

JOSEFA BAJACAN, PETITIONER, VS. EMILIO PEÑA, JUDGE OF FIRST INSTANCE OF NUEVA ECIJA, TELESFORA TORRES AND BASILIO DE LEON, RESPONDENTS.*G.R. No. 43918. August 17, 1935*

Ponente: IMPERIAL, J.

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The herein petitioner filed with the committee on claims appointed, in the intestate of Pascual de Leon (special proceedings No. 6213 of the Court of First Instance of Nueva Ecija) a claim for P16,200 against the said intestate. The special administratrix, Arcadia Bajaeon, sister of the petitioner, did not question the claim, and so the respondents Basilio de Leon and Telesfora Torres, parties interested in the intestate, made a written objection to the claim and interposed at the same time a counterclaim against the petitioner for the sum of two thousand pesos (P2,000).

After various substitutions, Gaudencio Medina, Teofilo N. Gozon and Isidro Gonzales were appointed commissioners. They took cognizance of the claim, and after it was submitted, they filed separate reports in writing. Gaudencio Medina and Isidro Gonzales approved the claim, recommended the payment thereof, and denied the counterclaim; Teofilo N. Gozon disapproved the claim, but it does not appear what action he took on the counterclaim. The three reports were filed on different dates with the office of the clerk of court without notice thereof having been served by any of the commissioners upon the petitioner or upon the respondents. The clerk of court set a day for the approval of said reports and notified the parties thereof. Fifty-six (56) days after the filing of the last report and on the day of the hearing of the three reports, the respondents presented a motion excepting to the resolution approving the claim, appealing therefrom, and asking that their appeal be given due course and that the bond to be filed by them be fixed. On July 19, 1934, the court admitted the appeal and fixed the bond at P1,000. Some days thereafter, the petitioner asked that the resolution of the majority of the commissioners approving her claim be declared final and the payment thereof be ordered. Later she filed another petition praying that the court set aside its order of July 19, 1934, giving due course to the respondents' appeal. These two motions were denied.

The instant petition was filed by the petitioner to set aside the aforesaid order of July 19, 1934, and to have this court hold that the respondents' appeal has been abandoned and that the resolution approving her claim has become final and should be executed.

The petitioner contends that the appeal interposed by the respondents was out of time because it was announced after the expiration of the twenty-five-day period provided for in section 775 of the Code of Civil Procedure and, furthermore, because the respondents did not give her notice of their intention to appeal, in violation of Rule 17 of the Rules of Courts of First Instance. The respondents, in turn, alleged that the period to appeal did not commence to run because the commissioners did not notify them of the filing of their reports in the office of the clerk of court, in violation of section 694 of the Code of Civil Procedure. This section reads:

"SEC. 694. Committee to Notify Certain Claimants at the Time of Filing Report.—The committee shall give notice to claimants whose claims are disallowed to the amount of twenty dollars or more, of the time of filing their report in the clerk's office, which notice shall be given personally or by letter, addressed to such claimants, at their place of residence or post-office address, mailed, postage paid, on the day of filing such report."

Section 775 of the same Code provides:

"SEC. 775. Perfecting Appeal.—The appeal provided in the two preceding sections shall be perfected by filing with the clerk of the Court of First Instance that has jurisdiction of the estate, within twenty-five days after the committee's report is filed therein, a statement that the person so appealing is dissatisfied with the action of the committee in respect to the item or items complained of, and appeals therefrom to the court."

Following the said provisions, the appeal should be perfected within twenty-five days from the date of the filing of the commissioners' report, and it is the latter's duty to notify the claimant whose credit or claim is disallowed to the amount of P40 or more, of the time of filing their report, which notice shall be given personally or by letter mailed to his post-office address on the day of filing such report. We believe that the word "claimants" used in section 694 refers to the person who presents a claim as well as to the person who opposes the same and interposes a counterclaim, like the case of the herein respondents.

In the present case, the respondents were not notified by any of the commissioners of the filing of their reports either on the day of such filing or thereafter, from which it follows that the respondents' period to appeal under section 775 has not yet commenced to run. Upon the same ground and for the reason that the period to appeal has not yet commenced, likewise the period to bring an ordinary action and to file a complaint under section 776 of the Code of Civil Procedure has not yet commenced to run as to the petitioner who is the one called upon to bring such action as plaintiff. (Sec. 776, Code of Civil Procedure; 17, Rules of Courts of First Instance; *Serrano and Sivila vs. Chanco and Serrano*, 5 Phil., 431; *Zaragoza vs. Estate of Viademonte*, 10 Phil., 23; *Escuin vs. Escuin*, 11 Phil., 332; *In re Estate of Santos*, 18 Phil., 403; *Villamil vs. Cuadra*, 55 Phil., 67.)

In deciding the fundamental question raised herein, it is not important that the respondents failed to notify the petitioner of their appeal, in violation of Rule 17 of the Rules of Courts of First Instance, because, as above stated, the period to appeal from the resolution of the majority of the commissioners has not yet commenced to run, and, at any rate, the petitioner is already apprized of the appeal filed and admitted by the Court of First Instance.

In view of the foregoing, the remedy prayed for is denied and the appeal interposed by the respondents held to be properly admitted, and the petitioner may bring an ordinary action in accordance with law by filing a complaint in the Court of First Instance of Nueva Ecija within thirty days from notice of this decision, with the costs of these proceedings to the petitioner. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

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