

**MATILDE ARAMBURU Y GARCIA, PLAINTIFF AND APPELLANT, VS.
ANGEL ORTIZ, DEFENDANT AND APPELLEE.***G.R. No. 5398. January 07, 1910*

Ponente: TORRES, J.

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On the 4th of October, 1907, counsel for Matilde Aramburu y Garcia presented a written complaint against Angel Ortiz, alleging that in suit No. 2060, brought in the Court of First Instance of Manila by virtue of the claim filed by Angel Ortiz on August 20, 1903, against the heirs of the late Ceferino Aramburu y Lambarri, one of whom) is the plaintiff Matilde Aramburu y Garcia, for the recovery of certain moneys, judgment was rendered on the 28th of October, 1905, sentencing the defendants, Ceferino, Josef a, Matilde, Adelaida, Leonor, Encarnacion, Angel, Jose, Carmen, Alfredo, and Julia, all bearing the surname of Aramburu, as heirs of said deceased, to pay to the plaintiff Ortiz the sum of P262,628.19 with the agreed interest of 8 per cent thereon from the 1st of July, 1903, until full payment was made, with costs. It was therein provided, however, that the five last-named defendants, Angel, Jose, Carmen, Alfredo, and Julia Aramburu, being minors, should only be obligated to the extent of the property they respectively inherited from their father. At the request of the plaintiff, Ortiz, the said judgment was amended to read as follows:

"For the reasons above set forth, the court orders the said eleven defendant heirs of the late Ceferino Aramburu y Lambarri to pay the plaintiff Ortiz the sum of P345,193.31 and the agreed interest thereon at the rate of 8 per cent from the 1st of July, 1903, until its payment is completed, and to pay the costs of the proceedings; provided, however, that the five last-named defendant minors, Angel, Jose, Carmen, Alfredo, and Julia Aramburu, shall only be obligated to pay said money and interests to the extent of the property that they respectively inherited from their father."

The above judgment was affirmed in all its parts by this court,[1] and it appears therefrom that Matilde Aramburu, the plaintiff herein, was sentenced to pay Ortiz the sum of P31,381.21, with interest thereon at the rate of 8 per cent from the 1st of July, 1903, until full payment is made, this being one-eleventh part of the aforesaid sum of P345,193.31, total amount of the judgment entered against the eleven defendants in said suit; that for the execution of the said judgment, private property of Matilde Aramburu to the value of P57,031.83 was sold, the sum of P8,331.75 in cash was withdrawn from the Hongkong Bank, and both these amounts were applied to the payment of said judgment, with the exception of P54.66 that was withheld for sheriff's fees. From this it is seen that Matilde Aramburu has paid Angel Ortiz by reason of said judgment P65,308.92. As the eleventh part corresponding to Matilde Aramburu only amounted to P31,381.21, plus interest thereon from the 1st of July, 1903, until the time of payment, it appears that the creditor Ortiz received, and that Matilde Aramburu paid an excess of P25,561.95, as may be seen from the following statement:

Eleventh part of the capital as per judgment..... P31,381.21

Interest thereon from July 1, 1903, until February 1, 1906, when the sum of P8,031.83, proceeds of the sale of real estate in Titinan, Mabigao, Ologan, and Rangas, all in the municipality of Ugao, Province of Albay, P. I., was

applied to the judgment	6,487.45
Amount of the debt on February 1, 1906.....	
37,868.66	
Proceeds of sales as above,.....	8,031.83
Net debit balance on February 1, 1906.....	
29,836.83	
Interest on the foregoing debit balance from February 1, 1906, to March 30, 1906, when the sum of P8,277.09, balance of the P8,331.75 withdrawn from the Hongkong Bank, was applied to the judgment	372.78
Net debit balance on March 30, 1906.....	30,209.61
Net amount in cash collected from the Hongkong Bank.....	8,277.09
Net balance on March 30, 1906.....	21,932.52
Interest on the foregoing debit balance of P21,932.52 from March 30, 1906, to February 5, 1907, when the sum of P49,000, proceeds of the sale of the rights of Matilde Aramburu y Garcia in the estate of Ceferino Aramburu y Lambarri, in the intestate estate of Dona Josefa Garcia, and in the estate of Jose M." Ceballos was applied to the judgment.....	P1,505.53
Net debit balance on February 5, 1907.....	
23,438.05	
Amount of the proceeds of the sale of the rights of Matilde Aramburu y Garcia in the estates above referred to.....	
49,000.00	
Remainder or excess paid by Matilde Aramburu y Garcia to Angel Ortiz by the judgment in civil case No. 2060	
25,561.95	

That this last sum Matilde Aramburu improperly paid to Angel Ortiz, without being so required in the judgment, and notwithstanding the fact that the creditor Ortiz improperly collected it, he refuses to return the same in spite of the demands made upon him therefor, for which reason the plaintiff prayed that judgment be entered against the defendant Ortiz, sentencing him to refund to the plaintiff the sum of P25,561.95, with the legal interest thereon since the date of the filing of the complaint, and the costs.

In answer to the foregoing complaint, the defendant Ortiz alleged as first defense that he admitted the facts stated in paragraphs 2, 3, 4, 5, and 6 of the complaint, but denied the allegation contained in paragraph 7; he likewise denied the facts alleged in paragraph 8 in so far as they do not conform to those that he would allege as a second defense; he offered a general and specific denial to the allegations in paragraph 9 as well as to those contained in paragraph 10 of the complaint. As a Second defense, he alleged that the dispositive part of the judgment rendered in said case No. 2060 and copied in the complaint, finds, among other things that are made an integral part of his answer, the following: The facts therefore conclusively show that the mercantile relations between the deceased Aramburu and Ortiz, by virtue of the public instrument dated July 15, 1889, were reassumed or continued after the death of the former, between the eleven defendant heirs of the deceased and the said Ortiz, under the same

conditions and guaranties as were stipulated in said instrument; that the property of the inheritance of the late Aramburu was in the possession of his heir Ceferino Aramburu y Garcia, the other defendant heirs, and Jose Rodriguez de Hinojosa, without one or other or any of them having availed themselves of the benefit of inventory or the right to deliberate within the term granted by law; it is evident that they showed their intention not to make use of the same when they held with Ortiz the conferences and agreements that resulted in said transactions and the continuation thereof in the form and to the extent heretofore described, which acts did not constitute the mere keeping or temporary administration of the inheritance; and that, by means of these acts, the eleven defendants assumed the title and quality of heirs of the late Aramburu y Lambarri, and publicly, and in all their business transactions, made use thereof, particularly in such as they had with Ortiz, which acts necessarily imply willingness to accept the inheritance, and constitute the tacit acceptance defined by article 999 of the Civil Code; an acceptance which is pure and simple on the part of the heirs who are of age, and which, according to paragraph 2 of article 992, must be understood as made under benefit of inventory on the part of those who are minors, for the reason that it was carried out by their tutor, Ceferino Aramburu y Garcia, without it appearing that he had secured authority for the purpose from the family council; consequently, the one and the other acceptance, according to its class, should produce the effects respectively defined by articles 1003 and 1023 of said code, for which reason the defendants, as inheriting the assets and liabilities of the deceased, must be considered as continuing to bear the responsibility of the deceased in the business carried on with Ortiz to such extent as may respectively correspond to them, according to the acceptance made by them of the inheritance of their principal; that the Supreme Court, upon affirming the judgment of the court below, advanced as a ground for its decision, among others, the following: It was admitted that the entire assets of "the firm" of The Heirs of C. Aramburu, the name under which the business was carried on after the death of the latter, was the property which the latter had left to his heirs. This property was taken possession of and managed by this new firm. Any of the heirs who participated in these acts accepted the inheritance without benefit of an inventory and became personally responsible for the obligations of the deceased. (Arts 999, 1000, Civil Code.) That Ceferino Aramburu for himself and as attorney in fact of all the heirs except Leonor, did participate in these acts, is clearly proved. As to the appellant Leonor, the wife of Jose Rodriguez de Hinojosa, it appears that the latter administered said business for several years while she was in these Islands, and there is sufficient evidence to hold that she consented to the acts performed by her coheirs and accepted the inheritance without benefit of inventory; that from these conclusions there follows the legal consequence that the plaintiff, Matilde Aramburu, was responsible in solidum with her coheirs for the total indebtedness of her deceased father, claimed in the said civil case No. 2060; that, with the exception of the sum of P8,277.09, cash, withdrawn from the Hongkong Bank, the defendant has not received any other sum of money from the property of the plaintiff in payment of the judgment rendered in said case No. 2060, since, although the sheriff of Albay offered at public auction certain rights and interests that the plaintiff had or might have over property administered in the proceedings of the intestate estate of Josefa Garcia, the plaintiff's mother, and in the estate of Ceferino Aramburu y Lambarri, as well as in the estate of Jose M.a Ceballos, instituted in the Court of First Instance of Albay, as no bidder came forward, Angel Ortiz moved that the said rights and interests of the plaintiff be adjudicated to him at given prices so that they might be applied in part payment of said judgment; but the fact is that the said plaintiff, ignoring all rights of the defendant Ortiz over said interests sold, claims to still have and maintain all her interest in the property included in said proceedings, and has denied and still denies Ortiz any interest therein, and claimed and still claims to be and continue to be an interested party in said proceedings; and as third defense he alleges that, even on the supposition that the plaintiff had really paid more than she was bound to pay by reason of the judgment in said case No. 2060, she is not entitled to bring any action against the defendant Ortiz to recover the excess; that if such claim existed it should be brought against her codebtors and coheirs sentenced in said case No. 2060, and, in view of what has been set forth, he prays the court to dismiss the plaintiff's claim with costs against her.

At the trial the plaintiff presented as evidence under Exhibit A all the civil orders involved in case No. 2060 of the Court of First Instance of Manila in which are included the complaint and the judgment rendered therein. Both parties agreed that the accounting set out in paragraph 9 of the complaint was correct.

Counsel for the defendant in turn presented as evidence the original judgment rendered by the lower court and the amended complaint in the said case No. 2060, together with the decision of the Supreme Court, for the purpose of proving the fourth allegation of his answer; he also offered as evidence the printed copy of civil case No. 143 in the Court of First Instance of Albay in connection with the estate of the late Jose M.a Ceballos, reviewed by the Supreme Court under No. 4190,[1] wherein Angel Ortiz appears as appellant, and Matilde Aramburu the appellee. The judge below ordered that the original judgment rendered in case No. 2060 be marked as "Exhibit 1," the amended complaint as "Exhibit 2," the decision of the Supreme Court in said matter as "Exhibit 3," and the printed copy of case No. 143 of the Court of Albay as "Exhibit 4."

On the 5th of March of this year judgment was entered by the trial court absolving the defendant of the previous complaint with the costs against the plaintiff. On the following day counsel for the plaintiff excepted in writing and announced his intention to file and forward a bill of exceptions, and in addition moved that the said judgment be set aside and a new trial granted on the ground that the evidence was insufficient and did not justify the decision of the court below, which decision was furthermore contrary to law; his motion was overruled on the 15th of said month, to which the petitioner excepted and presented in due course the corresponding bill of exceptions which was approved and forwarded to the clerk of this court.

After the record of the suit brought by Angel Ortiz against Josefa Aramburu et al. under No. 2060, for the recovery of a certain sum of money, was returned to the Court of First Instance on April 23, 1907, with certified copies of the judgment and the affirmative decision rendered by this court, counsel for one of the defendants, Matilde Aramburu y Garcia, presented a written motion on the 10th of September of the said year, that is to say, four months and a half later, requesting that the said judgment and decision be made clear in the sense that the defendants were sentenced to pay the amount claimed not severally but jointly, that is, that each defendant shall respond for one eleventh part of the debt and the corresponding interest thereon. To this end he alleged that the judgment of the lower court, as affirmed by this court, did not impose an obligation in solidum on said defendants, nor had the plaintiff asked that the payment be ordered made in that manner; that the explanation prayed for did not violate article 1003 of the Civil Code, and that the defendant Matilde Aramburu did not refuse to pay her share with her own property, seeing that the inherited property was not sufficient even though said judgment be made clear, and she only wishes to know the extent of her obligation.

The court, after discussing the matter in its sitting of the 23d of the month of September, resolved to overrule the motion.

Before taking up the question set up in this controversy and in the appeal interposed against the judgment of the court below, we deem it advisable and pertinent to refer to the aforesaid motion which was duly acted upon and finally decided in said resolution, inasmuch as the point for which an explanation was requested (in the sense that the order of payment of the amount claimed in the complaint, as decreed in the judgment affirmed by this court, shall be considered as mancomun, and not in solidum, so that the petitioner would only be responsible for one eleventh part of the debt with interest thereon), was considered in the complaint filed in this new suit as settled and a determining reason for bringing the suit, notwithstanding the said resolution which conclusively overruled her pretension, as may be seen from folio 56 of the record of the principal proceedings, bearing the register number 3143.

With the above preface, and proceeding to an examination of the errors assigned in the judgment appealed from,

we find in the appellant's brief and bill of errors that the following question has been set up: Has the order of payment of the debt contained in the judgment the character of an obligation in solidum, so that Matilde Aramburu, one of the debtors, is under obligation to pay the whole amount of the indebtedness although entitled to claim from her codefendants? The provisions of articles 1084 and 1085 of the Civil Code answer the question in the affirmative.

The question at issue is an hereditary debt, acknowledged after the death of the debtor, the common principal, by six of his heirs who are of age and by the representative of the five minors, and as the former accepted the inheritance purely and simply, without the benefit of inventory, since by the acceptance of the inheritance of the late Ceferino Aramburu y Lambarri as made by the said six heirs who are of age, among them being the plaintiff herein, Matilde Aramburu, according to article 1003 of the code they thereupon became liable for all of the charges of said inheritance not only with the inherited property but also with their own; for said reason the condemnatory judgment entered in case No. 2060 of the Court of First Instance of Manila, which bears No. 3143 of the general register of this court, was properly executed with regard to the legal portion or interest in the estates of her deceased parents which pertained to Matilde Aramburu, also with regard to her own property, and even such as she was entitled to from the estate of her late husband, Jose Ma. Ceballos.

Granted the foregoing, and as the court must abide by the express provisions of the law, it must be affirmed that the obligation to pay the large sum in controversy as decreed in the said judgment is in solidum, although it may not be clearly stated therein. The obligation of heirs who accept an inheritance encumbered by debts does not arise from the contracts, but from the law which has established the right to inherit, and has declared that the obligation to pay an hereditary indebtedness is in solidum, as whatever may have been the form in which they accepted the inheritance, and, according to the form of such acceptance, the extent of their respective liability would differ, but the creditor is entitled to claim the entire amount of his credit from any one of the heirs who accepted the inheritance without benefit of inventory, and also from any of the others who received the same with benefit to the extent of their hereditary portion. (Arts. 988, 998, 1003, 1010, 1023, Civil Code.)

It is immaterial to the creditor of the principal what may be the number of the heirs. He has the right to select one or more of them who may inspire him with confidence or offer him better assurances for the collection of his credit. If the debt is a single one, as in the present case, the obligation of the debtors toward the owner of the credit is also one and indivisible. The power to divide the debt between the debtor heirs, as well as the inheritance, resulting from the relations among themselves, can not affect the right of the creditor which already existed before the death of the principal and before the rights of his heirs. There is no law or proper reason to compel a creditor to divide his action into the number of heirs a debtor may have, and incur the risks and expenses arising from a multiplicity of suits.

The foregoing is based on various provisions of the Civil Code peculiarly harmonized and interrelated, and particularly on the above-cited articles and articles 1082, 1088, and 1084, the first and last of which are as follows:

"Art. 1082. Creditors, recognized as such, may oppose the division of the inheritance until they are paid or the amount of their credits is secured.

"Art. 1084. After the division has been made the creditors may demand the payment of their debts in full of any of the heirs who may not have accepted the inheritance under the benefit of inventory, or up to the amount of their hereditary share in case they have accepted it under such benefit.

"In either case the defendant shall have a right to notify and summon his coheirs, unless, by disposition of the testator or by reason of the division, he alone should be bound to pay the debt."

The supreme court of Spain, in applying the provisions of the above two articles of the code in deciding appeals in cassation, established in that of the 9th of January, 1901, the following doctrine:

"That the provisions contained in articles 1082 and 1084 of the Civil Code do not restrict or limit in any way the right of the hereditary creditor to exercise the actions derived from his title of credit, and to demand the payment of the amount thereof even when the inheritance remains undivided; inasmuch as the first of said provisions does nothing more than establish in favor of the creditor a faculty which he may or may not use as he wishes, that is, to oppose the division until he has been paid or the amount of his credit has been secured; and the second, namely article 1084, does not subordinate the exercise of his action to the fact that the inheritance has been divided, but sustains the principle that each heir is jointly liable for the hereditary debts, and authorizes the creditor to demand the whole amount of the debt from any of the simple heirs, and grants the defendant the right to notify and summon his coheirs, unless, by disposition of the testator or by reason of the division, he alone should be bound to pay the debt."

In that of April 3, 1903, is the following:

"That under the provisions of article 1084 of the Civil Code, as construed by recent jurisprudence, each of the heirs is liable in solidum for the hereditary debts."

The provision contained in article 1085 of said code sustains all our findings with regard to the character in solidum of the obligation to pay the credit of Angel Ortiz on the part of the heirs of the deceased debtor, Ceferino Aramburu, inasmuch as, if the creditor is entitled to proceed against any one of the heirs in order to recover the value of his credit, the coheir who has paid more than corresponds to his share in the inheritance may in turn demand his proportionate part of the others.

Therefore, the expression in solidum need not be looked for in a judgment recognizing the validity of an obligation which affects and encumbers an inheritance, but in the substantive law, which, in establishing hereditary right, at the same time proclaimed the joint nature of the obligation on the part of any of his heirs to pay the debts of the deceased, without prejudice to the right conferred upon the coheir under article 1085 to demand his proportional part of the others.

The complaint of Ortiz, demanding payment from the heirs of Ceferino Aramburu of the large sum of money that the latter owed him while living, even though it contained no prayer that the heirs be jointly sentenced, was yet sufficient to produce the effect that the judgment rendered in the matter should be considered as involving the character of in solidum, it being in accordance with the law that has decreed the joint obligation on the part of the heirs to pay the debts of their deceased principal. Nothing in the law provides that the creditor must divide his suit for the recovery of his credit into the number of responsible heirs.

If the obligation in question is per se in solidum, it follows that the judgment rendered in consonance therewith should bear the same character, and that on motion of the creditor its execution may be effected against all or any one of the parties finally sentenced therein. (Sec. 471, Code of Civil Procedure.)

On the other hand it should be noted that the question raised herein has already been overruled and finally negated by the said resolution of this court of September 23, 1907, and that in claiming from Ortiz the restitution of a certain sum which the plaintiff alleges to have paid in excess, she has instituted an improper suit which tends to violate the law that protects the creditor in his relations with the heirs of his deceased debtor, and to discredit or modify a final judgment rendered in accordance with the law, and which must be understood, complied with, and executed in conformity with its precepts.

In view of the foregoing, and considering that the judgment appealed from is in accordance with the law, it is our opinion that the same should be and it is hereby affirmed, with the costs against the petitioner. So ordered.

Johnson and Elliott, JJ., concur.

[1]Ortiz vs. Aramburo, 8 Phil. Rep., 98.

[1]12 Phil. Rep., 271.

CONCURRING

MORELAND, J.,

I concur in the result.

I deem it, however, wholly unnecessary to the resolution of this case to refer to the facts upon which was based the decision of the court giving judgment against the plaintiff and others, in order to determine plaintiff's liability under said judgment. Those facts have nothing whatever to do with the liability of the plaintiff herein or the character or the extent thereof. That liability is determined exclusively by the form of the judgment against her. That judgment is not attacked in this action either directly or indirectly.

Its legality and correctness are conceded. Its terms are clear and unambiguous. It needs no construction or interpretation. It is plainly and in terms a judgment against several persons for a specified amount. Under the law each one is liable to the judgment creditor for the full amount of the judgment, with the right to contribution to the one who pays more than his proportionate share of the same. To admit, when a final judgment comes before us as does the judgment in question, that it is necessary, in order to determine the liability of the persons named therein, to recur to the merits of the cause of which that judgment is a part, is to destroy absolutely the conclusiveness of a final judgment - that feature which alone lends to it its essential value. Such an admission renders uncertain and inconclusive every judgment heretofore or hereafter granted; for to consider the facts from which a final judgment proceeds is to retry the case.

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