

**SEVERINO VILLARRUZ, ADMINISTRATOR OF THE ESTATE OF
GREGORIO VILLARRUZ, DECEASED, PLAINTIFF AND APPELLEE, VS.
ISIDRO AZARRAGA, GUARDIAN OF THE MINORS MARIA FELISA AND
JESUS BELLO...**

G.R. No. 4913. January 27, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

Gregorio Villarruz had two sons; one, Severino Villarruz, the plaintiff in this action; the other, Ignacio Bellosillo. The first was a legitimate son. It is claimed in this case that the other was illegitimate. Whether he was or not we do not now decide.

For several years prior to the year 1900 said Gregorio Villarruz and said Ignacio Bellosillo had sustained business relations with each other. Ignacio seems to have had entire charge of the business of Gregorio during that period. In the year 1900 Ignacio, being in failing health, found it necessary to go to Manila to be cured of his infirmity. Just prior to his departure he went carefully over the book of accounts which he kept showing the relations between himself and his father and found a balance due from him to his father of P10,102. This balance he duly entered in the book as a part of the account between himself and his father, placed the book in his safe with some other papers and delivered the key thereof to his father. At the time of delivering the key to his father he told him of the fact that he had balanced the books between them and that there was a balance in favor of the father of said amount. He also acknowledged to his father that he owed him that amount and that he would find the evidence thereof in his safe.

Ignacio went to Manila and there died on the 3d day of November, 1900. On arriving in Manila Ignacio deposited in the Banco Espanol-Filipino the sum of P22,870, most of which was still on deposit in said bank at the time he died. Ignacio left surviving him his wife Filomena and two minor children, Felisa Bellosillo and Jesus Bellosillo, his only heirs at law. During the month of April or May, 1901, the defendant, Isidro Azarraga, was appointed guardian of said children. Immediately after his appointment as such guardian the defendant withdrew from the said bank substantially all of the money there on deposit. So far as can be ascertained from the record in this case said money so deposited, if it were the money of Ignacio, constituted all of his estate. The claim of Gregorio for the said balance seems to have been the only debt outstanding against Ignacio when he died.

Gregorio Villarruz died in Capiz on the 31st day of July, 1905. During his lifetime he made no effort to collect the amount due him from Ignacio. Soon after his death the plaintiff was appointed his administrator and duly qualified as such. This action is brought by the plaintiff as administrator of his father's estate to recover from the defendant as guardian the sum due from the estate of Ignacio Bellosillo to the estate of Gregorio Villarruz, basing that right of action upon the claim that the defendant as guardian took possession of the estate of the deceased Ignacio, converting the same to his use as such guardian and that thereby he became responsible for the debts of the said Ignacio Bellosillo.

Judgment was rendered in favor of the plaintiff in the court below for the sum of P10,102, with interest thereon from the commencement of the action. From that judgment this appeal is taken.

We have carefully examined the fourteen assignments of error on the part of the appellant's counsel and passed adversely upon them all. We find it necessary to refer specifically to only the following ones, the others being reviewed by implication. The first is an objection to the jurisdiction of the court on account of the lack of personality of the plaintiff, accompanied with the allegations that the facts stated in the complaint are insufficient to sustain a cause of action and that the complaint is unintelligible and vague. There is no question about the right of an administrator to begin an action for the purpose of recovering a debt due the estate. That is expressly granted by section 702 of the Code of Civil Procedure. The complaint states facts sufficient to constitute a cause of action, clearly and definitely.

In the second error assigned the defendant's counsel maintains that the court below had no jurisdiction over the subject-matter of the litigation, alleging that actions against executors, administrators, and guardians, touching the performance of their official duties, and actions for account and settlement by them, and actions for the distribution of the estates of deceased persons among the heirs and distributees, and actions for the payment of legacies, shall be brought in the province in which the will was admitted to probate or letters of administration were granted or the guardian was appointed. The action at bar is not one which falls within the terms or the meaning of said section. The action was properly brought in the Court of First Instance of Capiz.

As to the eleventh error assigned by the appellant, namely, that the right to maintain the action had prescribed before its commencement, it is necessary only to refer to section 38 of the Code of Civil Procedure. It has been held by this court that the rule of prescription to be applied where the right of action arose before the present code went into effect is that stated in the Civil Code or in the laws in force prior to the Civil Code. (Araneta vs. Garrido, 5 Phil. Rep., 137; Magallanes vs. Caneta, 7 Phil. Rep., 161; Tubucon vs. Dalisay, 7 Phil. Rep., 183; Palacio vs. Sudario, 7 Phil. Rep., 275; Fianza vs. Reavis, 7 Phil. Rep., 610; Civil Code, arts. 1941, 1964.) These references clearly affirm the right of the plaintiff to maintain the action notwithstanding the claim that it has prescribed.

The evidence supporting the statement of facts above set forth is substantially undisputed. It is substantially undisputed that Ignacio Bellosillo prepared the account book between himself and his father and left that book in the possession of his father in order that he might know the condition of the account between them. It is substantially undisputed that that book showed a balance of P10,102 in favor of the father and against Ignacio. It is undisputed that Ignacio told his father in the presence of three other persons that he, Ignacio, owed his father the sum of P10,102, the sum indicated in the account book. The existence of the account book was clearly proved, and the handwriting therein showing the status of the account between the father and Ignacio was clearly shown to be the handwriting of Ignacio. It is clearly proved that said book was left by the father in the possession of the wife of Ignacio and that it was never seen by the father thereafter. It is undisputed that the plaintiff sought after the commencement of this action to obtain possession of such book for the purpose of producing it in evidence and that he was unable to do so. It is admitted in the record that a subpoena for its production was secured and served upon the defendant and that the defendant failed and neglected to produce such book for evidentiary purposes. Its contents were proved by several reputable and disinterested witnesses. Letters from Ignacio to his father disclosing substantially the same condition of the account as indicated by the account book itself were identified and proved and were admitted in evidence. There was substantially no evidence disproving any of the facts above stated except the very improbable story of some of defendant's witnesses, who alleged that said account book had been fabricated and made up for the occasion by Gregorio Villarruz and that early one morning, during the absence of Filomena at church, said Gregorio Villarruz surreptitiously entered her house and by

connivance with her servants placed the said book in the safe where it was later found. The court below for apparent reasons rejected this story as untrue and passed upon the credibility of the witnesses presenting it.

The evidence of record abundantly justifies the decision of the court below.

The judgment of the court below is, therefore, affirmed, with costs against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Elliott, JJ., concur.

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