

L. O. HIBBERD, PLAINTIFF AND APPELLANT, VS. THE HEADWATERS MINING CO., DEFENDANT AND APPELLEE.

G.R. No. 8171. December 20, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal by plaintiff from a judgment of the Court of First Instance of Benguet in his favor in an action to recover-money, it being claimed on the appeal that the sum allowed was not in accordance with the pleadings and the evidence.

The defendant company is a mining corporation organized and incorporated for the working of various mineral claims in the Province of Benguet. During the operation of the mines the defendant company came to need additional funds and succeeded in borrowing from the plaintiff P40,000 for which it gave a mortgage on its mining properties and plant. The corporation not having paid the mortgage when it was due, this action was commenced.

The complaint contains four causes of action.

The first is for the foreclosure of the mortgage referred to. In that cause of action plaintiff asked for the appointment of a receiver, alleging that the corporation was insolvent; that the machinery and buildings and all property and effects connected therewith, having been abandoned by the defendant, were in danger of deteriorating and suffering material damage; that they were not insured; and that the property would not be sufficient on sale to pay the mortgage debt. On these allegations the Court of First Instance of Benguet appointed the plaintiff receiver of the property, and he thereupon duly qualified and took possession thereof.

The second cause of action is for the recovery of certain sums of money which the plaintiff paid to the laborers of the defendant corporation for services rendered to that corporation during the operation of the mines and for which they had not been paid prior to the appointment of the receiver.

The third cause of action is based on labor performed, materials furnished and money expended necessary to comply with the provisions of the mining law requiring a certain amount of work to be performed on each claim annually.

The fourth cause of action is for services rendered and money expended on behalf of the defendant corporation on a trip from Manila to Hongkong and return and two trips from Baguio to Manila and return.

The plaintiff also claims P878 fees and expenses of receiver. This claim, however, is not included in the complaint in this action but is presented along with the account of the receiver; and the court is asked to allow said sum in said proceeding, and to order the defendant to pay said sum at the same time that judgment is entered in his favor in the action.

On this appeal the only objections made to the judgment of the trial court relate to the disallowance of the fourth

cause of action and the fees and expenses of the receiver, and to a refusal to allow another small item to which reference will later be made.

It is the contention of the appellant that the trial court erred in dismissing the fourth cause of action, and he bases that contention on the claim that all of the allegations of that cause of action are either not denied or are expressly admitted by the answer; and that while there was, as matter of law, no question before the court except the value of the services rendered and the amount of the expenses incurred in the rendition thereof, the court, nevertheless, took under advisement and considered the question whether the company was liable for such services and the expenses incurred in their rendition and found, as a fact, that the services had not been rendered for and on behalf of the company and, accordingly, that the company was not liable therefor or for the expenses incurred therein. The appellant alleges that this finding is error as it is contrary either to the express admissions of defendant's answer or to the undenied allegations of the complaint.

We agree with the appellant in this contention.

As we have stated, the fourth cause of action is for services rendered on behalf of the defendant company at its instance and request, and money necessarily expended during the rendition of those services, consisting of a trip from Manila to Hongkong and return and two trips from Baguio to Manila and return, the value of which services, together with expenses included, according to the allegations contained in the fourth cause of action, was P813.20. This cause of action also embraces money expended for cablegrams, P34.96, and for rice furnished to the defendant of the value of P143.20.

Answering this cause of action the defendant says: "Defendant admits that plaintiff has sold and delivered to defendant rice of the value of one hundred and forty-three pesos and twenty centavos (P143.20), and admits that there is due plaintiff from defendant a sum of money for reimbursement of expenses incurred by plaintiff for defendant, but denies that such expenses amount to the sum set out in paragraph 3 of plaintiff's fourth cause of action or to any sum in excess of two hundred pesos (P200). And defendant further alleges that it is ready and willing to pay plaintiff the amount justly due plaintiff under his fourth cause of action, and has heretofore made tender to plaintiff of such amount, which plaintiff has refused.

"Defendant has heretofore tendered to plaintiff, and hereby again tenders to plaintiff, the sum of one thousand pesos (P1,000), Philippine currency, in payment of interest due plaintiff under his second and third causes of action, and principal and interest due plaintiff under his fourth cause of action, of costs, expenses and claims of any kind that plaintiff may have against defendant within the matters set up in plaintiff's complaint herein or arising therefrom; the purpose of this tender being not to acknowledge liability to plaintiff beyond the admissions of this answer, but to settle the case at the present time, or, if this tender be refused, to limit plaintiff's claim for interest and costs in the event that he shall not recover judgment in a greater amount than that thereby tendered."

We take the answer to the fourth cause of action to be an admission of, coupled with a failure to deny, the material facts alleged in that cause of action except the amount of the expenses incurred during the rendition of those services. The trial court, however, does not seem to have taken that view. It says:

"The first disputed item is one of P618 for expenses and compensation upon a trip made by the plaintiff to Hongkong. This, of course, can only be chargeable to the defendant in case it was actually authorized by its proper officer, or subsequently ratified. Plaintiff recognizes this by alleging (par. 3) that it was undertaken 'at the instance of the defendant corporation.' But in his testimony plaintiff does not claim that he was asked to go to Hongkong by any of the company's officers. In fact, his counsel relies chiefly upon a statement in a letter (Exhibit B) written subsequently by defendant's president, in which he states to plaintiff: 'We have done one good thing, which is to follow your advice, given to me when you were here last.' We are unable to consider

this or the surrounding circumstances a sufficient basis for a finding that defendant either authorized or ratified the expenses of this trip on plaintiff's part so as to make defendant chargeable therewith.

"The next claim is for P242.60 for one of plaintiff's trips to Manila. Practically the whole of the testimony on this point by plaintiff is as follows:

"Q. These two trips that you made to Manila; the first was on the 12th of December, according to your complaint. You say that was at the request of Dr. Noble?—A. Cablegrams from Dr. Noble, president of the company.

"Q. Have you that cable?—A. Yes, sir.

"Q. Produce it, please.—A. (Counsel produces a document.)

"Q. Just read the translation of that cablegram into the record.—A. 'Cole leaves today. Loongsang. Can you meet Manila with a view to make best possible arrangement continuance. Noble.'

"Q. What does that phrase 'best possible arrangement continuance' refer to?—A. Continue operation of the Headwaters mine.

"Q. Did you make any reply to that cablegram?—A. Yes, sir; I made reply to this cable.

"Q. Have you a copy of it?—A. I think I have; a copy where I would not make any arrangement with Mr. Cole.

"Q. Did you not cable or telegraph either Mr. Cole or Dr. Noble* that you would go to Manila if your expenses were paid?—A. No, sir; I did not.

"Q. What was your interest in continuing operation of the Headwaters mine?—A. The same interest that anyone else that is asked to take a man's case,—if he pays for it.

That is my interest; when a man asks me to do anything I do it to get my pay for it.

"Q. Then your purpose was to discuss taking over the management of the mine?—A. Yes, sir.

"Q. Why did that trip to Manila require seven days?—A. There was a number of * * *. This stated to make arrangements, and we were making arrangements, and I could never agree with his,—I would agree to start the mine, but they at that time, insisted that should work with Mr. Cole as technical manager,—I believe was the point,—and I didn't see where I could furnish any money, as they wanted some money furnished, too, and my mortgage released,—that we couldn't come to an agreement. That was why it took so much time. There were a number of telegrams exchanged."

With reference to the trips to Manila the trial court states: "For the same reasons mentioned in connection with the preceding claims, we do not think we would be justified in finding from this evidence that the defendant either authorized or ratified this expense. The trip seems to have been made partly at least in plaintiff's own interest, and with a view to discuss taking over the management of the mine. At any rate, there is nothing to indicate that any of defendant's officers understood that the company was to be chargeable with plaintiff's expenses, let alone the value of his time while engaged in such negotiations. The case would seem to be analogous to one where a business man cables another to meet him at a certain place in order to discuss matters of mutual interest. The one who requests the interview may be more interested than the other, but it is not usual and, we think, not expected that either will defray the other's expenses without a definite agreement to that effect. It must not be forgotten here that plaintiff was not only a heavy creditor, but a stockholder in the corporation, and had a very direct interest in the continuance of its operation."

In dealing with the question in this manner the trial court evidently overlooked the admission in defendant's

answer and its failure to deny certain allegations of the complaint to which we have already adverted. It is, of course, elementary that it is not incumbent on the plaintiff to prove allegations in his complaint which are admitted by the answer; nor is he obliged to prove allegations which are not denied. The last paragraph of section 94 of the Code of Civil Procedure provides: "A material allegation Of the complaint which is neither generally nor specifically denied in the answer shall be deemed to have been admitted." (Alemany vs. Sweeney, 3 Phil. Rep., 114, 115; Cabanas vs. Director of Lands, 10 Phil. Rep., 393; Mendiola vs. Pacalda, 10 Phil. Rep., 705, 707; Lopez vs. Enriquez, 16 Phil. Rep., 336, 338.)

While the express admission in defendant's answer refers only to "reimbursement of expenses incurred by plaintiff for defendant," the answer nowhere denies that the services were rendered for and on behalf of the defendant at its request and it nowhere denies the value of such services to be as alleged. The fourth cause of action states that the expenses of the trip to Hongkong and return were P168, while the value of the services rendered therein was P450. The expense of the two trips from Baguio to Manila is set out in that cause of action at P65.20, while the value of the services rendered on these two occasions is alleged to be P420. On the trial plaintiff proved that the expenses incurred on the trips mentioned in the fourth cause of action amounted to P233.20, and, that evidence not having been controverted and the amount not unreasonable, he is entitled to recover that amount. For the same reason he should recover the value of the services rendered on the trips to Hongkong and Manila; and the undisputed evidence shows that it was P870. For like reason the sum of P34.96 must be allowed for cablegrams sent by plaintiff for and on behalf of the defendant corporation; and he must recover the sum of P143.20 for rice furnished. These latter items, as we have seen, are expressly admitted in the answer to the fourth cause of action.

With the decision of the trial court on the question of the receiver's right to fees and expenses we agree in part, but we differ with it as to the ground on which the decision should be rested. The rejection of the claim of the receiver is placed by the trial court on the ground that, under the evidence adduced by plaintiff on the trial, the appointment of a receiver was unnecessary. Again it would appear that the trial court overlooked the pleadings, failing to take into consideration the fact that the answer of the defendant does not deny the allegations of the complaint which show the propriety and legality of the appointment of a receiver under the code. By virtue of section 174 of the Code of Civil Procedure a receiver may be appointed "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 of 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." A receiver may be appointed under that section in an action to foreclose a mortgage "where it appears that the property is in danger of being wasted or materially injured." The complaint alleges that the defendant was insolvent at the time the action was commenced; that the property mortgaged, consisting of machinery, buildings and accessories, was in danger of deterioration, and of suffering material damage, that it had been abandoned by the defendant, that it was uninsured, and that the property would probably be insufficient on sale to pay the mortgage debt. The defendant in answering these allegations simply denies that the property "was exposed to the danger of material deterioration, denies that said property or any part thereof was abandoned by defendant, and denies that there was any probability that the property covered by the mortgage would be insufficient in value to cover plaintiff's claim as set out in his first cause of action." Here, as will be seen, defendant has not denied that the plaintiff has an "interest in the property ? * * which is the subject of the action" or that the property was likely to be "materially injured." Defendant simply denies that the property is liable to deterioration, whereas the plaintiff alleges that the property is not only liable to deterioration but that it is likely to be materially injured.

From the foregoing we deem it clear that, considered in its best light, the answer fails to deny some of the material allegations of the complaint which, in a foreclosure action, or in any other action where plaintiff has an interest in

the property which is the object of the action, furnished sufficient ground for the appointment of a receiver. Moreover, we are of the opinion that, from the evidence, we cannot say, as matter of fact and law, that the court, in making the appointment, acted beyond or in excess of its power and authority.

In spite of the fact, nowever, that, under the pleadings and the evidence in the case, we cannot declare the appointment of a receiver improper, we are of the opinion that the plaintiff should not have been appointed. It is important to observe that courts of equity are exceedingly jealous of appointing any person to a receivership whose duty it would otherwise be to watch the proceedings of the receiver or to call him to account for his management of the trust; and, unless under special circumstances, as in partnership cases in some instances, a party to the cause will not ordinarily be appointed without the consent of the other party (High on Receivers, section 70) ; and it has been held that it is improper to appoint as receiver one of the plaintiffs at whose instance the relief is sought. While the plaintiff to the action is not absolutely disqualified for the position of receiver, nevertheless, it is not often that he should be appointed ; and, while an appellate court would hesitate before interfering with the discretion of the trial court in the appointment of a party as receiver, it is not improper, we think, to state that such is not the custom or the practice and should not be encouraged. It has been stated "that while a court may refuse to appoint a party to a cause, unless in cases of necessity, the weight of authority establishes the rule that the mere fact that one is interested in or a party to the suit does not disqualify him, in the absence of statutory disqualification, although in such case his appointment is without compensation * * *" (34 Cyc, 142). This rule, however, has its exceptions, some of the authorities stating that, where the appointment is made without any reference having been made to compensation, the granting of compensation rests in the sound discretion of the court trying the action in which the receiver is appointed, and his judgment on the matter will not be interfered with as a general rule.

We are, therefore, of the opinion that the receiver should not be allowed compensation, but that he should be permitted to recover the expenses actually and necessarily incurred in caring for the property. These, ijt is undisputed, amount to P218.

The judgment is reversed and set aside; and judgment is hereby rendered for the plaintiff, L. O. Hibberd, and against the defendant, The Headwaters Mining Co., for the sum of one thousand three hundred and five pesos and ninety-five centavos (P1,305.95). No costs in this instance.

As to the expenses allowed the receiver herein, the cause is returned for further proceedings in accordance with this opinion and the law and practice relating to receiverships. So ordered.

Arellano, C.J., Torres, Carson, Trent, and Araullo, JJ., concur.

Judgment reversed and case remanded for further proceedings.

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