

INTESTATE ESTATE OF JAMES R. BURT, DECEASED. THE PHILIPPINE TRUST CO., ADMINISTRATOR AND APPELLEE, VS. LUZON SURETY CO., INC., SURETY AND APPELLANT.

G.R. No. L-13031. May 30, 1961

Ponente: DIZON, J.

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DIZON, J.:

On February 14, 1946, the Court of First Instance of Manila appointed Francis R. Picard, Sr. as Administrator of the Intestate Estate of the deceased James R. Burt (Civil Case No. 71872) upon a bond of P1,000. Thereafter he submitted and the Court approved his bond in the required amount, with appellant Luzon Surety Co., Inc. as his surety.

For reasons that do not fully appear of record, on May 19, 1948 the Court dismissed Picard as administrator and appointed the Philippine Trust Co. in his place. After qualifying for the position, the latter, on July 19, 1948, submitted an inventory-report showing that the only asset of the Intestate Estate of Burt that had come into its possession was the sum of P57.75 representing the balance of the checking account of said deceased with the Philippine National Bank. In view thereof, on July 26, 1948 the Court issued an order the pertinent portion of which reads as follows:

"A review, however, of the record of the case reveals that former Administrator Francis Picard filed on February 6, 1947, an inventory of the estate of the deceased, from which it appears that the sole property he found was the amount of P8,873.73 in current account with the Philippine National Bank. This amount was reduced to P7,986.53 after deducting therefrom his expenses in the amount of P887.22; and as reported by him in his petition filed on June 8, 1948, the further expenses in the amount of P865.20 were deducted, thereby leaving the balance of P7,121.33 as of May 27, 1948.

"In view of the foregoing, the Court hereby orders said Francis Picard to deliver within forty-eight hours (48) from the receipt of a copy of the order the difference of P7,063.58 to the present Administrator, Philippine Trust Company; otherwise, he will be ordered committed to prison for contempt until he shall have complied with this order."

In compliance with the above order, Picard submitted an itemized statement of disbursements made by him as administrator of the estate, showing that as of February 6, 1947 the estate funds amounted to P7,986.53; that on June 8, 1948 he reported to the Court additional expenses incurred amounting to P865.20, thus leaving a balance of P7,121.33; that thereafter he disbursed the sum of P250 to defray the burial expenses of the deceased, thus leaving a balance of P6,871.33; that on several occasions during the period from February 22, 1946 to May 14, 1947, he had delivered to Feliciano Burt, adoptive son of the deceased James R. Burt, different sums of money totalling P5,825, thus leaving a balance of P972.33. After considering this statement, the Court, on September 18, 1948, issued an order finding Picard guilty of having disbursed funds of the estate amounting to about P8,000, without authority. For this reason, the Court referred the matter to the City Fiscal of Manila for investigation. Result of this was the prosecution of Picard for estafa. Having pleaded guilty to the charge, judgment of

conviction was accordingly rendered, and he was, besides, held civilly liable in the sum of P8,000.

On July 8, 1957 the Court issued an order requiring; appellant Luzon Surety Co., Inc. to show cause why the administrator's bond filed by it on behalf of Picard should not be confiscated. Appellant filed a motion to set aside said order upon the following grounds: firstly, that the Court cannot order the confiscation of the administrator's bond, no prejudice or injury to creditors, legatees or heirs of the estate of James R. Burt having been shown, and secondly, that "a probate court cannot, ex proprio motu, prosecute the probate bond". On August 3, 1957 the Court denied appellant's motion and ordered the confiscation of its bond. After the denial of appellant's motion for reconsideration, it took the present appeal.

Appellant's contention that the probate court, ex proprio motu, cannot order the confiscation or forfeiture of an administrator's bond, is clearly without merit. Whatever may be the rule prevailing in other jurisdictions, in ours a probate court is possessed with an all-embracing power not only in requiring but also in fixing the amount, and executing or forfeiting an administrator's bond. The execution or forfeiture of an administrator's bond, is deemed to be a necessary part and incident of the administration proceedings as much as its filing and the fixing of its amount. The rule, therefore, is that the probate court may have said bond executed in the same probate proceeding.

Moreover, the condition of the administrator's bond in question is that Francis L. Picard shall faithfully execute the orders and decrees of the court; that if he did so, the obligation shall become void, otherwise it shall remain in full force and effect. It having been established that Picard disbursed funds of the estate without authority, the conclusion follows that, he and his surety became bound upon the terms of their bond.

Appellant also contends that it was not proper for the lower Court to order the confiscation of its bond because no prejudice or injury to any creditor, heir or other interested person has been proved. This is also without merit. According to the record, the claims against the estate filed by Antonio Gardiner and Jose Teruel for the sums of P200 and P3,205, respectively, were approved by the probate court but the same have remained unpaid because of lack of funds.

Finally, appellant claims that it had been released from liability as surety because it received no notice of the proceedings for the determination of the accountability of the administrator. This contention we also find to be untenable.

From the nature of the obligation entered into by the surety on an administrator's bond—which makes him privy to the proceedings against his principal—he is bound and concluded, in the absence of fraud and collusion, by a judgment against his principal, even though said surety was not a party to the proceeding. In the case of *De Mendoza vs. Pacheco*, 64 Phil., 135, the sureties on the administrator's bond were held liable thereon altho they were not parties to the proceeding against the administrator, nor were they notified in connection therewith prior to the issuance of the court order for the confiscation of the bond. Lastly, according to Section 11, Rule 86 of the Rules of Court, upon the settlement of the account of an executor or administrator, his sureties "may, upon application, be admitted as a party to such accounting". The import of this provision is that the sureties are not entitled to notice but may be allowed to intervene in the settlement of the accounts of the executor or administrator if they ask for leave to do so in due time.

Wherefore, the decision appealed from is hereby affirmed, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, De Leon, and Natividad, JJ., concur.

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