

THE ESTATE OF LUIS R. YANGCO, DECEASED, PLAINTIFF AND APPELLEE, VS. ANTONINO DE ASIS, DEFENDANT AND APPELLANT.

G.R. No. 5735. March 09, 1912

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from the action of the court below in declining under section 689 of the Code of Civil Procedure to extend, in the exercise of its discretion, the time allowed for the presentation of a claim by appellant to the committee appointed for the examination and allowance of such claims, in the matter of the estate of Luis Rafael Yangco, deceased; and in declining further to provide for the submission of this claim as a contingent claim before a committee appointed for that purpose under the provisions of sections 746, 747, 748, and 749 of the Code of Civil Procedure.

It appears that before the death of Luis Rafael Yangco, the appellant instituted an action against him to recover the fair value of certain medical services, alleged to amount to some P8,713 Philippine currency; and that the following judgment was entered in that action:

"This case this day came on for trial upon the complaint, answer, cross-complaint and proof, and while the plaintiff was on the witness stand, pending his examination, he stated that he was losing too much time here in the trial of the case and that he wished to dismiss his complaint and make the defendant a present of his services: It is therefore.

"Ordered and adjudged by the court that this case be and the same is hereby dismissed, and that defendant, Luis R. Yangco, recover of the plaintiff, Antonino de Asis, the cost of this case for which execution may issue.

"Dated, Manila, P. I., September 11, 1905.

"J. C. SWEENEY, Judge."

Since the date of that judgment Luis R. Yangco died, and in the course of the administration of his estate a committee was appointed under the provisions of section 686 of the Code of Civil Procedure to appraise the estate and to allow claims as therein provided. The time limited by the court for the presentation of claims has lapsed and the committee's report has been filed. The object of the petition of the appellant in this proceeding, who failed or neglected to present his claim to the committee within the time allowed therefor, is to secure the extension of the time given to the original committee, or the appointment of a new committee, in order to submit to the committee thus authorized to hear it, a claim against the estate of the deceased, Luis R. Yangco, for the medical services which were the subject of the litigation in which the above set out judgment dismissing the complaint was entered.

The contention of the claimant and appellant is that Luis R. Yangco, deceased, not having accepted during his lifetime the gift of the value of these services to which reference is made in the above set out judgment, he, the claimant and appellant, is entitled to recover the value of these services from Yangco's estate. The court below

held otherwise, and declined to make provision for the submission of this claim.

Without discussing or considering the grounds upon which claimant bases his cause of action against the estate of the deceased, we are of opinion that upon his own showing as to the facts, the action of the lower court in refusing to extend the time within which the original committee might examine this claim, or to appoint a new committee for its examination, must be sustained. The judgment of dismissal above set out finally, conclusively and definitely determined the right of claimant and appellant to recover for the services in question. The dismissal of the complaint in the former action with costs to the defendant is a complete bar to another action for the same cause.

Claimant and appellant seems to be under the impression that the dismissal having been had at his own suggestion and request, he is not barred from instituting new proceedings. Section 127 of the Code of Civil Procedure is as follows:

"Dismissal of actions.—An action may be dismissed, with costs to the defendant, in the following cases:

" (a) By the plaintiff himself, by written request to the clerk filed among the papers in the case, at any time before trial, upon payment of the costs; provided a counterclaim has not been made or affirmative relief sought by the cross complaint or answer of the defendant, or provided the judge shall not decide that the defendant has made such preparation for trial that it would be unjust to permit a dismissal without a trial on the merits.

"(b) By the court) when the plaintiff fails to appear at the time of trial, and the defendant appears and asks for the dismissal.

"(c) By the court, when the plaintiff fails, for an unreasonable length of time, to prosecute his action.

"In either of these three cases a dismissal of the action shall not be a bar to another action for the same cause.

" (d) The court may also, in its discretion, allow a plaintiff to dismiss the action on payment of the costs after the trial has begun and at any time before final judgment, if the interests of justice so require, and in this case the dismissal shall not be a bar to another action for the same cause. The dismissal shall be entered on the docket of the court and shall be effective, when so entered, to end the action."

It will readily be seen that the dismissal of the former action does not fall under any of these heads; It is quite clear that the dismissal of that action was a dismissal "without day." It was a dismissal by the court after complaint, answer and cross complaint had been filed and the case called for trial, and the trial judge did not exercise his discretion "in the interests of justice" to allow the plaintiff to dismiss the action and to reserve the right to institute a new action if he so desired. On the contrary, the ground of the dismissal was that the plaintiff in that action wished "to make a present of his services to the defendant," and thus bring an end to the litigation. Judgment was rendered against the plaintiff and in favor of the defendant on the sole ground that plaintiff did not desire to proceed with the case, and not only was there no suggestion that plaintiff desired the court to exercise its discretion to permit him to institute another action for the services in question, but on the contrary it was expressly stated that such was not the case. Manifestly the plaintiff in that action has lost his right to recover for the alleged services, if indeed, he ever had a right so to do.

The orders of the trial court declining to provide for the submission of the claim in question to a committee should be and are hereby affirmed, with the costs of this instance against the appellant.

Arellano, C. J, Torres, Mapa, Johnson, Morelland, and Trent, JJ., concur.

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