

9 Phil. 698

[G.R. No. 2834. November 21, 1906]

**JUAN AZARRAGA, PLAINTIFF AND APPELLEE, VS. ANDREA CORTES ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

TORRES, J.:

While the action begun in the Court of First Instance of Capiz by Juan Azarraga against Andrea Cortes et al., for payment of a certain amount of money, was still pending in this court on account of the appeal filed by the defendants from the judgment rendered in said case on May 26, 1905, counsel for the latter, on the 20th of October of the present year, asked that the case be dismissed, at least in regard to Andrea Cortes, who died on January 30, of this year, and that the attachment levied upon the property owned by the deceased during her lifetime, be released. Counsel for the defendants opposed the petition, for the reason that sections 119 and 700 of the Code of Civil Procedure were not applicable, but that section 118 of the same code was.

One of several defendants having died long after the judgment for the payment of the debt had been rendered in first instance, and the case being still pending before this court on appeal, the proceedings must be continued in this second instance by the plaintiff appellee against the surviving defendants and the administrator who may be appointed by the court of Capiz for the testate or intestate estate of the deceased Andrea Cortes, at the request of any of the interested parties, in the corresponding special proceedings, by which procedure an essential requisite to the continuance of the action may be complied with in accordance with the law. (Secs. 119, 642, 651, and 702, Code of Civil Procedure.)

The obligation contracted by Jose Altavas, from whom the defendants derive their right, is single as well as the action derived therefrom to enforce payment of the debt originating the obligation; and the debtors are not entitled to demand the partition of the property in litigation, inasmuch as the debtor's estate, which is still undivided, is directly responsible

for the payment of said debt.

The preliminary attachment, levied upon the property owned by the defendants, in order to guarantee the fulfillment of such judgment as might be rendered at the pending trial, having been sustained, and there being no legal reason requiring the annulment or cancellation of such attachment, we find no proper legal grounds for the granting of the petition, inasmuch as the attachment must be sustained until a judgment favorable or unfavorable to the defendants is rendered, so that the attached property may be disposed of in accordance with the law.

The motion filed by counsel for the defendants is hereby dismissed with costs. Let notice hereof be given to counsel for the plaintiff. So ordered.

Arellano, C. J., Johnson, Carson, Willard, and Tracey, JJ., concur.
