

GEO. WHALEN, PLAINTIFF AND APPELLANT, VS. THE PASIG IRON WORKS, DEFENDANT AND APPELLEE.*G.R. No. 4894. March 31, 1909*

Ponente: CARSON, J.

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The plaintiff is a stockholder in the incorporated company (sociedad anonima), known as the "Pasig Iron Works," and hereinafter referred to as the company, and secured the appointment of a receiver for the company on the 10th day of October, 1907, under the provisions of section 176 of the Code of Civil Procedure, on the ground of its actual or threatened insolvency. Thereafter, by virtue of an agreement between the various interested parties and under orders and instructions of the court, the receiver sold all the tangible property of the company, collected the outstanding debts, as they appeared on the books, and on the 11th day of March, 1908, filed a report of his conduct of the business of the company, and at the same time prayed for authority to pay its debts, as set out in the report, and thereupon to be discharged from the duties of his office. On the same day the trial court issued an order setting the hearing upon the report and the motion for its approval for the 14th day of March, 1908. Thereafter the date of the hearing was continued until March 21, when the plaintiff appeared in person and stated verbally that he could show many reasons why the said report should not be approved, and asked to be permitted to submit evidence in support of his objections.

The hearing was thereupon continued until Tuesday of March 24, and the court orally instructed the plaintiff to submit his objections in writing before noon of that day. At nine o'clock on the morning of the 24th of March, plaintiff filed in the clerk's office a protest in writing objecting to the approval of the report, basing his objections principally upon the lack of proof in the record in support of the claim of the Philippine Transportation and Construction Company, hereinafter referred to as the Transportation Company, for P2,624.80, Philippine currency, set out in the receiver's report. Plaintiff did not appear in person or by attorney to contest the motion for the approval of the receiver's report, nor did he take any further action until the 4th day of April, 1908, when he filed a motion praying that the court set aside its order approving the final report of the receiver, and set a date for the taking of testimony in support of his objections to the claim of the Transportation Company; and praying at the same time that the court vacate a certain judgment entered in the course of these proceedings on March 6, 1908, in favor of the Transportation Company and against the Pasig Iron Works, for the amount set out in the receiver's report.

The receiver, immediately upon the issuance of the order of March 24 affirming and approving his account, paid all the claims against the company set out in the report, including that of the Transportation Company, and on March 25, 1908, turned over a balance of P172.36 in his hands to the clerk of the Court of First Instance of Manila; on the 7th day of April, an order was issued discharging the receiver and exonerating his bond, "there appearing no longer any reason for continuing the receivership." On the same day, the trial court overruled plaintiff's motion to vacate the order approving the receiver's account, and to set aside the judgment in favor of the Transportation Company. To this order the plaintiff excepted, and brings the record here for review on his duly

perfected bill of exceptions.

Plaintiff and appellant makes the following assignment of errors:

"(1) The court erred in rendering judgment in favor of the Philippine Transportation and Construction Company, because:

"(a) This plaintiff, as a party to the record, had no notice whatever of either a presentation of said claim, nor of any proceeding thereon;

"(b) There was no presentation or hearing of said claim as required by law.

" (2) The court erred in denying plaintiff's motion to set aside said judgment in favor of said Philippine Transportation and Construction Company, because:

"(a) The clear and positive showing against the validity of said claim made upon the opposition to the approval of the receiver's report, and upon the motion to set aside said judgment, was in no way contradicted.

"(b) The judgment in question, as to this plaintiff, was at most a default judgment irregularly taken, and it was an abuse of discretion upon the part of the court to refuse to set it aside.

" (3) The court erred in refusing to set aside its approval of the so-called final report of the receiver, because:

"(a) The receiver had wholly failed to comply with his first duty under section 176 of the Code of Civil Procedure, namely, to collect the debts and property due and belonging to the corporation.

"(b) Such an ex parte and summary disposition of the business and property of the corporation as was made in this case amounts to a taking of property without due process of law."

It appears from the record that a few days prior to the filing of the receiver's report, the receiver together with one Burlingame Johnson representing the Transportation Company, appeared in open court, without previous notice to any of the other parties in interest, and that Johnson, on behalf of the Transportation Company, then and there orally submitted a claim for \$1,312.40, United States currency, together with evidence satisfactory to the court that such claim was due as a balance on account between the Transportation Company and the defendant company; and that the receiver having recommended the allowance of the claim, the court directed that judgment be entered in favor of the Transportation Company for the sum of P2,624.80. It is to this judgment, and to the order overruling plaintiff's motion to set it aside, that the plaintiff's first and second assignments of error are directed.

There can be no doubt that the trial court erred in rendering judgment in favor of the Transportation Company in the summary manner above set out, without notice to the plaintiff who was a party to the record. It is true that while the provisions of section 176 of the Code of Civil Procedure direct the payment of the debts of a corporation committed to the hands of a receiver, no particular form of procedure is prescribed whereby such debts are to be ascertained and paid; but whatever proceeding may be adopted looking to this end, claims against the corporation should not be approved and paid without some formal and regular proceeding whereby their justice and correctness may be inquired into, after due and reasonable notice to all parties in interest, who should be given a reasonable opportunity to present objections to the admission and to the payment of such claims, and to offer evidence in support of their objections.

We do not undertake at this time to determine the form which such proceedings should take, but whether the court itself undertakes to hear all claims against the corporation after due notice to the various parties in interest, or

whether the receiver undertakes to determine these questions for himself, it is clear that no such claims should be paid by the receiver or approved and ordered paid by the trial court until all parties in interest have had an opportunity to submit their objections thereto and to secure a full and complete judicial review of the action of the court or of the receiver in this regard. It is hardly necessary to add that for this purpose notice to the receiver can not be regarded as sufficient notice to the various parties interested.

One of the plaintiff's principal objects in instituting these proceedings appears to have been to prevent the payment of the claim of the Transportation Company to a balance due on account with the defendant company; nevertheless, the court, in a summary proceeding, without notice to him and without affording him an opportunity to be heard, gave judgment for the full amount of its claim in favor of the Transportation Company. Manifestly such judgment was not binding on the plaintiff.

We think, however, that while it was undoubtedly error for the trial court to proceed to a hearing of the claim of the Transportation Company, without reasonable notice to the parties in interest, and without providing some formal and orderly proceeding for the determination of the claim, whereby any party in interest who believed himself aggrieved by the action of the court in that regard could secure judicial review of its action, nevertheless, in the light of after events, it must be regarded as error without prejudice so far as appellant is concerned. It appears that after judgment was entered the receiver filed his final report wherein was set out the claim of the Transportation Company; that plaintiff had full notice of the motion for the approval of that report and of the prayer of the receiver for an order directing him to pay the claims therein set out; that while he filed a written objection to the report, he failed to appear either in person or by attorney to support his objection; and that the court at the time and place appointed for the hearing, upon the motion of the receiver for the approval of his report, did in fact approve that report, and ordered the payment of the debts of the Transportation Company, as therein set out.

Plaintiff had full opportunity, had he so desired, to appear and resist the claim to which he objected, and having wholly failed so to do or to offer any sufficient excuse for his absence at the time appointed for the consideration of the motion to approve the receiver's report, he was not entitled to come in a week thereafter, and have the report set aside on his bare allegation that if he had an opportunity to be heard, he could satisfy the court that one of the claims set out in the report should not be paid. Had he appeared in due time and objected to the approval of the report, it would have been the duty of the court to give him an opportunity to present witnesses in support of his contentions, and had the court then relied upon the judgment in the record or declined to hear his witnesses, he would clearly have been entitled to appeal from the action of the court in that regard. We must presume that had he thus appeared and informed the court that he had had no notice whatever of the hearing upon which the judgment was based, the court would forthwith have vacated said judgment, given the parties an opportunity to introduce evidence in support and in opposition to the claim, and in the absence of satisfactory proof, declined to approve the report in this regard. Admitting that the judgment complained of, in so far as it affects the plaintiff, was a nullity, and could not be supported upon appeal, its entry in the record without notice to the plaintiff can not be said to have prejudiced him, since he was given an opportunity thereafter to contest the claim, of which, by his own fault, he failed to take advantage.

The second assignment of error must also be disregarded on the grounds just stated, in so far as it is directed to the action of the court in declining to vacate the judgment in question. In so far as it goes to the action of the court in affirming receiver's report, we do not think plaintiff's contention can be sustained. It appears from the record in this case that the books of the Pasig Iron Works in the hands of the receiver showed an indebtedness upon account with the Transportation Company of the amount set out in the report, and in the absence of proof of fraud or mistake, we do not think we would be justified in reversing the ruling of the court approving the report of the

receiver setting out this claim in the list of debts due by the company whose affairs he was administering.

The last assignment of error may be dismissed without much discussion. The receiver was appointed under the provisions of section 176 of the Code of Civil Procedure on the ground of the alleged insolvency of the company. It appears from the record that all the debts of the company have been paid and, all its tangible property has been disposed of, except a small cash balance now on deposit with the clerk of the court to the credit of the company. The object for which the receiver was appointed having been attained, the trial court properly discharged him.

The appointment and discharge of the receiver did not work a dissolution of the company, as claimed by appellant, and did not change the title or right of possession of the property, its corporate rights and the rights of the stock-holders being in nowise affected thereby., (186 (J. S., 223; 11 Colo., 464; 115 Ind., 466.)

The order of the court approving the report of the receiver and providing for his discharge, upon the payment of the debts set out therein, is affirmed, with the costs of this instance against the appellant.

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

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