

**IN THE MATTER OF THE ESTATE OF TOMAS RODRIGUEZ,
DECEASED. MANUEL TORRES, SPECIAL ADMINISTRATOR, AND LUZ
LOPEZ DE BUENO, HEIR, APPELLEES, VS. MARGARITA LOPEZ,
OPPONENT AND APPELL...**

G. R. No. 25966. November 01, 1926

Ponente: STREET, J.

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STREET, J.:

This appeal involves a controversy over one-half of the estate of Tomas Rodriguez, decedent. The appellant, Margarita Lopez, claims said half by intestate succession as next of kin and nearest heir; while the appellee, Luz Lopez de Bueno, claims the same by accretion and in the character of universal heir under the will of the decedent. The trial court decided the point of controversy in favor of Luz Lopez de Bueno, and Margarita Lopez appealed.

The facts necessary to an understanding of the case are these: On January 3, 1924, Tomas Rodriguez executed his last will and testament, in the second clause of which he declared:

"I institute as the only and universal heirs to all my property, my cousin Vicente F. Lopez and his daughter Luz Lopez de Bueno."

Prior to the time of the execution of this will the testator, Tomas Rodriguez, had been judicially declared incapable of taking care of himself and had been placed under the care of his cousin Vicente F. Lopez, as guardian. On January 7, 1924, or only four days after the will above-mentioned was made, Vicente F. Lopez died; and the testator, Tomas Rodriguez, died on February 25, 1924, thereafter. At the time the will was made Vicente F. Lopez had not presented his final accounts as guardian, and no such accounts had been presented by him at the time of his death. Margarita Lopez was a cousin and nearest relative of the decedent. The will referred to, after having been contested, has been admitted to probate by judicial determination (Torres and Lopez de Bueno vs. Lopez., 48 Phil., 772).

Our discussion of the legal problem presented should begin with article 753 of the Civil Code which in effect declares that, with certain exceptions in favor of near relatives, no ""testamentary provision shall be valid when made by a ward in favor of his guardian before the final accounts of the latter have been approved. This provision is of undoubted application to the situation before us; and the provision made in the will of Tomas Rodriguez in favor of Vicente F. Lopez must be considered invalid, owing to the incapacity of the latter. But it is obvious that the incapacity of Lopez was not any general incapacity on his part, but a special incapacity due to the accidental relation of guardian and ward existing between the parties.

We now pass to article 982 of the Civil Code, defining the right of accretion. It is there declared, in effect, that accretion takes place in a testamentary succession, first, when two or more persons are called to the same inheritance or the same portion thereof without special designation of shares; and, secondly, when one of the

persons so called dies before the testator or renounces the inheritance or is disqualified to receive it. In the case before us we have a will calling Vicente F. Lopez and his daughter, Luz Lopez de Bueno, to the same inheritance without special designation of shares. In addition to this, one of the persons named as heir has predeceased the testator, this person being also disqualified to receive the estate even if he had been alive at the time of the testator's death. This article (982) is therefore also of exact application to the case in hand; and its effect is to give to the survivor, Luz Lopez de Bueno, not only the undivided half which she would have received in conjunction with her father if he had been alive and qualified to take, but also the half which pertained to him. There was no error whatever, therefore, in the order of the trial court declaring Luz Lopez de Bueno entitled to the whole estate.

The argument in favor of the appellant supposes that there has supervened a partial intestacy with respect to the half of the estate which was intended for Vicente F. Lopez and that this half has descended to the appellant, Margarita Lopez, as next of kin and sole heir at law of the decedent. In this connection attention is directed to article 764 of the Civil Code wherein it is declared, among other things, that a will may be valid even though the person instituted as heir is disqualified to inherit. Our attention is next invited to article 912 wherein it is declared, among other things, that legal succession takes place if the heir dies before the testator and also when the heir instituted is disqualified to succeed. Upon these provisions an argument is planted conducting to the conclusion that the will of Tomas Rodriguez was valid, notwithstanding the fact that one of the individuals named as heirs in the will was disqualified to take, and that as a consequence Margarita Lopez is entitled to inherit the share of said disqualified heir.

We are of the opinion that this contention is untenable and that the appellee clearly has the better right. In applying the provisions of the Code it is the duty of the court to harmonize its provisions as far as possible, giving due effect to all; and in case of conflict between two provisions the more general is to be considered as being limited by the more specific. As between articles 912 and 983, it is obvious that the former is the more general of the two, dealing, as it does, with the general topic of intestate succession, while the latter is more specific, defining the particular conditions under which accretion takes place. In case of conflict, therefore, the provisions of the former article must be considered limited by the latter. Indeed, in subsection 3 of article 912 the provision with respect to intestate succession is expressly subordinated to article 983 by the expression "and (if) there is no right of accretion." It is true that the same express qualification is not found in subsection 4 of article 912, yet it must be so understood, in view of the rule of interpretation above referred to, by which the more specific is held to control the general. Besides, this interpretation supplies the only possible means of harmonizing the two provisions. In addition to this, article 986 of the Civil Code affords independent proof that intestate succession to a vacant portion can only occur when accretion is impossible.

The attorneys for the appellant direct attention to the fact that, under paragraph 4 of article 912, intestate succession occurs when the heir instituted is disqualified to succeed (*incapaz de suceder*), while, under the last provision in paragraph 2 of article 982, accretion occurs when one of the persons called to inherit under the will is disqualified to receive the inheritance (*incapaz de recibirla*). A distinction is then drawn between incapacity to succeed and incapacity to take, and it is contended that the disability of Vicente F. Lopez was such as to bring the case under article 912 rather than 982. We are of the opinion that the case cannot be made to turn upon so refined an interpretation of the language of the Code, and at any rate the disability to which Vicente F. Lopez was subject was not a general disability to succeed but an accidental incapacity to receive the legacy, a consideration which makes a case for accretion rather than for intestate succession.

The opinions of the commentators, so far as they have expressed themselves on the subject, tend to the conclusion that the right of accretion with regard to portions of an inheritance left vacant by the death or disqualification of one of the heirs or his renunciation of the inheritance is governed by article 912, without being limited, to the

extent supposed in appellant's brief, by the provisions of the Code relative to intestate succession (Manresa, Comentarios at Codigo Civil Español, 4th ed., vol. VII, pp. 310, 311; id., 34; 13 Mucius Scaevola, pp. 372, 373, 285-287; 16 Mucius Scaevola, 186). Says Escriche: "It is to be understood that one of the coheirs or legatees fails if nonexistent at the time of the making of the will, or if he renounces the inheritance or legacy, if he dies before the testator, if the condition be not fulfilled, or if he becomes otherwise incapacitated. * * *" (Diccionario de Legislation y Jurisprudencia, vol. I, p. 225.)

In conclusion it may be worth observing that there has always existed both in the civil and in the common law a certain legal intendment, amounting to a mild presumption, against partial intestacy. In Roman law, as is well known, partial testacy was not allowed, and there has remained in the derived systems a presumption against it,—a presumption which has its basis in the supposed intention of the testator.

The judgment appealed from will be affirmed, and it is so ordered, with costs against the appellant.

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

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