

ANICETO GOMEZ MEDEL, PLAINTIFF AND APPELLANT, VS. PEDRO AVECILLA, ADMINISTRATOR OF THE INTESTATE ESTATE OF ANDRES MADRID, DECEASED, DEFENDANT AND APPELLEE.*G.R. No. 5254. March 17, 1910*

Ponente: ARELLANO, C.J.

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Andres Madrid died on the 26th of June, 1901, and his widow, Luciana de los Santos, instituted proceedings for the settlement of the estate on the 7th of June, 1907, requesting the appointment of a judicial administrator to take charge of the property that the deceased had left in the Province of Albay, wherein his death had occurred. The property was believed to be worth about 30,000 pesos. As stated by the widow, the petitioner herein, it seems that the deceased had left a will, and that the nearest relatives were herself and the children and grandchildren of the deceased.

On the 11th of the said month of June, 1907, the will and testament of Andres Madrid was presented; therein it appeared that he left a widow, the said Luciana de los Santos, children and grandchildren, and appointed three executors, of whom one died, another, Aniceto Gomez Medel, declined to accept the appointment, and the other, Tomas Madrid, accepted the appointment. The will seems to have been executed on the 14th of November, 1890, in the municipality of Albay, in the presence of Paciano Imperial, a notary public, and the proper number of witnesses, in accordance with the Spanish law which was in force at the time. It is alleged, however, without contradiction, that the will had not been legalized (it was presented for this purpose shortly after the intestate proceedings), owing to a legal defect referred to in one of the briefs presented to this court. For this reason the intestate proceedings continued and commissioners were appointed, before whom Aniceto Gomez Medel filed his claim for a credit of 9,000 pesos, Mexican currency, against the estate left by Andres Madrid; this claim was admitted by the commissioners, against whose decision the administrator of the intestate estate of Pedro AVECILLA appealed to the court then having jurisdiction of the matter of the succession.

As the appeal to the Court of First Instance was perfected, Aniceto Gomez Medel reproduced his complaint and asked that judgment be entered in his favor ordering that the 9,000 pesos be paid him by the intestate estate, with legal interest thereon at the rate of 6 per cent per annum from the 16th of June, 1901, as damages for the delay.

The administrator of the intestate estate, in addition to a general denial, set up, as special defense, the statute of limitations.

The court below reached the following conclusions: That the only evidence of the claim consists of a document alleged to be the last will or testament of Andres Madrid; that the legalization of the said will was denied by the court; but that the document in itself, as a public instrument executed before a notary, was conclusive evidence that when Andres Madrid, now deceased, executed the same he owed Medel 9,000 pesos; that Andres Madrid so states therein; that the said document is dated December 14, 1890; that Andres Madrid died in June, 1901; that by said will the claimant was appointed executor, but until the year 1907 he did not ask for the legalization of the

will, and it was during the said year that the widow of Andres Madrid instituted proceedings in connection with the intestate estate of her deceased husband; and that from November, 1890, until 1907, to wit, during a period of more than sixteen years, it does not appear that the claimant took any action to enforce his claim.

On the strength of these conclusions and of the provision of article 1964 of the Civil Code, which is the only one applicable to the case, supposing the credit to date only from November, 1890 (date of the public instrument executed by Andres Madrid as his will and testament, in which he acknowledges the debt), the court below found that the action had prescribed by the lapse of fifteen years, which is the period allowed for personal actions according to aforesaid article of the Civil Code.

The claimant appealed from the decision and his bill of exceptions having been submitted to this court for the hearing of the appeal, it appears that the following errors have been assigned:

- For not considering the debt of a deceased person as an encumbrance upon the inheritance and a charge upon the property left by him, a debt which should be paid within two years after the making of the partition.
- For considering the period of prescription, which began to run before the death of the debtor, as continuing uninterruptedly after his demise in favor of his heirs, before the inheritance was legally settled and the debt paid or liquidated.
- For considering that, when a debt is acknowledged in a document which is denominated a will, said acknowledgment, is effective from the date of said document, and not from the time of the death of the testator.

The manner in which the court below has considered the validity of the public document, executed by Andres Madrid before a notary and a sufficient number of witnesses, is in accordance with the provisions of the Spanish law which was in force at the time. If it is not valid as a will, owing to the absence of an essential requisite in open wills, such as the specification of the hour at which it was executed, it is valid as a public instrument, for which latter the statement of the hour is not required, and because no other requirement as a public instrument is lacking.

If in said public instrument the person executing it, in addition to the clauses constituting his last will as a testator, also enumerates and acknowledges a debt in favor of a third person, the latter has, upon producing the said instrument, a positive proof of his claim; and in such a case what is not valid as a will is valid as a written and authentic evidence of an obligation.

The validity of such obligation does not depend upon the date of the death of the testator, which is the time when the will becomes effective, but is reckoned from the actual date when the same was contracted; and when the latter does not appear, as in the present case, it takes effect at least from the date when the written declaration and acknowledgment of its existence was made, and in this manner the court below has computed the existence of the obligation at bar.

The date of obligations contained in a will, where the same arise out of purely testamentary provisions by the testator in his will, is reckoned from the time of his death; but if the obligations are hereditary and antedate the will, and are declared and acknowledged in the will as just debts imposed by contract, they do not depend at all on the death of the testator, from which no validity is acquired as happens with the former class of obligations.

If the obligation of Andres Madrid for 9,000 pesos in favor of Aniceto Gomez Medel originated at least from the 14th of November, 1890, and the right of personal action which the creditor had against the debtor was not prosecuted until the middle of the year 1907, it is clear that the action prescribed by the lapse of fifteen years, which is the period the law grants for prosecution of personal actions (art. 1964, Civil Code).

The ground for the prescription of an action is the inaction or negligence on the part of the creditor who is not

solicitous in enforcing his rights. The allegation that, on account of the debtor's death, there is no person to answer the judicial complaint, can not excuse his lack of diligence, it being a well-known fact that the estate itself is a juridical person which continues the rights and obligations of the former owner of the estate, and the representative of the estate itself may be sued by the creditor of the deceased debtor and obliged to respond for debt.

It was within the power of the creditor to interrupt the term which was running, by instituting the testamentary succession proceedings after the death of the testator, he being in possession of the will as one of the executors; the whole term for the prescription would not then have elapsed without some action to suspend it, as has happened in this case.

Hereditary debts are an incumbrance upon the inheritance, that is, they should be deducted therefrom, because until the money which belongs to another has been deducted there is no inheritance; but the period of prescription is not interrupted until the creditor takes some action to enforce his claim.

For the reasons above set forth, the judgment appealed from is hereby affirmed with the costs of this instance against the appellant. So ordered.

Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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