

**LEONOR MENDEZONA, PLAINTIFF AND APPELLEE, VS.
ENCARNACION C. VIUDA DE GOITIA, ADMINISTRATRIX OF THE
ESTATE OF BENIGNO GOITIA, DEFENDANT AND APPELLANT.**

G. R. No. 31739. March 11, 1930

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }The plaintiffs, Leonor Mendezona and Valentina Izaguirre y Nazabal, filed separate claims with the committee of claims and appraisal against the intestate estate of Benigno Goitia y Lazaga (Court of First Instance of Manila, civil case No. 30273), the first for the amount of P5,940, and the second, P376. By order of the court dated June 16, 1927, these claims were heard by the committee. The claimants presented their evidence, which the committee deemed insufficient and disapproved their claims. Both claimants appealed from the report of the committee, and in accordance with section 776 of the Code of Civil Procedure, filed a new complaint which was later amended with the approval of the court, there being nothing in the bill of exceptions to show that the defendant, or the administratrix of the deceased Benigno Goitia, excepted to the court's order admitting the amendments to the complaints.

The defendant answered the amended complaints, pleading in special defense, that not having intervened in any of the transactions of Benigno Goitia y Lazaga as attorney-in-fact of the plaintiffs, and having no knowledge of the supposed management of their rights in the "Tren de Aguadas," and, furthermore, not having seen nor received any money of the plaintiff's from said business, she is not in a position to render an account of any sort to the plaintiffs, either in her own personal capacity or as judicial administratrix of Benigno Goitia's intestate estate.

By agreement of the parties, both cases were tried together, and the trial court rendered but one decision upon them on October 31, 1928, holding it sufficiently proved, "that defendant Encarnacion C. Vda. de Goitia has been duly appointed judicial administratrix of the estate of her deceased husband Benigno Goitia in special proceeding No. 30273 of this court; that Benigno Goitia was the representative and attorney-in-fact of the plaintiffs in the joint account partnership known, as the 'Tren de Aguadas' and located in the City of Manila, of which the plaintiff Leonor Mendezona, widow of Juan Bautista Goitia, owns 180 shares worth P18,000, and the plaintiff Valentina Izaguirre y Nazabal owns 72 shares worth P7,200; that prior to 1915, Benigno Goitia, at that time the manager of the aforesaid co-partnership, collected the dividends for the plaintiffs, which he remitted to them every year; that prior to 1915, the usual dividends which Benigno Goitia forwarded to plaintiff Leonor Mendezona each year were P540, and to plaintiff Valentina Izaguirre y Nazabal, P216; that from 1915 until his death in August, 1926, Benigno Goitia failed to remit to them the dividends upon their shares in the 'Tren de Aguadas'; that some time before his death, more particularly, in July, 1926, Benigno Goitia, who was no longer the manager of the said business, received as attorney-in-fact of both plaintiffs, the amount of P90 as dividend upon plaintiff Leonor

Mendezona's shares, and P36 upon Valentina Izaguirre y Nazabal's stock; that from 1915 to 1926, the 'Tren de Aguadas' paid dividends to the share- holders, one of them, Ramon Salinas, having received the total amount of ₱1,155 as ordinary and special dividends upon his 15 shares; that calculating the dividends due from 1915 to 1926 upon Leonor Mendezona's 180 shares at ₱540 per annum, and at ₱216 yearly upon the 72 shares held by Valentina Izaguirre y Nazabal, counsel for both plaintiffs filed their claims with the committee of claims and appraisal of the estate of Benigno Goitia, and, upon their disallowance, appealed from the committee's decision by means of the complaints in these two cases."

The trial court likewise deemed it proven that "during the period from 1915 to 1926, Benigno Goitia collected and received certain sums as dividends and profits upon the plaintiffs' stock in the 'Tren de Aguadas' in his capacity as representative and attorney-in-fact for both of them, which he has neither remitted nor accounted for to the said plaintiffs, although it has been proved that said Benigno Goitia was their attorney-in-fact and representative in the 'Tren de Aguadas' up to the time of his death."

The court below therefore ordered the defendant, as judicial administratrix of Benigno Goitia's estate to render a judicial account of the intestate estate of the deceased Benigno Goitia, in special proceeding No. 30273 of this court (below), to render an account of the amounts collected by her aforesaid husband Benigno Goitia, as attorney-in-fact and representative of the plaintiffs Leonor Mendezona and Valentina Izaguirre y Nazabal in the copartnership known as the "Tren de Aguadas" from 1915 to July, 1926, within thirty days from notice of this decision; and that the defendant may see, examine, and make a copy of the books and documents relative to the business of the aforementioned copartnership, in accordance with the provisions of section 664 of the Code of Civil Procedure. Without special pronouncement of costs.

On December 15, 1928, at the instance of the plaintiffs, the trial court set the 15th of January, 1929, as the date on which the defendant should present her account of the dividends and profits collected by the decedent, as attorney- in-fact for the plaintiffs, with regard to the "Tren de Aguadas" copartnership, from 1915 to 1926, and the hearing was postponed to the 7th of February, 1929.

On February 6, 1929, the defendant, reiterating her exception to the court's decision enjoining her to render accounts, manifested that after a painstaking examination of the books of account of the copartnership "Tren de Aguadas," and several attempts to obtain data from Ruperto Santos, the manager and administrator thereof, she has found no more evidence of any amount received by her late husband, Benigno de Goitia, than a book of accounts where she came upon an item of 90 for Leonor Mendezona, and another of 36 for Valentina Izaguirre.

In view of this report and the evidence taken at the hearing, the court rendered a suppletory judgment, upon motion of the plaintiffs dated December 3, 1928; and taking into account chiefly the testimony of Ruperto Santos and Ramon Salinas, it was held that, upon the basis of the dividends received by the witness Salinas on his fifteen shares in the "Tren de Aguadas" from 1915 to 1925, it appears that the dividends distributed for each share was equal to one- fifteenth of ₱1,087.50, that is ₱72.50. Thus the dividends upon plaintiff Leonor Mendezona's 180 shares would be ₱13,050, and upon the 72 shares pertaining to Valentina Izaguirre, ₱5,220; and these sums, added to those collected by the attorney-in-fact Benigno Goitia as part of the 1926 dividends, ₱90 for Leonor Mendezona, and ₱36 for Valentina Izaguirre, show that Benigno Goitia thereby received ₱13,140 in behalf of Leonor Mendezona, and ₱5,256 in behalf of Valentina Izaguirre.

Wherefore, the court; ordered the defendant, as judicial administratrix of the estate of the deceased Benigno Goitia, to pay the plaintiff Leonor Mendezona the sum of ₱13,140 with legal interest from the date of the filing of the complaint, and to pay the plaintiff Valentina Izaguirre ₱5,256 likewise with legal interest from the date of the filing of the complaint, and moreover, to pay the costs of both instances.

The defendant duly appealed from this judgment to this Supreme Court through the proper bill of exceptions.

The fundamental question raised by the appellant in the first assignment of error refers to the court's jurisdiction to admit the amended complaints whereby the plaintiffs claim P13,680 and P5,470, respectively, whereas the claims presented to the committee of claims and appraisal were only for P5,940 and P2,376, respectively. Appellant contends that the plaintiffs have not perfected their appeal in accordance with section 773 of the Code of Civil Procedure in claiming more in their complaints than in the claims filed with the committee of claims and appraisal, by including therein, not only the yearly dividends paid from 1915 to 1925, inclusive, but also the ordinary and extraordinary dividends upon their shares for the years of 1915 to 1926, alleged to have been delivered to Benigno Goitia.

The fact that the claims filed with the committee were upon the basis of annual dividends, while those filed with the court below were on ordinary and extraordinary dividends, is of no importance, for, after all they refer to the same amounts received by the deceased Benigno Goitia in the name and for the benefit of the plaintiffs. The question to be decided is whether or not in this jurisdiction a greater sum may be claimed before the court than was claimed before the committee. It should be noted that according to the cases cited by the appellant on pages 12 and 13 of her brief, to wit, *Patrick vs. Howard*, 47 Mich., 40; 10 N. W. 71, 72; *Dayton vs. Dakin's Estate*, 61 N. W., 349; and *Luizzi vs. Brady's Estate*, 113 N. W., 574; 140 Mich., 75; 12 Detroit Leg., 59, the claims passed upon by the committee cannot be enlarged in the Circuit Court by amendment. But counsel for the appellees draws our attention to the doctrines of the Vermont Supreme Court (*Maughan vs. Burns' Estate*, 64 Vt, 316; 23 Atlantic, 583), permitting an augmentative amendment, to the claim filed with the committee.

In the *Maughan* case, *supra*, the court stated:

"*ROWELL*,'. This is an appeal from the decision and report of the commissioners on the estate of Michael Burns. Plaintiff presented her claim to the commissioners at P2,789.65. The ad damnum in her declaration filed in the probate court was P3,500. In the county court she recovered P3,813.49. Thereupon she moved for leave to amend her declaration by raising the ad damnum to P4,000, which was granted, and she had judgment for the amount of her recovery. The identical claim presented to the commissioners was the claim tried above. The amount of plaintiff's recovery rested on the quantum meruit. The jury found that she merited more than she estimated her claim when she presented it to the commissioners. But such underestimate did not preclude her from recovering more, if the testimony show her entitled to it, as presumably it did, as more was found. The fact of such estimate was evidence against her deserving more, as it was an implied admission that what she claimed was enough; but the admission was not conclusive upon her, and did not prevent her from recovering more. (*Rooney vs. Minor*, 56 Vt., 527; *Stowe vs. Bishop*, 58 Vt., 498; 3 Atl. Rep., 494; *Hard vs. Burton*, 62 Vt., 314; 20 Atl. Rep., 269.)

"It is conceded that in common law actions the court has power to raise the ad damnum at any time; but it is claimed that as the probate court is not a common law court, but is a court of special and limited jurisdiction, and has by statute original jurisdiction of the settlement of the estates of deceased persons, the county court has no power to raise the ad damnum of the declaration filed in the probate court. The county court has, by statute, appellate jurisdiction of matters originally within the jurisdiction of the probate court and in such appeals it sits as a higher court of probate, and its jurisdiction is co-extensive with that of the probate court. It is not limited to the particular questions that arose in the probate court in the matter appealed, but is expressly extended to matters originally within the jurisdiction of that court. It is an appellate court for the rehearing and the re-examination of matters—not particular questions merely—that have been acted upon in the court below. (*Adams vs. Adams*, 21 Vt., 162.) And these matters embrace even those that rest in discretion. (*Holmes vs. Holmes*, 26 Vt., 536.) In *Francis vs. Lathrope*, 2 Tyler, 372, the claimant was allowed, on terms, to file a declaration in the county court, he having omitted to file one in the probate court as required by statute. It was within the jurisdiction of the probate court to have allowed this amendment, and, as the county court had all the

jurisdiction of the probate court in this behalf, it also had power to allow the amendment."

However this may be, in this jurisdiction there is a rule governing the question raised in this assignment of error, namely, section 776 of the Code of Civil Procedure, as construed in the cases of *Zaragoza vs. Estate of De Viademonte* (10 Phil., 23); *Escuin vs. Escuin* (11 Phil., 332); and *In re Estate of Santos* (18 Phil., 403). This section provides:

"Sec. 776. Upon the lodging of such appeal with the clerk, the disputed claim shall stand for trial in the same manner as any other action in the Court of First Instance, the creditor being deemed to be the plaintiff, and the estate the defendant, and pleadings as in other actions shall be filed."

Just as in ordinary actions in which the pleadings may be amended, so in the instant case, the original complaint for the same amounts claimed before the committee was altered, increasing the amounts, and the amended complaint was approved by the court and not objected to by the adverse party. The character of the action throughout is the same. The action; before the committee rested on the contention that as attorney-in-fact for the plaintiffs with respect to the partnership "Tren de Aguadas," the late Benigno Goitia had received dividends upon their shares which he failed to turn over to them;; the appeal to the Court of First Instance is founded on the same contention. When the claim was filed with the committee, counsel for the plaintiffs merely made a calculation of the amounts due, in view of the fact that he had not all the data from the plaintiffs, who live in Spain; but after filing the complaint on appeal with the Court of First Instance, he discovered that his clients were entitled to larger sums, and was therefore compelled to change the amount of the claims.

Considering the distance that separated the plaintiffs from their attorney-in-fact, the deceased Benigno Goitia, and that the latter failed to supply them with data from 1915 until his death in 1926, it is natural that they had to resort to calculating the amounts due them from the "Tren de Aguadas." To deny them the right to amend their complaint in accordance with section 776, when they had secured more definite information as to the amounts due them, would be an injustice, especially when it is taken into consideration that this action arises from trust relations between the plaintiffs and the late Benigno Goitia as their attorney-in-fact.

The first error is therefore overruled.

The allegation found in the second assignment of error that the plaintiffs are not in reality interested parties in this case is untenable. It does not appear from the bill of exceptions that the appellant demurred on the ground of misjoinder of parties, or alleged such misjoinder in her answer. In accordance with section 93 of the Code of Civil Procedure, the appellant has waived the right to raise any objection on the ground that the plaintiffs are not the real parties in interest, or that they are not the owners of the stock in question. (*Broce vs. Broce*, 4 Phil., 611; and *Ortiz vs. Aramburo*, 8 Phil., 98.) Furthermore it appears from Exhibits D, E, F, and G, that the late Benigno Goitia recognized that those shares of the "Tren de Aguadas" really belonged to the plaintiffs. And above all, Exhibit K-I, which is a copy of the balance sheet for May and June, 1926, taken from the books of the partnership, clearly shows that Leonor Mendezona owned 180 shares, and Valentina Izaguirre, 72 shares. Therefore the appellant cannot now contend that the plaintiffs are not the real interested parties.

In the third assignment of error it is argued that following section 676 of the Code of Civil Procedure, the court below had no power to order the defendant to render an account of dividends supposed to have been received by her deceased husband. We are of opinion that the order of the court enjoining the appellant to render an account of all the amounts collected by her aforesaid husband Benigno Goitia as representative and attorney-in-fact of the plaintiffs, from 1915 until June, 1926, was made for the purpose of giving her an opportunity of showing, if she could, just what amounts the deceased Goitia received on account of the appellees stock. There is no reversible error in this; for, as the complaint demanded the return of amounts alleged to have been received by the deceased

attorney-in- fact represented by the appellant, it was quite in order to determine whether such amounts were really received or not. The fourth assignment of error relates to Exhibits A and B, being the appellees' depositions made before the American consul at Bilbao, Spain, in accordance with section 356 of the Code of Civil Procedure. Counsel for the appellant was notified of the taking of these depositions, and he did not suggest any other interrogatory in addition to the questions of the committee. When these depositions were read in court, the defendant objected to their admission, invoking section 383, No. 7, of the Code of Civil Procedure. Her objection referred mainly to the following questions:

"1. Did Mr. Benigno Goitia render you an account of your partnership in the "Tren de Aguadas?"—Yes, until the year 1914.

"2. From the year 1915, did Mr. Benigno Goitia send you any report or money on account of profits upon your shares?—He sent me nothing, nor did he answer, my letters.

"3. Did you ever ask him to send you a statement of your account?—Yes, several times by letter, but I never received an answer."

The first of these questions tends to show the relationship between the principals and their attorney-in-fact Benigno Goitia up to 1914. Supposing it was error to permit such a question, it would not be reversible error, for that very relationship is proved by Exhibits C to F, and H to I. As to the other two questions, it is to be noted that the deponents deny having received from the deceased Benigno Goitia any money on account of profits on their shares, since 1915. We are of opinion that the claimants' denial that a certain fact occurred before the death of their attorney-in-fact Benigno Goitia does not come within the legal prohibitions (section 383, No. 7, Code of Civil Procedure). The law prohibits a witness directly interested in a claim against the estate of a decedent from testifying upon a matter of fact which took place before the death of the deceased. The underlying principle of this prohibition is to protect the intestate estate from fictitious claims. But this protection should not be treated as an absolute bar or prohibition from the filing of just claims against the decedent's estate.

The facts in the case of *Maxilom vs. Tabotabo* (9 Phil., 390), differ from those in the case at bar. In that case, the plaintiff Maxilom liquidated his accounts with the deceased Tabotabo during his lifetime, with the result that there was a balance in his favor and against Tabotabo of P312.37, Mexican currency. The liquidation was signed by both Maxilom and Tabotabo. In spite of this, some years later, or in 1906, Maxilom filed a tflaim against the estate of Tabotabo for L,062.37, Mexican currency, alleging that P750 which included the 1899 liquidation had not really been received, and that therefore instead of P312.37, Mexican currency, that liquidation should have shown a balance of P1,062.37 in favor of Maxilom. It is evident that in view of the prohibition of section 383, paragraph 7, of the Code of Civil Procedure, Maxilom could not testify in his own behalf against Tabotabo's estate, so as to alter the balance of the liquidation made by and between himself and the decedent. But in the case before us there has been no such liquidation between the plaintiffs and the deceased Goitia. They testify, denying any such liquidation. To apply to them the rule that "if death has sealed the lips of one of the parties, the law seals those of the other," would be to exclude all possibility of a claim against the testamentary estate. We do not believe that this was the legislator's intention.

The plaintiffs-appellees did not testify to a fact which took place before their representative's death, but on the contrary denied that it had taken place at all, i. e. they denied that a liquidation had been made or any money remitted on account of their shares in the "Tren de Aguadas" which is the ground of their claim. It was incumbent upon the appellant to prove by proper evidence that the affirmative proposition was true, either by bringing into court the books which the attorney-in-f act was in duty bound to keep, or by introducing copies of the drafts kept by the banks which drew them, as was the decedent's usual practice according to Exhibit I, or by other similar evidence.

The appellant admits having found a book of accounts kept by the decedent showing an item of 90 for the account of Leonor Mendezona and another of P36 for the account of Valentina Izaguirre, which agrees with the statement of Ruperto Santos, who succeeded Benigno Goitia in the administration of said partnership, to the effect that the deceased attorney-in-fact had collected the amounts due the plaintiffs as dividends on their shares for the months of May and June, 1926, or P90 for Leonor Mendezona, and P36 for Valentina Izaguirre, amounts which had not been remitted by the deceased to the plaintiffs.

Finally, the appellant complains that the trial court held by mere inference that Benigno Goitia received from the "Tren de Aguadas" the amounts of P13,140 and P5,265 for Mendezona and Izaguirre, respectively, as dividends for the years from 1915 to 1926, inclusive, and in holding again, by mere inference, that Benigno Goitia did not remit said sums to the plaintiffs.

It is a well established fact in the record that the plaintiffs had an interest or some shares in the partnership called "Tren de Aguadas," Mendezona holding 180 shares, worth P18,000, and Izaguirre, 72 shares worth P7,200. By the testimony of Ruperto Santos, former secretary of Benigno Goitia and his successor in the administration of that partnership, it appears that the deceased Benigno Goitia had received the dividends due the appellees for the months of May and June, 1926. And according to Exhibit K-1, the dividend for the months of May and June was P0.50 a share. And witness Ramon Salinas, a practising attorney and one of the shareholders of the partnership "Tren de Aguadas," testified, from a notebook which he had, that he received from the "Tren de Aguadas" the following ordinary dividends: F45 in 1915; P45 in 1916; P45 in 1917; W6 in 1918; P45 in 1919; P90 in 1920; P67.50 in 1921, and P45 each for 1922, 1923, 1924, 1925, and 1926. By way of extraordinary dividends, the witness testified that he received P22.50 each year from 1915 to 1918 inclusive; P45 in 1919; P60 in 1920; P37.50 in 1921, 1922, 1923, and 1924; P15 in 1925; and P22.50 in 1926. He further stated that he received P165 in 1918 as his share of the proceeds of the sale of the boat Santolan. Summing up all these amounts, we find that the witness Ramon Salinas, from 1915 to 1925, received a total of P1,087.50. It further appears that Ruperto Santos assured the court that the dividends for the period from 1915 to 1926 have been distributed among the shareholders, and that the late Benigno Goitia received the dividends due on the shares pertaining to Leonor Mendezona and Valentina Izaguirre, deducting them from the total distribution. In view of these data, the court below reached the conclusion, on the basis of the dividends received by partner Ramon Salinas, that the attorney-in-fact Benigno Goitia received for the plaintiffs-appellees, respectively, the amounts of P13,140 and P5,256, including the dividends for 1926, or 90 for Leonor Mendezona, and P36 for Valentina Izaguirre.

As to the interest imposed in the judgment appealed from, it is sufficient to cite article 1724 of the Civil Code, which provides that an agent shall be liable for interest upon any sums he may have applied to his own use, from the day on which he did so, and upon those which he still owes, after the expiration of the agency, from the time of his default. The judgment appealed from being in accordance with the merits of the case, we are of opinion, and so hold, that the same must be, as it is hereby, affirmed, with costs against the appellant. So ordered.

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

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