

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHIU GUIMCO, DEFENDANT AND APPELLANT.*G.R. No. 12184. September 27, 1917*

Ponente: STREET, J.

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This is an appeal brought by the accused Chiu Guimco to reverse a judgment of the Court of First Instance of the Province of Misamis, subjecting him to a fine of P1,800 for a violation of section 628 of the Code of Civil Procedure and ordering him to be confined in the provincial jail until he should produce the will of his deceased brother, or until the further order of the court.

It appears that the testator, Joaquin Cruz, alias Piaua, had for many years resided in the municipality of Gingoog, Province of Misamis, where he had lived as a Chinese "merchant and had amassed a considerable estate, worth possibly forty or fifty thousand pesos. On or about the year 1898, Joaquin Cruz visited China and was there married to a Chinese woman, Uy Cuan, and by her had one child. In the year 1902, after his return from China, he was married in Gingoog to a Filipina woman named Maria Villafranca. In the early part of the year 1910, Joaquin Cruz again visited China, leaving his brother, Chiu Guimco, the accused, in charge of his property and business in Gingoog as agent or attorney in fact (apoderado). While absent on this visit to China Joaquin Cruz died. Before his departure from the Philippine Islands he had executed a will before Anastasio Servillon, notary public, in which Chiu Guimco and Co-Iden were named as executors. In August 1910, Chiu Guimco and Co-Iden appeared before Anastasio Servillon; and at their request the latter drew up a petition for the probate of the will. This petition was signed by Co-Iden and the accused. The will itself was not produced before the notary public upon this occasion, and he was not informed by them as to who then had possession of the will. Nothing further was done in the matter of the probate of the will and Co-Iden subsequently died.

In September, 1910, the accused, as attorney in fact (apoderado) and manager of the estate of his deceased brother, entered into an arrangement with Maria Villafranca whereby, in consideration of the conveyance of certain property to her, she relinquished in favor of the other persons interested in the estate of the deceased all her claims in respect to the same property.

No further action was taken by the accused to distribute the estate to the persons in interest. In 1914 Uy Cuan, the Chinese wife, secured a special permit to enter the Philippine Islands for the period of six months to effect some settlement of the estate of her deceased husband. When she arrived in Misamis, the accused made the claim that he and his brother had been partners in the business which had been conducted originally by Joaquin Cruz. He also asserted that another brother living in China, named Chiu Tamco, was also a partner in the business, though he had never been in the Philippine Islands. In a document which was then drawn up, it was agreed that Uy Cuan and her child Chiu Machay were to receive 40 per centum of the estate of the deceased, that the defendant Chiu Guimco was to receive another 40 per centum, and Chiu Tamco 20 per centum. Later upon the same visit, Uy Cuan, on behalf of herself and child, entered into a contract with the accused whereby he agreed to pay the sum of P350 per quarter by way of rental on their interest in the real estate of the decedent. No payments have, however,

been made by him in compliance with this contract.

In 1915 Ramon Contreras, a Chinese merchant of Cagayan, Misamis, acting on behalf of Uy Cuan and her child, began to make inquiries into the affairs of the estate and on January 26, 1915, wrote a letter to the defendant Chiu Guimco, urging him to produce the will of the decedent for the institution of lawful proceedings in accordance therewith. The letter called his attention to the penalty denounced by sections 628 and 629 of the Code of Civil Procedure for withholding a will, but assured him that if he would then produce the will no penalty would be incurred.

Chiu Guimco was somewhat disturbed by this letter and called in his friend Antonio Yacapin, then municipal president of Gingoog, for advice. Upon this occasion he showed Yacapin the will; and the latter says he advised the Chinaman to present the will to the court, but the latter dissented from this opinion and stated that if he should now present the will he would suffer prejudice as a long time had already elapsed. In deference to this determination of the accused a letter was written for him by Yacapin to Ramon Contreras, in which the accused asserted that the will in question had never been in his possession and that he had never seen it.

A few months later the complaint in this case was filed, under section 628 of the Code of Civil Procedure, charging the defendant with the failure to produce the will within the time required by law. The principal witness for the prosecution was Antonio Yacapin, who meanwhile had ceased to have friendly relation with the defendant. The court found the accused guilty. That the will was duly executed and that the accused and his coexecutor appeared before the notary public and procured the latter to prepare a petition for the probate of the will are facts which are not disputed. The action of the accused in possessing himself of the property of his deceased brother and in refusing to take the proper steps to distribute the estate, as well as his refusal to comply with the contract for the payment of rent to the wife and child in China, all tend to show that he was acting in bad faith; and we have no doubt that the will was in his possession at the time when Yacapin professes to have seen it. In finding the defendant guilty and imposing upon him a fine of P1,800f the Court of First Instance therefore committed no error.

During the hearing of this cause the trial judge formed the opinion that the accused still had possession of the will. He therefore, upon July 22, ordered the accused to produce the will in court and addressed to him, while he was testifying as a witness in his own behalf, the following words: "I serve notice on you now to produce the will of your deceased brother Joaquin Cruz or make a reasonable and satisfactory explanation as to why you cannot do so. And be back here on the 8th of August and we will take up the case again." The accused, however, failed to produce the will at the time specified in the notice, alleging that though he had searched diligently among his papers he was unable to find it; and he reiterated his previous assertion that the will had never been in his possession. The judge was not satisfied with this explanation, and upon deciding the present case against the defendant he not only imposed the fine mentioned above but also included in the judgment an order to the effect that the accused should be committed to the provincial jail until he should produce the will or until further order of the court.

The judge of first instance believed that he had authority to give the notice and make the order in question under section 629 of the Code of Civil Procedure which provides that if a person having custody of a will after the death of the testator neglects without reasonable cause to deliver the same to the court having jurisdiction, after notice by the court so to do, he may be committed to the prison of the province by a warrant issued by the court and there kept in close confinement until he delivers the will.

It is our opinion that this provision can only be applied when a court is acting in the exercise of its jurisdiction over the administration of the estates of deceased persons; and where administration proceedings are not already

pending, the court, before taking action under this section, should require that there be before it some petition, information, or affidavit of such character as to make action by the court under this section appropriate.

The proceedings in this case, under section 628 of the Code of Civil Procedure, is an ordinary criminal prosecution. The act penalized in that section (628) is a special statutory offense and is properly prosecuted upon complaint or information as other criminal offenses created by law. The fact that this penal provision is contained in the Code of Civil Procedure does not make the proceeding to enforce the penalty a civil proceeding in any sense. The remedy provided in section 629 of the Code of Procedure is evidently a totally different remedy, having no relation with that provided in section 628; and it is in our opinion not permissible in a prosecution under the last mentioned section to superimpose upon the penalty of fine therein prescribed the additional penalty of imprisonment prescribed in section 629.

It may further be observed that one grave difficulty in applying the remedy provided in section 629 in a prosecution under section 628 is that to enforce the production of the will by the accused at such trial would virtually compel him to convict himself, since the mere production of the will by him would be conclusive that he had possession of it as charged in the criminal complaint; and it seems probable that this would constitute an infringement of that provision of law which says that in a criminal action the defendant shall be exempt from testifying against himself. (See Gen. Orders No. 58, sec. 15.)

From what has been said it follows that the order of commitment made by the lower court remanding the accused to jail should be vacated and if subsidiary imprisonment should be imposed for insolvency the defendant shall, under the provisions of Act No. 2557, be credited with the time during which he was confined in pursuance of the order of the lower court. With this modification the judgment of the court below should be affirmed with costs against the appellant. So j ordered.

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

CARSON, J., concurring:

I concur.

I think it well, however, to indicate that I do not understand the comment in the concluding paragraphs of the prevailing opinion to amount to a ruling of this court that separate proceedings may not be instituted under the terms of section 629 of the Code of Civil Procedure to compel production of a will after judgment of conviction under section 628; or, that, when no criminal action is pending, commitment may not be had under section 629 in a proper case.

MALCOLM, J., concurring:

I concur in the resolution of the case.

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