

ANGELA OJINAGA, PLAINTIFF AND APPELLANT, VS. THE ESTATE OF TOMAS R. PEREZ, DEFENDANT AND APPELLEE.*G.R. No. 3754. November 15, 1907*

Ponente: WILLARD, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-3754/>**WILLARD, J.:**

The appellant, Dona Angela Ojinaga, as judicial administratrix of Eladio Ojinaga, deceased, presented to the commissioners appointed to hear claims against the estate of Tomas R. Perez, deceased, a demand for 12,053.54 pesos with interest from the 1st of May, 1893. This claim was disallowed by the commissioners and from that disallowance the appellant appealed to the Court of First Instance. That court entered judgment against the appellant and from that judgment she has appealed to this court.

Domingo Perez died in the town of Nueva Caceres in 1882, Leaving as surviving heirs ten children, six by one marriage and four by another. His estate was administered by one Manuel Achondo until 1889, when the administration was assumed by Tomas R. Perez, one of the heirs.

In April, 1890, a partition of such estate was had among the heirs of Domingo Perez. By this partition the six children of the first marriage received 31,608.90 pesos each, and the four children of the second marriage 17,241.24 pesos each. Two of the children of the first marriage, Adela and Aurora, withdrew their participation. The remaining children, however, four of the first marriage and four of the second—Tomas R. Perez being included among the former—continued Tomas R. Perez in the administration of their respective portions. The community as thus constituted was as follows:

Of the first marriage, Tomas R. Perez, Patricio Perez, Juan Perez, and Eladio Ojinaga the latter being the surviving husband and successor in interest of Isabel Perez, one of the children of the first marriage. These four contributed to the community their respective portions, i. e., 31,608.90 pesos each.

Of the second marriage, Filomena, Jose", Rodolfo, and Margarita Perez, who contributed 17,241.24 pesos each. Tomas R. Perez continued the administration of this property from April 20, 1890, to May, 1893. In such administration he acted as guardian for all the persons interested except Eladio Ojinaga, and as to him Tomas R. Perez acted as agent. In 1893, when, apparently, Juan and Patricio Perez became of age, Tomas R. Perez filed an account of his administration in the Court of First Instance at Nueva Caceres. In this accounting he showed the net profits of the business for the period stated as 8,084 "pesos. The brothers Juan and Patricio refused to accept this statement as correct, claiming that the profits actually derived by Tomas R. Perez from such business during the period named were greater than shown by him. Eladio Ojinaga accepted the account as rendered and permitted Tomas R. Perez to continue in the administration of his interest. Patricio Perez and his brother Juan persisted in their charge that the account was not correct and continued to demand a new accounting from Tomas R. Perez. The result was that in 1896 or 1897 arbitrators were appointed to examine the accounts of Tomas R. Perez from April 20, 1890, to May 1, 1893. These arbitrators had before them the books of Tomas R. Perez which were examined by Patricio Perez. While this examination was going on, and before it had been completed, Patricio

Perez offered to accept 32,000 pesos as a final settlement and determination of the whole question. It seems that Tomas R. Perez was willing to pay this amount as a settlement of the transaction, but Patricio Perez and his associates insisted that in the division of this 32,000 pesos among the heirs Eladio Ojinaga be excluded, and that it be divided among seven heirs instead of being divided among eight heirs.

Patricio Perez knew at this time that Eladio Ojinaga was satisfied with the accounting rendered in 1893 and, testifying at the trial, he said that the reason why they excluded Ojinaga from participation in this amount was because they suspected that there was an agreement between him and Tomas R. Perez and that the idea of Tomas R. Perez was to take his own share out so as to reduce the share of each for his own benefit. This settlement, therefore, was never carried out. Litigation was begun by Patricio and Juan Perez against Tomas R. Perez for an accounting. Other judicial proceedings were commenced by Tomas R. Perez against the heirs, or some of them. A final settlement of all the suits and proceedings then pending and of the entire matter in controversy was made on the 14th of August, 1901, in a public document of that date. By that agreement: "4. Don Tomas R. Perez binds himself to pay Don Patricio Perez the sum of 12,053.54 pesos, as profits, together with the interests agreed upon during the period of his administration from April 20, 1890, to May 1, 1893." He agreed to pay to the other heirs who joined in the agreement, and who were all of the heirs except Eladio Ojinaga, a proportionate amount. It is claimed by the appellant that this document proves conclusively that the amount of the profits to which Eladio Ojinaga was entitled for the period in question was this sum of 12,053.54 pesos and that he is entitled to that sum with interest thereon from the 1st of May, 1893. It is, however, apparent from the whole document, and from the testimony of Patricio Perez, a witness presented by the appellant at the trial, that this agreement was a compromise settlement and that this sum of 12,000 pesos included interest, costs, and expenses. Patricio Perez testified:

"Q. What is the ultimate account on which was calculated your share of 12,053 pesos?—A. I can not tell precisely now from whence that account was taken, but, adding my share to the shares of my brothers and the other four, this was the total sum to be given to us, including the prejudice and damage suffered by us.

"Q. What was to be your share of this 52,000 pesos?—A. I do not know exactly.

"Q. More or less?—A. about 6,000 pesos, approximately.

"Q. And how was it that you ultimately received 12,000 pesos?—A. Because here in Manila I had incurred further expense and the interest had been accumulating."

The appellant sought to prove at the trial the actual amount of the profits during the period in question by the books kept at the time, but it appears that these had been lost and destroyed. With the exception of these compromise settlements, the only evidence as to the actual profits was that furnished by Patricio Perez. He testified that the reason, why he would not accept 8,084 pesos as the amount of the profits was "because the first year he (Tomas R. Perez) rendered the account to the court there was 17,000 pesos profit, and the second year not more than 8,000 pesos profit, and the third year not more than 4,000 pesos profit, but my brother stated to me that on account of some mistakes in the account the profits became reduced by reason of paying off some expenses." It appears from testimony that Tomas R. Perez filed yearly statements in regard to the profits and that from these yearly statements they would appear to amount to 29,000 pesos, but when he presented his final account for the whole time he showed profits of only 8,084 pesos, claiming that expenses had been paid which had not been included in the yearly accounts. Tomas R. Perez having died in 1903, his explanation of this difference could not be given.

But assuming that the profits for the period above mentioned were 29,000 pesos instead of 8,000 pesos, the question is whether Eladio Ojinaga so conducted himself with regard to the transaction that his administratrix has

now lost the right to claim a proportionate share of the said 29,000 pesos.

On the 25th of October, 1894, Tomas R. Perez rendered to Eladio Ojinaga an account of his administration from April 1, 1893, to October 25, 1894. In that account are found the following items:

Pesos

Proportionate share of profits during 91, 92, and 93

1,662.00

6 per cent interest on the above amount.....

99.72

On the 29th of October, 1894, Ojinaga stated in writing his consent to this account and left to the administration of Tomas R. Perez all the property which belonged to him coming from the estate. The rendition of this account and the agreement of Ojinaga to the correctness thereof constituted a contract between, these parties (Ternate vs. Aniversario,[1] 5 Off. Gaz., 462; Enriquez vs. Enriquez,[2] 5 Off. Gaz., 739), a contract which can be set aside only upon the grounds upon which any other contract can be annulled, It is claimed by the appellant that it can be annulled on the ground of fraud committed by Tomas R. Perez in concealing from Ojinaga the truth in regard to the amount of profits for the period in question. No contract can be set aside on the ground of fraud if the person who claims to be defrauded knew all of the facts upon which his claim of fraud is based.

Patricio Perez, who testified as a witness for the appellant, stated that—

"* * * In the year 1894 Eladio Ojinaga invited me to approve that account because he had done so, and he advised me to approve it because it would be more just to him, and I did not like to follow his advice.

* * * * *

"Q. Did Eladio Ojinaga know of all this trouble between you and Tomas R. Perez and your brothers?—A. Yes, sir. He had knowledge of that at the time when he invited me to approve the account. I informed him about that. I gave him all of my reasons for not wishing to approve the account and he told me that he on his part approved it."

It is thus seen that in 1894 Ojinaga knew practically everything that is known today. Whether this conversation took place before or after the 29th day of October, 1894, is immaterial, because on the 30th of April, 1895, Perez rendered another account to Ojinaga for the time between the 25th of October, 1894, and the 30th of April, 1895. The first item in this account is the balance found in the account approved by Ojinaga on the 29th of October, 1894. On the 30th of April, 1896, he rendered another account to Ojinaga for the time between the 1st day of May, 1895, and the 30th of April, 1896. The first item in this account is the balance of the last preceding account. On the 30th of November, 1896, Ojinaga agreed in writing to the correctness of this account. On the 30th of June, 1897, Tomas R. Perez rendered another account to Ojinaga for the time between the 1st of May, 1896, and the 30th of June, 1897. The first item in this account is the balance of the last preceding account. On September 18, 1897, Ojinaga agreed in writing to the correctness of this account.

The appellant admitted at the trial that when litigation was commenced against Tomas R. Perez, about 1897, Ojinaga complained bitterly of the conduct of Juan and Patricio and accused them of being unkind to their brother. Evidence was introduced at the trial as to the contents of two letters said to be lost, written by Tomas R. Perez to Ojinaga at the time the settlement of 32,000 pesos was under discussion, in Avhich Perez advised

Ojinaga to claim his part of that sum. Even then Ojinaga took no action in the matter. He died in Kobe in July, 1898. His will, made in that month, stated that the last time when he settled accounts with Tomas B. Perez was in 1894, but that this settlement was not made effective because there were discovered certain irregularities in the account, irregularities which had been, and are now, the subject of litigation, and he added:

"At any rate, it is my desire that whatever profit may accrue from this property, it should be equally divided between my son and my wife."

From what has been said it is seen that this statement is not exactly correct as he kept on approving the accounts of Perez up to the time of his death. The appellant testified at the trial that she learned the facts in regard to these accounts before her husband's death, and that after his death Juan and Patricio Perez proposed to her to join them in this litigation. This she refused to do, but said that in case they won the suit she would pay her share of the expenses when they paid her proportionate share of what they obtained. No action in court was taken by her until November, 1902.

Under the circumstances above stated this action can not be maintained. Eladio Ojinaga not only agreed to the correctness of this account in 1894, but after he was thoroughly informed in the same year as to all the facts in the case he agreed to other accounts, which necessarily, as he then knew, involved a repetition of his agreement to the account of 1894. And knowing all the facts in the case, he not only did not join in litigation commenced for the purpose of securing a true statement of the profits but expressly refused to do so and censured the persons who promoted such litigation. The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

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

DISSENTING

JOHNSON, J.:

I can not agree with the conclusion in this case. The following facts were admitted:

- (1) That the defendant was the administrator or agent in charge of the property of the plaintiff.
- (2) That the actual profits accruing to the plaintiff by virtue of such administration amounted to about 12,000 pesos.
- (3) That the defendant paid to the plaintiff of such profits the sum of 1,761.72 pesos.
- (4) That the plaintiff believed that this amount so received was her share of the accrued profits and gave a receipt for the same.

Under these facts the majority of the court held that the receipt so given to the agent was a bar to her right to recover the amount of her share growing out of the administration of her estate by the administrator or agent. Under the view we take of the case it is unimportant whether the defendant was administrator or agent. The rule of law, as we understand it, is exactly the same. No rule of law is better settled than that an agent can not retain for his own use profits made in the course of the agency. Such profits belong to the principal. The well-settled and salutary principle that a person who undertakes to act for another shall not, in the same matter, act for himself, results also in the other rule that all profits made and advantage gained by the agent in the execution of the agency belong to the principal. It matters not whether¹ such profit or advantage be the result of the performance or the violation of the duty of the agent, if his duty be strictly performed, the resulting profit accrues to the principal as

the legitimate consequence of the relation; even if the profit accrues from his violation of duty, that likewise belongs to the principal, not only because the principal has to assume the responsibility of the transaction but also because the agent can not be permitted to derive advantage from his own default. The mere fact that the agent, by some means or other, by stating facts or by refusing to state all of the facts, induces the principal to accept a certain amount as the profits made in the course of the agency, this fact can not be used for the purpose of preventing the principal from recovering the true amount when the true amount is actually discovered.

It is only by rigid adherence to this rule of law that all temptation can be removed from one acting in a fiduciary capacity to abuse his trust or seek his own advantage in the position which it affords him.

It matters not how fair the conduct of the agent may have been in a particular case, nor that the principal would have been no better off if the agent had strictly pursued his power, nor that the principal was not, in fact, injured by the intervention of the agent for his own profit. The result in both cases must be the same.

If an agent dealing legitimately with the subject-matter of his agency acquires a profit, or if by departing from his instructions he obtains better results than would have been obtained by following them, the principal may yet claim the advantage thus obtained, even though the agent may have contributed his own funds or responsibility in producing the result. All profits and every advantage, beyond lawful compensation, made by the agent in a business, or by dealing or speculating with the effects of his principal., though in violation of his duty as agent, and though the loss, if one had occurred, would have fallen on the agent, are for the benefit of the principal. (Dutlon vs. Willner, 52 N. Y., 312; Gardner vs. Ogden, 22 N. Y., 327; 78 American Decisions, 192.)

The principal may, at his own option, in such cases, compel the agent to account for or convey to him the profits thus acquired. (Gardner vs. Ogden, supra.) In no instance and under no condition will the courts allow an agent or trustee to make a profit for his own benefit in the course of his agency or trust relation. The law holds out no such inducement to agents or trustees so to misapply their services or the funds intrusted to their care. An agent by concealing facts from his principal can under no condition be permitted, by sound jurisprudence, to profit thereby. The principal, once such facts are discovered, has the right to recover whatever may be due him from the agent as the result of the agency. (Merryman vs. David, 31 111., 404; Kerfoot vs. Hyman, 52 111., 512; Bunker vs. Miles, 30 Maine, 431; 50 American Decisions, 632; Montgomery County vs. Robinson, 85 111., 174; In re Rdse, 80 Cal., 166; Estate of Knight, 12 OaL, 200; 73 American Decisions, 531; Ward vs. Tinkham, 65 Mich., 695.)

It is found also that the rule under the Spanish law is no different from that above quoted. Article 1720 of the Civil Code provides:

"Every agent is bound to give an account of his transactions and to pay to the principal all that he may have received by virtue of the agency, even though what has been received is not owed to the principal."

Not only is he liable to the principal for any sum or sums resulting from such agency, but if he has applied the same to his own use he is liable for interest upon the same. (Art. 1724, Civil Code.)

The judgment of the lower court should be reversed and the plaintiff should be permitted to recover, with interest, whatever sum or sums the defendant received as a result of the agency or administration, with costs.

[1] 8 Phil. Rep., 292.

[2] 8 Phil. Rep., 607.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.