

**IN THE MATTER OF THE ESTATE OF GEORGE M. ICARD, DECEASED.
JOSEPH K. ICARD, PLAINTIFF AND APPELLEE, VS. CLARO MASIGAN,
AS SPECIAL ADMINISTRATOR OF THE ESTATE OF GEORGE M.
ICARD; ...**

G. R. No. 47442. April 08, 1941

Ponente: MORAN, J.

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MORAN, J.:

For services rendered in connection with the development and location of certain mining claims, Joseph K. Icard filed a claim of P2,000 against the estate of his deceased father, George M. Icard. The claim having been allowed by the commissioners on claims, the administrator appealed to the Court of First Instance, where it was likewise allowed. The administrator's appeal to this Court rests mainly on the theory that the probate court erred in allowing the claimant to testify to the services rendered by him in favour of his father, because the action being one against the administrator of a deceased person, plaintiff cannot be allowed to testify as to any matter of fact which occurred before the death of such deceased person, under section 383, paragraph 7, of Act No. 190, now Rule 123, section 26, paragraph (c), of the Rules of Court.

It is undisputed that the Antamok Central Group of mining claims, situated in the subprovince of Benguet, were originally owned in common by Fred M. Harden, the deceased George M. Icard, and plaintiff-appellee Joseph K. Icard. These mining claims were later sold to the Big Wedge Mining Company, the deed of sale having been executed jointly by the common owners, Fred M. Harden, George M. Icard, and Joseph K. Icard, the latter represented by his attorney-in-fact, George M. Icard. A dispute having arisen as to the price still due under the contract of sale, the Big Wedge Mining Company filed in the Court of First Instance of Manila an action for rescission (Civil Case No. 48186) against the vendors, Fred M. Harden, George M. Icard, and Joseph K. Icard, the latter in his personal capacity and as executor of the deceased George M. Icard. The case was, however, settled between the parties, and a compromise agreement was duly approved by the court. Pursuant to the compromise, an order was issued decreeing that the sum of P39,478.16 be paid to Joseph K. Icard in full settlement of his personal interest and that of said George M. Icard in the Antamok Central Group of mining claims. The order directed that said amount be divided between Joseph K. Icard and the estate of the deceased George M. Icard in the manner and proportion to be determined by the probate court.

It is thus clear that Joseph K. Icard had an interest in the mining claims aforementioned, as evidenced by the deed of sale executed in favor of the Big Wedge Mining Company and the compromise agreement approved by the court in civil case No. 48186 of the Court of First Instance of Manila. The amount of this interest being undetermined, Joseph K. Icard may, if he wishes to, properly claim one-half of P39,478.16, under the legal provision that "

Section 383, par. 7, of the Code of Civil Procedure, which is now Rule 123, section 26, paragraph (c), of the Rules of Court, is designed to close the lips of the party plaintiff when death has closed the lips of the party defendant,

in order to remove from the surviving party the temptation to falsehood and the possibility of fictitious claims against the deceased. Where, as in the instant case, the purpose of the oral testimony is to prove a lesser claim than what might be warranted by clear written evidence, to avoid prejudice to the estate of the deceased, the law has certainly no reason for its application. *Ratione cessante, cessat ipsa lex.*

Judgment is affirmed, with costs against appellants.

Imperial, Diaz, Laurel, and Horrilleno, JJ., concur.

Avancena, C. J., did not take part. Judgment affirmed.

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