

**INTESTATE ESTATE OF THE DECEASED JOSE DE LA VIÑA, Y PORTA.
THE VISAYAN GENERAL SUPPLY CO., INC., APPELLEE, VS. ELISA
IGLESIAS, VIUDA DE DE LA VIÑA, ADMINISTRATRIX, APPELLANT.***G.R. No. 26920, August 12, 1927*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-26920/>**STATEMENT**

During his lifetime Jose de la Viña executed a mortgage to and in favor of the Visayan General Supply Company on certain property lying and being situate in the Province of CapiZ. The mortgage was duly filed for record. Upon the death of Jose de la Viña, and about December 31, 1924, his widow filed a petition to have an administrator appointed for the estate of her deceased husband, which was granted, and the court appointed a committee on claims and appraisals, all of whom duly qualified and gave the required notice for the presentation of claims.

August 22, 1925, the appellee, through its attorneys, made and presented to the committee two claims against the estate of the deceased, one for the sum of P49,253.99 and the other for P13,053.33. September 26, 1925, and at a hearing before the committee, each of said claims was allowed as presented, and on October 16, 1925, the committee filed its final report with the court. Two days prior thereto and on October 14, 1925, the attorneys for the appellee filed a motion with the committee praying that the claim of the appellee for the sum of P49,253.99 should be withdrawn and stricken from the report, for the reason that it was filed through a mistake, error or oversight, and that it was secured by a valid mortgage, and that it was never the purpose or intent of the appellee to waive its mortgage. In answer to this motion, and on October 22, 1925, the committee advised the attorneys for the appellee that its motion "was attached to the record of said case for such purposes as may be proper, in view of the fact that said commissioners on appraisals can no longer act, the period of their office having expired September 26th last." The appellee then renewed its motion before the court, and after a hearing thereon, it made an order sustaining appellee's motion and striking out all of that portion of the report of the committee allowing plaintiff's claim and the refusal of the committee to permit the appellee to withdraw the proof of its claim. From that order the estate appeals and contends that the trial court erred in hearing and deciding appellee's motion without notice to the appellant, and in making its order "to strike from the report of the committee on claims and appraisals the claim, against the estate of the deceased filed by the appellee with the said committee, which claim is secured by mortgage deed executed by the deceased Jose de la Viña on the 25th day of August, 1924."

JOHNS, J.:

There is no dispute as to the amount of the claim. Appellant contends that because the claim was presented to, and allowed by, the committee on claims, in legal effect that amounted to a waiver of the appellee's mortgage, and for the reason that the motion to strike and withdraw the claim was not made within thirty days, the action of the committee became final, and that the appellee lost its mortgage and now has an unsecured claim.

This transaction arose in the Province of CapiZ, and it appears that at the time the claim was presented, the home office and the manager of the appellee were in Manila. That when the office in Manila first learned that the claim in question had been presented to the committee on claims, it took prompt action to have it withdrawn, and that in

truth and in fact it filed a motion with the committee for that purpose two days before the report of the committee was filed with the court. That the committee denied it any relief, and that the motion was then renewed before the court, a copy of which was served on the attorney for the appellant on November 20, 1925, and that the order of the court from which this appeal was taken was made on November 28, 1925.

Upon an application within a reasonable time, and a proper showing, the court has both the inherent and statutory power to relieve any person from a judgment or order rendered by mistake, oversight or excusable neglect. That is what the court did in this case. The appellee's claim was secured by a valid mortgage lien, and it is very apparent that it never intended to waive its mortgage, and when the home office first discovered that a mistake had been made by its local agents, it took prompt action to have it corrected.

There is no merit in the appeal. The judgment of the lower court is affirmed, with costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

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