

**IN THE MATTER OF THE ESTATE OF JOSEFA GARCIA PASCUAL,
DECEASED.—A. U. BETTS, ADMINISTRATOR, APPELLEE; ANGEL
ORTIZ, APPELLANT.***G.R. No. 4101. July 27, 1908*

Ponente: TORRES, J.

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Ceferino Aramburu y Lambarri and his wife Josefa Garcia Pascual, resided, during their lifetime, in the Province of Albay where they owned property of different kinds and the husband was engaged in business. The wife died on the 5th 6i July, 1889, without leaving any testamentary disposition. On the 18th of June, 1899, ten years later, the husband also died and left eleven children had during his marriage. The property of both the deceased continued undivided in the possession of their heirs under the administration of the eldest son, Ceferino Aramburu y Garcia, who, as well as the rest of his brothers and brothers-in-law who were of age, in their own name, and some on behalf of the minors, continued to carry on the business left by their father on his death.

On the 3d of October, 1902, Luis Palomar Baldovi, the husband of Julia Aramburu y Garcia, one of the daughters and heirs of the above-named deceased, appeared before the Court of First Instance of said province, accompanied by his brother-in-law, Ceferino Aramburu, and requested the appointment of an administrator to the succession of his late mother-in-law, Josefa Garcia. After the regular proceedings, the judge by an order dated the 9th of December of the said year (1902) appointed the petitioner, Baldovi, administrator to the aforesaid estate upon furnishing bond to the extent of P50,000, appointing at the same time three experts with the rights and duties set out in section 669 of the Code of Civil Procedure, and fixing a term of nine months within which claims might be presented to the committee by the creditors of the estate. Later on Arlington U. Betts was appointed judicial administrator of the intestate succession of Josefa Garcia, in place of Baldovi.

While the estate was still under administration, an inventory of the property and a liquidation of the gananciales (conjugal partnership property) of the above-named conjugal copartnership having been made by the committee of experts, the attorneys of Angel Ortiz, who claimed to be a party in interest in the special proceedings pending, appeared before the court, and on March 29, 1906, presented various written petitions in the name of the said Ortiz, and in another document dated the 6th of September of the same year, they ratified their previous claims, alleging, among other reasons, that the commissioners appointed to make the valuation in the said liquidation of the gananciales, which liquidation they prayed be annulled, did not take into account the fact that the conjugal copartnership was responsible in equal shares for a portion of the credit that existed in favor of their client, Angel Ortiz, who is a mortgage creditor for the sum of P97,000, as shown by a public instrument executed on the 15th of June, 1889, while the conjugal copartnership of Ceferino Aramburu and Josef a Garcia still existed; and that said credit should be given preference and paid from the assets of the said copartnership.

The attorneys for the administrator of the intestate estate of the late Garcia on the 21st of June, 3906, petitioned in writing that the motion presented by the attorneys of Ortiz be dismissed, for the reason that the latter had no right

to intervene in the administration of the estate of the late Ceferino Aramburu, and even less in that of Josefa Garcia Pascual, because he is neither an heir to nor a creditor of either of the two said estates; they therefore prayed for the revocation of the order of the court, dated March 30, which directed A. U. Betts, the administrator of the intestate estate of Josefa Garcia, and Gabriel Diego Vela, the administrator of the estate of Ceferino Aramburu, to jointly, and of common accord, after due investigation and examination of the papers and other things necessary, prepare and submit to the clerk of the court a report upon the liquidation made by the committee of appraisers and the inventory that served as a basis for said liquidation, notifying the clerk of the court to appoint a day for the hearing of the motion presented by the lawyers of Angel Ortiz, at the term of court to be held in said province after the date of said order.

The judge below, in view of the report submitted by the administrators of the two estates above named, on the 27th of February, 1907, issued the order appealed from, holding that Angel Ortiz is entitled to appear in the proceedings and to be heard therein, and dismissed his petition for the annulment of the liquidation made by the committee of experts of the gananciales of Aramburu and Garcia. From the foregoing order both the lawyers of Ortiz and the administrator of the intestate estate of the late Garcia have appealed.

Section 686 of the Code of Civil Procedure provides as follows:

"The committee appointed to appraise the estate and to allow claims as hereinbefore provided, shall act under oath, and may administer oaths to parties and witnesses upon the trial of questions before them. They may try and decide upon claims, which by law survive against executors or administrators, except claims for the possession of or title to real estate; and may examine and allow claims at their present value, which are payable at a future day, although such claims are payable in specific articles; and they may set off demands in favor of the estate against demands against the estate, and determine the balance due either way."

So that, if a creditor considers that he is entitled to claim the recovery of a credit against a testate or intestate estate represented according to law by the executor or the administrator thereof, it is his duty to appear before the committee appointed to make the valuation of the hereditary property, and to hear the claims against the same; and if he should not do so within the term fixed or any extension thereof, he shall suffer the consequences according to the provisions of section 695 of said code which reads:

"A person having a claim against a deceased person proper to be allowed by the committee, who does not, after publication of the required notice, exhibit his claim to the committee as provided in this chapter, shall be barred from recovering such demand or from pleading the same in offset to any action, except as hereinafter provided."

The representative in Albay of the so-called creditor, Angel Ortiz, was aware that a committee had been appointed to liquidate the estate of the late Josefa Garcia and to hear claims against it; he, however, did not appear in the name of Ortiz to set up his claims in accordance with the only law in force applicable in the premises, notwithstanding the fact that the term granted by the court by order of the 9th of December, 1902, had more than expired, and in consequence of his silence and abstention he has lost his right to make effective any claim which he may have had against the estate of the late Garcia, in accordance with the provisions of section 695 of said code, cited above.

In the judgment appealed from, reference is made to the action brought by the creditor, Angel Ortiz, in the Court of First Instance of Manila against the heirs of the late Ceferino Aramburu, in which suit judgment was rendered, sentencing the defendants to pay the sum of P345,193.31 with interest thereon at the rate of 8 per cent per annum from the 1st of July, 1903; the decision of this court by virtue of the appeal interposed by the heirs of Aramburu from said judgment was not set forth at the time. After the date of the aforesaid judgment appealed from, a decision was rendered by this court in case No. 3143,[1] affirming the judgment of the court below in the

proceedings instituted by Ortiz, the creditor, against the heirs of Aramburu, as appears in its record.

It is not therefore surprising that Ortiz or his representative in Albay failed to appear to present his claims for the recovery of the considerable amount which constitutes his credit in the proceedings in the matter of the intestate estate of the late Garcia, inasmuch as he had already brought action for the same purpose against the heirs of the spouses Josefa Garcia and Ceferino Aramburu.

Since Ortiz preferred to take action against the children of the late spouses Aramburu and Garcia, as the heirs of the latter, and thus obtained judgment in his favor from the Court of First Instance of Manila, subsequently affirmed by this court, and as he did not appear to claim the recovery of his credit before the committee appointed for the special proceedings in the intestate estate of Garcia, he has now no right to intervene as a party in the present proceedings, because in the strict sense of the law he is not actually a creditor of the intestate estate in question, but of the heirs of the above-named deceased parties.

For the reasons above set forth we hold that Angel Ortiz has no right to intervene as a party in interest in the proceedings in the intestate estate of Josefa Garcia Pascual, and in consequence thereof his request that the liquidation of the property acquired during marriage, made by the committee be declared null, is hereby dismissed, and the order of February 2.5, 1907, is hereby affirmed in so far as it conforms hereto, with the costs of this instance. So ordered.

Arellano, C. J., Mapa, Willard, and Tracey, JJ., concur.
Carson, J., did not sit in this case.

[1] Ortiz vs. Aramburo, 8 Phil. Rep., 98.

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