

STRONG & TROWBRIDGE ET AL., PLAINTIFFS AND APPELLANTS, VS. THE VAN BUSKIRK-CROOK COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 4319. February 19, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

The plaintiffs being several creditors of the defendant, an anonymous society, brought this action to recover their demands, with the result that they obtained a judgment establishing their claims on the 18th of July, 1907. No objection appears to have been made to the form of the action or to the improper joinder of parties plaintiff.

In the course of the proceedings, on the 28th of May, 1906, upon their agreement with the defendant, the judge of First Instance appointed a receiver of the defendant's property, who took possession and collected the assets and whose successor, after converting them into cash and promissory notes amounting to P33,000, turned them into court and was discharged.

On the 11th of November, 1900, the judge made an order directing a dividend of 20 per cent, payable to these plaintiffs and on the same date a second order directing a like dividend paid to many other admitted creditors of the defendant, who had not intervened in this suit, nor recovered judgments, nor brought independent actions. The San Francisco News Company was by order authorized to intervene, but it is to be inferred from the papers before us that its claims never readied judgment.

The plaintiffs objected and excepted to the order of distribution of the dividend to the general creditors who had recovered no judgments. That order was manifestly improper, inasmuch as this court has decided that, in the absence of a bankruptcy act, preferences in payment among creditors are to be regulated by article 1924 of the Civil Code, according to which, in the present case, the judgment creditors must be paid in full before any dividend is paid to the general creditors. (Peterson vs. dewberry, 6 Phil. Rep., 260.)

In Bonaplata vs. Ambler (2 Phil. Rep., 392) it was held that the appointment of a receiver of an insolvent debtor was a violation of section 524 of the Code of Civil Procedure, providing that no new bankruptcy proceedings should be instituted until a new bankruptcy law should go into force in the Islands, and that in an action for debt, not in aid of a lien upon specific property, the plaintiff, before the return of his execution unsatisfied, has no such interest in the defendant's property as to authorize the appointment of a receiver under section 174 of the same code. Therefore, the order of the judge appointing a receiver and all subsequent orders in the receivership were without warrant and void. It is unnecessary to determine to what extent the plaintiffs are bound by their consent to the appointment and by such participation as they may have had in the subsequent orders. Suffice it to say that they are not deprived of the benefit of their exception to the order of distribution.

The procedure of the court below in this matter was probably devised for the purpose of avoiding some of the inconveniences resulting to the commercial community from the lack of a proper insolvency act, but to supply such deficiencies is the province of the legislature and not of the courts.

The plaintiffs may have execution against the fund in court, with liberty to take such proceedings as they may be advised against the fund, if any, paid out to the general creditors under the second order of distribution, without costs in this court. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.

Willard, J., did not sit in this case.

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