

F.C. AREY ET AL., PETITIONERS, VS. ADOLPH WISLIZENUS ET AL., RESPONDENTS.

G.R. No. 9594. February 18, 1914

Ponente: TRENT, J.

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TRENT, J.:

This is an original action in certiorari seeking to set aside the appointment of a receiver for the plaintiffs' business.

It appears from the pleadings that the defendant company is carrying the herein plaintiffs on its books for a considerable amount. But that the latter assumed the indebtedness due the defendant company from the S. L. Joseph Lumber Yard, and have also incurred additional indebtedness by the purchase of large quantities of the defendant company's products, for which they have not yet paid, does not entitle the defendant company to ask for the appointment of a receiver.

In *Bonaplata vs. Ambler* (2 Phil. Rep., 392), this court, in referring to section 174 of the Code of Civil Procedure, said: "That section authorizes the appointment of a receiver (1) in certain corporation cases; (2) where the plaintiff has an interest in the property or fund which is the subject of the action, etc.; (3) in an action to foreclose a mortgage; (4) and, finally, whenever in other cases it shall appear to the court that the appointment of a receiver is the most feasible means of preserving and administering the property which is the subject of the litigation during the pendency of the action"

A later case of the same tenor is *Rocha & Co. vs. Cross field* (6 Phil. Rep., 355), in which the court said: "The case at bar does not fall within any of the provisions of this section. There is no allegation in the complaint, as has been before stated, that the plaintiff is the owner of any of the property of Rocha & Co., nor is there any allegation that he has any lien thereon, nor are there any facts alleged in the complaint from which it could be inferred that he was the owner of such property or had any lien thereon."

While the defendant company, in its complaint before the Court of First Instance, alleged that lumber delivered to the plaintiffs under the contract of June 1, 1913, was for sale on consignment only, we cannot overlook the fact that the eighth paragraph of that contract states that "The company (The Insular Lumber Company) agrees to sell to Arey & Laing, such lumber as may be necessary for their business, at the following prices, * * *."

Again, in *Strong vs. Van Buskirk-Crook Co.* (10 Phil. Rep., 190), this court said: "In *Bonaplata vs. Ambler* (2 Phil. Rep., 392), it was held 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."

A receiver cannot be appointed merely for the purpose of assisting in the collection of debts.

For these reasons it is adjudged that the court below exceeded its jurisdiction in appointing a receiver for the plaintiffs' business, and all the proceedings taken therein are hereby annulled. Let judgment be entered accordingly, with the costs of this action against the defendant, The Insular Lumber Company.

Arellano, C. J., Moreland and Araullo, JJ., concur.

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