

45 Phil. 246

[ G.R. No. 20956. October 13, 1923 ]

**IN THE MATTER OF THE ESTATE OF FRANCISCO ATILANO, DECEASED. TORIBIO ATILANO, ADMINISTRATOR, PETITIONER AND APPELLEE, VS. JULIAN INCLAN ET AL., OPPONENTS AND APPELLANTS.**

**D E C I S I O N**

STATEMENT

During his lifetime Francisco Atilano was the owner of Lots Nos. 209-A, 209-B and 214 of the cadastral plan of the municipality and Province of Zamboanga, of the western extension, record 8695, certificates of title Nos. 4231, 5468 and 4371.

June 1, 1920, in consideration of P9,662.20, he executed, as a widower, a mortgage on this land, in which Pio Atilano and Toribio Atilano, as married persons, joined, to and in favor of Lim Jua, also a married person. Among other things, the mortgage recites the delivery of the money, and that "the amount of forty (40) piculs on the 15th day of September, 1920, and the amount of forty (40) piculs of copra after each quarter, counting after said date until the complete payment of the sum mentioned in this mortgage. Each delivery should be completed on or before the dates mentioned." It also provides that for the failure to pay any of the specified amounts or the taxes on the land as they become due, that the mortgagee may declare the whole amount due and payable. The mortgage was duly signed by Francisco Atilano, Toribio Atilano and Pio Atilano, and duly witnessed and acknowledged before a notary public, and was duly filed for record. Francisco Atilano died on September 4, 1920, and a petition was duly filed in the Court of First Instance of Zamboanga praying for the appointment of Toribio Atilano as administrator of his estate. August 7, 1921, by an order of the court, Toribio Atilano was duly appointed as administrator of the estate of

the deceased, qualified and entered upon the discharge of his duties. In the ordinary course of business, commissioners on claims and appraisal were also appointed. Acting through Yap Seng, its attorney-in-fact, the claim of Lim Jua & Co. was presented to the commissioners on August 26, 1921, in the sum of P9,439.70 against the estate of the deceased, and it was duly accepted, approved and allowed by the commissioners as a valid claim against the estate. No appeal was ever taken from the allowance of the claim by anyone. March 3, 1922, Toribio Atilano, as administrator, filed a petition for the sale of the lands above-described, the only real property of the estate, to pay the full amount of the claim of Lim Jua & Co., and some other small claims against the estate, amounting to about P1,000. March 30, 1922, the appellants here filed objections to the allowance of such petition, on the ground that the alleged indebtedness against the estate was obtained through fraud, falsification and connivance by Toribio Atilano and Lim Jua, a creditor, and asked leave to contest the claim upon those grounds.

August 10, 1922, they filed supplemental objections, alleging that the indebtedness was not a joint and several debt of the deceased, and that the estate is only liable for one-third of the whole indebtedness.

August 18, 1922, another petition for an order of sale was filed, to which the appellants filed like objections on August 23, 1922.

January 15, 1923, the administrator filed another petition for the same purpose, to which the appellants again filed their objections.

After a hearing on the final petition and the objections on February 5, 1923, the lower court ordered and decreed the sale of the real property belonging to the estate of the deceased, for the purpose of applying the proceeds to the payment of the debt of Lim Jua & Co. in the sum of P9,439.70. From the entry of this judgment the appellants prosecute this appeal, specifying the following assignments of error:

“1. The court *a quo* erred in not permitting the herein opponents and appellants to question the validity of the claim of P9,439.70 which is originally in the sum of P9,662.20, presented by Lim Jua & Co. in any stage of the proceeding upon the application of the administrator to sell the real

property of the estate for the payment thereof.

“2. The court erred in holding and ordering that the claim presented by Lim Jua & Co. for the sum of P9,439.70, before the Commissioners is the joint and several obligation of the deceased, Francisco Atilano, with the present administrator Toribio and Pio Atilano.

“3. The court *a quo* erred in ordering the sale of the real properties known as Lots Nos. 209-A, 209-B, and 214, Case No. 8695, belonging to the dissolved conjugal partnership of the deceased spouses, Francisco Atilano and Maria Acevedo.

“4. The court *a quo* erred and, therefore, abused its discretion in not dismissing the herein administrator and appellee Toribio Atilano, in spite of the application of the opponents and appellants.

“5. The court *a quo* committed an error in entering its order of February 5, 1923, ordering the sale of Lots Nos. 209-A, 209-B and 214, of the property of the spouses Francisco Atilano and Maria Acevedo, both deceased.”

### **JOHNS, J.:**

The appellants are the heirs of Francisco Atilano, deceased, and prosecute this appeal as paupers.

It is conceded that commissioners on claims were duly appointed; that the claim in question was duly presented and allowed by the commissioners; that no objections were filed; and that no appeal was taken from the order of allowance. It does not appear that the heirs of the deceased are minors, and there is no claim or pretense that they were not legally notified, or that they were deprived of their right to object or to appeal.

Among other things, section 773 of the Code of Civil Procedure provides:

*“An Appeal from Allowance or Disallowance of Claim.—Any executor or administrator may appeal to the Court of First Instance from the allowance of*

any claim against the estate by the committee appointed for the purpose of allowing claims against the estate of deceased persons, etc.

*“SEC. 774. If Administrator Does Not Appeal, Heir or Creditor May.—If the executor or administrator does not appeal from the allowance of any claim against the estate by the committee, or the disallowance in whole or in part by it of any offset in behalf of the estate against such claim, any heir or creditor may appeal to the Court of First Instance from such allowance or disallowance, and prosecute the appeal in the name of the executor or administrator, etc.”*

Section 775 provides:

*“Perfecting Appeal.—The appeal provided in the two preceding sections shall be perfected by filing with the clerk of the Court of First Instance that has jurisdiction of the estate, within twenty-five days after the committee’s report is filed therein, a statement that the person so appealing is dissatisfied with the action of the committee in respect to the item or items complained of, and appeals therefrom to the court.”*

Section 776 provides:

*“Proceedings in Court of First Instance on Such Appeal.—Upon the lodging of such appeal with the clerk, the disputed claim shall stand for trial in the same manner as any other action in the Court of First Instance, the creditor being deemed to be the plaintiff, and the estate the defendant, and pleadings as in other actions shall be filed.”*

It is claimed by the respondents [petitioner] that, because no objections were filed or an appeal taken from the order of allowance of the claim, the appellants are now barred and have no right to object to the order of allowance.

In a well-reasoned, able and exhaustive brief, the attorney for the appellants contends that where, as in this case, the administrator was a party

to the mortgage, and there was fraud and collusion between him and the creditor, that in a petition to sell the real estate covered by the mortgage, the heirs have a right to object and to allege and prove the fraud, even though no objections were filed to the allowance of the claim. In the opinion of the writer, the legal principle for which the appellants contend is sound and well sustained by the authorities and, in a proper case, the heirs are not barred by the above provisions of the Code of Civil Procedure, even though no objections were made to the allowance of the claim, or an appeal was not taken from the order of allowance.

Be that as it may, there is no proof of fraud in the record. It is conceded that Francisco Atilano was the owner of, and held the record title to, the land described in the mortgage, and that Pio Atilano and Toribio Atilano, who signed the mortgage with him, did not have any right, title or interest in the land. Neither is there any evidence as to whom any part of P9,662.20 was paid, or that any portion of it was paid to Pio Atilano or Toribio Atilano, or that either of them had any use or benefit of the money.

Assuming, without deciding, that the question could now be raised, and that fraud would be a valid objection, there is no proof in the record that Pio Atilano or Toribio Atilano received any part of the P9,622.20, or that the mortgage was fraudulent. Without such allegation and proof, the appellants have no legal right to contend that the debt was a joint liability between the parties, or that the proceeds of the mortgage were shared equally between them. The fact that the deceased was the sole owner of the land, which is mortgaged, and that Pio Atilano and Toribio Atilano, although joining in the mortgage, did not have or claim any interest in the land, plus the fact that the mortgage provides that the products of the land shall be applied in payment of the mortgage, and the parties contemplated that the products would be sufficient to pay the debt, would clearly indicate that Francisco Atilano was the sole beneficiary of the mortgage, and would create at least a presumption of that fact. In the absence of any testimony to overcome that presumption, it must prevail. In other words, there is nothing in the record tending to show fraud, or that either Pio Atilano or Toribio Atilano personally had or received any portion of the original mortgage debt.

Fraud is never presumed. It must be both alleged and proven. In this case,

there is a failure of proof. If it be a fact that Pio Atilano and Toribio Atilano did share in the proceeds of the mortgage loan, upon the payment of the debt, the estate of Francisco Atilano would have the right of contribution from them for the respective amounts which they received.

The petition of the appellants to discharge the administrator was overruled by the lower court. That was a matter largely in its discretion.

We have given this case very careful consideration. Notwithstanding the able brief of the attorney for the appellants upon the legal principles involved, for a failure of proof, the judgment of the lower court must be affirmed, without costs to either party. So ordered.

*Johnson, Street, Malcolm, Avanceña,  
Villamor, and Romualdez, JJ., concur.*