

**FELICIANA DARIANO, ADMINISTRATRIX DE BONIS NON OF THE
PROPERTY OF THE DECEASED DON FRANCISCO DE P. DE LA ROSA,
AND EUGENIO FERNANDEZ, TUTOR OF THE MINOR HEIRS OF THE
SAID DECEAS...**

G.R. No. 4918. August 26, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the Province of Pampanga on or about the 3d day of December, 1906, by the plaintiffs against the defendant for the purpose of having declared null and void a certain account allowed by the commission which was appointed for the purpose of considering claims against the estate of the deceased De la Rosa. The account allowed amounted to P17,234.27. The claim of the defendant was based upon two grounds:

First. That the said commission had no authority nor jurisdiction to consider a claim made by the plaintiff against the estate of De la Rosa; and

Second. By reason of fraud in the allowance of said claim.

From an examination of the record the following facts seem to be clearly established:

First. That in the early months of the year 1900, the deceased De la Rosa and the defendant entered into an arrangement by which they purchased and were to operate two cascoes, numbered respectively 1515 and 2089. The agreement also provided for a division of the profits resulting from the management of these cascoes. (See *Fernandez vs. De la Rosa*, 1 Phil. Rep., 671.)

Second. Some question arose as to the relation which existed between the deceased, De la Rosa, and the said Fernandez, concerning the right of the latter to participate in the profits resulting from the management of the said cascoes. This question was presented to the courts and was finally decided by the Supreme Court upon the 2d day of February, 1903. The Supreme Court held:

"* * * That a partnership was formed between the parties (De la Rosa and Fernandez) in January, 1900, the existence of which the defendant (De la Rosa) is bound to recognize; that cascoes Nos. 1515 and 2089 constitute partnership property, and that the plaintiff (Fernandez) is entitled to an accounting of the defendant's administration of such property, and of the profits derived therefrom." (*Fernandez vs. De la Rosa*, 1 Phil. Rep., 671, 678.)

The Supreme Court ordered the case returned to the lower court for an execution of the judgment. The Supreme Court expressly declared that its decision did not involve an adjudication as to any disputed items of the partnership account, evidently intending to leave all disputed items of the partnership account to be settled in the further investigation of the cause by the lower court.

Third. After the said decision of the Supreme Court and on the 15th of April, 1903, De la Rosa died and one Carmelino Punsalan was appointed administrator of his estate.

Fourth. In accordance with the provisions of section 669 of the Code of Procedure in Civil Actions a committee was appointed for the purpose of hearing and allowing claims against the estate of the deceased De la Rosa. The exact date of the appointment of this committee does not appear.

Fifth. Later (the exact date not appearing) Fernandez Fidalgo, without waiting for a settlement of the partnership account, dismissed his original action, which had been returned to the lower court for an accounting of said partnership, and presented his claim against De la Rosa relating to said partnership to the said committee. The claim presented by Fernandez, showing the amount to which he was entitled as a result of the management of the said cascoes, amounted to P17,234.27. This claim was allowed by the committee. Later the said administrator, Carmelino Punsalan, resigned, which resignation was accepted June 30, 1906, and the plaintiffs herein were then appointed administratrix of the estate and tutor of the minor children of the said De la Rosa, deceased, and on the 3d day of December of the same year this present action was brought.

Sixth. It appears that at the time the said Fernandez Fidalgo presented his claim before the said committee, the then administrator, Punsalan, refused to present any proof whatever for the purpose of refuting the claim made by Fernandez, and in this the present plaintiffs now claim he acted in collusion with the said Fernandez and allowed a fraud to be perpetrated against the said estate, which this action was brought to set aside.

From the evidence adduced during the trial of the cause, it also appears that each of the cascoes from the very beginning required a great many repairs, and that by reason of their rotten and decayed condition they could be used but a small portion of the time. It appears also that long before any action was brought for the purpose of settling the partnership accounts between Fernandez and De la Rosa, each of the two cascoes was practically out of commission and had been for months. The claim of the plaintiff (Fernandez) was based upon the profits resulting from the management of the cascoes, assuming that they were in daily use from the commencement of the partnership until the action was commenced, and without taking into consideration at all the fact that great expense said cascoes. The books of De la Rosa were evidently in the possession of Punsalan. These books, if they had been presented, would, no doubt, have shown the real condition of the business resulting from the management of the said cascoes. They were not presented.

It is not necessary to decide whether the first administrator (Punsalan) was in collusion with Fernandez in the presentation and allowance of his claim against the estate. It is sufficient to decide that the claim presented by Fernandez had not been sufficiently proven and that fraud had been perpetrated against the estate of the deceased De la Rosa.

The lower court also held that the said commission had no authority to consider the said claim of Fernandez. Upon this question the lower court said:

"It is the opinion of the court that the commission had no jurisdiction whatever to hear the claim. After the death of Francisco de la Rosa, Jose Fernandez Fidalgo was only entitled to demand an accounting of the management of the cascoes. He might have applied to the court to compel the administrator to render said accounts. The court would have compelled the latter to render them, and would even have removed him from office had he failed to fulfill the order of the court. Once the accounts were rendered, had they shown a balance against the estate and in favor of Jose Fernandez, the court would have compelled the administrator to pay the said balance and charged the amount of the same as administration expenses. An action brought to recover the outstanding balance after a liquidation made subsequent to the death of the deceased is not an action originating during his lifetime, and actions which arise after the death of a person can not properly be presented to such commission. (Philippine Trading Co. vs. Crossfield, 5 Phil. Rep., 400.) Therefore the court considers that the

decision of the commission whereby the estate of De la Rosa is ordered to pay to Jose Fernandez Fidalgo the sum of P17,234.27 is null and void."

The lower court, after a full consideration of all of the facts, declared null and void the resolution of the committee in respect of the claim of Jose Fernandez against the estate of De la Rosa, with costs to the defendant. From this decision of the lower court the defendant appealed and made the following assignments of error:

"1. The action brought by the claimant Jose Fernandez Fidalgo originated before the death of Francisco de la Rosa, that is to say, during his lifetime.

"2. Under the law the commission has jurisdiction to hear and decide the claim of Jose Fernandez Fidalgo.

"3. Under the law, the action of the claimant, Fernandez, can not be brought before the Court of First Instance."

With reference to the first assignment of error, it will be remembered that the Supreme Court, in its decision above referred to, simply ordered that the lower court require an accounting of the said partnership and refused to pass upon any item of indebtedness between the parties in relation thereto. After the return of the case to the lower court Fernandez dismissed this action. The accounting was not made as directed. There was no proof or finding of facts that De la Rosa owed the partnership a single cent. There was no proof of any character showing that the partnership assets were not sufficient to cover all of its liabilities. The partnership had not been dissolved until after the death of De la Rosa. There was no accounting of the partnership business. Fernandez refused to proceed, with the accounting ordered by the Supreme Court. There was nothing to show what had become of the partnership property existing at the time of the death of De la Rosa. So far as the record shows it may be even now in the hands of the surviving partner. Certainly no claim existed against the private estate of De la Rosa for the payment of the debts of the partnership until after the property of the partnership had been exhausted, and no claim of this character is made. No debt of this nature had arisen before the death of De la Rosa. The claim of Fernandez was a claim against the partnership and not a claim against De la Rosa until the liquidation of the partnership business. The lower court committed no error, therefore, in holding that the said commission, appointed for the purpose of allowing the claims against the estate of De la Rosa, had no jurisdiction to consider the claim presented. (Philippine Trading Company vs. Crossfield, 5 Phil. Rep., 400.)

What we have said with reference to the first assignment of error we believe fully answers the second also, and there is no question, under the provisions of the Code of Procedure in Civil Actions, that the Court of First Instance had jurisdiction to review, on appeal, the findings of the said commission.

It would seem to be clear that some one was guilty of a fraud against the estate of De la Rosa in allowing the present claim. The record does not clearly show who these parties were. It is sufficient, however, to set aside the claim when it is shown that a fraud had been committed. Courts of probate jurisdiction are very jealous in guarding the interests of the estates of deceased persons, and when the action of any party connected with the administration of such estates is tainted in the slightest degree with fraud, such courts will take jurisdiction for the purpose of remedying whatever injury the estate may have suffered thereby.

For the reasons above stated the judgment of the lower court is hereby affirmed, with costs against the defendant.

Arellano, C. J., Torres, and Mapa, JJ., concur.

Carson, J., concurs in the result.

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