

IN THE MATTER OF THE TESTATE ESTATE OF ROBERT MCCULLOCH DICK DECEASED, FRANCIS THEOBALD ROGERS, EXECUTOR AND PETITIONER, VS. HELEN C. DICK AND HON. ANDRES REYES, JUDGE, COURT OF...

G. R. No. L-18220. April 30, 1963

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an original action for certiorari to annul certain orders of the Court of First Instance of Rizal.

It appears that on October 20, 1960, petitioner Francis Theobald Rogers filed with said Court, a petition, which was docketed therein as Special Proceedings No. 3433, for the probate of a document said to be the last will and testament of Robert McCulloch Dick, who allegedly died in Quezon City, Philippines, on February 14, 1960. It was alleged in said petition that the decedent at the time of his death was a British subject domiciled in the Philippines and a resident of Tinejeros, Malabon, Rizal." On or about December 2, 1960, respondent Helen C. Diek, one of the persons named in said Will as heirs, legatees or devisees of the decedent, filed a "Manifestation and Motion" praying that the aforementioned petition "be corrected so that it will state that the decedent was a British subject of Scottish nationality and/or citizenship.' Despite petitioner's opposition thereto, Respondent Hon. Andres Reyes, as Judge of said Court, Branch VI, granted said motion by an order dated January 4, 1961. A reconsideration of this order having been denied by respondent Judge, in another order dated February 9, 1961, the petitioner instituted the present action upon the ground that respondent Judge had gravely abused his discretion in issuing said orders of January 4 and February 9, 1961.

Section 4 of Rules 17 of the Rules of Court, upon which respondents rely, reads:

"Sec. 4. Amendment to conform to evidence.-When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence."

Respondents maintain that the phrase "any party" contained in this section justifies the orders complained of. Such pretense is clearly untenable, for it overlooks the spirit and purpose of the above provision and the nature and character of pleadings under our procedural laws.

To begin with, pleadings "are written allegations of what is affirmed on one side or denied on the other." (Words

& Phrases, Vol. 32A, p. 251, citing *Tiffin vs. Hendricks*, 271 p. 2d, 683, 44 Wash. 2d. 837). Hence, a party may amend his own pleading, but not that of his opponent, for otherwise the pleading would not reflect the claim, allegations or defenses of the pleader.

Secondly, pleadings serve to determine the issues of law and/or fact raised by the respective pleaders. Accordingly, there must be, and there is a limit as to the time at which a party may amend, his own pleading. Amendments may be made, therefore, within the time and under the conditions prescribed in the Rules of Court, generally, before the trial or hearing of the case or issue on the merits. Indeed, otherwise, there would be no way to determine and limit the nature of the evidence to be presented or admitted or of the arguments that the parties may adduce. This, notwithstanding, "when", as provided in the above-quoted section 4, "issues not raised by the pleadings are tried by express or implied consent of the parties, they shall, be treated, in all respects, as if they had been made in the pleadings," and "such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party even after judgment; but failure so to amend does not affect the result of the trial of these issues." This provision confers upon the Court discretion to permit a party to amend its own pleading, at any time, under the circumstances therein adverted to.

Thirdly, if respondent Helen C. Dick deems it necessary, for the protection of her right, to allege and prove, or feels she has proven, that the decedent is of "Scottish nationality and/or citizenship", she may so allege in her own pleading and urge the court, at the proper time, to declare that said allegation has been established and is a fact, regardless of whether or not petitioner has alleged it in his own petition. She cannot compel the petitioner to allege what he is unwilling to allege or believes-even though erroneously-mot to be a fact.

Wherefore, the aforementioned orders of respondent Judge, dated January 4 and February 9, 1961, are hereby annulled, with costs against respondent Helen C. Dick. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angela, Barrera, Reyes, J.B.L., Paredes Dizon, Regala and Makalintal, JJ., concur.

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