

**TESTATE ESTATE OF THE DECEASED JOSE LASERNA PARO Y TUPAZ.
ARISTONA LASERNA, HEIR AND APPELLANT, VS. JOSE ALTAVAS,
CREDITOR AND APPELLEE.***G.R. No. 45793. October 09, 1939*

Ponente: LAUREL, J.

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In civil case No. 2961, Court of First Instance of Capiz, Jose Altavas, appellee in the proceedings now before us, instituted an action against Jose Laserna Paro y Tupaz to recover the sum of P4,500 as attorney's fees. The Court of First Instance of Capiz rendered judgment in favor of Altavas. From this judgment the defendant Jose Laserna Paro y Tupaz appealed to this Court (G. R. No. 40038). During the pendency of the appeal but after the filing by the appellant of the corresponding brief, Jose Laserna Paro y Tupaz died, leaving a will which was probated in civil case No. 3109, same Court of First Instance of Capiz; in which the order appealed from and to be presently referred to was issued by the lower court. The Supreme Court was notified by the defendant-appellant's attorney in G. R. No. 40038 of the death of said defendant-appellant and, upon motion of said attorney, the deceased defendant-appellant was substituted by Aristona Laserna who was duly appointed by the court as executrix and administratrix of the estate of the late Jose Laserna Paro y Tupaz in the aforesaid testamentary proceedings No. 3109 of the Court of First Instance of Capiz. On March 20, 1934 the Supreme Court rendered its decision affirming the judgment of the lower court with costs in both instances against the appellant. Upon the return of the record to the lower court, it appears that Jose Altavas filed a motion praying that the administratrix be ordered to pay the sum adjudicated to him by the lower court and confirmed by the Supreme Court. The lower court, on July 8, 1934, granted the motion and issued an order giving Aristona Laserna, administratrix of the estate of the late Jose Laserna y Tupaz, thirty days within which to effect payment of the sum of P4,500 and the costs amounting to P127.38. As the administratrix failed to effectuate the payment ordered within the time fixed, an order of execution was issued against the property of Jose Laserna Paro y Tupaz, and the sheriff, in compliance therewith, sold the properties under administration which appear to have been previously attached by the claimant Altavas upon the original institution of the action brought by the latter for the recovery of the attorney's fees hereinabove mentioned. Subsequently, however, and for reasons that do not clearly appear from the record, Altavas himself moved for the suspension of the sale by the sheriff and, without any opposition on the part of the administratrix, the sale was set aside.

Such was the status of the case with reference to the adjudicated claim of Jose Altavas when, subsequently, he filed in the present proceedings a motion praying that the administratrix be ordered to pay the sum of P4,500 and, in case of failure, that the said administratrix be ordered to sell the property under administration and to apply the proceeds thereof to the payment of the sum adjudged in his favor. It is in pursuance of this motion that the lower court, on December 31, 1935, issued the following order which is the subject of appeal in these proceedings:

"In view of the foregoing, the Court hereby orders the administratrix Aristona Laserna to pay Jose Altavas within ten (10) days after receipt of this order, the sum of P4,500, adjudged to him by virtue of the decision of

the Supreme Court dated March 20, 1934, in civil case No. 2961, plus costs amounting to P127.38.

"The administratrix is further ordered that, in case she does not have sufficient funds, she submit within ten days to this Court a petition to sell at public auction, with all the formalities and requisites prescribed by law, all the property belonging to the deceased or such part of the same as may be sufficient to cover the sums due Jose Altavas. The Administratrix is hereby warned that in case she fails to comply with this order, the Court will take disciplinary measures against her."

The appellant Aristona Laserna assigns four errors in her brief the most important of which is that raised in the third assignment which is as follows:

"That the trial court erred in not holding that the claim of appellee, Jose Altavas, was definitely barred by the statute of nonclaim."

In contending that the claim of Jose Altavas is barred because of the latter's failure to present it before the committee on claims and appraisal, the appellant relies on the cases of *Fidelity & Surety Co. vs. Green et al.*, G. R. No. 43086, promulgated November 29, 1935; *Pabico vs. Jaranilla et al.*, 60 Phil., 247; as well as on the provisions of the Code of Civil Procedure, sections 119, 700, 703, 706, the latter as amended by Act No. 4229. The appellee, on the other hand, predicates his contention on the cases of *Guioc-Co vs. Del Rosario*, 7 Phil., 126; *Azarraga vs. Cortes et al.*, 9 Phil., 698; *Masecampo vs. Masecampo*, 11 Phil., 1. Without attempting to make any comparison between the cases relied upon by the parties in this appeal, a task which we deem unnecessary to undertake at this juncture, we are of the opinion and so hold that, upon the facts and circumstances of the present case, the claim of Jose Altavas, although it did not survive the deceased, need not have to be presented before the committee on claims and appraisal principally because that claim is already an adjudicated claim by final pronouncement by this Court in G. R. No. 40038. To countenance appellant's theory would be to convert a claim duly passed upon and determined not only by the Court of First Instance but by this Court into a contested claim, once again, in the language of the trial court, "giving the committee on claims more power than the courts of justice" and "obliging a creditor whose claim had already been passed upon by the Court to submit himself to the committee on claims and to pass over again through the endless process of presenting his evidence which he had already done." It does not appear that the claim of appellee has been satisfied. Neither is it possible that the decision in favor of appellee has lapsed by the expiration of the; five-year period. On the contrary; the situation is obviously the contrary. It also appears that the substitution of the defendant in civil case No. 2961, for the recovery of attorney's fees, was effected at the instance of the defendant and appellant herein, Aristona Laserna. She had an opportunity to contest that claim, and when her contention was overruled she did not impugn the jurisdiction of the Supreme Court. Neither does it appear that during the pendency of the appeal in the Supreme Court she moved for the abatement or suspension of the proceedings because of the provisions of sections 119, 700 and 703 of the Code of Civil Procedure. Under the circumstances it is unjust to defeat the claim of the appellee and to hold that it has been barred by the statute of nonclaim.

As a decision in one case is not necessarily an authority upon which to base the decision in another case, unless the entire factual bases are similar in principle, and as the facts of the present case are distinguishable from the cases adjudicated by this Court and relied upon by the appellant, our conclusion is that the order appealed from must be, as the same is hereby, affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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