

**INTESTATE ESTATE OF THE DECEASED BALDONAERO COSME.
ROSARIO COSME DE MENDOZA, ADMINISTRATRIX AND APPELLEE,
VS. JANUARIO PACHECO AND RAYMUNDO CORDERO, SURETIES AND
APPELLANTS.**

G. R. No. 43351. February 26, 1937

Ponente: LAUREL, J.

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LAUREL, J.:

The facts in this case are not disputed. Manuel Soriano was former administrator of the estate of Baldomero Cosme In civil case No. 5494, Court of First Instance of Laguna, To assure faithful performance of his duties as such administrator, he filed a bond for P5,000, with the herein appellants, Januario Pacheco and Raymundo Cordero, as sureties. Soriano's account, upon approval, showed him indebted to the estate in the sum of P23,603.21. Unable to turn this amount over to the estate upon demand of Rosario Cosme, the new administratrix, the lower court ordered the execution of his bond on November 4, 1932, after notice duly served upon the sureties. Sometime later, the court approved a settlement had between the administratrix and the ex-administrator, whereby the latter ceded certain real properties to the estate reducing on that account his indebtedness to the estate from P23,603.21 to P5,000. As to this last amount, "La administradora se atiene a la orden de ejecucion de la fianza suscrita por los fiadores Januario Pacheco y Raymundo Cordero" (Record on Appeal, p. 2). Subsequently, the administratrix had the sheriff levy on the property of the sureties and advertise the public sale thereof to collect this amount of P5,000. Separate motions to be discharged from the bond were filed by sureties Pacheco and Cordero. Both motions were denied. A motion by Cordero to reconsider the order of denial met a like fate. Brought on appeal to this court, the appeal was dismissed. The dispositive part of the decision of this court (G. R. No. 40998, Cosme de Mendoza vs. Pacheco and Cordero [60 Phil., 1057]) reads as follows:

"The motion of October 1, 1933, was filed only on behalf of Raymundo Cordero who filed no motion for reconsideration of the order of execution of November 4, 1932, and took no appeal therefrom. Being of the opinion that the trial court correctly held that said order had become final, the motion of October 31, 1933, for reconsideration (if such it may be called) came too late. The judgment is therefore affirmed with costs against the appellants."

When the case was remanded to the lower court, the sureties filed a motion challenging, for the first time, the jurisdiction of the trial court to issue the order of November 4, 1932, executing the bond. The trial court denied the motion in view of the decision of this court. The case is elevated here for the second time on appeal.

Appellants assign the following error:

" The lower court erred in refusing: (a) To declare null and void its order of execution of the ex-administrator's bond of November 4, 1932, as well as the writs of execution issued in virtue thereof; (b) to accordingly vacate said order of November 4, 1932, and order the release of the properties of the herein sureties-appellants attached in pursuance of the writs of execution issued against them by virtue of said order; and (c) to order the suspension of the execution of the said order of November 4, 1932, until this case is finally decided."

In the discussion of the foregoing assignment of error in their brief (pp. 9-23), the appellants take in six propositions. One question, however,—that of jurisdiction of the Court of First Instance of Laguna to order the execution of the administrator's bond—is decisive of this appeal. Appellants, sureties upon the bond, press the point that the order in suit is an absolute nullity for lack of power in the issuing court. "In vain," they tell us, "have we searched our statute books, especially the part of our Code of Civil Procedure regarding probate jurisdiction, to find whether our Courts of First Instance, acting as probate courts, have the power to order the execution of an administrator's bond." Neither their failure to assail that jurisdiction when they ought nor the subsequent affirmance of the order by this court, they say, could revive an order dead from its inception.

To begin with, it lies within the discretion of the court to select an administrator of the estate of a deceased person (*Capistrano vs. Nadurata*, 46 Phil, 726, 727). Before an administrator, or an executor, enters upon the execution of his trust, and letters testamentary or of administration are issued, the person to whom they are issued is required to give a bond in such reasonable sum as the court directs, with one or more sufficient sureties, conditioned upon the faithful performance of his trust (Code of Civil Procedure, sees. 643, 662). The administrator is accountable on his bond along with the sureties for the performance of certain legal obligations. (*Tan vs. Go Chiong Lee*, 46 Phil., 200, . 205. See also, *Stovall vs. Banks*, 10 Wall., 583, 588; 19 Law. ed., 1036; *Long vs. O'Fallon*, 19 How., 116; 15 Law. ed., 550.)

It is clear that a Court of First Instance, exercising probate jurisdiction, is empowered to require the filing of the administrator's bond, to fix the amount thereof, and to hold it accountable for any breach of the administrator's duty. Possessed, as it is, with an all-embracing power over the administrator's bond and over administration proceedings, a Court of First Instance in a probate proceeding can not be devoid of legal authority to execute and make that bond answerable for the very purpose for which it was filed. It is true that the law does not say expressly or in so many words that such court has power to execute the bond of an administrator, but by necessary and logical implication, the power is there as eloquently as if it were phrased in unequivocal terms. When the accountability of an administrator's bond is spoken of in the very provisions dealing with and bearing directly on administration proceedings, it would involve a strained construction to hold, as appellants would have us do, that where an administrator is held liable for a devastavit for having squandered and misapplied property which he was in duty bound to marshal and conserve, the estate is without a remedy to go against the administrator's bond in the same probate proceedings, but in an action outside of and separate from it. In this connection, it should be observed that section 683 of the Code of Civil Procedure provides that "Upon the settlement of the account of an executor or administrator, trustee, or guardian, a person liable as surety in respect to such account may, upon application, be admitted as a party to such accounting, and may have the right to appeal as hereinafter provided." There is here afforded to a person who may be held liable as surety in respect to an administrator's account the right, upon application, to be admitted as a party to the accounting, from which we may not unreasonably infer that a surety, like the appellants in the case before us, may be charged with liability upon the bond during the process of accounting, that is, within the recognized confines of probate proceedings, and not in an action apart and distinct from such proceedings.

Appellants in their brief direct our attention to several cases decided by this court holding that Courts of First Instance, as probate courts, have no power to adjudicate on claims of other persons on property forming part of the estate, by title adverse to the deceased (*Guzman vs. Anog and Anog*, 37 Phil., 61, 62); on the legal usufruct of the widow (*Sahagun vs. De Gorostiza*, 7 Phil., 347, 351), and on the validity of testamentary dispositions (*Castaneda vs. Alemany*, 3 Phil., 426, 428). We have carefully examined these cases in relation to the facts and circumstances of the case at bar. We take the view, however, that the execution, of an administrator's bond, unlike the questions involved!! in the cited cases, clearly stands upon a different footing,! and is as necessary a part and incident of the administration proceedings as the filing of such bond or the fixing of its amount. Particularly is this

true in the present case where Soriano's indebtedness to the estate in the amount of P23,603.21, subsequently reduced to P5,000, is conceded on all sides, and all that the trial court had to do was to see that said amount was turned over to the estate.

It is the duty of courts of probate jurisdiction to guard jealously the estates of the deceased persons by intervening in the administration thereof in order to remedy or repair any injury that may be done thereto (*Dariano vs. Fernandez Fidalgo*, 14 Phil., 62, 67; *Sison vs. Azarrasa*, 30 Phil., 129, 134). "Probate and like courts have a special jurisdiction only, and their powers as to ancillary or incidental questions must of necessity be exercised within certain limitations; but such powers include the right to try questions which arise incidentally in a cause over which such courts have jurisdiction and the determination of which are necessary to a lawful exercise of the powers expressly conferred in arriving at a decision. * * * There seems, however, to be a general tendency, in the absence of express and specific restrictions to the contrary, to uphold the exercise by these courts of such incidental powers as are, within the purview of their grant of authority, reasonably necessary to enable them to accomplish the objects for which they were invested with jurisdiction and to perfect the same. And it has been held that statutes conferring jurisdiction on such courts, being remedial and for the advancement of justice, should receive a favorable construction, such as will give them the force and efficiency intended by the legislature." (15 C. J., 813, 814.) The tendency in the United States, indeed, has been towards the enlargement of the powers of probate courts, "In the beginning these courts were possessed of but limited powers. Having originated from the ecclesiastical courts of England, their jurisdiction, following their English patterns, was practically limited to the probate of wills, the granting of administrators, and the suing for legacies (*Plant vs. Harrison*, 74 N. Y. Sup., 411, 441; 36 Misc. Rep., 649; *Chadwick vs. Chadwick*, 13 Pac, 385, 388; 6 Mont., 566; 3 Bl. Comm., pp. 95-98). But, though they still are often unadvisedly described, particularly in Connecticut (*Griffin vs. Pratt*, 3 Conn., 513), as courts of limited, inferior or special jurisdiction, they have outgrown their limitations and have become courts with considerably increased powers (*Woerner, The American Law of Administration* [2d], sec. 145; *Plant vs. Harrison*, *supra*).

What has been said is sufficiently determinative of the appeal before us. We wish, however, to say a word on a salutary consideration of policy which has been invariably followed by this court in cases of this nature. We refer to the dispatch and economy with which administration of the estates of deceased persons should be terminated and settled. It will be recalled that the appellants could have raised the question of jurisdiction now pressed upon us in civil case No. 5494 of the Court of First Instance of Laguna and on appeal of that case to this court once before (G. R. No. 40998 [60 Phil., 1057]). They not only failed to avail of that right but failed to appeal from the order complained of {*Vide*, Decision of this court in G. R. No. 40998, *Cosme de Mendoza vs. Paeheco and Cordero*). The questions raised in the appeal at bar, appellants' second attempt to go about and frustrate the order in question, could have been passed upon once for all in the case referred to. We cannot encourage a practice that trenches violently upon the settled jurisprudence of this court that the policy and purpose of administration proceedings is " * * * to close up, and not to continue an estate * * *" (*Lizarraga Hermanos vs. Abada*, 40 Phil., 124, 133), and that " * * * the State fails wretchedly in its duty to its citizens if the machinery furnished by it for the division and distribution of the property of a decedent is so cumbersome, unwieldy and expensive that a considerable portion of the estate is absorbed in the process of such division. Where administration is necessary, it ought to be accomplished quickly and at very small expense; and a system which consumes any considerable portion of the property which it was designed to distribute is a failure. * * *" (*McMicking vs. Sy Conbieng*, 21 Phil., 211, 220.)

The order appealed from is hereby affirmed, with costs against the appellants. So ordered.

Avancena, C. J., Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

DISSENTING**VILLA-REAL, J.,**

Much as I respect the opinion of the majority, I am constrained by contrary conviction to dissent from said opinion.

Chapter XXXI of the Code of Civil Procedure, which is headed "Wills and the allowance thereof, and duties of executors", contains no provision concerning the enforcement of the liability of an executor or administrator on his bond and of that of his sureties. According to article 1853 of the Civil Code, "the guarantor may set up against the creditor all the defenses available to the principal debtor and which may be inherent in the debt; * * *." In an administration bond the executor or administrator stands in the place of the principal debtor; his sureties may, therefore, set up all the defenses to which he may be entitled, and which are inherent in the obligation. The procedure by which such defenses may be set up is the ordinary one established by the said Code of Civil Procedure by means of an action in court wherein an answer may be filed to a complaint, which answer may contain general or special denial, a special defense or a counterclaim. (Sees. 94 and 95, Act No. 190.) The said Code has not established any special procedure by which an executor or administrator and his sureties may set up their defenses. A summary execution of the bond of an executor or administrator with a mere notice to his sureties does not afford them an adequate opportunity to set up the defenses which the law guarantees to them. To enforce the liability of an administrator and his sureties on their bond by such summary procedure—which is neither authorized by law nor necessarily included in the power of a probate court to appoint administrators and require them to file an adequate bond—is not only ultra vires but a violation of the constitutional inhibition that no person shall be deprived of his life, liberty, and property without due process of law. "The usual method of enforcing the liability on an administration bond is by an action brought on the bond in a court of law, although in some jurisdictions other forms of remedy are provided by statute, * * *." (24 Corpus Juris, sec. 2598, p. 1084.)

The only procedure by which the liability of an executor or administrator and his sureties may be enforced on their bond is, therefore, by an ordinary action in court.

The failure of the sureties to appeal from the order of summary execution issued by the court below on their bond after a mere service of notice did not legalize said summary procedure and the order of summary execution issued by the lower court, which were otherwise illegal and ultra vires.

The order appealed from ordering the summary execution of the bond filed by the sureties-appellants, together with the former administrator Ramon Soriano, was issued not only in excess of jurisdiction but without it, because it was not authorized by law.

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