

**WILFRIDO MACEDA ET AL., PLAINTIFFS AND APPELLANTS, VS.
ZOSIMO FERNANDEZ ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 47689. June 10, 1941*

Ponente: MORAN, J.

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On May 30, 1939, plaintiffs, Wilfrido Maceda, Ana Fabella, Pedro E. Llamas, Miguela Tabia, Felicita Abaya and Sancho Salamea, instituted, in the Court of First Instance of Laguna, an action against Zosimo Fernandez and Mariano Gabatan, the latter in his capacity as assignee of the estate of the insolvent, Francisco Abaya, seeking to annul all the proceedings taken under civil case No. 6190. The complaint alleges that all said plaintiffs, except Wilfrido Maceda, were duly named as creditors of the insolvent Francisco Abaya and have duly proved their claims in the insolvency proceedings, and that the action brought by Zosimo Fernandez against Francisco Abaya some time in 1932 to 1934 in said civil case No. 6190 was entirely a matter of connivance by and between them, the debt sought then to be recovered being purely imaginary and the levy and execution sale of all the properties of Abaya having been effected with his implied consent to the benefit of Zosimo Fernandez who acquired all of them, the purpose being to prevent the herein plaintiffs from thereafter having any recourse to said properties of Francisco Abaya. The demurrer interposed to the complaint was sustained on the ground that plaintiffs have no cause of action, and from the order dismissing the complaint this appeal was taken.

The demurrer was rightly sustained. Settled is the rule that, after the election of an assignee and the assignment to him of all the properties of the insolvent, the title to all such properties shall, by operation of law, vest in him as of the date of the filing of the petition for insolvency. (Act No. 1656, sec. 32; *O'Brien vs. Del Rosario*, 49 Phil., 657; *Sun Life Assurance Co. vs. Ingersoll*, 42 Phil., 331.) From then all actions to recover the estate, debts, and effects of the insolvent should be brought and prosecuted by the assignee and not by the creditors, (Act No. 1956, sees. 33 and 36, par. 1). Moreover, plaintiffs' complaint partakes of the nature of an action to nullify fraudulent transactions provided for in section 70 of the Insolvency Law, and as such, should be prosecuted by the assignee in representation of the general creditors. (*Asia Banking Corp. vs. Herridge*, 45 Phil., 577, 588).

Order is affirmed, with costs against appellants.

Avanceña, C. J., Diaz, Laurel, and Horrilleno, JJ., concur.

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