

**TIRTH DHARMDAS ET AL., PLAINTIFFS AND APPELLANTS, VS.
MARCELO BUENAFLOR, CHIEF OF POLICE OF THE MUNICIPALITY
OF ILOILO, DEFENDANT AND APPELLEE. THE BANK OF THE
PHILIPPINE ISLAND...**

G. R. No. 35474. November 05, 1932

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of the Province of Iloilo by Tirth Dharmdas and others for the purpose of recovering from Marcelo Buenaflor, chief of police of the municipality of Iloilo, certain silks, jewelry and other merchandise, or, in the alternative, the value thereof, amounting to P12,130, with interest from the filing of the complaint, and costs. The Bank of the Philippine Islands intervened and claimed the property in question as receiver of the insolvent J. D. Ramnani & Co. When the cause came on for trial and the testimony of the plaintiff Tirth Dharmdas was being delivered in court, his Honor, the trial judge, stopped the proceedings and entered an order dismissing the action for lack of jurisdiction in the court, without prejudice to the right of the plaintiffs to exercise their rights in an insolvency proceeding instituted in the Court of First Instance of Manila against J. D. Ramnani & Co. From this order the plaintiffs appealed.

It appears that on August 1, 1930, the effects of J. D. Ramnani & Co., merchants of the municipality of Iloilo, were attached by a creditor in the amount of P9,000. On August 9, 1930, the same J. D. Ramnani & Co. was declared insolvent in case No. 37784 of the Court of First Instance of Manila. In said insolvency proceeding the Bank of the Philippine Islands was appointed receiver. But meanwhile the manager of J. D. Ramnani & Co. had transferred to the plaintiffs, Tirth Dharmdas and others, goods belonging to the stock of J. D. Ramnani & Co. to the amount of some P12,000, in alleged satisfaction of salary and wages due to the plaintiffs as employees of the store. This fact having come to the attention of the receiver bank, it procured a search warrant to be issued by the justice of the peace of Iloilo, and said warrant was placed in the hands of Marcelo Buenaflor, chief of police of the municipality of Iloilo for proper action. Armed with this instrument, Buenaflor seized the effects in question which had been removed by the plaintiffs and caused them to be returned to the original store from which they had been taken. By this means the merchandise came into the possession of the receiver.

The appeal involves merely a question of law, and we are of the opinion that the trial court committed no error in dismissing the case. The property which is the subject of this action pertains to the insolvency proceeding instituted against J. D. Ramnani & Co. It was transferred by the manager of said company to the plaintiffs out of due course of business and within the thirty days next before the institution of the insolvency proceeding. It is an established rule that the jurisdiction over the estate of an insolvent rests exclusively in the court of insolvency, and as soon as it appeared that the property in controversy pertained to that insolvency, it was proper that the court in which this action was instituted should dismiss the case, as it did. (*Bastida vs. Penalosa*, 30 JPhil., 148; *De Amuzategui vs. Macleod*, 33 Phil., 80.)

It is immaterial to the issues of this case that the proceeding by which the receiver bank obtained possession of the property is supposed to have been irregular, in that it proceeded by means of a search warrant, instead of starting an ordinary action of replevin. It is enough to know that the property once belonged to the insolvent, that it was transferred to the plaintiffs, out of due course, within thirty days prior to the insolvency, and that it is now in the hands of the receiver. This places it in the custody of the court of insolvency, and that court is the only court having jurisdiction to decide all questions concerning the title or right of possession to the same. (*De Krafft vs. Velez*, 34 Phil, 854.) It is true that the plaintiffs assert a right of action to recover damages to the extent of the value of the property, in case the property itself should not be returned, but this is a derivative right based upon a claim of ownership, and the court of insolvency is the proper forum in which the right should be asserted.

The plaintiffs had a complete remedy by intervention in the insolvency proceedings, and any rights that they possessed would have been duly recognized and protected by the court entertaining those proceedings.

No error was committed in the order which is the subject of this appeal, and the same is hereby affirmed. So ordered, with costs of both instances against the plaintiffs.

Avanceña, C. J., Malcolm, Ostrand, Villa-Real, Abad Santos, Vickers, Imperial, and Butte, JJ., concur.

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