

**IN RE WILL OF HENRY W. ELSE, DECEASED. E. S. LYONS,
APPLICANT AND APPELLANT, VS. C. W. ROSENSTOCK AND ELAINE
CHILDS ELSE, OPPONENTS AND APPELLEES.**

G. R. No. 24984. March 13, 1926

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

On February 28, 1924, E. S. Lyons filed with the committee on claims and appraisals duly appointed and qualified in the proceeding for the settlement of the estate of Henry W. Elser, deceased, a claim concerning 500 shares of stock of J. K. Pickering Co., Ltd., amounting approximately to P100,000, with all dividends paid and interest thereon from the date of their receipt by the deceased until their delivery to the claimant, minus the amount paid by said deceased, Henry W. Elser, for the benefit of said claimant for the cancellation of a mortgage upon a property in the City of Manila, No. 316 Calle Carriedo.

On February 29, 1924, the committee, through its member J. J. de Guzman, acknowledged receipt of said claim in a letter addressed to the claimant, which is as follows:

"Dear Sir: "This is to acknowledge receipt of your claim dated February 28, 1924, presented to this Commission amounting to P100,000 plus all the dividends declared on 500 shares of the J. K. Pickering Co. less amount paid by Henry W. Elser on your behalf for the retirement of a certain mortgage.

"You will be notified later of the date of the hearing.

"Very truly yours,

"P. D. CARMAN & J. J. DE GUZMAN

"Committee on Claims and Appraisals for the Estate of Henry W. Elser

"By (Sgd.) J. J. DE GUZMAN

"Member"

The claimant, E. S. Lyons, did not receive any notice of the hearing upon his aforesaid claim.

On June 2, 1924, the committee filed its report on the claims, the pertinent part of which is as follows:

"FINAL REPORT OF COMMITTEE ON CLAIMS AND APPRAISALS

"Come now the undersigned Committee appointed by the Court to appraise the estate and receive claims against the same in the above-entitled case and respectfully presents to the Court, below its final report, of all the claims that have been presented against the estate in the above-entitled case from the 4th day of September, 1923, the date of the first publication of notice to the creditors of the estate as directed by this Court, up to and including February 29, 1924, in which report are expressed in each case the name of the creditor, the nature of the claim, and the fact of its admission or rejection by the undersigned Committee :

* * * * *

"The following claims have also been presented before the Committee but have not been heard for reasons set forth after each claim:

Name of claimants

Nature of Claim

Reasons why claim wasn't heard

Amount of Claim

E.S. Lyons

Asking for the return of 500 shares of J.K. P. Co. or approximately the amount of claim

Hearing was postponed due to the fact that there was a proposed settlement of the claim but later was not carried out.

P100,000.00

Neither did claimant E. S. Lyons receive any notice of the filing of the report. On July 20, 1925, his attorneys filed a motion, praying the Court of First Instance of Manila that the committee be ordered to meet and hear the claim of E. S. Lyons, upon notice of the time to be fixed for the purpose, and decide the same, or other two commissioners be appointed to hear and decide said claim.

This was opposed by the executor of the deceased and the widow through their attorneys.

On August 19, 1925, the court denied the motion of E. S. Lyons on the ground that more than eighteen months had already elapsed since the committee was appointed and qualified.

On August 25, 1925, the claimant filed a motion for reconsideration, which was opposed by the executor, and denied by the court on September 14th of that year, 1925.

The claimant appeals from said orders of August 19 and September 14, 1925, denying his motions, and assigns error to the action of the lower court in denying his first motion, as well as his motion for reconsideration.

The court below denied the petition of the claimant, as stated in the orders appealed from on the ground that the whole period fixed by sections 689 and 690 of the Code of Civil Procedure has expired, and that whatever may be the purpose of reappointing the committee, it would mean an extension of the period fixed by the law.

But said sections 689 and 690 have reference to the time within which creditors may present their claims,' and the case at bar is not about filing of claims, but their examination and admission by the committee.

Similar to the instant case is *Riosa vs. Estate of Valenciano* (20 Phil., 170), where the creditor, Mariano Riosa, had presented his claim to the committee also within the period fixed but as the parties did not appear, and a motion of the creditor for a new postponement of the hearing was pending of which a notice was given to the administrator of the estate, the committee adjourned its meetings, leaving the aforementioned claim of said creditor undecided. That committee had begun to publish their notices on December 18, 1906, "fixing," as this court says (page 175, volume 20 of the Philippine Reports), "* * * the time of six months for the persons who might have claims against said estate to present themselves, which time must have been counted at least from the

19th of said month. * * * " (Italics ours.)

By an order dated January 22, 1908, the trial court considered such claim as not presented.

On July 29, 1908, that is 18 months and 29 days, after the period fixed by the committee had begun to run, Mariano Riosa moved the court " * * * to regard the claim, with its Exhibits A and B, as presented and to admit it; and in case it be disputed to order that it be proved before the committee already appointed or before another to be appointed for the purpose, as provided in said section of the code."

This motion was denied, and the creditor having taken an appeal therefrom, this court, in a decision reported in the aforecited volume of the Philippine Reports, reversed the judgment of the lower court, and ordered that " * * * the court should make due disposition for a committee on appraisal to examine and pass upon the said claim of Mariano Riosa in the manner indicated, said committee to act as provided by law * * *."

In that case, as in the one at bar, the claim was presented to the committee within the period fixed; there, as here, the committee filed its report without deciding the claim; there, as here, it was petitioned, eighteen months after the first meeting, at least, of the committee, that the committee examine the claim, or another committee be appointed. In that case, this court granted the petition. We see no reason why the petition filed in this proceeding should not be granted.

Appellant is charged with laches. The facts of record do not show it. The appellant had filed his claim. He was told that he would be notified of the hearing. He was not notified. The report of the committee was filed. He had no notice thereof. Wondering why he did not receive notice from the committee, he wrote letters of inquiry on August 30, September 10 and November 19, 1924. (Pages 75, 76 and 79, record on appeal.)

He is also blamed for not having appealed from the report of the committee within the time fixed by the law for the purpose. Said report did not contain any ruling upon the claim of the herein appellant. Even supposing him to have had notice of the report on time, there was nothing from which he could take an appeal. Such a report, as regards the appellant, was not a due compliance with the provision of section 693 to the effect that there be stated "how much was allowed, and how much disallowed, with the final balance, whether in favor of the creditor or the estate; and the report shall state the manner in which notice was given to the claimants."

It was alleged that the committee acts in a judicial capacity. True; but it did not do so in the instant case,—it did not hear, deliberate, nor form a judgment; it did not judge nor decide the claim of the appellant.

It was incumbent upon the appellant, according to the appellee, to push his claim. Under the circumstances of the case, we are of the opinion that the appellant did all that was in his power to obtain payment of his credit.

Appellee contends that the filing of the report is in effect a pronouncement of the judgment of the committee. That is true, provided that the report decides the claims presented.

It is true that when no appeal is taken, the decision of the claim by the committee is final. But it is also true that when, as in the instant case, there was no such decision, there was no occasion for an appeal, and nothing to become final.

As to the period of the functions of the committee, they are limited by sections 689 and 690 as to the time within which they shall receive claims for hearing and decision. But as to their duties to hear and decide the claims presented in due time, the law gives it to understand that such duties last as long as they are not discharged by the same commissioners or others appointed for that purpose, and it was so held by this court in the aforecited case of Riosa vs. Estate of Valenciano.

The orders appealed from are reversed, and the lower court is ordered to appoint the same persons who were

commissioners on claims in this proceeding, or others, in accordance with the law, in order that the committee thus appointed may set a date for the hearing of the claim of the herein appellant, proceed with said hearing and decide the claim upon its merits according to law, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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