditors of the corporation. It was never the purpose or intent that the receiver should be vested with all of the powers and duties of a permanent receiver, or that he should have any other powers and duties than those specified and defined in section 175 of the Code of Civil Procedure. The appointment of a receiver did not dissolve the corporation, and it does not in the least interfere with the exercise of its corporate rights. There is no legal principle by which the receiver in the original suit, in which he was appointed, could claim or assert the right to appear and legally represent either litigant. Suffice it to say that the lower court eventually denied that right to the receiver.

High on Receivers, page 2, section 1, says:

"A receiver defined; distinguished from trustee.—A receiver is an indifferent person between the parties to a cause, appointed by the court to receive and preserve the property or fund in litigation pendente lite, when it does not seem reasonable to the court that either party should hold it. He is not the agent or representative of

either party to the action, but is uniformly regarded as an officer of the court, exercising his functions in the interest of neither plaintiff nor defendant, but for the common benefit of all parties in interest. He should be a person wholly impartial and indifferent to all parties in interest. Being an officer of the court, the fund or property intrusted to his care is regarded as being in custodia legis for the benefit of whoever may finally establish title thereto, the court itself having the care of the property by its receiver, who is merely its creature or officer, having no powers other than those conferred upon him by the order of his appointment, or such as are derived from the established practice of courts of equity."

That is the law and is the rule which every receiver should follow.

It further appears that since his appointment and on his own motion, the receiver made application to, and obtained an order from, the court to pay a number of claims against the corporation which did not have any legal preference, amounting to P30,000 or P40,000, among which is the claim of Haskins & Sells, the legality of which as such was denied and bitterly contested by the corporation, and, as to that particular claim, that the receiver was not only instrumental in having it presented, allowed and ordered paid, but that he actively aided and assisted in having it allowed, over and against the vigorous protest and objection of the corporation.

Nothing said in this opinion should be construed as having passed upon or decided the merits of the claim of Haskins & Sells against the corporation. That is a matter on which we do not now have or express an opinion. But we do say that, upon the record before us, it was the duty of the receiver on behalf of the corporation, to contest rather than to aid and facilitate the allowance of the claim, and, in particular, its payment at this time, together with all other similar claims.

As one of the grounds for the appointment of a receiver, the complaint in the original suit alleges that the corporation is in imminent danger of insolvency, and that it is necessary to have a receiver appointed to protect and preserve the assets of the corporation pending the suit, for the use and benefit of the plaintiff and the creditors of the corporation. There is no claim or pretense that the claim of Haskins & Sells has any legal preference over any other unsecured claim, and yet without even a claim of preference unsecured debts against the corporation have been allowed and ordered paid in full, amounting to P30,000 or P40,000, the legal effect of which is to nullify and overthrow the very purpose for which the receiver was appointed, and to pay in full certain specified unsecured claims against a corporation which is in imminent danger of insolvency, in a case where a receiver was appointed to protect and preserve the assets of the corporation pending the original suit.

Upon that question High on Receivers, section 428, says:

"But it is error, in such a case, to direct the receiver to pay the creditors of defendants out of collections and sales made by him, before it is finally determined whether they are entitled to priority of payment out of the funds; since, even if they are entitled to priority, it is premature to direct the payment before their claims have been ascertained and allowed by the court. And before such direction is given, an account should be taken and an opportunity afforded to prove the claims of creditors upon the one hand, and to contest them upon the other."

And in section 4395, the same author says:

"No preference allowed as between creditors of the same class.—Where a court of equity has appointed a receiver over the estate of an insolvent debtor and the receiver has taken possession of his property, no creditor will be allowed, by obtaining judgment against the insolvent after the receiver has taken possession, to obtain a preference over other creditors of the same class, and this is true even though the action in which the judgment was recovered was instituted before the receiver actually took possession of the property."

Hence, it must follow that unsecured claims which do not have a preference ought not to be paid pending the

receivership until a final order of distribution has been made among all of the creditors of the corporation whose claims have been presented and allowed.

As to the question of impairing the obligation of a contract, in section 273d, High says:

"Cannot impair contract liability of original party.—While, as has already been shown, a receiver is in no way bound by the contracts or covenants of the person over whose estate he is appointed, it is equally true that where a valid and subsisting contract has been entered into by his principal and a third person, a receiver who is afterward appointed can do no act which will in any way impair the obligations of such contract, and the obligee may therefore maintain an action against the insolvent to recover damages resulting from a violation of the agreement, and to such action the receiver is neither a necessary nor a proper party. * * * But it is to be observed, in such case, that any judgment which may be rendered should run against the obligor only and not against his receiver."

That is in harmony with the decision of this court in *International Banking Corporation vs. Corrales* (14 Phil., 360).

The authority of the receiver is limited to the allowance of claims which are recoverable against the corporation.

Section 335, High on Receivers, says:

"* * * And they have no authority to allow a demand, which is not a proper charge upon the fund in their hands, without the consent of all persons interested in having the claim rejected, the receivers in this respect being considered as guardians of the rights of all persons in interest. And when such receivers have disallowed demands against the corporation, and the matter has been referred to referees for adjustment, it is the duty of the receivers to resist the allowance of the demands before the referees, and to continue their defense so long as it may, in their opinion, be rendered effectual."

When his powers are derived wholly from statute, the same author, in section 322, says:

"When receivers over corporations are appointed under a statute which regulates their functions and prescribes their powers and duties, it is held that they derive their powers wholly from the statute under which they are appointed, and have no authority other than such as is thus conferred. But to warrant them in the exercise of a power, it need not be expressly conferred, and if it can be fairly implied, either from the general scope and purpose of the statute, or as an incident to a power expressly given, there is sufficient warrant for its exercise."

And as to the functions of a receiver, the author, in section 175, says:

"* * * And it is necessary to a proper understanding of the functions of a receiver, and of the real nature of his office, to bear in mind that he is not appointed for the benefit merely of the plaintiff on whose application the appointment is made, but for the equal benefit of all persons who may establish rights in the cause, and that he is not the plaintiff's agent, but is equally the representative of all parties in his capacity as an officer of the court."

It should be borne in mind that a receiver in a pending suit should be neutral, fair and impartial between the litigant parties, and that should he knowingly or wilfully become a partisan or favor either party at the expense of the other, upon a proper showing, it would be ground for his removal. Legally speaking, the court assumes that the plaintiff has made out a prima facie case at the time the receiver was appointed; otherwise, the receiver ought not to be appointed. Be that as it may, no final decision is made on the actual merits of the case until both parties have been heard on their respective contentions, at which time a final decision is then made, and during that period, through the receiver, the property is in custodia legis pending the final decision for either the plaintiff or the defendant in the original suit, and it is for such reason that the law makes it the imperative duty of a receiver to be neutral, fair and impartial between the litigants.

In the absence of something exceptional and of some special reason, the powers and duties of the receiver in the instant case should be confined and limited to those specified and defined in section 175 of the Code of Civil Procedure, together with those which are germane to such powers and duties.

With these admonitions, restrictions and limitations on his powers and duties, the appointment of the receiver by the lower court is sustained and the writ denied without costs to either party. So ordered.

Johnson, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

CONCURRING

MALCOLM, J.:

I agree that the writ of certiorari should not be granted, and only desire to point out that as an appeal has been taken from the allowance of the Haskins & Sells claim, that matter is here removed from the field of discussion.

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