

PATROCINIO BAYOT, AS ADMINISTRATRIX OF THE INTESTATE ESTATE OF FRANCISCO MA. BAYOT, PLAINTIFF AND APPELLANT, VS. LUCAS ZURBITO, AS ADMINISTRATOR OF THE INTESTATE ESTATE OF GASPA...

G.R. No. 13124. February 28, 1919

Ponente: STREET, J.

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STREET, J.:

This is an action to recover a sum of money, and the plaintiff appeals from the action of the Court of First Instance sustaining a motion to dismiss, based on the ground that the matter in controversy had been determined, in a former action.

The plaintiff Patrocinio Bayot, is the administratrix of the estate of her deceased father, Francisco Ma. Bayot, formerly a merchant in Masbate, who died intestate many years ago. The defendant, Lucas Zurbito, is the administrator of the estate of his father, Gaspar Zurbito, who also died several years ago, but subsequent to the death of Francisco Bayot. The claim sued on in this case consists of a debt for P9,694.52, with interest from August 9, 1907. It is alleged to consist of the balance of an account current, as shown upon the books of Francisco Bayot, resulting from mercantile operations sustained between the latter and Gaspar Zurbito, during a period of several years prior to the death of Bayot. The claim in question in this suit was presented by the plaintiff to the committee in the estate of Gaspar Zurbito and was allowed by the committee as a just debt, but upon appeal to the Court of First Instance it was held that the action could not be maintained inasmuch as the plaintiff had previously exhibited this debt by way of set-off against another claim presented by Zurbito against the estate of the plaintiff's intestate.

In this connection it appears that on April 8, 1907, Gaspar Zurbito presented a claim for P53,602.76 to the committee acting in the estate of Francisco Bayot. The facts concerning this claim need not be set out in detail, it being sufficient to say that, according to Zurbito, Bayot had become indebted to Zurbito's father while the former was acting as manager or administrator of a cattle ranch belonging to the latter. Said claim was disallowed by the committee on claims of the Bayot estate as being wholly without any merit whatever. An appeal was promptly taken by Zurbito to the Court of First Instance, which court also disallowed the claim, and upon appeal to the Supreme Court the judgment of the Court of First Instance was affirmed. (*Zurbito vs. Bayot*, R. G. No. 6567).^[1] Meanwhile Gaspar Zurbito, the original proponent of the claim above mentioned, had died and had been succeeded by the defendant, Lucas Zurbito, in the character of his administrator.

When the claim of Gaspar Zurbito was presented to the committee in the estate of Francisco Bayot, as above stated, the present plaintiff, as administratrix of Bayot, denied liability and asked that judgment be given in favor of the estate of Francisco Bayot upon the indebtedness which is the subject of the present action. The committee, however, considered that, inasmuch as the Zurbito claim was disallowed, it had no jurisdiction to allow the claim in favor of the Bayot estate. The committee accordingly made the following report:

"With regard to the counterclaim of the administratrix Dona Patrocinio Bayot, this commission understands that it is not authorized by law to take jurisdiction of this counterclaim after the claim presented by Don Gaspar Zurbito has been disallowed. Therefore, it is sent to the Court of First Instance of this subprovince of Masbate for determination."

As already stated, an appeal was taken in behalf of Gaspar Zurbito from the action of the committee in rejecting his claim, but no formal appeal was taken in behalf of the administratrix of Francisco Bayot. However, in the Court of First Instance, the administratrix set out in her answer this same indebtedness and asked for judgment thereon. The trial court considered that the action taken by the committee was in effect a disallowance of the debt and that by failing to appeal the administratrix had placed herself in a position where judgment could not be given in her favor. The counterclaim was accordingly dismissed, and the administratrix brought the matter by cross-appeal to this court in the same cause in which the appeal of Zurbito was prosecuted; but this court also decided against her.

The first observation to be made upon the case as thus presented is that the committee on claims in the estate of Francisco Bayot was in error in assuming that it had no authority to allow the claim which was exhibited by the administratrix by way of set-off. The provision upon which the committee based its action is found in the last clause of section 696 of the Code of Civil Procedure, which declares that "the committee shall have no jurisdiction over claims in favor of the estate, except as offsets to claims presented against the estate." From this provision the committee evidently inferred that if the principal claim is not allowed the authority to allow the set-off falls to the ground. This cannot be accepted as a correct interpretation of that provision. A creditor who presents a claim against an estate submits himself to the jurisdiction of the committee, and the circumstance that his claim is found to be without merit in no wise defeats the authority of the committee to allow the set-off against him.

In *Stearns vs. Stearns* (30 Vt., 213), the plaintiff exhibited a demand against an estate; and the administrator exhibited notes in offset to them. Upon trial in the court where the case went by appeal nothing was found due the plaintiff upon his demand, yet it was held that the estate was entitled to a judgment upon the offset exhibited by the administrator. In *Bliss vs. Little* (63 Vt., 86), it was insisted that it is only when there is a valid claim against the estate that the administrator is bound to exhibit claims in favor of the estate. This contention was rejected, the court observing that if the argument in question was sound, it would necessarily follow that an administrator would in no case be bound to exhibit claims of an estate in offset until the validity of the creditor's demand was established, which clearly is not the meaning of the statute. These decisions are instructive, inasmuch as they have reference to the very provision of the Vermont Statutes from which section 696 of our Code of Civil Procedure has been taken.

The next point to be considered is whether the disallowance of the present claim by the committee in the estate of Francisco Bayot and the final disposition made of the matter upon appeal to this Court operate as a bar to the present action. Upon this point it is very plain that the decision in that case does not exhibit the requisites essential to create the bar of *res judicata*. As was said in *Hughes vs. United States* (4 Wall, 232; 18 L. ed., 303); "in order that a judgment may constitute a bar to another suit, it must be rendered in a proceeding between the same parties, or their privies, and the point of controversy must be the same in both cases, and must be determined on the merits." In accordance with this doctrine, it was held in *Smith vs. McNeal* (109 U. S., 426; 27 L. ed., 986) that a judgment dismissing a cause for want of jurisdiction does not conclude the plaintiff's right of action. Any number of decisions might be cited in support of this proposition; and its applicability to the case before us cannot be doubted.

The action of the committee on claims in the estate of Francisco Bayot was expressly based upon the idea that the

jurisdiction of the committee to allow the set-off in favor of said estate was destroyed by the disallowance of the principal claim presented by Zurbito against the Bayot estate; and the Court of First Instance merely held, as this court also held, that the claim could not be allowed in the Court of First Instance because no appeal had been taken. In neither tribunal was any consideration paid to the merits of the claim; and no court has ever passed upon this point.

But it is said that the action of the committee in disallowing the claim for want of jurisdiction was misconceived and that the committee ought to have considered the claim' on its merits and given judgment in favor of the Bayot estate if the facts had been found to support the claim. From this it is argued that the action of the committee has the same effect as if the claim had been considered on its merits. In our opinion this suggestion is not well founded. Not only does there appear to be no authority in support of the proposition that a judgment dismissing a case for want of jurisdiction will have the effect of a judgment upon the merits, if it be shown that the tribunal did in fact have jurisdiction; but on the contrary the authorities show that a person who relies on a former judgment as a conclusive adjudication of any controversy must take the prior judgment for what it appears to be on its face; and if it is not a judgment on the merits, it does not conclude the right of action.

This point came under consideration in *Wanzer vs. Self* (30 Ohio St., 378), where the judgment relied upon as res judicata contained the reservation "without prejudice." It was argued that the insertion of these words in the judgment was erroneous and unwarranted and that as the case had been in fact tried upon the merits the judgment must be considered as a conclusive bar to another action. Said the court:

"The actual judgment rendered does not appear to be one that is conclusive of the merits of the case. To give it the effect of such a judgment would not only create that which does not exist, but might work a great wrong to the plaintiff by finally determining a just cause of action which the court did not adjudge against him, and by misleading him to acquiescence in a judgment from which he would have appealed had it been regarded as conclusive. * * * The judgment is an entirety, and if it has any validity, it must stand as rendered. * * * Upon that judgment the party must stand, and, being without prejudice to a future action, it is not a bar to the action to which it was pleaded" (30 Ohio St., 381, 382).

What has been said shows that the former proceeding has created no technical bar to the maintenance of the present action. But a further obstacle is supposed to be found in section 696 of the Code of Civil Procedure. The first paragraph of this section makes it the duty of an administrator to exhibit all claims in favor of his decedent as an offset against any claim presented by a creditor of the estate. The first part of the second paragraph of the same section reads as follows:

"Claims in favor of the estate and against a creditor who presents a claim for allowance against the estate shall be barred, unless so presented by the executor or administrator as an offset."

This provision undoubtedly means not only that the executor or administrator should present any claim in favor of the estate as an offset where a creditor presents a claim against the estate but that he should prosecute it with effect. In other words the statute clearly intends that the sole remedy of the executor or administrator shall be in that proceeding. From this it would appear to follow as a necessary consequence that, by failing to appeal from the action of the committee disallowing the claim now sued on, the plaintiff herein has lost all remedy, and cannot now maintain an independent action. This idea seems to be implicit in the opinion written by Justice Moreland in *Zurbito vs. Bayot* [supra]. Nevertheless, what was really decided in that case is that, by failing to appeal from the action of the committee, the plaintiff was precluded from relying on this claim as an offset in the Court of First Instance in that proceeding. The court was not called upon to decide whether an independent action could be maintained. Now that we are called upon to decide this point, it is necessary to take account of another provision of law the effect of which has not been so far considered.

Section 696 of the Code of Civil Procedure, part of which is quoted above, is contained in Chapter XXXVIII of said Code. The final section of this same Chapter, in the part here material to be noted, reads as follows:

"Sec. 701. An Executor or Administrator may sue.— Nothing in this chapter shall prevent an executor or administrator from commencing and prosecuting an action commenced by the deceased in his lifetime, for the recovery of a debt or claim, to final judgment, * * *."

Upon examination of the language of this provision, it will be seen that the word "commencing" is interpolated in a rather awkward manner into a statement which deals principally with the continued prosecution of actions already begun by the deceased in his lifetime. Nevertheless, the meaning of the entire provision is clear; and it evidently recognizes the right of an executor or administrator, not only to continue the prosecution of an action already begun, but also to institute an action upon a cause which accrued in the lifetime of the deceased but which had not been made the subject of action by him. This of course supposes that the cause of action is such as to have survived to the estate. (Section 703, Code of Civ. Proc.) In other words, it is apparent that there is an ellipsis in the text of section 701 after the word "commencing" in the second line, and the full meaning of the provision can only be brought out when this ellipsis is applied by a process of construction, somewhat as follows:

"Nothing in this chapter shall prevent an executor or administrator from commencing and-prosecuting an action, or from prosecuting an action already commenced by the deceased in his lifetime, for the recovery of a debt or claim to final judgment"

No other interpretation could be adopted which would give any effect whatever to the word "commencing," as used in section 701; and that this is its true meaning is proved by comparing said section with section 2443 of the Statutes of Vermont (1894), from which section 701 was copied almost verbatim by the author of the Code of Civil Procedure. This section, as it exists in the Vermont Statutes, reads as follows:

"Nothing in this chapter shall prevent an executor or administrator from commencing and prosecuting an action by attachment, or otherwise, or from prosecuting an action commenced by the deceased in his lifetime, for the recovery of a debt or claim to final judgment."

The obvious explanation of the ellipsis noted in section; 701 is that the eye of the copyist skipped from the word "prosecuting," at the end of the second line as the section is printed in the Vermont Statutes, to the same word at the end of the next line. Fortunately the error is not such as to destroy the sense of the provision.

It is thus seen that section 701 supplies general authority for the institution of an action by an executor or administrator upon any claim, in the nature of a debt, which accrued in the lifetime of the decedent; and the exception made in the opening words of section 701 is such, as to give absolute precedence to the rule therein expressed over anything to the contrary in section 696 or any other part of chapter 38. In other words the provisions of section 701 necessarily overrule so much of section 696 as purports to bar absolutely all claims in favor of an estate which are not made effective as offsets. Of course the provision that the executor or administrator shall present all claims in favor of the decedent as offsets to hostile claims presented against the estate is unaffected by this decision, but it remains in force as a directory provision only.

The propriety of this conclusion is supported by consideration of the fact that so much of section 696 as purports to operate as an absolute bar is of a highly penal nature. It tends to the destruction of rights and takes away from the executor or administrator a privilege which the law concedes to all other litigants, namely, the right to elect between presenting a claim as an offset and making it the subject of an independent proceeding, that is to say, in those cases where the claim in question constitutes an independent cause of action. This provision should therefore be interpreted in the mildest possible sense; and in case of conflict between sections 696 and 701, it is the duty of the court to apply the more benevolent provision. This consideration is of course entirely apart from

the express reservation made in the opening words of section 701.

Our conclusion is that the claim on which this action is based is not barred by the failure of the plaintiff to prosecute it with effect as an offset in the former proceeding; and inasmuch as the judgment entered in that proceeding cannot, for reasons already stated, be considered binding as *res judicata*, the result is that the plaintiff is entitled to be heard on the merits in this action.

The judgment is accordingly reversed, and the cause is remanded to the court of origin with directions to proceed to a trial of the, cause on the merits. No express adjudication of costs will be made.

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

Malcolm, J., took no part in the consideration or disposition of this case.

Judgment reversed, case remanded with instructions.

[1] Decided March 28, 1912; not published.

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