

**ANGELES TAPIA VIUDA DE JONES, JUDICIAL ADMINISTRATRIX OF  
THE INTESTATE ESTATE OF THE DECEASED, WALTER E. JONES,  
PETITIONER, VS. FRANCISCO ZANDUETA, JUDGE OF FIRST  
INSTANCE OF RI...**

*G.R. No. 39955. September 18, 1933*

Ponente: IMPERIAL, J.

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**IMPERIAL, J.:**

In this original petition for a writ of certiorari, the petitioner Herein, in her capacity as judicial administratrix of the intestate estate of the deceased, Walter E. Jones, seeks to annul and set aside the order of the respondent judge, reading as follows:

"After considering the plaintiff's motion dated June 7, 1933, and in view of the reasons therein stated, the administratrix is hereby ordered to pay to the plaintiff 17.7 per cent of the amount of the judgment rendered in his favor on September 8, 1932, within the non-extendible period of three (3) days from date of receipt of a copy of this order; otherwise she shall be declared in contempt of court. So ordered.

"Pasig, Rizal, June 30, 1933.

"(Sgd.)

Francisco Zanduetta

"Judge"

In the aforementioned intestate proceedings, docketed as case No. 4339 in the Court of First Instance of Rizal, a committee on claims was appointed before which the herein respondent, E. E. Elser, presented his claim amounting to P23,444.76. Inasmuch as his claim was disallowed, he appealed and instituted civil case No. 4876. In the latter case, judgment was rendered in favor of the respondent and against the intestate estate for the sum of P8,348.26, with interest thereon and the costs. The judgment became final. In the intestate proceedings, many creditors presented claims, aggregating about P174,000. Some claims have already been allowed while others were either pending resolution by the committee on claims, or on appeal pending decision by the court. The respondent's claim was among those last mentioned. Inasmuch as the petitioner in her capacity as administratrix had not sufficient funds to pay all the claims allowed and contingent, the court appointed a commission composed of Attorneys Escudero, O'Brien, McFie, jr., and Alikpala, to determine the amount of the funds under administration, the amount of all the claims of every nature, and the dividend to be paid out of said funds. The committee thus appointed submitted its report wherein it was stated that the administratrix had in her hands available funds amounting to P32,924.19; that, of this amount, P13,170.15 should be distributed among the creditors whose claims have been allowed and that the sum of P18,589.46 should be held by the administratrix to be paid at the proper time to the creditors whose claims were still pending before the committee on claims or on appeal before the court. These sums represented a distributable dividend of 17.7 per cent. The court approved the

report and ordered the administratrix to act in accordance therewith. Sometime later, three preferred creditors whose claims amounted to P11,300 appeared in the intestate proceedings and asked that their preferred claims be paid. The administratrix, by order of the court, paid the said preferred claims out of the funds reserved for the payment of the other contingent claims. After making these last payments, there still remained in the hands of the administratrix-petitioner, for the same purpose, the sum of P8,454.04 to be distributed on the basis of a 17.7 per cent dividend among the creditors with contingent claims. At this juncture, the respondent creditor filed several motions urging payment by the petitioner of his claim which had already been determined, in the proportion mentioned above, and inasmuch as the petitioner herein resorted to subterfuges to avoid payment thereof, he finally filed another motion praying that the aforesaid petitioner be declared in contempt of court for refusing to pay him the aforementioned dividend. Accordingly, the court issued the order appealed from compelling the petitioner herein to pay the dividend in question within three days, otherwise she would be punished for contempt.

The petitioner herein contends that the order in question, dated June 30, 1933, is null and void on the ground that it was entered in civil case No. 4876 and that the respondent judge who issued it was not sitting as a probate judge. Consequently, she argues that such order could only be entered by the probate judge who took cognizance of special proceedings No. 4339. We hold that such contention is unfounded and untenable inasmuch as the dividend distributable among the creditors, one of whom is the respondent Elser, had already been fixed by the probate court within the intestate proceedings and, under such circumstances, the respondent judge in an independent civil case had jurisdiction and could properly compel the petitioner to comply with what had been ordered in the course of the said special proceedings. It is obvious that the respondent judge has done nothing more than to enforce the judgment rendered by the probate court relative to the distribution of funds, instead of issuing a writ of execution in the civil case decided in favor of the other respondent herein.

The petitioner alleges that after paying the three preferred claims, the balance she had on hand was not sufficient to pay the dividend corresponding to the respondent's claim, and she also claims that she was under no obligation to comply with the order in question on the ground that she has filed a new motion in the intestate proceedings praying that a readjustment be made for the purpose of determining the dividend to be paid to the remaining creditors. These allegations are likewise unfounded, first, because the last petition filed by her has not yet been favorably acted upon in the intestate proceedings and, second, because it is an undisputed fact that even after the payment of the three preferred claims, there still remain in her possession funds of the administration amounting to P8,454.04, which sum is more than sufficient to pay the 17.7 per cent dividend of the respondent's claim or credit.

Wherefore, the petition for a writ of certiorari is hereby denied, with the costs against the petitioner. So ordered.

Malcolm, Villa-Real, Abad Santos, and Hull, JJ., concur.

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