

**RAFAEL ENRIQUEZ ET AL., PLAINTIFFS AND APPELLANTS, VS.
FLORENCIA VICTORIA ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 3502. January 25, 1908*

Ponente: WILLARD, J.

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Differences having arisen among the heirs of Antonio Enriquez and of his wife, Ciriaca Villanueva, who died intestate, over the settlement of the estates of both, they, for the purpose of putting an end to litigation, on the 22d of April, 1891, executed a public document by the terms of which they agreed that Jose J. de Icaza, selected by Francisco Enriquez, and Jose Moreno Lacalle, selected by Rafael Enriquez, should make a partition of the property of both estates among the heirs. Jose J. de Icaza having died, another agreement was made on the 9th day of August, 1896, by which Jose Moreno Lacalle was selected to make the partition.

In December, 1897, this arrangement was abandoned and Rafael Enriquez and his associates commenced criminal proceedings against Francisco Enriquez. The transactions between 1891 and 1898 appear in Oases heretofore decided by this court. (Enriquez vs. Enriquez, 5 Phil. Rep., 668; Enriquez vs. Enriquez, 8 Phil Rep., 607.)

Jose Moreno Lacalle not having been paid for his services, on the 29th of December, 1898, took steps for the collection thereof by means of a summary action for the recovery of money (juicio ejecutivo). The amount of his claim was 6,290 pesos, for services from 1891 to the 9th of March, 1898, and was for services rendered to the estates of Antonio Enriquez and of Ciriaca Villanueva. Francisco Enriquez, as executor of his father's will and administrator of his estate, having admitted the existence of the debt, a formal complaint was filed on the 12th of January, 1899. The citation which was issued upon this complaint was directed to Francisco Enriquez in his capacity as executor and administrator of the testate estate of his deceased father, Antonio Enriquez. Francisco Enriquez, in response to the citation, stated that he had no money with which to pay the debt, and designated as property upon which the execution could be levied the land here in question, known as "the old theater of Jijnondo," and the execution was accordingly levied thereon.

Final judgment was entered in that action on the 8th of August, 1899, ordering the sale of the property levied upon to satisfy the debt. On the 10th day of September the property above described was sold at public auction by the judge of the Court of First Instance, for 33,915 pesos, to the defendant Francisco Saez Co-Tiongco. A deed thereof was made by the judge, which was duly recorded in the registry of property. Thereafter the defendant Francisco Saez Co-Tiongco sold the property to the defendant Cho Jan-Ling, who has erected thereon a building at an expense of 110,741 pesos.

On the 21st of September, 1900, Rafael Enriquez and most of the other heirs of Antonio Enriquez and Ciriaca Villanueva brought this action against Florencia Victoria, the executrix of the will of Jose Moreno Lacalle, and against Francisco Saez Co-Tiongco, Francisco Enriquez, and Cho Jan-Ling, asking that all the proceedings in the action above referred to be declared void. Judgment was entered therein in the court below on the 31st day of May, 1900, in favor of the defendants. From that judgment the plaintiffs have appealed.

The plaintiffs have changed the grounds on which they claim the right to maintain this action since the presentation of the first complaint. In that complaint it seems to be claimed that nothing was due to Jose Moreno Lacalle because the payment for his services was conditional upon the final settlement of the estates, when he was to receive 2 ½ per cent upon the value thereof. This claim is based upon a letter written by Moreno Lacalle to Rafael Enriquez upon the 19th day of August, 1890, but an examination of that letter shows that payment in the manner indicated was a mere suggestion and that Moreno Lacalle therein expressed his willingness to agree to anything which the heirs thought proper. There is no evidence whatever in the case to show that any of the heirs ever accepted this proposition. That the services were performed as claimed; and that they were of the value stated in the account, and that the estates of Antonio and of Dona Ciriaca, or the heirs interested therein, were responsible for the payment of this debt, are facts all clearly established by the evidence. In fact, at one of the meetings held in the office of Moreno Lacalle on the 23d day of October, 1897, at which were present Francisco, Antonio (the son), and Rafael, who represented all of the plaintiffs, it was agreed that the property here in question should be sold for the purpose, among others, "(2) To pay the fees of the attorney Jose Moreno Lacalle, for his services in liquidating and partitioning the said estate." This indicates why Francisco pointed out this building as property which might be levied upon to pay the debt here in question.

In an amended complaint filed on the 28th of April, 1902, plaintiffs alleged that Antonio was at the time of his death the sole and exclusive owner of the property herein involved. In a second amended complaint, filed on the 10th day of February, 1904, they alleged that the property belonged to the conjugal partnership of Antonio and Doña Ciriaca; that Doña Ciriaca died in 1882 and that Antonio died in 1884, and that immediately upon the death of Doña Ciriaca an undivided one-half of this property descended to the heirs of Doña Ciriaca, some of whom are the plaintiffs in this case, and that such heirs became at once the owners thereof.

Under this last amended complaint the claims of the plaintiffs seem to be (1) that the debt in question, having been incurred after the death of Antonio and Doña Ciriaca, was not an obligation binding upon their estates, but binding only upon the individuals who employed Jose Moreno Lacalle; (2) that even if it were a claim binding upon the estate of Antonio, the action for its recovery should have been directed against the heirs and not against the executor; (3) that Francisco Enriquez was the executor only of his father's estate, and the action having been directed against him in that capacity, the judgment entered therein could in no event bind the estate of Ciriaca Villanueva, and that the sale of one-half of the property in question under the judgment rendered in that action was absolutely void, because that half belonged not to the estate of Antonio but to the estate of Doña Ciriaca.

(1) The appellants in their brief cite cases from the American courts to the point that a debt contracted after the death of the testator is not binding upon his estate. The same doctrine as applied to lawyers has been held by this court in the cases of *Escueta vs. Sy-Juilliong* (5 Phil. Rep., 405) and *Gonzales vs. Del Rosario* (7 Phil. Rep., 140). Limit these decisions related to the present system of administering estates, as established by the Code of Civil Procedure now in force, and the cases cited by the appellants arose¹, in States where a similar system was in force. They have nothing to do with the method of administering estates of deceased persons which was in force here prior to the adoption of the present Code of Civil Procedure. In the case at bar, the will provided as follows:

"It also provides that the inventory, appraisalment, and division of his inheritance be made out of court, for, exercising a right which the law grants him, he prohibits every interference on the part of the judiciary, and upon his executors he confers the necessary authority without any restriction whatever, and their term of office is extended for such time as may be necessary."

Under the Spanish Law of Civil Procedure such a prohibition was lawful only when the testator by his will appointed executors with full power to do all that was necessary for the settlement of the estate, as the testator did in this case. (Art. 1028, *Ley de Enjuiciamiento Civil*.)

When the transaction here in question took place there was no judicial proceeding of any kind pending for the settlement of either the estate of Doña Ciriaca or the estate of Antonio. In fact, this was distinctly held by the Court of First Instance of Intramuros in its order of the 7th of November, 1809, presented as evidence by the plaintiffs, in which it denied the application of Francisco Enriquez to have the partition made by him approved. The court there said:

"The procedure under article 1069, with reference to the opposition of the heirs, can not be followed herein because this action pertains exclusively to probate jurisdiction which has not been instituted here on account of an agreement between the parties, and because of the prohibition by the testator."

That under the law existing prior to the promulgation of the present Code of Procedure this contract bound the two estates in question, there can be no doubt.

(2) The next question presented is this: In order to bind the estate of Antonio Enriquez, was the action of Jose Moreno Lacalle properly directed against Francisco Enriquez as executor of his father's estate?

As has been said before, there was no judicial proceeding pending and the powers of the executor and administrator were ample to do everything necessary for the liquidation of the inheritance. The obligation was an obligation against the estate itself. The only legal representative of that estate was Francisco Enriquez, and he was the person against whom any demand by a third person against it should be directed. Nothing to the contrary is held in the two decisions of the supreme court of Spain cited by the appellants. In the judgment of the 16th of March, 1864, the testator gave directions to his heir that she pay an allowance to A. It was held that the action to recover this allowance should be directed against her, and not against the executor. In the judgment of the 8th of April, 1865, the action was in fact directed against the heirs and not against the executor, and the question here suggested was not discussed. So that, so far as the estate of Antonio Enriquez is concerned, the action against it was properly directed against Francisco Enriquez, as executor, and the judgment rendered in that action is binding upon the estate and upon the heirs interested therein.

(3) The principal reliance of the appellants is upon the proposition that the property here in question belonged to the conjugal partnership, and that upon the death of Ciriaca Villanueva one-half thereof passed immediately to the heirs and that they became the owners thereof, and that Francisco Enriquez, never having been appointed administrator of this estate, the judgment rendered against him as executor of his father's estate was not binding upon the interest of the heirs of Doña Ciriaca.

When a conjugal partnership is dissolved by the death of the husband, it has already been held by this court that the settlement of the affairs of that partnership must be had in the probate proceedings for the settlement of the husband's estate; that is, that the husband's estate and the conjugal partnership must all be settled in one judicial proceeding and that the administrator of the husband's estate is the administrator of the affairs of the conjugal partnership. (Alfonso vs. Natividad, 6 Phil. Rep., 240; Prado vs. Lagera, 7 Phil. Rep., 395; De la Rama vs. De la Rama, 7 Phil. Rep., 745.)

In the case of Alfonso vs. Natividad the court said (p. 245) :

"The question whether or not this rule for the settlement of the affairs of the conjugal partnership when it is dissolved "by the death of the husband is equally applicable when the partnership is dissolved by the death of the wife, we do not consider."

It is necessary now, however, to resolve that question.

The husband is by law the manager of the conjugal partnership. (Art 1412, Civil Code.) His debts, contracted during marriage, are its debts. (Art. 1408.) Upon the death of the wife he becomes the surviving partner, and we

do not doubt that he is the person called upon to settle the affairs of the partnership. It could not have been intended that upon the death of the wife, leaving the husband surviving, the property which the husband had administered and in which he was directly interested, should be taken out of his hands and delivered over to an administrator appointed in proceedings for the settlement of his wife's estate, and we hold that, where a conjugal partnership is dissolved by the death of the wife, the surviving husband is the administrator of the affairs of the conjugal partnership until they are finally settled and liquidated.

It follows from this holding, and from the holding already made in the case of *Alfonso vs. Natividad*, that when the husband who is the administrator of the affairs of the conjugal partnership, the wife having died, himself dies, his executor or administrator becomes not only the executor or administrator of the property of the husband but also the administrator of the affairs of the conjugal partnership and that he is the legal representative of that conjugal partnership.

The case of *Alfonso vs. Natividad* was an action brought by the administrator of the husband's estate to recover possession of real property which had belonged to the conjugal partnership, and we held that that action could be maintained not only in respect to the interest of the husband but also in respect to the interest of the wife. In order words, we held that the representative of the husband was the legal representative not only of the interest of the husband but also of the interest of the wife. That decision practically controls this case.

Upon the death of Ciriaca Villanueva, Antonio Enriquez became the legal administrator of the affairs of the conjugal partnership. Upon his death, Francisco Enriquez became the legal administrator of such property, and when the complaint of Jose Moreno Lacalle was directed against Francisco Enriquez, as the executor of his father's estate, it was as a matter of law directed against him also in his capacity as the administrator of the conjugal partnership, and the judgment rendered against him bound not only the interest of Antonio in the property in question but also the interest of Doña Ciriaca.

That Francisco was in fact the administrator of both estates from the death of his father is practically admitted by the appellants. It is to be noted, moreover, that when, on May 14, 1900, Rafael was appointed by the court provisional administrator on account of the criminal proceedings against Francisco, the appointment in terms expressly related to both estates.

This case has been before this court once before (R. G. No. 31), judgment having been rendered therein on the 17th day of October, 1901.[1] That judgment decided none of the questions here involved. It simply held that Rafael 1 Not reported.

Enriquez and his brothers had a right to maintain an action for the purpose of having resolved the questions which have here been determined.

The judgment of the court below is affirmed, with the costs of this instance against the appellants. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Tracey, JJ., concur.

[1] Not reported.

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