

EMILIANA PINEDA ET AL., PETITIONERS, VS. COURT OF FIRST INSTANCE OF TAYABAS AND COLLECTOR OF INTERNAL REVENUE, RESPONDENTS.*G.R. No. 30921. February 16, 1929*

Ponente: STREET, J.

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This is an original petition for the writ of certiorari presented to this court by Emiliana Pineda and Dominga G. Villadiego, as administratrixes of the estate of Felix Villadiego, against the Judge of the Court of First Instance of Tayabas and the Collector of Internal Revenue, with a view to the abrogation of an order entered on December 8, 1928, by the respondent judge in the matter of the intestacy of Felix Villadiego, deceased (civil cause No. 1661 of said court), wherein his Honor ordered the petitioners to pay to the Collector of Internal Revenue, within the period of fifteen days, the sum of P240.26 in satisfaction of income taxes assessed against the deceased for the years 1925 and 1926; and further ordering that, in case of the failure of the administratrixes to make such payment, said taxes should constitute a preferential charge upon the shares pertaining to the heirs or legatees of the deceased. The cause is now before us for determination upon petition and answer, supplemented by oral testimony submitted by the petitioners.

Before his death, the decedent, Felix Villadiego, had submitted to the Collector of Internal Revenue the returns corresponding to his income tax for the years 1925 and 1926; and he had also, before his death, paid the taxes which the Collector of Internal Revenue had estimated to be due upon said returns. After the death of the said Felix Villadiego on May 7, 1927, intestate proceedings were duly opened in the matter of his estate, and the petitioners herein were appointed as his administratrixes (civil cause No. 1661 in the Court of First Instance of Tayabas). On the same date a committee on claims was also appointed; and at the time the present petition was filed, said committee was still exercising its functions.

It further appears that, while said proceedings were pending, the Collector of Internal Revenue made a revision of the assessment of the income tax due from the deceased for the years 1925 and 1926, with the result that he found that the tax for said years was underassessed to the extent of P111.30 for the year 1925 and P128.96 for the year 1926, making a total for the two years of P240.26.

In view of this fact the provincial fiscal of Tayabas, on behalf of the Government, filed a motion before the respondent judge in the intestate proceedings aforesaid, showing that the deceased Felix Villadiego was indebted to the Government of the Philippine Islands, upon the account above indicated, to the extent of P240.26, and asking that, in the adjudication to be made concerning the property of the deceased in the aforesaid proceedings, this additional tax should be declared to constitute a preferential charge in favor of the Government. Accompanying this motion was Exhibit A, showing the alleged true status of the tax of the deceased for the years stated, as reliquidated by the Collector. On December 8th, thereafter, the respondent judge made the order which is the subject of complaint in this petition, ordering the administratrixes to pay the tax as stated in the first

paragraph of this opinion, and declaring that, in case of their failure so to do, the claim should constitute a preferred charge in favor of the Government,

The order referred to is now made the subject of attack on two main grounds, namely, first, that the court had no jurisdiction to order the payment of the claim in question without the presentation of the same for allowance in usual course to the committee on claims; and, secondly, that the order was in fact made without adequate notice to the administratrixes, as a result of which they were deprived of the opportunity of making defense against the claim.

To reply to these contentions in turn, we observe that, while¹ there are a few courts that have expressed themselves to the effect that a claim for taxes due to the Government should be presented like other claims to the committee appointed for the purpose of passing upon claims, the clear weight of judicial authority is to the effect that claims for taxes and assessments, whether assessed before or after the death of the decedent, are not required to be presented to the committee. (24 C. J., 325; *People vs. Olvera*, 43 Cal., 492; *Hancock vs. Whittemore*, 50 Cal., 522; *Findley vs. Taylor*, 97 Iowa, 420; *Bogue vs. Laughlin*, 149 Wis., 271; 40 L. R. A. [N. S.], 927; Ann. Cas. 1913 C, p. 1367).

In the case before us the tax now, claimed by the Government was not due until it was assessed; and this assessment was not made until after the individual against whom the tax was assessed had died. The claim therefore arose during the course of administration. The law imposes on the administrator of a deceased person the duty to pay taxes assessed against the property of the deceased; and as is well known, in case of insolvency, such taxes constitute a preferential claim in the distribution of assets over ordinary debts, under section 735 of the Code of Civil Procedure. In the case before us it is not suggested that the estate is insolvent, and there is therefore no danger of imperiling the payment of funeral expenses or expenses of last sickness by ordering the immediate payment of these taxes.

As it is the duty of an administrator to pay taxes assessed against the estate of the decedent, where funds are available for that purpose, the court, in the exercise of its administrative control over the administrator, undoubtedly has authority to direct the payment of assessed taxes. Moreover, it is evident that the act of the court in directing the petitioners to pay this tax does not have the effect of depriving the petitioners of the remedy, open to every taxpayer, of paying the tax under protest and bringing an action to recover the money; and assuming that leave of the court might properly be required for the institution of such action, it is to be assumed that such leave would be granted if the petitioners should be able to show to the court any plausible ground for concluding that the tax had been improperly collected.

In view of what has been said, the second point raised by the petition, namely, that the motion made by the provincial fiscal, asking the court to declare the additional tax a lien upon the shares of the heirs, was notified to the attorney for the petitioners only on the day before the motion was heard and that the refusal of the court to postpone action thereon, in obedience to the telegraphic request of said attorney, deprived the petitioners of the opportunity to make defense, loses its force.

In this connection we observe that the petitioners are mistaken in assuming, as they appear to do, that the reliquidation of the income tax of Felix Villadiego for the years 1925 and 1926 was beyond the competency of the respondent Collector of Internal Revenue; for, if the original assessment was incorrect, the Government was not concluded thereby, and it was clearly within the power of the Collector to reassess and collect any additional tax due upon the returns for said years, even after the death of the taxpayer. The Government is never estopped by mistake or error on the part of its agents. It follows that, in so far as this record shows, the petitioners have not made it appear that the additional tax claimed by the Collector is not in fact due and collectible. The assessment of

the tax by the Collector creates, it must be remembered, a charge that is at least prima facie valid.

From what has been said it follows that the petition is not well founded. The same will therefore be dismissed, with costs against the petitioners. So ordered.

Johnson, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

Malcolm, J., dissents.

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