

TAN SEN GUAN, SPECIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF TAN PENG SUE, (ALIAS TAN PENG CHO), (ALIAS CHAN BAI CHOO), PLAINTIFF AND APPELLEE, VS. GO SIU SAN, ADMINISTRATOR O...

G.R. No. 22451. December 22, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The record shows that the plaintiff is the administrator of the intestate estate of Tan Peng Sue, just as the defendant is the administrator in the testamentary proceeding for the settlement of the estate of Antonio Tampoco; that, according to the books kept by the defendant administrator, Antonio Tampoco owed Tan Peng Sue, about the month of January, 1920, the sum of P25,802.60, which, with the interest stipulated by the two deceased Tan Peng Sue and Antonio Tampoco in their lifetime at the rate of 9 6/10 per cent per year, amounted to P30,272.89 at the end of the year 1922; that upon the death of Antonio Tampoco, which occurred on February 5, 1920, proceeding was instituted in the Court of First Instance of Manila for the settlement of his estate; that on December 14 of that year commissioners were appointed to hear and decide whatever claim might be presented against the estate; that said commissioners qualified as such in due time, and rendered their final report on June 27, 1921, which was approved by the court below on July 14 of said year; that about August 30, 1922, after the approval by the court of the report of the committee on claims, the plaintiff, in his capacity as administrator of the estate of Tan Peng Sue, moved the court that the committee on claims be again authorized, or a new committee appointed, to hear and decide a claim that he had and which he was to present against the estate, alleging, among other grounds, that the administrator Go Sui San had been assuring the heirs of Tan Peng Sue that they would not lose their credit, were in no need of presenting their claim, and would be paid by the heirs of Antonio Tampoco as soon as they should ask for it, and that in the meantime the credit might continue in the business of the deceased Antonio Tampoco and thus earn interest.

Passing upon this motion, the Honorable Geo. R. Harvey, judge, on September 21, 1922, appointed new commissioners, holding that the committee on claims did not comply with the imperative provisions of sections 687 and 693 of the Code of Civil Procedure in rendering its report, and that the motion of the plaintiff Tan Sen Guan was in accordance with the provisions of section 690 of Act No. 190. After due proceeding the new commissioners admitted the claim of the plaintiff, recommending its payment by the defendant administrator, which was by agreement of the parties estimated at P30,272.89 at the end of the year 1922.

On Decemebr 22, 1923, the court presided over by Judge Anacleto Diaz rendered decision, absolving the defendant administrator of the estate of Antonio Tampoco from the complaint, holding that the commissioners appointed on September 21, 1922, had no authority under the law to hear and decide said claim, because the court that had appointed them had on the said date no jurisdiction to appoint them in view of the fact that more than fourteen months have elapsed since their final report was submitted by the former committee on claims in the aforesaid testamentary proceeding and approved by the court. To this decision the plaintiff excepted on the 29th

day of the same month, and moved for new trial on January 9, 1924, on the ground that said decision was against the law and the facts proven at the trial.

On March 27, 1924, the lower court presided over by the Honorable Geo. R. Harvey, judge, after considering the motion for new trial, rendered a new decision, setting aside that of December 22, 1923, and ordering the administrator of the estate of Antonio Tampoco to pay the administrator of the estate of Tan Peng Sue the sum of P28,802.60, with interest thereon at the rate of 9 6/10 per cent per annum from March 28, 1920. From this decision the administrator of the estate of Antonio Tampoco appealed, and his counsel in this court prays for the reversal of the decision appealed from, alleging that the lower court erred: (a) In setting aside its former decision and in entering a new decision entirely contrary to the preceding one, instead of granting a new trial; (b) in holding that the claim presented was valid and effective at the time it was presented, and in not holding that the same was extinguished at that time under the law; and (c) in not absolving the defendant from the complaint.

The first assignment of error raises the same question as that in issue" in the case of Cordovero and Alcazar vs. Villaruz and Borromeo, R. G. No. 21586,[1] recently decided by this court, as to the legal effect of a motion for new trial under section 145, subsection 3, of the Code of Civil Procedure. In that case it was held that the discretionary power granted the judges by section 145 of the Code of Civil Procedure to revise or amend their judgments, before the same become final, may be exercised upon a motion based on section 145, subsection 3, jointly with, or separately from, the power to grant new trial, although the exercise of the power to grant new trial necessarily requires the revocation of the former judgment; that under section 145, a judge may correct errors in his decisions, and in revoking his original decision by amending it upon the motion of a party or his own, he has not necessarily to order a reopening of the case. Therefore this assignment must be overruled.

Disregarding this feature of the case, what is important to decide is whether or not this action has prescribed, as contended by the defendant.

The pertinent part of section 695 of the Code of Civil Procedure provides:

"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 or from pleading the same in offset to any action, except as hereinafter provided."

Provisions similar to this are found in the statutes of many, if not all the, states of the Union, and are ordinarily alluded to as statutes relative to claims not presented in due time. It was enacted in order to facilitate the speedy liquidation of estates, and to that end, it bars all proceeding when the claim is one that was not presented after the publication of the notice required.

To avoid the effect of section 695, the plaintiff lays stress on two circumstances. In the first place, he says that his failure to present the claim to the committee appointed by the court on September 21, 1922, was due to the machinations and fraudulent and false representations of the defendant. While it is easy to understand that the interests of the plaintiff, in his capacity as administrator of the estate of Tan Peng Sue, were not duly protected, and that his conduct was, to a certain extent, influenced by the unfavorable circumstances that surrounded him, yet we hold that prescription cannot be avoided on the ground of fraud or undue influence. The failure of Tan Chu Lay, heir of Tan Peng Sue, to present his claim was an omission committed by an heir who had knowledge of the existence of the credit of his deceased father. The fact that Tan Chu Lay might have been induced by fraudulent machinations and unlawful influence of the defendant administrator cannot affect the legal consequences of said act. And even if it be admitted that the widow of Tan Peng Sue was in China while the committee on claims was acting in the proceeding for the settlement of Antonio Tampoco's estate, still the result would be the same. The

law does not make any reservation or exception whatever, and this court cannot make either.

"* * * Where the statute of non-claim makes no exception as to any persons or class of persons, the courts can make none; and hence in the absence of some provision to the contrary, the statutes of non-claim run against non-resident as well as resident, and infant as well as adult claimants, and also against insane persons, and the estate of a deceased creditor. According to the weight of authority the statutes of non-claim, unlike the general statutes of limitations, run against the state. * * *" (18 Cyc, 468.)

Secondly, to-avoid the effect of section 695, the plaintiff alleges that the notice to the creditors was not published in the manner prescribed by section 687 of the Code of Civil Procedure, which provides:

"The committee so appointed shall appoint convenient times and places for the examination and allowance of claims, and, within sixty days from the time of their appointment, shall post a notice in four public places in the province stating the times and places of their meeting, and the time limited for creditors to present their claims, and shall publish the same three weeks successively in a newspaper of general circulation in the province, and give such other notice as the court directs. The court, in the commission issued to the committee, shall designate the paper in which the notice shall be published, and the number of places in the province in which it shall be posted, and any other mode of notice which the court directs."

Section 693 requires the committee to state in their report among other things, "the manner in which notice was given to the claimants." The report of the committee was introduced as Exhibit L in the testamentary proceeding, and really it was not written exactly in accordance with the technicality of the law. There is, however, attached to said report, as a part thereof, the affidavit of the editor of the newspaper La Nacion, wherein it appears that the committee on claims in the aforesaid proceeding had published for three consecutive weeks a notice to claimants, stating that they might present their claims within the period of six months, the committee to hold meetings at the office of Attorney M. G. Goyena, room No. 1, 34, Escolta, on the last Wednesday of each month at 3.30 p. m. for the purpose of hearing and deciding claims. It, thus, appears that the committee complied with the requirements of the law as to publication of notice, so much so that in the stipulation of facts it is stated that the commissioners qualified, and under the date of December 14, 1920, published in the newspaper La Nacion the notice to claimants prescribed by the law for three consecutive weeks. There are also attached to the report of the committee, the appointment issued by the court, in which the places are designated where the notice should be posted, and the newspaper in which it should be published for three weeks, giving the creditors the period of six months to present their claims. We think that the documents attached to the report of said committee, the stipulation of facts and the approval of said report by the trial court constitute a conclusive proof that the commissioners have complied with the statute, requiring the publication of the notice to the creditors.

Before a credit may be held barred by our procedural statutes relative to liquidation of inheritance, it must appear, among other things, that the committee have designated convenient hours and places for the holding of their meetings for the examination and admission of claims, and that they have published this fact in the manner provided by the law. Unless this is done, the right of a creditor cannot prescribe, and he who claims the benefit of prescription has the burden of proof.

In these terms does the Supreme Court of Vermont comment on the statute of that State from which section 695 of our Code of Civil Procedure was taken. (Roberts vs. Estate of Burton, 27 Vt., 396.) Under general principles, there can be no doubt but that, as the statutory provision in question has a tendency to destroy rights, it should not be extended to cases distinct from those included in its language; and all the authorities, without exception, hold that statutes of this character must be strictly construed, and the legal prescription of action will not be held to take effect in a particular case unless the provision relative to the publication of notices have been entirely complied with.

Under section 690, a creditor who has failed to present his claim within the period fixed by the committee on claims may apply to the court, within six months after the period previously fixed, for the renewal of the commission for the purpose of examining his claim. Also a creditor may make such application even after six months from the expiration of the period formerly fixed and before the final settlement of the estate, if the committee shall have failed to give the notice required by section 687. The record shows that the application of the plaintiff was presented fourteen months after the expiration of the period fixed for the filing of claims. And while it was presented before the final settlement of the estate of Antonio Tampoco, yet, it having been proved that the committee had published in the newspaper La Nacion the notice required by law, there was no possible ground for granting said application. Even considering this application under section 113 of the Code of Civil Procedure, we believe that the lapse of fourteen months is an unsurmountable barrier opposing the granting of said application.

It matters not that the defendant did not appeal from the order of the lower court appointing new commissioners, if it is taken into consideration that it was entered beyond the authority given by section 690. And as the defendant objected to said appointment, we believe that he is now entitled to raise the point in this court.

For the foregoing the judgment appealed from is reversed, and it is hereby declared that the plaintiff appellee has lost his right to enforce his claim in this proceeding, without pronouncement as to costs. So ordered.

Johnson, Malcolm, Avanceña, Ostrand, and Romualdez, JJ., concur.
Street, J., dissents.

[1] 46 PHIL., 473.

DISSENTING OPINION

JOHNS, J.:

As stated in appellee's brief, the following appears from the stipulation of facts and exhibits:

"During all this time, nothing, as has already been said, was done with regards to the estate of Tan Peng Sue. His widow was in China and no legal representative was appointed to look after his affair. When his widow and heirs learned of the death of Tampoco and inquiries were made about this credit, Tampoco's executor, Go Siu San, assured them that the same will be respected and paid when demanded; that there was no need of presenting the claim before the committee or the probate court as the same appeared already on the books of the estate; and that it was to their advantage not to segregate it from the mass as it was gaining interest. Certain different amounts on this account were in fact received by the widow and heirs of Tan Peng Sue who naturally became, more convinced of the advices of Go Siu San. (See affidavits of Go Biec and Tan Chiu Lay, folios 79 to 86 of record.) Consequently, the claim of Tan Peng Sue was not presented to the original committee on claims in the estate of Tampoco."

Based upon such facts, the judgment of the lower court should be affirmed.

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