

**IN RE INTESTATE OF THE DECEASED EUGENIO CASIMIRO.
SILVESTRE C. PASCUAL, ADMINISTRATOR AND APPELLANT, VS.
PETRA SANTOS ET AL., HEIRS AND APPELLEES.**

G.R. No. 44109. September 26, 1935

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is a petition presented in this court by the attorney for the heirs of the deceased Eugenio Casimiro which prays that the appeal interposed by the administrator-appellant be dismissed for the reasons (1) that the orders of the lower court dated February 2 and March 3, 1935, are interlocutory in nature and not appealable, and (2) that the notice of appeal was filed beyond the period fixed by law. Although a copy of the motion was served on opposing counsel no opposition thereto has been entered.

We have ascertained that the second ground of the motion is entirely devoid of merit. As to the first ground, something might be said in support of the proposition that since the basic decision of the trial court, affirmed by this court, has become final and executory, a subsidiary order of the trial court which merely has for its purpose the execution of the judgment of the appellate court is in nature interlocutory and non-appealable. We have preferred, however, to rest our judgment on a broader and more practical basis, namely, that the decree of this court operated as a termination of the controversy involved in an appeal settling the account of the administrator and accordingly the account should be stated and a settlement made in accordance therewith.

It appears from the record in the case of the intestate of the deceased Eugenio Casimiro, Silvestre C. Pascual, administrator and appellant, vs. Petra Santos, et al., oppositors and appellees, G. R. No. 40053, to paraphrase the language of counsel for the administrator, that on June 21, 1930, said administrator submitted to the Court of First Instance of Manila a statement of receipts and disbursements incurred in connection with the intestate estate of the deceased Eugenio Casimiro. The widow and the minor heirs entered opposition to the approval of the report. The court ordered that with the exception of the items disallowed the account be approved with a balance of P4,377.07. In a decision handed down in this court on March 28, 1934,¹ the order of the trial court was affirmed with the correction of a mathematical error and the account of the administrator was allowed with a cash balance of P4,465.15.

Subsequently the matter was brought before the court of origin which cited the administrator to appear before it on July 28, 1934, and to bring with him the amount of P4,465.15 or the certificate of a bank showing that the proper deposit has been made. Instead of doing so the administrator asked that many other expenses "inadvertently omitted from his statement submitted to the honorable court", be allowed and the previous order vacated. The petition was objected to by the heirs and the matter came on for hearing before the court. It was then disclosed that some of the expenses for which the administrator claimed reimbursement were incurred by him in defense of the approval of his statement of accounts, that other items were previously involved in the case which went on appeal to the Supreme Court, and that other items could gain no standing on account of a lack of proof to

substantiate them and on account of a lack of previous authorization of the court. As a result the court disallowed all the items set forth in the amended petition except the sum of P44.82 which was admitted by the oppositors. The administrator was given three days to deposit the balance of P4,420.33 with the clerk of the court or with a local bank to the credit of the estate. Thereafter the confiscation of the bond of the administrator furnished by the Philippine Guaranty Company was ordered.

The first thought which suggests itself relates to the point of whether or not the account filed by the administrator and which later gained the attention of "this court was a partial settlement or a final settlement. That it could not be taken to be a partial settlement is evident because in that case no appeal would lie in favor of the administrator to this court. On the other hand, one fact demonstrative of the finality of the account is that the bondsman of the administrator has been cited to make good for the principal. Being a decree settling the account of the administrator, as expressly provided by the Code of Civil Procedure, "the decision of the Supreme Court thereon shall be final" (Sec. 778).

If the decree is conclusive as to a final settlement of an account of an administrator it necessarily follows that the latter may not litigate the same questions or related or belated questions upon a second hearing. To permit an administrator to avail himself of such tactics would mean never ending controversy regarding the expenses of an estate and would place the heirs at the mercy of the administrator. If when an administrator loses on appeal he could thereafter attempt to rely on items, real or fancied, to offset the money due the estate, the heirs would be unable to enforce their rights against the administrator, for the reason that everytime he is required to comply with the order of the court, he could appeal from the said order and' thus frustrate the administration of justice. To our way of thinking that was not the purpose of the law. In the instant case, for example, the heirs of the deceased have had to defend two appeals against the very administrator of the estate who is supposed to represent their interests.

The administration of estates in the Philippines is carried on not by probate courts exclusively provided for the purpose, but by Courts of First Instance of general jurisdiction. With judges of first instance occupied with criminal and civil cases and shifted from one district to another, unscrupulous administrators and executors have it within their power, unless the judge is alert to the situation, to delay the final disposition of estates for years, in the meantime living off of the estate, at last to hand over a pitiful remnant of the property left by the deceased to his lawful heirs. The policy of the law should be to close an estate as promptly as possible and as economically as possible. It is with this paramount idea to the forefront that we are led to take the stand that the decision of this court, since relating to the final settlement of an administrator, had the force and effect of a judgment as between the parties thereto, which only needs to be enforced and not reopened in order that the estate may be closed. (See generally, *Lizarraga Hermanos vs. Abada* [1919], 40 Phil., 124; *Wilson vs. Rear* [1930], 55 Phil., 44; *Sulit vs. Santos* [1932], 56 Phil., 626; *Butterfield vs. Smith* [1880], 101 TJ. S., 570.)

Let an order issue dismissing the appeal interposed by the administrator and appellant in this case, with the costs taxed against him.

Villa-Real, Hull, Vickers, Butte, and Goddard, JJ., concur.

DISSENTING

ABAD SANTOS, J.,

This court isf I think, setting a bad precedent when, merely upon motion of the appellee, it dismisses an appeal on the grounds relied upon in the majority decision. After the allowance of an appeal, the same may be dismissed, according to the rules of .this court, only on the following grounds: (I) Failure to pay the docketing fees; (2)

failure to pay the estimated' cost of printing the record on appeal; and (3) failure to serve copies of the appellant's brief on the appellee or appellees. (Rules 14 [6], 16, and 24) It has also been held that an appeal may be dismissed (a) on the ground of lack of jurisdiction or (6) when, pending the appeal, the circumstances have changed to such an extent that the appeal involves merely a moot question. (*Velasco vs. Rosenberg*, 29 Phil, 212; *In the matter of the estate of Ceballos*, 12 Phil., 271; 2 R. C. L., 167, 169.) I can also conceive of a situation where the court might be justified to dismiss an appeal on the ground that it is frivolous.

In the absence of the grounds above enumerated and specified for the dismissal of an appeal, the appellant is entitled to have the appellate court give to the case that consideration which is necessary to its determination on the merits.

As stated in the majority opinion, the dismissal of the appeal in the present case is urged on two grounds: (1) that the orders of the lower court dated February 2 and March 3, 1935, are interlocutory in nature and not appealable, and (2) that the notice of appeal was filed beyond the period fixed by law. The majority opinion rejects the second ground for lack of merit, and proceeds to discuss the first as follows: As to the first ground, something might be said in support of the proposition that since the basic decision of the trial court, affirmed by this court, has become final and executory, a subsidiary order of the trial court which merely has for its purpose the execution of the judgment of the appellate court is in nature interlocutory and non-appealable. We have preferred, however, to rest our judgment on a broader and more practical basis, namely, that the decree of this court operated as a termination of the controversy involved in an appeal settling the account of the administrator and accordingly the account should be stated and a settlement made in accordance therewith."

It is thus clear that the motion to dismiss was granted not precisely on any of the grounds alleged in the motion, but on the theory that the matters involved in the appeal constituted *res adjudicata*. That this is a question that goes to the merit of the case and that the appeal is not frivolous is clearly shown by the dissenting opinion of Justice Recto, which is concurred in by the Chief Justice. In *Velasco vs. Rosenberg*, *supra*, this court held: "The grounds on which an appeal may be dismissed are well settled. They do not include matters which go to the merits of the cause or to the right of the plaintiff or defendant to recover. Nor do they involve the sufficiency of pleadings or defenses, or the kind or sufficiency of pleas made in the court below."

My conclusion, therefore, is that the motion to dismiss the appeal should be denied.

DISSENTING
IMPERIAL, J.,

As the judgment of this court is not based on lack of jurisdiction or violation of any rule, the ordinary grounds for the dismissal of a pending appeal, I believe that the judgment of dismissal should have been entered on the merits and after full consideration of the appeal interposed.

DISSENTING
RECTO, J.,

I disagree and shall state the grounds of my dissent:

In the Court of First Instance of Manila before which these proceedings are pending, the administrator of this intestate estate, on June 21, 1930, submitted a statement of receipts and disbursements of his administration. The court, after examining it and taking evidence relative to the legality of the controverted items, entered an order declaring the existence in favor of the estate of a balance in the sum of P4,377.07, which the administrator should

deposit with the clerk of court or in a local bank. On appeal, the order was affirmed by this court according to its decision rendered on March 28, 1934 (G. R. No. 40053), with only a correction of a mathematical error—P4,465.15 instead of P4,377.07.

After the record had been remanded to the lower court and after some proceedings which have no bearing on this case, the court, in an order dated July 9, 1934, cited the administrator to appear before it and to bring with him the P4,465.15, or the certificate to the effect that said sum had been deposited in a bank. Far from complying with the order, the administrator filed a petition praying to be relieved from compliance therewith alleging that in view of the expenses incurred by his administration, and others inadvertently omitted in his former account, the intestate estate was still indebted to him. The court entered an order overruling this claim of the administrator and directed him to deposit within three days the sum of P4,420.33 with the court or in a bank. The administrator appealed from this order and after the record had been forwarded to this court, the appellees filed a motion to dismiss the appeal on the ground that notice thereof was filed beyond the period fixed by law, and the appealed order, being interlocutory, was not appealable.

A majority of the members of this court is of the opinion that the appellees' petition should be granted, ordering the dismissal of this appeal. Its resolution to that effect is based, not upon the allegations of the petition, but upon a fact the existence of which is in no way disclosed either by the record of this appeal or by that of G. R. No. 40053, which is that the administrator's account dated June 21, 1930, which was the subject matter of the former appeal, was final.

On this point I am constrained to state that not only was there nothing in said account to indicate that it was final but also that the court, in its order dated December 28, 1932 (page 25, Bill of Exceptions in G. R. No. 40053), declaring in connection with the account in question that there was a balance of P4,377.07 in favor of the intestate estate, stated that said account covered the period from June 30, 1928, to June 2, 1930. In its decision dated March 28, 1934 (G. R. No. 40053), this court, affirming the order in question, made no pronouncement, either direct or indirect, that said account was final. It was not nor could it be final, because from the time it was filed in court on June 21, 1930, up to the present time the administration of this intestate estate has been open and is still pending settlement, there being nothing of record to warrant a statement to the contrary. During that period, the intestate estate had to incur expenses of administration, some legitimate, others unwarranted.

Inasmuch as the administration is not yet closed and the estate still remains unsettled, a final account is out of the question. Until this is done there can be only partial accounts. The law provides that "every executor or administrator * * * shall render further accounts of his administration as may be required by the court until the estate is wholly settled", (Section 672 of the Code of Civil Procedure.)

The lower court's order, the appeal from which is dismissed by the resolution of the majority, contains the following paragraphs, to wit:

"The amount of P20 paid as premium for appeal bond; the sum of \$300 paid to the writing expert, Mr. J. I. del Rosario; P13 paid for the transcription of stenographic notes; P65.25 paid for the fees and printing of the bill of exceptions; P200 paid to Atty. T. Lara; P0.44 paid to sheriff, are not chargeable against the estate. The expenses were incurred by the administrator in the defense of the approval of the statement of accounts filed by him on June 19, 1930. The estate cannot be held responsible because those expenses are personal to the administrator. The objection to the allowance of these expenses is sustained.

"With respect to the sum of P1,068.14 (involved in Exhibit 2 of the case) and of the amount of P1,150.55 (involved in Exhibit 6 of the case), the court finds that these amounts have already been included in the final statement of accounts filed on June 19, 1930, and, hence, these items are hereby disapproved. These amounts were already disallowed by this court in its order of December 28, 1932, and affirmed by the Supreme Court in

its decision of March 28, 1934.

"Likewise the amounts of P6 paid' to the commissioners on claims and appraisal; ^80 paid to forest charges; P30 paid for the publication of notices in El Debate; P72 paid as rentals on lot occupied by two houses; P21.60 paid for electric bills, are disapproved. There is no proof showing that these expenses were in fact paid by the administrator." (Page 14, Expediente de apelacion [not printed] in G. R. No. 44109.)

As may be noted, with the exception of two items, one amounting to P1,068.14 and the other to P1,150.55, concerning which a final pronouncement had' already been made in the former appeal (G. R. No. 40053), according to the court, the other items have been disallowed because, in the opinion of the court, some represent expenses which are not chargeable to the intestate estate and for which the "administrator should be personally liable, and as regards the others, there is no evidence that the expenses referred to therein were actually paid by him.

Upon appeal from this order, there is no doubt but that the question whether or not the grounds thereof are in accordance with the true merits of the case, or, otherwise constitute a reversible error, is ipso facto raised before this court, it being obvious that the couit cannot arrive at any just conclusion on this point without trying the appeal on its merits by means of a complete examination of the record. If this case could be summarily decided on its merits, upon a simple motion, there is no reason why the same procedure should not be followed', dispensing with brief and arguments, in all cases appealed to this court.

An appeal may be dismissed only for want of jurisdiction of the appellate court, or failure to observe the law or rules relating to the form or manner of making the appeal, or when the questions raised by the appeal are abstract, hypothetical or frivolous, because the controversy between the parties, for one reason or another, has ceased to exist.

"Want of jurisdiction and irregularity of the writ are the only grounds for dismissal. (Hecker vs. Fowler, 1 Black, 95; Sparrow vs. Strong, 3 Wall., 97.)

"As appellate courts do not sit to give opinions on moot questions or abstract propositions, the appeal or writ of error will be dismissed where no actual controversy exists between the parties at the time of the hearing, * * * (4 C. J., 575, citing hundreds of cases.)

In the resolution of the majority, it is claimed that this appeal not only lacks merit but it was interposed for the purpose of delaying the settlement of the intestate estate. It is doubtful whether such view can be so held without trying the appeal on its merits, but, granting that it is true, it is not a ground for dismissing the appeal.

"Want of merit in an appeal is not a ground for dismissing it." (4 C. J., 565, citing Fogg vs. Perris Irr. Dist., 58 Pac, 907.)

"This court cannot dismiss a case, on motion, simply on the ground that it has been brought here for delay only." (Amory vs. Amory, 91 U. S., 356.)

The majority opinion is obviously a deviation from the ruling laid down in the case of Velasco vs. Rosenberg (29 Phil., 212), wherein this court, stating the grounds on which an appeal may be dismissed, correctly said:

"The motion is to dismiss on the ground that one of the judgments having been fully executed, the appeal from the other can have no force or effect whichever way the appeal may be decided by this court. The argument, therefore, is that where an appeal can have no result which is effective with regard to the subject matter involved, it is idle and useless and should be dismissed.

"We are not inclined to take this view of the matter. The grounds on which an appeal may be dismissed are well settled. They do not include matters which go to the merits of the cause or to the right of the plaintiff or

defendant to recover. Nor do they involve the sufficiency of pleadings or defenses, or the kind or sufficiency of pleas made in the court below. Motions to dismiss appeals are based on lack of jurisdiction of the appellate tribunal or failure to observe the law or rules relating to appeals or for causes arising subsequent to the judgment from which the appeal is taken. If, when the case arrives in this court, there is no actual controversy, the appeal will be dismissed on motion. It is not within the province of the appellate court, for example, to decide abstract or hypothetical questions distinct from the granting of actual relief or from the determination of which no practical result can follow. Nor will an appellate court consider a fictitious case submitted merely for the purpose of testing the right to do a particular thing. Therefore, if, pending an appeal, an event occurs which renders it impossible for the appellate court to grant any relief, the appeal will be dismissed no matter whether such condition arise from the act of the appellant or from the act of the appellee; and the result will be the same if the same condition arise from an act of the court a quo, as where, pending appeal, some order or judgment issued in the case renders the determination of the questions presented by the appeal unnecessary. Such a condition may arise also by act of the law or by mere lapse of time, as where, pending an appeal from an order of the court in a case involving an infringement of a patent, the acts or tenure of a public or election officer, or other matter, the patent expires, the official term comes to an end, the election is held, or an order of the court is executed. Similarly where a litigation has ceased to be between parties having an adverse interest, the appeal will be dismissed; and where all substantial interest in the controversy has been parted with or extinguished, the court will not hear the appeal simply to determine the right to costs."

I agree with the majority that it is in the interest of justice that the estate be settled as promptly as possible and the rights of the heirs and other parties interested therein should not be left at the mercy of the dilatory tactics of a rapacious and unscrupulous administrator or executor. However, it should be borne in mind that the zeal and diligence of the courts in this respect should be exercised and displayed in accordance with the legal standards, recognizing everybody's right to make use of all means afforded him by the laws, because it is secured by the constitutional guarantee of "due process" and because the end does not justify the means and the goodness and excellence of purpose in themselves alone do not always justify the employment by the courts of ways and means which must first have the sanction of the legislative branch of the government. To leave the determination of controversies entirely to the presumed uprightness and wisdom of a court or judge, ignoring the legal provisions, is equivalent to allowing the stability of governments and their institutions to depend upon aleatory events. Let it not be said that in this case the letter of the law is one thing and the spirit another thing. When, as in this case, the letter of the law is clear, to seek its spirit elsewhere is simply to venture vainly, to no practical purpose, upon the boundless domains of speculations.

Of course, it may happen that this appeal, if it is ever tried on its merits, may prove to be frivolous and dilatory in its purpose, and the delay resulting therefrom might have actually prejudiced the appellee; but if such is the case, the court may effectively apply the sanctions adequately provided by law against appellants in bad faith. Furthermore, the administrator's bond and the appeal bond, in my opinion, constitute sufficient guarantees against the damages that may be caused to one of the parties by reason of a frivolously interposed appeal.

For the foregoing considerations, I am of the opinion that the appeal should take its course and the petition for its dismissal should be denied.

AVANCEÑA, C.J.,

I concur in this dissenting opinion of Justice Recto.

Appeal dismissed.

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