

SEBASTIANA MARTINEZ ET AL., PLAINTIFFS AND APPELLANTS, VS. CLEMENCIA GRAÑO ET AL., DEFENDANTS. ESTANISLAO REYES, RECEIVER AND APPELLEE.*G.R. No. 27685. December 24, 1927*

Ponente: STREET, J.

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This appeal is prosecuted by the Martinez heirs, as plaintiffs, for the purpose of reversing an order of the Court of First Instance of the Province of Laguna dated December 10, 1926, approving the accounts of Estanislao Reyes, as receiver. The facts necessary to an understanding of the questions involved in the appeal will be stated in the course of the opinion.

While the case of Martinez vs. Graño (42 Phil., 35), was pending in the Court of First Instance of Laguna, prior to the appeal to this court, the plaintiffs found themselves unable to meet the financial requirements of the litigation for attorney's fees, costs, and other expenses. They therefore applied to Estanislao Reyes, son-in-law of Sebastiana Martinez, for the purpose of getting him to contract with lawyers for necessary services and to pay the incidental expenses of the appeal. As a memorial of this agreement a formal contract dated March 5, 1921, was executed between the Martinez heirs, as party of the first part, and Estanislao Reyes, as party of the second part, of which the following are the principal features: (1) Reyes agreed to advance and pay the attorney's fees, expenses of documents, and court costs,—for all which the individuals forming the party of the first part agreed jointly and severally to reimburse him "in conformity with an exact statement of accounts to be rendered by him"; (2) Reyes further agreed to take over the administration of the properties involved in the litigation and to pay the taxes accruing thereon and all the liens incumbering the property, principally the mortgage lien existing in favor of a building and loan association, the Hogar Filipino, it being contemplated by the parties that in the event the litigation ended favorably to the heirs, Clemencia Graño, who was then in possession of the property, would be substituted by Reyes, with the permission of the court and consent of Hogar Filipino; (3) it was agreed that in payment for his services, and as a free gift, the party of the first part would not only reimburse Reyes, as above stated, but would transfer to him one thousand fruiting coconut trees such as Reyes might select from the trees then in litigation, but these trees were further specified in the contract as being those then planted and bearing upon a parcel of land of an area of six hectares pertaining to the heirs of Inocente Martinez, deceased.

Paragraph 6 of the contract contains certain provisions which, for the purposes of this litigation, are of sufficient importance to justify exact verbal quotation. It reads thus:

"Sixth. Until all the incumbrances burdening the property which is the subject of litigation are fully paid and also until the party of the first part has completely reimbursed the party of the second part for all the expenses advanced by the party of the second part on account of the litigation, the latter, that is to say, Estanislao Reyes, or his legal representative, shall have absolute power over the administration and gathering (of the nuts), for his own benefit and in order that he may pay all the charges burdening the property subject to the litigation, it being the sole duty of the party of the second part to present annually, to anyone of the party of the first part,

an exact statement of the income obtained and expenses incurred upon whatever account, such as the cost of the gathering and cleaning (of the nuts) and caring for the trees."

At the time the foregoing contract was made Clemencia Graño had permitted unpaid dues, interest, and fines to accrue in favor of the building and loan association in the amount of P5,215.89, and the association was threatening to foreclose the property on account of said arrears. For this reason Reyes, on March 21, 1921, paid off these pressing claims, in the amount stated, and took the receipt of El Hogar Filipino therefor. On May 31, thereafter, Judge Llorente, then presiding in the Laguna court, appointed Reyes receiver of the property, upon application of the plaintiffs. On August 29, 1925, upon petition of the plaintiffs, his Honor, Judge Isidro Paredes, then presiding in the Laguna court, entered an order annulling and dissolving the receivership, and requiring Reyes to render his accounts as receiver within fifteen days from notification of the order. This order was upon appeal affirmed by this court on August 14, 1926.[1] In affirming the order of removal and requirement of account from Reyes, this court made the following disposition:

"The court, however, is of the opinion that if upon the prompt submission and examination of the receiver's accounts, it should be found that he has actually paid out for the conservation and protection of the property which is the subject of the receivership more than he has received by way of income, or should have received in the exercise of reasonable diligence, such balance in his favor should be recognized as a lawful claim constituting a lien on the property."

Pursuant to the foregoing order the record was returned to the court of origin, and after Reyes had submitted his accounts, exceptions were taken thereto by the plaintiffs, and the cause was heard upon proof submitted by the respective parties. In the end Judge Paredes approved the accounts as submitted by Reyes, declared him to be creditor of the receivership in the amount of P25,230.21, to July, 1926, and ordered that, in the event that the plaintiffs should not pay off this balance within three months, all of the property pertaining to the receivership (with the exception of the lot containing one thousand trees set aside for Reyes in the eighth paragraph of the contract) should be sold by the sheriff for the satisfaction of said claim. It is from this order that the present appeal is prosecuted by the plaintiffs.

Among the items for which the appellee has been allowed credit is the sum of P5,215.89, which we have already mentioned as paid by him to El Hogar Filipino on March 31, 1921. The appellants do not question the propriety of said credit, but they contend, under their fourth assignment of error, that in view of the facts presently to be stated the appellee should have charged himself with a like amount. This contention is well founded, as will be at once apparent upon an examination of the history of this credit. In this connection it appears that, after the appellee had paid the aforesaid amount of P5,215.89 to El Hogar Filipino, he instituted, in his own name and behalf, an action to recover said sum from Clemencia Graño (civil action No. 2011 of the Court of First Instance of Manila). On September 13, 1921, judgment was rendered in said action in his favor, for the recovery of the amount stated, with interest and costs. Clemencia Graño appealed in vain against this decision, and it was affirmed in the First Division of this court on December 9, 1922 (R. G. No. 18910). Pursuant to said judgment, an execution was issued in favor of Reyes and levied on property of the judgment debtor, Clemencia Graño, consisting of five parcels of coconut land and one parcel of land devoted to palay,—all located in San Lorenzo, municipality of San Pablo, Laguna. At the subsequent sale of these lands by the sheriff they were bought in by Reyes as plaintiff in the execution for the sum of P5,215.89, this being the amount of his judgment. In satisfaction of this bid Reyes paid no money, but caused the credit itself to be applied thereto. Two of the lots thus acquired by Reyes appear to have been previously conveyed away by Graño to another person, and the title of Reyes to these two lots has thus failed. He continues to hold title to the others, however, and has procured at least one of the lots to be registered under the Torrens system in his own name.

Upon these facts it is manifest that Reyes has appropriated to his own use the credit for P5,215.89, which he held against the receivership, and by this act said credit must be considered satisfied. He cannot be permitted to maintain the credit in his accounts as a valid charge against the receivership after he has used it to acquire the property of Clemencia Graño, of much greater value, at an execution sale pursuant to a judgment recovered by him individually. It results that the defendant must be charged with said sum of P5,215.89, or what is the same in effect, the total credit of P28,249.63, allowed by the lower court, must be reduced by P5,215.89, leaving a charge of P23,033.74, representing the total credit side of the account.

In their fifth assignment of error the appellants claim that the appellee should be charged with the sum of P2,400, which represents an additional loan procured by the appellee from El Hogar Filipino, the proceeds of which were delivered to the Honorable C. M. Recto, one of the lawyers who represented the plaintiffs in the original litigation. In this connection it appears that the lower court, in November, 1921, approved an account of the appellee in which the sum of P1,000 was allowed for a fee paid to the plaintiff's attorneys (Exhibit 2 of Nov. 30). In 1922 a similar account of the appellee was approved in which there was an item of P4,000 for attorney's fee (Exhibit 3 of Aug. 9). In 1924, it appearing that there was still a balance due of P2,400 to Mr. Recto, the court permitted the loan from El Hogar Filipino to be increased in this amount, and the money thus secured was paid over directly to Recto, without having passed through the hands of Reyes. It thus appears from the documents, including the approved accounts, that the sum of P7,400 was paid out by the appellee upon account of attorney's fees; and it is evident that if said amount was so applied, the accounts are properly stated.

The appellants claim that the total amount really paid out for attorney's fees was only the sum of P5,000, as shown by the approved accounts of 1921 and 1922. It is further claimed that the amount of P4,000 in the approved account of 1922 was allowed as a credit in favor of the appellee before the said amount had been in fact disbursed and that the sum of P2,400, subsequently secured from El Hogar Filipino, really went in satisfaction of part of said P4,000. This assertion, however, has not been satisfactorily demonstrated; and we are compelled to take the approved accounts for what they appear to show, namely, that the appellee actually disbursed the sum of P5,000 upon account of lawyer's fees in addition to the P2,400 loan obtained from El Hogar Filipino.

The most difficult branch of the case is that concerned with the income which the appellee received, or in the exercise of reasonable diligence should have received, from the coconut trees placed under his administration. In this connection it will be noted that the number of trees committed to the receiver's charge was somewhat above or around seven thousand. This is the estimate of Julio Martinez who had charge of these groves many years ago as administrator and has actually counted them. We entertain no doubt as to the substantial correctness of this estimate because it is fully corroborated by documentary evidence which the attorney for the appellee himself submits to us as a reliable source of information, namely, the sworn inventory of Julio Martinez, as administrator, from the year 1909, and the inventory contained in the order of partition of the Martinez estate, dated April 9, 1915. Turning to these exhibits we find that the inventory of 1909 shows that the different parcels of land comprised in the estate then contained 5,567 trees; while in the partition of 1915 the number of trees indicated in the portions assigned to the several heirs are as follows:

To Sebastiana Martinez.....	1,056
To Julio Martinez	1,121
To heirs of Inocente Martinez.....	1,320
To heirs of Apolomo Martinez.....	696
To Isidro Martinez.....	920
To Benedicto Martinez	976
To Eleuterio Martinez	460

The foregoing figures are in conformity with the tabulated statements printed on pages 148-150, inclusive, of the appellee's brief, with the single exception that we have added four trees to the number ascribed in said brief to the heirs of Apolonio Martinez, there having been evidently a clerical error on the part of the copyist in failing to note four trees in bearing on a lot segregated from parcel A. The total of these items, properly summed up, comprises 6,549 trees, instead of 5,225 as erroneously shown in the appellee's brief. In the statements contained in the partition we find it stated that several of the parcels contain young trees not taken into account in the partition. If we bear in mind the fact that partition was effected in 1915 and that the appellee was appointed receiver in 1921, it is reasonable to suppose that at the inception of the receivership a considerable number of trees were in bearing which were too young to be counted in 1915. In fact the data above supplied shows a regular increase in the number of trees from 5,567 in 1909 to 6,549 in 1915, and 7,000 in 1921. The statement of Julio Martinez to the effect that the groves contained 7,000 bearing trees during the period covered by the receivership must therefore be accepted as true, especially in view of the fact that the appellee admitted that he had not counted the trees and did not expect to be questioned as to their number.

With respect to the quality and character of the trees in these groves, we are likewise not left in doubt, since we are told by Porfirio Reyes and Mauricio Ticzon, owners of adjacent groves, that the Martinez groves produce equally well as their own groves which are in good condition. The proof also shows that the groves in question are in the care of a sufficient number of sharers (aparceros) whose duty it is to look after the groves, keep the ground clear of hurtful growth and guard the trees and fruit against depredation. For this service the sharers receive a part of the crop, which, by universal custom in the Province of Laguna, is fixed at one-seventh of the produce. In the four years covered by these accounts there has been no storm, drought, or other catastrophe, such as would cause a marked diminution in the harvest; and on the contrary the amount of fruit taken from coconut trees in this vicinity has been all that could be expected under favorable conditions. There is not a word of proof in the record tending to show that the Martinez groves are in any way inferior to other groves.

We now come to the question of the amount of the income that ought to be obtained by a person of ordinary diligence having the care of these groves. Porfirio Reyes testified that his grove of 1,000 trees is adjacent to those that have been in the hands of the appellee and that his trees produce a net average income of P1, or more, per tree annually. As corroborative of the statement of the witness on this point, he produced an old memorandum book in which he and his children had for years been entering complete statements of the income obtained from time to time from their coconut trees. In the pages of this book we note that in 1922 the 1,000 trees belonging to this witness produced 51,074 nuts; in 1923, 51,439; in 1924, 60,235; and in 1925, 46,356. This gives an annual average of 52,276 nuts, with a resulting net income, after deduction of all expenses, for the same years as follows: In 1922, P1,013.79; in 1923, P1,272.92; in 1924, P1,551.12; and in 1925, P1,656.84, or an annual average of P1,373.67 from one thousand trees. At this rate of production the Martinez groves should have produced, during the four years of the receivership, a net income of more than P38,000.

The witness Mauricio Ticzon testified that he has a grove containing 1,700 coconut trees in the barrio of San Lorenzo, located near the groves comprised in the receivership, and that he obtains from his grove an annual average income of about P1, per tree. But this witness converts his nuts into copra on his own place and his income is more than it would be if the nuts were sold in the crude state. The results of Ticzon's operations show a less favorable result than that obtained by Porfirio Reyes, since the latter gets an average annual profit of more than one peso per tree from the sale of crude nuts only.

There is also direct evidence corroborative of the inferences drawn from the testimony of Porfirio Reyes and Mauricio Ticzon as to the productive capacity of the groves in question. This is found in the testimony of Julio Martinez in relation with Exhibit 11 of the plaintiffs. In this connection it appears that after hostility developed in

early 1922 between Estanislao Reyes and the Martinez heirs, Julio Martinez, as representative of the heirs, was advised by his attorney that it was important to obtain and preserve exact information as to the number of coconuts produced on the groves in the hands of the receiver. In order to comply with these instructions Julio Martinez availed himself of information procured from time to time from Pedro Barilla, a worker in the copra kilns of the receiver. This individual assisted in counting the nuts as they came in from the groves, and from information thus procured he made regular reports to Martinez. From these reports Julio Martinez made the entries in the memorandum book (Exhibit 11), showing in detail the results of the different harvests. According to this showing the Martinez groves produced in 1922 (last five months) a total of 184,906 nuts; in 1923, a total of 309,492 nuts; in 1924, a total of 385,923 nuts; in 1925, a total of 339,985 nuts; and in 1926 (to August only) 194,910 nuts, making altogether a grand total of 1,415,216 nuts. Applying to these figures the lowest values indicated in the receiver's own account for the respective years, the total gross income for the whole period would be in excess of P42,000.

Everything pertinent and trustworthy that we can find in the record points to a productivity of the Martinez groves such as is above indicated. For instance, going back to a period antedating the receivership, we find it stated by Eulogio Diuño, that he gathered the nuts from these trees at four consecutive harvests beginning in August, 1918, and that upon these occasions he obtained: From the first gathering, 81,000 nuts; from the second gathering, 75,000 nuts; from the third gathering, 66,000 nuts; and from the fourth gathering, 64,000 nuts, or an average of 66,500 nuts at each gathering. If the trees continued to produce at this rate—and we see nothing that would justify an inference to the contrary—they should have produced during the period covered by the accounts now before us a total of more than one and a half million nuts.

Turning now to the testimony submitted by the receiver in support of his accounts relating to the administration of these groves, we are confronted with the extraordinary fact that the receiver has not offered in evidence any scrap of paper in the nature of a voucher for money paid out or memorandum of any sort showing the quantity of nuts produced. This is not only a dereliction of legal duty but is an absolute violation of the sixth clause of his contract of March 5, 1921, with the Martinez heirs, whereby he obligated himself to present annually an exact statement of all items of income obtained and expenses paid out. The receiver admits that he kept no accounts contemporaneously with the transactions, and the "Addendas to the Accounts" submitted in this cause as Exhibits A, B, C, D and E, purporting to show the details of the administration, are shown to have been made out by him after the decision requiring him to submit accounts was rendered in this court.

It appears that the receiver has maintained at different places on the groves in his charge a number of kilns, or ovens for drying copra. Here he has caused the nuts taken from the groves to be for the most part converted into copra. As this work was accomplished the copra was conveyed to the bodegas of the receiver, who is a merchant in San Pablo, from whence the copra has been marketed by him. A small portion of the produce of the groves has apparently been sold from time to time in the crude form, but the general rule has been that the nuts have been converted into copra before being sold. The receiver admits that the expenses which he has charged in connection with the administration of the nuts include the cost of converting the nuts into, copra. Yet the credits allowed from the sales indicate only receipts from the sale of unconverted nuts. Moreover, there are two items of expense amounting all together to P5,533 which cannot be allowed. These are the salaries of manager and watchman between 1922 and 1926. These expenses were, in our opinion, either unnecessary or merely incidental to the management of the ovens. A brother-in-law of the receiver, one Crispino Briones, appears from the proof of the appellants to have been occupying the lot containing the one thousand coconut trees which was set aside for Estanislao Reyes in the original contract of March 5, 1921. Reyes claims that he has paid Briones a monthly salary of P90, for overseeing the business. But no receipt was offered in evidence to prove any such payments; and although Briones himself was called to the stand as a witness, he was not asked by the appellee whether any

such payments had in fact been made to him. Our conclusion is that Briones probably did not receive the salary which is charged in the accounts as having been paid to him, and that if he was so paid, the expense was unnecessary. The groves were in the possession of sharers (aparceros) chosen by Reyes himself, and the oversight of these workers was ample for the protection of the groves.

Much less justifiable is the salary of P50 per month which the receiver claims to have paid to a watchman, one Julian Diuño; for the testimony of Diuño shows that his duties were confined to working around the ovens during the daytime. It is evident that the inclusion of this item as a charge against the receivership is merely in keeping with the appellee's policy of charging the receivership with all the expenses of converting the nuts into copra.

The receiver claims that the employment of a manager and watchman was made necessary by thefts and depredations committed by the plaintiffs from time to time in taking fruit from the lands in charge of the receiver. This, in our opinion, is merely an exaggerated version of an incident which occurred in 1924 when Clemencia Graño and Julio Martinez, taking occasion from the release of their lots from the mortgage to El Hogar Filipino, attempted to repossess themselves of the property, an attempt which was frustrated by the receiver.

Our analysis of the "Addendasto the Accounts" with respect both to the income and expenses of the administration leads to the conclusion that they are grossly inexact both as to income and expenses. In order to prove this it is enough to state that according to the appellee's showing the net income of the groves for the whole period covered by the accounts was the sum of P2,929.42. This cannot be true and cannot be accepted by the court. It is unreasonable and impossible that a coconut grove containing 7,000 trees in bearing, and valued at from P60,000 to P70,000, should have produced so little return during the four consecutive years covered by these accounts, and if the receiver did not get more, it must have been due to his own lack of diligence.

The proof in the record with respect to the cost of harvesting and marketing coconuts points to the conclusion that the expenses which might have been legitimately incurred by the receiver, supposing him to have taken from the groves the number of coconuts which they ought to have produced, should be in the neighborhood of P11,000. Subtracting this amount from the sum of P42,000 which, as stated above, is the gross income that ought to have been received, we have a net balance of about P31,000, as the amount that should have been received by the receiver from the produce of the groves in his charge. This estimate is nearly 20 per cent lower than what would have been received if the groves had been administered as economically and as effectually as the grove of Porfirio Reyes; but we assume that the last named individual may be taken to have been exceptionally efficient, and something should be conceded to the receiver in view of the fact that the trees concerned in this receivership were not under his personal supervision.

In fixing the amount for which the receiver should be held liable upon his administration account, we are not so much concerned with what he actually received as with what he should have received in the exercise of reasonable diligence, and it is idle to pretend that exact figures are attainable; but the receiver himself is to blame for the obscurity in which the subject is enveloped, and the court cannot be deterred from attempting to accomplish the ends of justice in the light of the best information available. With these considerations in view we have come to the conclusion that by the time the receiver surrendered the possession of the groves in his charge as receiver (except the one thousand trees reserved for himself) he had received, or should have received from the trees in his charge a net profit of something more than P31,000, or in round numbers, an amount of about P8,000 in excess of P23,033.27, which, as stated above, is his true credit balance against the receivership. It results, therefore, that instead of being a creditor of the receivership to the extent of P25,321.21, as found by the trial court, he is actually a debtor thereto in the amount of P8,000.

In the appealed decision the trial court ordered that the land subject to this receivership, except the one thousand

trees assigned to Estanislao Reyes, should be sold for the payment of the balance which the court found to be due to the receiver; and the appellants, in their sixth assignment of error, maintain that it was error on the part of the lower court thus in effect to adjudicate said one thousand trees to Reyes. This point may possibly be said to be academic in view of the fact that, under this decision, no sale of the groves will be effected; but if we may be permitted to say a word prompted by a desire to see a conclusion of this protracted litigation, we would suggest that the claim of Reyes to said thousand trees be respected, subject of course to the mortgage in favor of El Hogar Filipino; and after the entire property shall have been cleared of the mortgage lien the Martinez heirs should, by amicable arrangement among themselves, equitably compensate the former owners of the thousand trees thus awarded to Reyes.

From the discussion contained in the briefs, it may be collected that the appellants entertain a belief that the property which Reyes acquired by purchase under execution against Clemencia Graño, as already stated in this opinion, ought to be adjudged to the receivership. It is true that in testifying as a witness in this case Reyes repeatedly insisted that his operations against Graño were conducted in behalf of the owners of the receivership property. But as we have already shown, he actually acquired title to those lands in his individual right; and in charging him with the credit of P5,215.89 which he used in purchasing said property, we have gone on the assumption that he had acquired a good individual title. The appellants must therefore leave that property to him, and in fact they will hereafter be estopped from questioning his right thereto.

In view of the conclusions stated in the foregoing opinion, it becomes necessary to reverse, as we hereby reverse, the appealed judgment; and judgment will be entered for the plaintiffs to recover of the appellee, Estanislao Reyes, the sum of P8,000, without liability on his part for any additional income that may have been received by him from the groves between the last day covered by his accounts and the date when he surrendered possession; but the income obtained by the receiver now in possession as successor to Reyes, if such there be, will of course pertain to the receivership and should be applied by the court to any lawful charges against the property. Without pronouncement as to costs. So ordered.

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

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