

**J. T. CASSELLS, PLAINTIFF AND APPELLANT, VS. ROBERT R. REID
AND JUAN T. FIGUERAS, AS ADMINISTRATORS OF THE ESTATE OF
JOHN HENRY GRINDROD, DECEASED, DEFENDANTS AND
APPELLEES.**

G.R. No. 3731. January 15, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

This is a proceeding brought as an appeal from the disallowance of a claim against an estate to establish as preferred a supposed award of arbitrators, amounting to P22,629.45, and also to declare the plaintiff the owner of one-half of certain credits aggregating P38,529.92.

Upon the dissolution of the house of Cassells, Buchanan & Co. of Iloilo, in 1897, a new firm was formed consisting of the plaintiff, residing in England, who was the principal capitalist, and John T. Grindrod, of Iloilo, who was the resident managing partner and contributed a small amount of capital. A disagreement having arisen between the partners as to the terms of settlement, turning principally on the classification of accounts and the ownership of certain lighters, it was referred to two arbitrators in England, one of whom wrote Grindrod as follows:

"LONDON, June 29th, 1905.

"DEAR GRINDROD: Referring to my letter by last mail, Patterson and I had, as I told you, a discussion over the accounts, and we ultimately came to the following conclusion.

"The question of how long Cassells remained or did not remain your partner seems to be immaterial at the moment, seeing that you are both agreeable to take as a starting point the balance as shown by you on the 31st March, 1903.

"The other smaller items were not disputed on either side, and therefore the whole question resolves itself into that of the entry for the lighters and the value to be put upon the lighters, and the question as to whether Alvarez' account belonged to the firm or to Cassells individually.

"As regards the former, we came to the conclusion that the entry of half the value of the lighters should not have been made to your debit, and we therefore accepted your account to write it back with interest. With regard to the value of the lighters, we agreed that the valuation of \$7,000 each put on them by Cassells, on an estimate sent him by Bethell Jones, was too high; but it was agreed that they stood in the books at too low an amount, considering that their value had to be taken as on the 19th of March, 1902, when the values of craft were pretty high. We came to the conclusion that it would be fair to value the 3 lighters at \$15,000, thus writing them up \$4,333.34.

"With regard to Alvarez' account, after going into the matter as carefully as we could we came to the conclusion that this account belonged to the firm, and not to Cassells alone. We had not really sufficient documents before us, but we understand that this account did not appear in the balance sheet dated 30th April,

1897, on which basis you took charge of the business, as per your letter to Cassells on the 20th of the month, but that it did appear in the following balance sheet; and we have therefore treated it as belonging to the firm.

"On this basis I have made up a fresh account current which I enclose, showing that with interest, 21 months, the amount owing to Cassells by you on the 31st December, 1904, was \$22,629.45 (Conant), and Cassells is prepared to settle on this basis, plus interest at 8% from 31st December, 1904, to date of payment, the first payment to be made as soon as possible, but not later than the 31st December of this year and the remainder not later than the 30th June, 1900.

"I trust you will agree with the view we have taken and agree to settle on these terms, in which case you can use the cipher words given in your letter to me of 3rd April, 1905.

"Yours, sincerely,

"H. A. MCPHERSON.

"P. S.—I have omitted to say that the adjustment of balance of C. B. & Co. in liquidation mentioned in the account arises from the following memorandum from Cassells, which seems to us to be correct:

" 'In a balance of C. B. & Co., in liq. dated 31st March, 1908, I find that J. T. C. has a credit balance of \$660.80, and J. H. G. a debit of \$2,616.51, therefore I have to be credited with the \$660.80 plus 1/3 of (\$2,616.51—660.80) \$1,955.71, say \$651.90—or in all \$1,312.70.'

"J. GRINDROD, ESQ., Iloilo."

"LONDON, June 30th, 1905.

"DEAR GRINDROD: Referring to my letter of yesterday, Patterson very properly points out that I should have added that of course when you have settled up with Cassells on the terms suggested the lighters will then be your property, and that also any amounts recovered from Alvarez and others in suspense will have to be divided equally between you and Cassells, less expense.

"Yours, very truly,

"H. A. MCPHERSON."

To this the following answer was sent:

"ILOILO, 18th August, 1905.

"MY DEAR MCPHERSON: I now beg to thank you for your letters of 22nd March, 22nd and 29th June, with view of what I should pay Cassells. In reference to this I herein hand you documents showing that Bassons' ac/ in balance sheet of 30th April, 1897, was really Alvarez's ac/.

"On receipt of your letter of 22d March I called upon Bethell-Jones who desired me to await further advices from you, saying that he would advise you to this effect.

"Last mail yours of 22nd and 29th June came to hand of which I duly advised Bethell-Jones. I am now extremely obliged to both Patterson and yourself for your kindly interest in aiding a settlement of Cassells and my unfortunate affairs, which you have brought to a point pending further documentary proof that Bassons' ac/ in April. 1897, balance sheet really should have been in the name of E. Alvarez, against whom I now have a judgment for 32,785.25, Conant. I now submit following documents for Patterson's and your further guidance, viz:

"No. 1, Bassons' actual contract with Cassells, Buchanan & Co.

"No. 2. Bassous' letter of 1st May, 1897, correcting a journal debit of 27th April, 1897.

"No. 3. Bassons' letter of 14th inst. re sale of his debt and good will to Alvarez.

"No. 4. Buchanan's chit re Alvarez ac/ being part of Cassells, capital withdrawn from Cassells, Buchanan & Co.

"No. 5. My actual circular re continuation of C. B. & Co.'s business.

"No. 6. Copy of Alvarez' second agreement showing that he still worked the hacienda Esperanza, rented from Da. Julita Villanueva, which was the same estate he took over from Bassons. The 1st agreement is in Juzgado Bacolod but Cassells has a copy of it in my handwriting.

"Re termination of our contract I have always considered it expired on 31st March, 1900, but under no circumstances could it pass September, 1902, when Cassells' representative here refused to take over the whole thing from me.

"Re lorchas, you have details but I don't think I could get 10,000 to-day for the three.

"Re your P.S., Cassells apparently wishes to increase my debit balance by 1/3. Buchanan who is equally interested is quite satisfied that there has been no mistake. The liquidation of C. B. & Co. went through my books and any balances in my name went up or down in accordance with compromises of liquidation. At this moment there is a case in the Supreme Court for P6,000 against us, which I am defending. There is also Serra's debt, which is being looked after.

"Thanking you for the consideration extended to us and hoping the enclosed information will satisfy your doubts as to my liability for the Bassons-Alvarez debt.

"Yours, sincerely,

"J. H. GRINDROD."

No reply had been received to this communication when on November 7, 1905, Grindrod died. His will contained the following clause :

"It is my desire that all my differences with Sr. J. T. Cassells pending at the present time the decision of the arbitrators in London, England, shall be adjusted in the most amicable manner possible, even though in so doing it shall become necessary to turn over the three lighters belonging to me called Isabela., Rosario, and Paquita, in order to settle any claim made by the said Cassells. I therefore charge my executors to put an end to this matter by accepting the decision of the arbitrators as final."

Beyond the defect of form in the award sufficient to prevent it from taking effect over an objection of one of the parties, we are of the opinion that by its terms it was expressly made conditional on acceptance by the defendant's testator, which he never gave, but on the contrary he withheld[^] forwarding documents on the lack of which the arbitrators had commented and which logically tended to change their tentative conclusion. Nor does the sixth clause of his will serve as an acceptance of what he had already refused. It mentions the arbitration as then "actually pending" and suggests a disposition of the lighters not in accordance with the proposed award.

The first claim of the plaintiff was properly rejected and the first assignment of error based on its rejection is overruled. The second assignment of error was the receipt in evidence of a corrected balance of accounts in Grindrod's handwriting, dated December 31, 1904, and understood to be a copy of one sent by him to the plaintiff. This account was made up after the closing of the books, and as a declaration of the deceased in his own favor and not a part of the res gesta would have been inadmissible, were it not that the witness Figueras, with the books of account before him, verifying the items herefrom, pronounced it correct, thereby rendering it admissible as a part of his testimony.

The testimony of Figueras also helps to dispose of the third assignment of error, to the effect that the court erred in not admitting proof as to the manner in, which certain accounts, other than what is known as the Bassons-Alvarez account, were treated by Grindrod. He makes it plain that the new accounts, opened during the existence of the second partnership, were firm assets, but that the proceeds of the accounts of the old firm, other than certain specified ones, had been remitted as individual property, when collected, to the plaintiff, who had received in principal and interest much more than his contributions to the capital of the firm.

This renders it unnecessary to take up for interpretation the terms of the letter which constituted the agreement of partnership which, not clear in themselves, are best read in the light of the acts of the parties.

The charging of the Bassons-Alvarez account, amounting to P31,677.10 to Cassells as his sole property rather than to the firm, was consistent with this explanation, and the keeping of it alive by entries of running payments and advances appears to have been for his benefit as the most probable method of avoiding a loss. As this account ultimately remained uncollected it was properly charged to him rather than to both the partners.

The minutes of the trial show that it was repeatedly stated by counsel for the defendant that no question remained in the case except that of the Bassons-Alvarez account, and that the judge proceeded upon this theory. Although no express assent to this view appears therein on the part of the plaintiff, yet we do not think that he made his opposition to it upon the trial sufficiently plain to enable him to raise some of the minor questions treated in the brief before us. In the English copy of his brief occurs this statement:

"The question here at issue is substantially whether the estate of Grindrod should bear one-half the loss of what might properly be termed the Bassons-Alvarez account."

We must perforce accept this statement of his interpretation of what occurred at the trial, and in reliance thereon overrule the fourth assignment of error to the effect that the court erred in finding that the plaintiff had abandoned his other claims.

The trial judge also very properly rejected proof of any accounts not included in the claims passed upon by the committee of the estate. (Code of Civil Procedure,, secs. 695 and 696.)

The judgment of the Court of First Instance is affirmed with the costs of this instance. So ordered.

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

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