

MARIANO RIOSA, CLAIMANT AND APPELLANT, VS. THE ESTATE OF TOMAS VALENCIANO, DECEASED, APPELLEE.*G.R. No. 5850. September 05, 1911*

Ponente: TORRES, J.

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This is an appeal by the counsel for Mariano Riosa from the order of November 26, 1908, wherein the court rules that it can not, for the reasons it gives, modify its order of January 22 of the same year, in so far as it declares that the accounts approved by the committee on appraisal are legal and that as Mariano Riosa's claim was not presented, his and all others that may be outstanding against the estate have lapsed, because of failure to present in due time.

On December 23, 1910, counsel for the appellant filed a written motion in this court praying that the title of this case be changed to read as follows: Mariano Riosa, claimant and appellant, vs. The estate of Tomas Valenciano, deceased, appellee. After due consideration of this motion the court decided that it would be ruled upon in rendering final judgment in this case.[1]

Tomas Valenciano, of legal age, husband of the deceased Carmen Pimentel, died leaving a will, which was executed on August 8, 1906, and duly probated, as shown in the record, and leaving a minor daughter married to Ruperto Serrano. It appears from the inventory that the deceased was indebted to Mariano Riosa of Tabaco, Albay, in the sum of P400.

According to the report submitted by the committee on appraisal appointed for said estate by the Court of First Instance of the Eighth Judicial District, sitting at Daet, Ambos Camarines, the said committee held its first meeting on December 18, 1906, when it ordered the publication in the newspaper "La Paz" of notices that the meetings of said committee would be held on Friday and Saturday of each week for a period of six months, so that the deceased's creditors and any other persons who might have claims against his estate might appear before it. The town hall of Daet, Ambos Camarines, was given as the office of the committee. On May 21, 1907, the committee received the claim filed on the 14th of that month by Mariano Riosa's counsel for the collection of P2,034.73. The claimant and the administrator-defendant were accordingly cited to appear within, twenty days, and a copy of this claim was transmitted to said administrator, Ruperto Serrano. On June 15, the committee received a letter from the administrator, Serrano, requesting postponement of the hearing to the month of July, as he was unable on account of his health to be present, which request was refused. On July 17 following, Riosa's counsel requested a further postponement of twenty days for the hearing on his claim against the estate, which request was granted, the hearing of the case being set forward until the 16th of August following. At the request of Mariano Riosa's counsel that the hearing on his claim be further postponed to the early part of September of that year, the committee on August 19, ordered the foregoing petition transmitted to the administrator, so that he might state whether or not he agreed to the new postponement requested. Neither party appeared, and the committee after fifteen days adjourned its meetings, leaving Mariano Riosa's claim undecided on account of his counsel's failure to appear. Accordingly, the committee submitted its report to the Court of First Instance for settlement

according to law, under section 693 of the Code of Civil Procedure.

In a letter to the committee on appraisal, dated May 14, 1907, Mariano Riosa sets forth that the deceased Tomas Valenciano's estate owes him:

To balance current account closed June 30, 1901, derived from a commercial partnership between the debtor and the claimant-creditor P1,509.43

To legal interest thereon to date, at 6 per cent per annum.... 525.30

Total 2,034.73

In view of this account and of the recorded oath of Riosa's counsel, averring that no payment had been made on said account, and that there was no record of any counterclaim against the creditor Riosa, the court issued the order of December 17, 1907, approving the report of the committee only in its first, second and third parts, relating to recognized accounts, and setting a date for these proceedings, for approval of the administrator's accounts, declaration of heirs, appointment of a committee of distribution, and everything pertaining to the settlement of the matter.

In another order of January 22, 1908, appears the following : "Whereas, at the expiration of the time set by the committee on appraisal, there was pending a claim of P2,034.73 of Francisco Alvarez, counsel for Mariano Riosa, which was not examined or allowed because of claimant's failure to appear on the different occasions when he was summoned by said committee, it is ordered that the accounts recognized by the committee on appraisal in favor of the Chinamen Quien Choco, Dy Deco, and Don Marcelino Viejo, amounting respectively to P29, P100 and P80, be declared legal, and the claim of Don Mariano Riosa to have lapsed, as well as all others that may be outstanding against this estate, because of failure in presentation in due time."

On the 29th of July following, counsel for Mariano Riosa filed a written motion, representing: (1) that it appears from the attached documents, exhibits A and B, setting forth the account taken from Riosa's books, that the deceased Tomas Valenciano owed Riosa the sum of P1,509.43 as outstanding balance on the current account closed June 30, 1901, resulting from a commercial partnership between him and the said Riosa, with the sum of P525.30 as legal interest at 6 per cent per annum, making in all P2,034.73; that for the reasons set forth in the attached sworn statement, such account could not be proved before the committee, but that as this claim was not rejected by the committee and the account whereon it is based was in part recognized by the testator himself in one clause of his will (pp. 4 and 5 of the record), and as section 748 of the Code of Civil Procedure authorizes the admission of such claims if presented within two years from the time allowed the other creditors, he prays the court to regard the claim, with its exhibits A and B, as presented and to admit it; and in case it be disputed to order that it be proved before the committee already appointed or before another to be appointed for the purpose, as provided in said section of the code.

Exhibit A is a document setting forth the contract between Mariano Riosa and Tomas Valenciano, stating the business in which they were going to engage and the conditions of the partnership formed. This document was signed by both parties on May 18, 1899.

Exhibit B, dated January 2, 1905, and signed merely by S. Riosa, with power of attorney from M. Riosa, sets forth the account subsisting between them and a balance of P1,509.43.

By order dated November 26, 1908, the court for the reasons it gives held that it can not modify its order of January 22, 1908, because the claim of Riosa's counsel is not such as is provided for in section 748 of the Code of Civil Procedure. As he did not ask for an extension of the time set for hearing claims against the committee's

report even when requested to do so, the court can not allow it under section 690 of said code, because it was not presented within the six months prescribed by said section. Against this decision Riosa's counsel entered an appeal, which was admitted upon appellant's furnishing a bond of P1,000.

The principal question raised in this suit is that mentioned in the second of the three errors assigned to the court by the appellant, that is, whether or not Mariano Riosa presented his claim for collection of his account against the estate of Tomas Valenciano within the six months fixed in section 690 of the Code of Civil Procedure.

Section 689 of this code provides; that the court shall fix the time during which the creditors may present their claims to the committee for examination and allowance, which time shall not be more than twelve months or less than six months; and the court may extend this time as circumstances require, but not so that the whole time shall exceed eighteen months.

On December 18, 1906, notices were published in the newspaper "La Paz," issued in Nueva Caceres, fixing the time of six months for the persons who might have claims against said estate to present themselves, which time must have been counted at least from the 19th of said month. On May 14, 1907, there was presented the claim of the creditor, Mariano Riosa, for collection of the sum of P2,034.73, balance due, with legal interest at 6 per cent, which the estate of Valenciano owed him. (B. of e., p. 6.)

The committee on appraisal at a meeting on May 21, 1907, took up the claim presented, fixed a day for a hearing, and issued summonses to the claimant and the administrator of the estate, Ruperto Serrano. After the postponements requested by each party and in view of the new postponement, or the petition that for the reasons given the time for the hearing be again extended, the committee on appraisal ordered the administrator to be informed thereof in order that he might state whether or not he agreed to the new postponement requested. According to the report, the parties did not appear, and the committee adjourned its meetings, leaving undecided and pending the claim of the creditor Riosa, and submitted its report to the court for action in accordance with law.

It is an indisputable fact that Mariano Riosa's claim was presented within the period of six months fixed in the notices published in said newspaper by the committee on appraisal. Decision thereon was still pending, and there is no record that the administrator of the estate admitted or denied it, nor that the committee on appraisal rendered a decision either way on the claim presented, only that it adjourned its meetings after forwarding due report to the Court of First Instance.

In such case, with an account outstanding, presented in time and not rejected by the administrator of the estate, the committee on appraisal was under obligation to extend the time and to pass upon the correctness and legality of the account, collection whereof was under consideration with the administrator's knowledge. Nor for this reason could said claim be declared not presented, or that it had lapsed like other claims not presented in time; neither could such declaration be reiterated in the order appealed from of November 26, 1906, notwithstanding the notice that the proceedings would be terminated on January 22, 1908, for the claim made by Mariano Riosa for the collection of his account, in part recognized by the testator in his will, was duly presented, as has been said, within the period of six months fixed by the committee on appraisal, and as a creditor to appear in the case he should have been personally notified in order that another new period of judicial character might have elapsed and that he might be held to have renounced his right.

Mariano Riosa's account does not fall within the provisions of section 695 of the Code of Civil Procedure for the reason that his counsel presented his claim within the first period of six months fixed by the committee on appraisal, which has the right or is authorized only to reject it in case it be illegal and must not be settled by the estate, but there is no justification for a declaration by the committee on appraisal or by the court that the right to

collect said account has lapsed, when collection thereof was claimed in due time.

Under article 1026 of the Civil Code, Tomas Valenciano's estate is understood to be under administration until all the known creditors and legatees are paid. In accordance with this legal provision, the principle has been laid down in law that only after the obligations of the estate have been discharged can the portion of the heir, or the balance divisible among the heirs, if there are several, be recognized. (Judgment of March 2, 1896.)

Section 753 of the Code of Civil Procedure affirms the provisions of said article of the Civil Code and the legal principle cited, by providing that after payment of the debts, funeral charges, expenses of administration and allowances made for the expense of maintenance of the family of the deceased, the court shall assign the residue of the estate to the persons entitled to the same, in its order naming the persons and proportions, or parts, to which each is entitled, etc., thus carrying out the law and the wishes of the deceased.

We agree that the claim, presented in due time by Mariano Riosa's counsel, is not a fortuitous one, because it is a claim for the collection of a certain account, which was in part recognized by the debtor in his will, together with interest thereon. As there is no record of any objection on the part of the administrator to payment of said claim, nor was it disputed on the legal ground that it was not correct or that the claim was not presented in due time, it follows in our opinion that the report dated September 17, 1907, should be returned to the committee on appraisal which made it, or to another to be appointed for the purpose, in order that it may, with the administrator's knowledge, examine the claim presented by Mariano Riosa's counsel within the time set therefor, render due decision thereon, and then make report to the court for settlement thereof in accordance with the provisions of section 693 of the Code of Civil Procedure. Tomas Valenciano's estate can not be regarded as settled, nor the testamentary property be awarded to his heiress, until all the legal claims presented within the time fixed by law have been paid or settled. Such is the case of Mariano Riosa's account, claim for which was presented in time. Only after this account may have been rejected and there is no other legal claim, can the unencumbered balance of the testator's estate be determined.

Therefore, it follows, in our opinion, that the final portion of the order appealed from,, of November 26, 1908, should be revoked, and that the court should make due disposition for a committee on appraisal to examine and pass upon the said claim of Mariano Riosa in the manner indicated, said committee to act as provided by law and to communicate its decision to the court. The clerk will change the title of this case as requested by Riosa's counsel in his written motion dated December 23 of last year included in the record. So ordered.

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

[1] The original title was: Marcos Pimentel, petitioner and appellee, vs. Mariano Riosa, claimant and appellant.

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