

**IN THE MATTER OF THE INTESTATE ESTATE OF THE DECEASED
FILOMENO NERY VELEZ. CASIMIRO TAMPARONG, CLAIMANT AND
APPELLANT, VS. ROQUE V. NERY, ADMINISTRATOR AND APPELLEE.***G.R. No. 46345. December 16, 1938*

Ponente: DIAZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-46345/>**DIAZ, J.:**

The question raised and to be decided in the appeal taken by Casimiro Tamparong from the orders of the lower court dated July 7 and October 27, 1936, both of which were issued in civil case No. 4152 of the Court of First Instance of Oriental Misamis entitled "In the Intestate estate of the deceased Filomeno Nery Velez; Macaria V. de Nery, applicant, Casimiro Tamparong, claimant; and Roque V. Nery, administrator" (G. R. No. 46345), is whether or not the lower court erred in rejecting the claim of appellant (Casimiro Tamparong) for the payment by said administrator of the sum of P6,045 which, the former alleges, is the amount of two loans which the deceased Filomeno Nery Velez had, during his lifetime, obtained from him. The first order rejected the claim on the ground that it was filed too late, while the second denied the motion for reconsideration which appellant filed in accordance with the provisions of section 113 of the Code of Civil Procedure on August 19, 1936 and affirmed the prior order in all respects.

Filomeno Nery Velez died on September 3, 1931. On March 26, 1932 intestate proceedings were commenced. The Court of First Instance of Oriental Misamis appointed Roque V. Nery administrator and two commissioners to appraise the property left by the deceased and to decide on the claims which might be filed against the estate. Subsequently appellant filed his claims for the first time, consisting of one for P4,000 and another for P2,225, the latter being the amount of P2,045 appearing in the promissory note which the deceased had executed in his lifetime on March 24, 1931 (Exhibit B) plus other minor amounts. The first claim is based on a document which is alleged to be a mortgage (Exhibit A). Acting upon said claims of appellant, the committee on claims and appraisal approved the same on November 12, 1932 and on March 11, 1933. Not satisfied with the resolution of the committee, the administrator appealed therefrom on March 22. Instead of renewing his action by filing the corresponding claim in accordance with the provisions of sections 775 and 776 of Act No 190, appellant asked, on May 23, 1933, or two months after the administrator brought his appeal, that the latter be ordered to pay him his claim of P2,225. On June 30, of said year, appellant filed a motion of which he sent a copy to the administrator and appellee, stating that he abandoned his claim of P4,000 in order to prosecute his credit of P2,225 alone inasmuch as he had brought action in a separate case for the payment of his mortgage credit of P4,000. Plaintiff and appellant referred to the complaint filed on May 23, 1933 in case No. 4231 of the Court of First Instance of Oriental Misamis entitled "Casimiro Tamparong, plaintiff, vs. Intestate estate of the deceased Filomeno Nery Velez, defendant." Said case was then the second one brought by appellant to recover his aforementioned credit of P4,000 from the judicial administrator of the intestate estate of the late Filomeno Nery Velez. The first action commenced by him was that which bore No. 200 and the same was decided adversely to the plaintiff early in 1933 for the reason that it was premature. Thereafter he commenced the second case, that is to say, the one

bearing No. 4231. He filed his complaint in said case on May 23, 1933, not only months but years before submitting anew in the intestate estate of Filomeno Nery Velez, civil case No. 4152, his amended claim of July 7, 1936 in which he again demanded payment of his mortgage credit of P4,000 plus his mortgage credit of P2,225. It is clear, therefore, that what appellant has done was to commence one case after another for the purpose of collecting the same credits. When he reproduced his claim for the last time in the aforementioned intestate proceedings in order to recover said credits, cases Nos. 4200 and 4231 had long before been decided against him, and it must be observed that he did not take any appeal from the judgments rendered against him therein. If the first decision did not dispose of his claim upon its merits, the second one did so and adversely to him. And this may be the reason why he thought of having another recourse to the intestate proceedings so as to reproduce his claim which could not prosper in the aforesaid cases. The law does not countenance such a practice. When a creditor who has a simple or mortgage credit against a deceased person, elects to file his claim for the collection of said credit in the intestate or testamentary proceedings of the deceased or to enforce the same by ordinary action in a separate case, he cannot commence another action for the same purpose after the first action brought by him has been decided one way or the other, because such a procedure is not allowed by section 708 of Act No. 190. The provisions of this section permit him to make use of one of said remedies to collect his credit, but not of both at the same time. If he chooses one, he must desist from bringing the other; and if he loses in one, he loses in both. (*Osorio vs. San Agustin*, 25 Phil., 404; *Veloso vs. Heredia*, 33 Phil., 306.)

There is, however, another matter that deserves attention. When the committee on claims and appraisal approved appellant's credits, one for P4,000 and another for P2,225, for the second time on September 2, 1935, December 3, 1935 and December 16, 1935, and the administrator appealed from the resolutions of said committee on January 30, 1936, of which appeal appellant had timely notice on February 1, 1936, on which said dates Act No. 4229 which amends section 776 of Act No. 190 was in full force for the reason that it took effect on August 12, 1935, appellant did not take any step nor reproduced his claim as required by section 776 aforesaid, but did so only on July 7, 1936 or after the lapse of five months and six days, when the period granted by law for this purpose was no more than thirty days. Therefore, whether the question be considered from the point of view above stated, that is to say, whether appellant could proceed in the way he did, commencing one suit after another for the prosecution of his two claims; or from the second standpoint which is that of whether or not he filed his last claim within the time prescribed by law, the conclusion which may be reached is that his appeal should not and cannot prosper. In other words, the orders appealed from are well-founded.

Wherefore, said orders are hereby affirmed in all respects, with costs against the appellant. So ordered.

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

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.