

ROMAN JAUCIAN, PLAINTIFF AND APPELLANT, VS. FRANCISCO QUEROL, ADMINISTRATOR OF THE INTESTATE ESTATE OF THE DECEASED HERMENEGILDO ROGERO, DEFENDANT AND APPELLEE.

G.R. No. 11307. October 05, 1918

Ponente: STREET, J.

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STREET, J.:

This appeal by bill of exceptions was brought to reverse a judgment of the Court of First Instance of the Province of Albay whereby said court has refused to allow a claim in favor of the plaintiff, Roman Jaucian, against the estate of Hermenegilda Rogero upon the facts hereinbelow stated.

In October, 1908, Lino Dayandante and Hermenegilda Rogero executed a private writing in which they acknowledged themselves to be indebted to Roman Jaucian in the sum of P13,332.33. The terms of this obligation are fully set out at page 38 of the bill of exceptions. Its first clause is in the following words:

"We jointly and severally acknowledge our indebtedness in the sum of P13,332.33 Philippine currency (a balance made October 23, 1908) bearing interest at the rate of 10 per cent per annum to Roman Jaucian, of age, a resident of the municipality of Ligao, Province of Albay, Philippine Islands and married to Pilar Tell."

Hermenegilda Rogero signed this document in the capacity of surety for Lino Dayandante; but as clearly appears from the instrument itself both debtors bound themselves jointly and severally to the creditor, and there is nothing in the terms of the obligation itself to show that the relation between the two debtors was that of principal and surety.

In November, 1909, Hermenegilda Rogero brought an action in the Court of First Instance of Albay against Jaucian, asking that the document in question be canceled as to her upon the ground that her signature was obtained by means of fraud. In his answer to the complaint, Jaucian, by way of cross-complaint, asked for judgment against the plaintiff for the amount due upon the obligation, which appears to have matured at that time. Judgment was rendered in the Court of First Instance in favor of the plaintiff, from which judgment the defendant appealed to the Supreme Court.

In his appeal to this court, Jaucian did not assign as error the failure of the lower court to give him judgment on his cross-demand, and therefore the decision upon the appeal was limited to the issues concerning the validity of the document.

While the case was pending in the Supreme Court, Hermenegilda Rogero died and the administrator of her estate was substituted as the party plaintiff and appellee. On November 25, 1913, the Supreme Court rendered its decision reversing the judgment of the trial court and holding that the disputed claim was valid.[1]

During the pendency of the appeal, proceedings were had in the Court of First Instance of Albay for the administration of the estate of Hermenegilda Rogero; Francisco Querol was named administrator; and a committee was appointed to pass upon claims against the estate. This committee made its report on September 3,

1912. On March 24, 1914, or about a year and a half after the filing of the report of the committee on claims against the Rogero estate, Jaucian entered an appearance in the estate proceedings, and filed with the court a petition in which he averred the execution of the document of October, 1908, by the deceased, the failure of her coobligor Dayandante, to pay any part of the debt, except P100 received from him in March, 1914, and the complete insolvency of Dayandante. Upon these facts Jaucian prayed the court for an order directing the administrator of the Rogero estate to pay him the principal sum of P13,332.33, plus P7,221.66, as interest thereon from October 24, 1908, to March 24, 1914, with interest on the principal sum from March 24, 1914, at 10 per cent per annum, until paid.

A copy of this petition was served upon the administrator of the estate, who, on March 30, 1914, appeared by his attorney and opposed the granting of the petition upon the grounds that the claim had never been presented to the committee on claims for allowance; that more than eighteen months had passed since the filing of the report of the committee, and that the court was therefore without jurisdiction to entertain the demand of the claimant. A hearing was had upon the petition before the Honorable P. M. Moir, then sitting in the Court of First Instance of Albay. On April 13, 1914, he rendered his decision, in which, after reciting the facts substantially as above set forth, he said:

"During the pendency of that action (the cancellation suit) in the Supreme Court Hermenegilda Rogero died, and Francisco Querol was named administrator of the estate, and he was made a party defendant to the action then pending in the Supreme Court. As such he had full knowledge of the claim presented and was given an opportunity to make his defense. It is presumed that defense was made in the Supreme Court.

"No contingent claim was filed before the commissioners by Roman Jaucian, who seems to have rested content with the action pending. Section 746 et seq. of the Code of Civil Procedure provides for the presentation of contingent claims, against the estate. This claim is a contingent claim, because, according to the decision of the Supreme Court, Hermenegilda Rogero was a surety of Lino Dayandante. The object of presenting the claim to the commissioners is simply to allow them to pass on the claim and to give the administrator an opportunity to defend the estate against the claim. This having been given by the administrator defending the suit in the Supreme Court, the court considers this a substantial compliance with the law, and the said defense having been made by the administrator, he cannot now come into court and hide behind a technicality and say that the claim had not been presented to the commissioners and that, the commissioners having long since made report, the claim cannot be referred to the commissioners and therefore the claim of Roman Jaucian is barred. The court considers that paragraph (e) of the opposition is well taken and that there must be legal action taken against Lino Dayandante to determine whether or not he is insolvent, and that declaration under oath to the effect that he has no property except p100 worth of property, which he has ceded to Roman Jaucian, is not sufficient.

"Hermenegilda Rogero having been simply surety for Lino Dayandante, the administrator has a right to require that Roman Jaucian produce a judgment for his claim against Lino Dayandante, in order that the said administrator may be subrogated to the rights of Jaucian against Dayandante. The simple affidavit of the principal debtor that he had no property except P100 worth of property which he has ceded to the creditor is not sufficient for the court to order the surety to pay the debt of the principal. When this action shall have been taken against Lino Dayandante and an execution returned 'no effects,' then the claim of Jaucian against the estate will be ordered paid or any balance that may be due to him."

Acting upon the suggestions contained in this order Jaucian brought an action against Dayandante and recovered a judgment against him for the full amount of the obligation evidenced by the document of October 24, 1908. Execution was issued upon this judgment, but was returned by the sheriff wholly unsatisfied, no property of the judgment debtor having been found.

On October 28, 1914, counsel for Jaucian filed another petition in the proceedings upon the estate of Hermenegilda Rogero, in which they averred, upon the grounds last stated, that Dayandante was insolvent, and renewed the prayer of the original petition. It was contended that the court, by its order of April 13, 1914, had "admitted the claim."

The petition was again opposed by the administrator of the estate upon the grounds (a) that the claim was not admitted by the order of April 13, 1914, and that "the statement of the court with regard to the admissibility of the claim was mere dictum;" and (b) "that the said claim during the life and after the death of Hermenegilda Rogero, which occurred on August 2, 1911, was a mere contingent claim against the property of the said Hermenegilda Rogero, was not reduced to judgment during the lifetime of said Hermenegilda Rogero, and was not presented to the commissioners on claims during the period of six months from which they were appointed in this estate, said commissioners having given due and lawfull notice of their sessions and more than one year having expired since the report of the said commissioners; and this credit is outlawed or prescribed, and that this court has no jurisdiction to consider this claim."

On November 24, 1914, the Honorable J. C. Jenkins, then sitting in the Court of First Instance of Albay, after hearing argument, entered an order refusing to grant Jaucian's petition. To this ruling the appellant excepted and moved for a rehearing. On December 11, 1914, the judge a quo entered an order denying the rehearing and setting forth at length, the reasons upon which he based his denial of the petition. These grounds were briefly, that as the claim had never been presented to the committee on claims, it was barred; that the court had no jurisdiction to entertain it; that the decision of the Supreme Court in the action brought by the deceased against Jaucian did not decide anything except that the document therein disputed was a valid instrument.

In this court the appellant contends that the trial judge erred (a) in refusing to give effect to the order made by the Honorable P. M. Moir, dated April 13, 1914; and (b) in refusing to order the administrator of the estate of Hermenegilda Rogero to pay the appellant the amount demanded by him. The contention with regard to the order of April 13, 1914, is that no appeal from it having been taken, it became final.

An examination of the order in question, however, leads us to conclude that it was not a final order, and therefore it was not appealable. In effect, it held that whatever rights Jaucian might have against the estate of Rogero were subject to the performance of a condition precedent, namely, that he should first exhaust this remedy against Dayandante. The court regarded Dayandante as the principal debtor, and the deceased as a surety only liable for such deficiency as might result after the exhaustion of the assets of the principal coobligor. The pivotal fact upon which the order was based was the failure of appellant to show that he had exhausted his remedy against Dayandante, and this failure the court regarded as a complete bar to the granting of the petition at that time. The court made no order requiring the appellee to make any payment whatever, and that part of the opinion, upon which the order was based, which contained statements of what the court intended to do when the petition should be renewed, was not binding upon him or any other judge by whom he might be succeeded. Regardless of what may be our views with respect to the jurisdiction of the court to have granted the relief demanded by appellant in any event, it is quite clear from what we have stated that the order of April 13, 1914, required no action by the administrator at that time, was not final, and therefore was not appealable. We therefore conclude that no rights were conferred by the said order of April 13, 1914, and that it did not preclude the administrator from making opposition to the petition of the appellant when it was renewed.

Appellant contends that his claim against the deceased was contingent. His theory is that the deceased was merely a surety of Dayandante. His argument is that as section 746 of the Code of Civil Procedure provides that contingent claims "may be presented with the proof to the committee," it follows that such presentation is optional. Appellant, furthermore, contends that if a creditor holding a contingent claim does not see fit to avail

himself of the privilege thus provided, there is nothing in the law which says that his claim is barred or prescribed, and that such creditor, under section 748 of the Code of Civil Procedure, at any time within two years from the time allowed other creditors to present their claims, may, if his claim becomes absolute within that period present it to the court for allowance. On the other hand counsel for appellee contends (1) that contingent claims like absolute claims are barred for non-presentation to the committee but (2) that the claim in question was in reality an absolute claim and therefore indisputably barred.

The second contention takes logical precedence over the first and our view of its conclusiveness renders any consideration of the first point entirely unnecessary to a determination of the case. Bearing in mind that the deceased Hermenegilda Rogero, though surety for Lino Dayandante, was nevertheless bound jointly and severally with him in the obligation, the following provisions of law are here pertinent.

Article 1822 of the Civil Code provides:

"By security a person binds himself to pay or perform for a third person in case the latter should fail to do so.

"If the surety binds himself jointly with the principal debtor, the provisions of section fourth, chapter third, title first, of this book shall be observed."

Article 1144 of the same code provides:

"A creditor may sue any of the joint and several (solidarios) debtors or all of them simultaneously. The claims instituted against one shall not be an obstacle for those that may be later presented against the others, as long as it does not appear that the debt has been collected in full."

Article 1830 of the same code provides:

"The surety can not be compelled to pay a creditor until application has been previously made of all the property of the debtor."

Article 1831 provides:

"This application can not take place—

"(1) * * * (2) If he has jointly bound himself with the debtor * * *."

The foregoing articles of the Civil Code make it clear that Hermenegilda Rogero was liable absolutely and unconditionally for the full amount of the obligation without any right to demand the exhaustion of the property of the principal debtor previous to its payment. Her position so far as the creditor was concerned was exactly the same as if she had been the principal debtor.

The absolute character of the claim and the duty of the committee to have allowed it in full as such against the estate of Hermenegilda Rogero had it been opportunely presented and found to be a valid claim is further established by section 698 of the Code of Civil Procedure, which provides:

"When two or more persons are indebted on a joint contract, or upon a judgment founded on a joint contract, and either of them dies, his estate shall be liable therefor, and it shall be allowed by the committee as if the contract had been with him alone or the judgment against him alone. But the estate shall have the right to recover contribution from the other joint debtor."

In the official Spanish translation of the Code of Civil Procedure, the sense of the English word "joint." as used in two places in the section above quoted, is rendered by the Spanish word "mancomunadamente." This is incorrect. The sense of the word "joint," as here used, would be more properly translated in Spanish by the word "solidaria,"

though even this word does not express the meaning of the English with entire fidelity.

The section quoted, it should be explained, was originally taken by the author, or compiler, of our Code of Civil Procedure from the statutes of the State of Vermont; and the word "joint" is, therefore, here used in the sense which attaches to it in the common law. Now, in the common law system there is no conception of obligation corresponding to the divisible joint obligation, contemplated in article 1138 of the Civil Code. This article declares in effect that, if not otherwise expressly determined, every obligation in which there are numerous debtors—we here ignore plurality of creditors—shall be considered divided into as many parts as there are debtors, and each part shall be deemed to be the distinct obligation of one of the respective debtors. In other words, the obligation is apportionable among the debtors; and in case of the simple joint contract neither debtor can be required to satisfy more than his aliquot part.

In the common law system every debtor in a joint obligation is liable in solidum for the whole; and the only legal peculiarity worthy of remark concerning the "joint" contract at common law is that the creditor is required to sue all the debtors at once. To avoid the inconvenience of this procedural requirement and to permit the creditor in a joint contract to do what the creditor in a solidary obligation can do under article 1144 of the Civil Code, it is not unusual for the parties to a common law contract to stipulate that the debtors shall be "jointly and severally" liable. The force of this expression is to enable the creditor to sue any one of the debtors or all together at pleasure.

It will thus be seen that the purpose of section 698 of the Code of Civil Procedure, considered as a product of common law ideas, is not to convert an apportionable joint obligation into a solidary joint obligation—for the idea of the benefit of division is totally foreign to the common law system—but to permit the creditor to proceed at once separately against the estate of the deceased debtor, without attempting to draw the other debtors into intestate or testamentary proceedings. The joint contract of the common law is and always has been a solidary obligation so far as the extent of the debtor's liability is concerned.

In Spanish law the comprehensive and generic term by which to indicate multiplicity of obligation, arising from plurality of debtors or creditors, is *mancomunidad*, which term includes (1) *mancomunidad simple*, or *mancomunidad properly such*, and (2) *mancomunidad solidaria*. In other words the Spanish system recognizes two species of multiple obligation, namely, the apportionable joint obligation and the solidary joint obligation. The solidary obligation is, therefore, merely a form of joint obligation.

The idea of the benefit of division as a feature of the simple joint obligation appears to be a peculiar creation of Spanish jurisprudence. No such idea prevailed in the Roman law, and it is not recognized either in the French or in the Italian system.

"This conception is a badge of honor to Spanish legislation, honorably shared with the Spanish-American, since French and Italian codes do not recognize the distinction or difference, just expounded, between the two sorts of multiple obligation. * * *" (Giorgi, *Theory of Obligations*, Span, ed., vol. I, p. 77, note.)

Considered with reference to comparative jurisprudence, liability in solidum appears to be the normal characteristic of the multiple obligation, while the benefit of division in the Spanish system is an illustration of the abnormal, evidently resulting from the operation of a positive rule created by the lawgiver. This exceptional feature of the simple joint obligation in Spanish law dates from an early period; and the rule in question is expressed with simplicity and precision in a passage transcribed into the *Novísima Recopilación* as follows:

"If two persons bind themselves by contract, simply and not otherwise, to do or accomplish something, it is thereby to be understood that each is bound for one-half, unless it is specified in the contract that each is bound in

solidum, or it is agreed among themselves that they shall be bound in some other manner, and this notwithstanding any customary law to the contrary; * * *" (Law X, tit. I, book X, Novísima Recopilación, copied from law promulgated at Madrid in 1488 by Henry IV.)

The foregoing exposition of the conflict between the juridical conceptions of liability incident to the multiple obligation, as embodied respectively in the common law system and the Spanish Civil Code, prepares us for a few words of comment upon the problem of translating the terms which we have been considering from English into Spanish or from Spanish into English.

The Spanish expression to be chosen as the equivalent of the English word "joint" or "jointly" must, of course, depend upon the idea to be conveyed; and it must be remembered that the matter to be translated may be an enunciation either of a common law conception or of a civil law idea. In *Sharruf vs. Tayabas Land Co. and Ginainati* (37 Phil. Rep., 655), a judge of one of the Courts of First Instance in these Islands rendered judgment in English declaring the defendants to be "jointly" liable. It was held that he meant "jointly" in the sense of "mancomunadamente," because the obligation upon which the judgment was based was apportionable under article 1138 of the Civil Code. This mode of translation does not, however, hold good where the word to be translated has reference to a multiple common law obligation, as in article 698 of the Code of Civil Procedure. Here it is necessary to render the word "joint" by the Spanish word "solidaria."

In translating the Spanish word "mancomunada" into English a similar difficulty is presented. In the Philippine Islands at least we must probably continue to tolerate the use of the English word "joint" as an approximate English equivalent, ambiguous as it may be to a reader indoctrinated with the ideas of the common law. The Latin phrase *pro rata* is a make shift, the use of which is not to be commended. The Spanish word "solidaria" is properly rendered in English by the word "solidary," though it is not inaccurate here to use the compound expression "joint and several." The use of the Latin phrase "in solidum" is also permissible. We close these observations with the suggestion that a person writing in English may at times find it conducive to precision to use the expanded expressions "apportionable joint obligation" and "solidary joint obligation," as conveying the full juridical sense of "obligación mancomunada" and "obligación solidaria," respectively.

From what has been said it is clear that *Hermenegilda Rogero*, and her estate after her death, was liable absolutely for the whole obligation, under section 698 of the Code of Civil Procedure; and if the claim had been duly presented to the committee for allowance it should have been allowed, just as if the contract had been with her alone.

It is thus apparent that by the express and incontrovertible provisions both of the Civil Code and the Code of Civil Procedure, this claim was an absolute claim. Applying section 695 of the Code of Civil Procedure, this court has frequently decided that such claims are barred if not presented to the committee in time (*In re estate of Garcia Pascual*, 11 Phil. Rep., 34; *Ortiga Bros. & Co. vs. Enage and Yap Tico*, 18 Phil. Rep., 345, 351; *Santos vs. Manarang*, 27 Phil. Rep., 209, 213); and we are of the opinion that, for this reason, the claim was properly rejected by Judge Jenkins.

There is no force, in our judgment, in the contention that the pendency of the suit instituted by the deceased for the cancellation of the document in which the obligation in question was recorded was a bar to the presentation of the claim against the estate. The fact that the lower court had declared the document void was not conclusive, as its judgment was not final, and even assuming that if the claim had been presented to the committee for allowance, it would have been rejected and that the decision of the committee would have been sustained by the Court of First Instance, the rights of the creditor could have been protected by an appeal from that decision.

Appellant apparently takes the position that had his claim been filed during the pendency of the cancellation suit,

it would have been met with the plea of another suit pending and that this plea would have been successful. This view of the law is contrary to the doctrine of the decision in the case of Hongkong & Shanghai Banking Corporation vs. Aldecoa & Co. ([1915], 30 Phil. Rep., 255).

Furthermore, even had Jaucian, in his appeal from the decision in the cancellation suit, endeavored to obtain judgment on his cross-complaint, the death of the debtor would probably have required the discontinuance of the action presented by the cross-complaint or counterclaim, under section 703.

As already observed the case is such as not to require the court to apply sections 746-749, inclusive, of the Code of Civil Procedure, nor to determine the conditions under which contingent claims are barred. But a few words of comment may be added to show further that the solidary obligation upon which this proceeding is based is not a contingent claim, such as is contemplated in those sections.

The only concrete illustration of a contingent claim given in section 746 is the case where a person is liable as surety for the deceased, that is, where the principal debtor is dead. This is a very different situation from that presented in the concrete case now before us, where the surety is the person who is dead. In the illustration put in section 746—where the principal debtor is dead and the surety is the party preferring the claim against the estate of the deceased—it is obvious that the surety has no claim against the estate of the principal debtor, unless he himself satisfies the obligation in whole or in part upon which both are bound. It is at this moment, and not before, that the obligation of the principal to indemnify the surety arises (art. 1838, Civil Code) ; and by virtue of such payment the surety is subrogated in all the rights which the creditor had against the debtor (art. 1839, same Code).

Another simple illustration of a contingent liability is found in the case of the indorser of a negotiable instrument, who is not liable until his liability is fixed by dishonor and notice, or protest and notice, in conformity with the requirements of law. Until this event happens there is a mere possibility of a liability, which in fact may never become fixed at all. The claims of all persons who assume the responsibility of mere guarantors is—as against their principles—of the same contingent character.

It is possible that "contingency," in the cases contemplated in section 746, may depend upon other facts than those which relate to the creation or inception of liability. It may be, for instance, that the circumstance that a liability is subsidiary, and the execution has to be postponed after judgment is obtained until the exhaustion of the assets of the person or entity primarily liable, makes a claim contingent within the meaning of said section; but upon this point it is unnecessary to express an opinion. It is enough to say that where, as in the case now before us, liability extends unconditionally to the entire amount stated in the obligation, or, in other words, where the debtor is liable in solidum and without postponement of execution, the liability is not contingent but absolute.

For the reasons stated, the decision of the trial court denying appellant's petition and his motion for a new trial was correct and must be affirmed. No costs will be allowed on this appeal. So ordered.

Arellano, C. J., Torres, Johnson, Araullo, and Avanceña, JJ., concur.

[1] Rogero vs. Jaucian and Dayandante, R. G. No. 6671, November 25, 1913, not published.

CONCURRING OPINION

MALCOLM and FISHER, JJ., concurring:

The determination of the issues raised by this appeal requires a careful analysis of the provisions of the Code of

Civil Procedure relating to the presentation and allowance of claims against the estates of deceased persons.

Appellant contends that his claim against the deceased was contingent. His theory is that the deceased was merely a surety of Dayandante. His argument is that as section 746 of the Code of Civil Procedure provides that contingent claims "may be presented with the proof to the committee," it follows that such presentation is optional. Appellant, furthermore, contends that if a creditor holding a contingent claim does not see fit to avail himself of the privilege thus provided, there is nothing in the law which says that his claim is barred or prescribed, and that such creditor, under section 748 of the Code of Civil Procedure, at any time within two years from the time allowed other creditors to present their claims, may, if his claim becomes absolute within that period, present it to the court for allowance. On the other hand, counsel for appellee contends that "contingent claims, like absolute claims, against the estate of a deceased person, must be filed before the committee on claims of said estate within the time limited by law for the operation of the committee, to give the contingent claims status for allowance by the court, when they become absolute, otherwise the contingent claims are barred."

As to absolute claims, the statute expressly provides that the failure to file them within the time named results in their complete extinction. This clearly appears from the wording of section 695, which reads as follows:

"A person having a claim against a deceased person proper to be allowed by the committee, who does not, after publication of the required notice, exhibit his claim to the committee as provided in this chapter, shall be barred from recovering such demand * * *."

That absolute claims, if not presented to the committee in time, are absolutely barred has frequently been decided by this court and by the Supreme Court of Vermont, from which State the Philippine statute was taken. (In re estate of Garcia Pascual [1908], 11 Phil., 34; Ortiga Bros. & Co. vs. Enage and Yap Tico [1911], 18 Phil., 345; Briggs vs. The Estate of Thomas [1859], 32 Vt., 176; Ewing vs. Griswold [1871], 43 Vt., 400—subject to certain exceptions in cases in which there has been a fraudulent concealment of assets. In re estate of Reyes [1910], 17 Phil., 188.)

The effect of this statute is, obviously, to curtail very materially the time allowed under the ordinary statute of limitations for the enforcement of a claim, in the event of the death of the debtor. This effect, and the reason for it, were pointed out very clearly in the case of Santos vs. Manarang ([1914], 27 Phil., 209, 213), in which it was said:

"It cannot be questioned that this section supersedes the ordinary limitation of actions provided for in chapter 3 of the Code. It is strictly confined, in its application, to claims against the estates of deceased persons, and has been almost universally adopted as part of the probate law of the United States. It is commonly termed the statute of non-claims, and its purpose is to settle the affairs of the estate with dispatch, so that the residue may be delivered to the persons entitled thereto without their being afterwards called upon to respond in actions for claims, which, under the ordinary statute of limitations, have not yet prescribed."

It must be quite obvious that every reason which can be adduced as justifying the policy of the law with regard to absolute claims applies with even greater force to contingent claims. Unless there is a fixed and definite period after which all claims not made known are forever barred, what security have the distributees against the interruption of their possession? Under the system formerly in force here heirs might take the estate of their decedent unconditionally, in which event they were liable absolutely for all his debts, or with benefit of inventory, being then liable only to the extent of the value of their respective distributive shares. But that system has been abolished (Suiliong & Co. vs. Chio-Taysan [1908], 12 Phil., 13), and the heir is now not personally responsible as such for the debts of the deceased. On the other hand, as stated in the case cited, the property of the deceased comes to him "charged with the debts of the deceased, so that he cannot alienate or discharge it free of such debts until and unless they are extinguished either by payment, prescription, or * * *" by the operation of the statute of

non-claim. It is thus to the interest of the heirs and devisees to have the property discharged of this indefinite liability as soon as possible.

Ordinarily, this is accomplished by judicial administration ; this procedure is compulsory as to all estates, with one exception, namely, that established by section 596 of the Code of Civil Procedure, which authorizes the distribution of the property of a deceased person by written agreement of the heirs, when all of them are of full age and legal capacity, and there are no debts or the known debts have been paid. Section 597, as amended by Act No. 2331, establishes a summary procedure applicable to estates not exceeding three thousand pesos, under which the property of the deceased is distributed without the appointment of a committee on claims. But as it is clear that when an estate is distributed summarily by either of these methods creditors having just claims against the deceased may be overlooked, section 598, as amended, provides:

"But if it shall appear, at any time within two years after the settlement and distribution of an estate in accordance with the provisions of either of the preceding sections of this chapter, that there are debts outstanding against the estate which have not been paid, 'or that an heir or other persons (sic) has been unduly deprived of his lawful participation in the estate, any creditor, heir, or other such person, may compel the settlement of the estate in the courts in the manner hereinafter provided, unless his credit or lawful participation in the estate shall be paid, with interest. The court shall then appoint an administrator who may recover the assets of the estate for the purpose of paying such credit or lawful participation; and the real estate belonging to the deceased shall remain charged with the liability to creditors, heirs or other persons for the full period of two years after such distribution, notwithstanding any transfer thereof that may have been made."

It will be observed that the section last quoted does not distinguish between claims, absolute and contingent, but limits to two years the time within which the holder of any claim against the deceased may assert it against the distributees. While the statute does not say in so many words that all claims not presented within two years are barred, that is the plain inference and it has been so construed by this court in the case of *McMicking vs. Sy Conbieng* ([1912], 21 Phil., 211). The decision in this case definitely decided that all claims, absolute or contingent, against an estate partitioned without judicial proceedings and without notice to creditors are barred and extinguished if not asserted within two years. It is equally firmly established by the express terms of section 695 and the decisions by which it has been construed that absolute claims against the estates judicially administered are barred, unless presented to the committee on claims within the time limited.

We will now consider the effect of the failure to present a contingent claim against an estate undergoing judicial administration in which a committee on claims has been legally appointed and notice given to creditors to present their claims.

With respect to contingent claims, the Code of Civil Procedure provides:

"If a person is liable as surety for the deceased, or has other contingent claims against his estate which can not be proved as a debt before the committee, the same may be presented, with the proof, to the committee, who shall state in their report that such claim was presented to them." (Sec. 746.)

"If the court is satisfied from the report of the committee, or from proof exhibited to it, that such contingent claim is valid, it may order the executor or administrator to retain in his hands sufficient estate to pay such contingent claim, when the same becomes absolute, or, if the estate is insolvent, sufficient to pay a portion equal to the dividend of the other creditors." (Sec. 747.)

"If such contingent claim becomes absolute and is presented to the court, or to the executor or administrator, within two years from the time limited for other creditors to present their claims, it may be allowed by the court if

not disputed by the executor or administrator, and, if disputed, it may be proved before the committee already appointed, or before others to be appointed, for that purpose, as if presented for allowance before the committee had made its report." (Sec. 748.)

"If such contingent claim is allowed, the creditor shall receive payment to the same extent as the other creditors, if the estate retained by the executor or administrator is sufficient. But if the claim is not established during the time limited in the preceding section, or if the assets retained in the hands of the executor or administrator are not exhausted in the payment of such claims, such assets, or the residue of them, shall be disposed of by the order of the court to the persons entitled to the same; but the assets so distributed shall still remain subject to the liability of the claim when established, and the creditor may maintain an action against the distributees to recover his debt, and such distributees and their estate shall be liable for such debts in proportion to the estate they have respectively received from the property of the deceased." (Sec. 749.)

The authority of the committee with respect to contingent claims differs materially from that which it exercises over absolute claims. As to the latter the committee has complete authority, and its decisions, unless an appeal is taken to the court, are final. But as regards contingent claims, the committee does not in the first instance pass upon their validity. When such claims, with the proof, are presented to the committee it becomes their duty to report them to the court. If the court, "from the report of the committee" or from "the proofs exhibited to it," is satisfied that such contingent claim is valid, the executor or administrator may be required to retain in his possession sufficient assets to pay the claim, when it becomes absolute, or enough to pay the creditor his proportionate share. The time during which the retained assets are to be held is two years from the time limited for other creditors to present their claims. If the claim matures within that time, and demand is made to the court for its payment, the court may direct the administrator to pay it, but if he objects it must then be proved before the original committee or a new committee appointed for that purpose. The court in no event has authority to allow a disputed claim, originally contingent, and to require the administrator or executor to pay it, until it has been passed upon by the committee. If the claim does not become absolute within the two years the retained assets are delivered to the distributees and the estate is closed. If "such claim" matures after the two years the creditor may sue the distributees, who are liable in proportion to the share of the estate respectively received by them.

In the light of these provisions, can it be maintained that a creditor holding a contingent claim may, at his option, refrain from presenting it to the committee, and after it becomes absolute, require its payment by the administrator if it has matured within the two years, or recover it from the distributees if it matures after that time? In other words, do sections 748 and 749 refer to contingent claims in general, or only to contingent claims which have been presented to the committee pursuant to the provisions of sections 746 and 747?

If we hold that sections 748 and 749 are not limited by sections 746 and 747, but are to be read as though those sections were nonexistent, the result must be that the heirs and distributees of an estate can never be certain, until the expiration of the full term of the statute of limitations, that they may safely enjoy the property which has descended to them. For a period of indefinite duration—indefinite because of the uncertainty engendered by section 45 of the Code of Civil Procedure—they must be exposed to the claims of unknown creditors of the deceased who may come forward to demand payment of claims which were contingent when the estate was distributed, but which have since become absolute. During that period of uncertainty the distributees will never know at what moment they may be called upon to pay over the whole amount received by them from the estate of the decedent.

On the other hand, if we construe sections 748 and 749 as being limited by the two preceding sections, and hold that only such contingent claims as have been presented to the committee may be recovered from the estate or the distributees, then the doubt and uncertainty will disappear. If no such contingent claims are presented to the committee they will be nonexistent so far as the distributees are concerned. If such claims are proved, but do not

become absolute within the two years, the distributees will know that their respective shares are subject to a contingent liability, definite in amount, and may govern themselves accordingly.

In construing a statute it is proper to bear in mind the purpose of the legislature in enacting it, with a view to adopting, if possible, that interpretation which will accomplish rather than defeat the legislative intent. It will not be disputed that it must be assumed that the legislature desires certainty rather than uncertainty in the tenure of property transmitted by descent.. As was said in the case of *McMicking vs. Sy Conbieng* ([1912], 21 Phil., 211): "It is the undisputed policy of every people which maintains the principle of private ownership of property that he who owns a thing shall not be deprived of its possession or use except for the most urgent and imperative reasons and then only so long as is necessary to make the rights which underlie those reasons effective." In the *De Dios* case ([1913], 24 Phil., 573, 576), it was said: "It is distinctly against the interest of justice and in direct opposition to the policy of the law to extend unduly the time within which the estate should be administered and thereby to keep the property from the possession and use of those who are entitled to it * * *." It must be equally contrary to the policy of the law to allow property which has passed by descent into other hands to be subject for an indefinite term to contingent claims of indefinite amount.

It is true that in this particular case the demand was made within two years and while the assets, apparently, were still undistributed. Nevertheless, if the principle contended for by appellant be established, and creditors holding contingent claims against estates judicially administered may disregard the committee on claims entirely, then they may enforce such claims against the distributees after the estate is closed. Unless the time for the presentation of such claims is limited by the sections under consideration it is wholly unlimited, save by the general statute of prescription.

Examining the statute in the light of these considerations we are of the opinion that the contention of the appellant cannot be sustained. Sections 748 and 749, in speaking of contingent claims which are demandable after they become absolute, against the administration or against the distributees, use the expression "such contingent claim" The use of the word "such" is, we think, clearly intended to limit the words "contingent claim" to the class referred to in the two preceding sections—that is, to such contingent claims as have been presented to the committee and reported to the court pursuant to the requirements of sections 746 and 747.

As on most important questions, authorities both pro and con can be cited. For instance, in the case of *McKeen vs. Waldron* ([1879], 25 Minn., 466), the Supreme Court of Minnesota held, construing a similar statute, that contingent claims need not be presented to the committee and are not barred by the failure to do so; that by the failure to present a contingent claim, the creditor loses his rights to have assets retained by the executor or administrator, but if his claim becomes absolute, he may maintain an action against the distributees to recover such claim to the extent of the estate so distributed But we do not consider the reasoning of this decision of controlling or even of persuasive authority as applied to our own statute. In interpreting its provisions we must take into consideration the object which the legislature had in view in enacting it. As stated by this court in the case of *De Dios* (24 Phil., 573): "The object of the law in fixing a definite period within which claims must be presented is to insure the speedy settling of the affairs of a deceased person and the early delivery of the property of the estate into the hands of the persons entitled to receive it" (See also *Verdier vs. Roach* [1892], 96 Cal., 467.) The affairs of a deceased person are not "speedily settled" if contingent claims, uncertain and indefinite, are left outstanding. An estate left in this precarious condition can hardly be said to be "settled" at all.

We do not agree with the contention of appellant that the use of the word "may" in section 746 is to be construed as authorizing the holder of a contingent claim to disregard the existence of the committee without suffering any untoward consequences. He "may" present his contingent claim, if he desires to preserve his right to enforce it against the estate or the distributees, but if he does not he may not thereafter so assert it.

With respect to the contention that the bar established by section 695 is limited to claims "proper to be allowed by the committee" our reply is that contingent claims fall within this definition equally with absolute claims. It is true that as long as they are contingent the committee is not required to pass upon them finally, but merely to report them so that the court may make provision for their payment by directing the retention of assets. But if they become absolute after they have been so presented, unless admitted by the administrator or executor, they are to be proved before the committee, just as are other claims. We are of the opinion that the expression "proper to be allowed by the Committee," as limiting the word "claims" in section 695 is not intended to distinguish absolute claims from contingent claims, but to distinguish those which may in no event be passed upon by the committee, because excluded by section 703, from those over which it has jurisdiction.

There is no force, in our judgment, in the contention that the pendency of the suit instituted by the deceased for the cancellation of the document in which the obligation in question was recorded was a bar to the presentation of the claim against the estate. The fact that the lower court had declared the document void was not conclusive, as its judgment was not final, and even assuming that if the claim had been presented to the committee for allowance, it would have been rejected and that the decision of the committee would have been sustained by the Court of First Instance, the rights of the creditor could have been protected by an appeal from that decision. Appellant apparently takes the position that had his claim been filed during the pendency of the cancellation suit it would have been met with the plea of another suit pending and that this plea would have been successful. This view of the law is contrary to the doctrine of the decision in the case of *Hongkong & Shanghai Bank vs. Aldecoa & Co.* ([1915], 30 Phil., 255). Furthermore, even had Jaucian, in his appeal from the decision in the cancellation suit, endeavored to obtain judgment on his cross-complaint, the death of the debtor would probably have required the discontinuance of the action presented by the cross-complaint or counterclaim, under section 703.

In the consideration of this appeal we have assumed that the claim is a contingent one. The document upon which it is based is not before us. Both parties, however, until the brief of appellee was filed, seem to have agreed that the deceased was a mere surety or, more strictly speaking, a guarantor for Dayandante, and that the claim against her was contingent. This being undeniable, and the cause having been tried upon a particular issue, accepted by the parties and the court, the appellate court should proceed upon the same theory. (*Molina vs. Somes* [1913], 24 Phil., 49; *Limpangco Sons vs. Yangco Steamship Co.* [1916], 34 Phil., 597; *Agoncillo and Marino vs. Javier* [1918], p. 424, ante.)

Of course, it is quite obvious that if the claim was indeed absolute, as contended by appellee and as conceded in the main decision, the practical result would be the same, as there can be no doubt that all absolute claims not presented to the committee are barred by the express terms of section 695 of the Code of Civil Procedure, as heretofore construed by this court. (In re estate of *Garcia Pascual*, supra; *Ortiga Bros. & Co. vs. Enage and Yap Tico*, supra; *Briggs vs. The Estate of Thomas*, supra; *Ewing vs. Griswold*, supra; *Estate of Reyes*, supra; in connection with *McMicking vs. Sy Conbieng*, supra.) In view of these decisions additional argument is unnecessary.

The main decision also contains a discussion of the subject of "apportionable joint obligations" and "solidary joint obligations." Here again it is only worthy of note that the terms "joint," "mancomunada" "jointly," "mancomunadamente," "jointly and severally," "solidariamente" (in solidum) have heretofore been authoritatively construed in the decisions of this court and in decisions of the supreme court of Louisiana and the Supreme Court of the United States. The following cases can be noted: *Sharruf vs. Tayabas Land Co. and Ginainati* ([1918], 37 Phil. Rep., 655) ; *Parot vs. Gemora* ([1906], 7 Phil., 94) ; *Pimentel vs. Gutierrez* ([1909], 14 Phil., 49); *Chinese Chamber of Commerce vs. Pua Te Ching* ([1910], 16 Phil., 406) ; *De Leon vs. Nepomuceno and De Jesus* ([1917], 37 Phil. Rep., 180); *Groves vs. Sentell* ([1894], 153 U. S., 465) ; *Adle vs. Metoyer* ([1846], 1 La. Ann.,

254); *Ledoux & Co. vs. Rucker* ([1850], 5 La. Ann., 500) ; *Pecquet vs. Pecquet's Executor* ([1865], 17 La. Ann., 467) ; *Duggan vs. DeLizardi* ([1843], 5 Robinson's Reports, 224) ; *Commissioners of New Orleans Improvement & Banking Co. vs. The Citizen's Bank* ([1845], 10 Robinson's Reports, 14). For example, in the decision first above cited (*Sharruf vs. Tayabas Land Co. and Ginainati*), we find the following:

"We agree with the appellant that this promissory note evidences a joint and not a joint and several obligation, but it appearing that the trial judge correctly rendered judgment holding the defendants 'jointly' liable, there is no necessity for any modification of the terms of the judgment in that regard. Our decision in the case of *De Leon vs. Nepomuceno and De Jesus* (37 Phil. Rep., 180) should make it quite clear that in this jurisdiction at least, the word 'jointly' when used by itself in a judgment rendered in English is equivalent to the word *mancomunadamente*, and that it is necessary to use the words 'joint and several' in order to convey the idea expressed in the Spanish term *solidariamente* (in *solidum*); and further, that a contract, or a judgment based thereon, which fails to set forth that a particular obligation is 'joint and several' must be taken to have in contemplation a 'joint' (*mancomunada*), and not a 'joint and several' (*solidary*) obligation.

"A similar distinction is made in the technical use of the English words 'joint' and 'joint and several' or 'solidary'

in Louisiana, doubtless under like historic influences to those which have resulted in this construction we have always given these terms.

" 'A joint obligation under the law of Louisiana binds the parties thereto only for their proportion of the debt (La. Civ. Code, arts. 2080, 2086), whilst a solidary obligation, on the contrary, binds each of the obligators for the whole debt' (*Groves vs. Sentell*, 14 Sup. Ct., 898, 901; 153 U.» S., 465; 38 L. Ed., 785.)"

We are of the opinion, therefore, that contingent claims not presented to the committee on claims within the time named for that purpose are barred.

For the reasons stated, the decision of the trial court denying appellant's petition and his motion for a new trial was correct and should be affirmed.

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