

**CARLOS ILUSTRE, ADMINISTRATOR OF THE ESTATE OF THE
DECEASED FRANCISCO CALZADO, PLAINTIFF AND APPELLEE, VS.
CORNELIO ALARAS FRONDOSA, DEFENDANT AND APPELLANT.**

G.R. No. 6077. November 16, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record it appears that Francisco Calzado died on the 9th or 10th of December, 1903. It also appears from the record that at the time of his death he was the owner of certain property, some of which was described in paragraph 3 of the complaint. The plaintiff alleges, and the fact is not denied, that he was appointed as administrator of the estate of the said Francisco Calzado. The record fails to show when he was appointed.

On the 31st of July, 1909, nearly six years after the death of the said Calzado, the plaintiff, as administrator, commenced the present action to recover the property described in paragraph 3 of the complaint. The defendant demurred to the complaint, alleging:

First. That the plaintiff was not the proper party to bring the action; and

Second. That the facts alleged were not sufficient to constitute a cause of action.

This demurrer was sustained and the plaintiff filed an amended petition. The amended petition did not change the character of the action. To the amended petition the defendant answered, denying generally and specifically all of the facts alleged in the complaint, and as a special defense alleged:

First. That at the time of the death of Francisco Calzado (the 9th of December, 1903), he was the owner of the property described in the complaint;

Second. That at the time of the death of Francisco Calzado he had no relatives, descendants or ascendants, but nephews, who being of lawful age divided among themselves the property in question and sold to the defendant the said property;

Third. That at the time of the division of the estate among the heirs of the deceased and at the time the lands were sold, there were no debts against the estate of the said Francisco Calzado;

Fourth. That the plaintiff is not a creditor of the estate of the said deceased.

During the trial of the cause the defendant showed by oral and documentary proof that he was in possession of the land in question; that he had purchased the same from some of the nephews and heirs of the deceased Francisco Calzado; that he had purchased the interest of all the heirs except perhaps three. There was no proof adduced during the trial of the cause to show that any of the heirs of the deceased were minors or that there were any debts existing against the said estate.

Under the provisions of the Civil Code (arts. 657 to 661), the rights to the succession of a person are transmitted

from the moment of his death; in other words, the heirs succeeded immediately to all of the property of the deceased ancestor. The property belongs to the heirs at the moment of the death of the ancestor as completely as if the ancestor had executed and delivered to them a deed for the same before his death. In the absence of debts existing against the estate, the heirs may enter upon the administration of the said property immediately. If they desire to administer it jointly, they may do so. If they desire to partition it among themselves and can do this by mutual agreement, they also have that privilege. The Code of Procedure in Civil Actions provides how an estate may be divided by a petition for partition in case they can not mutually agree in the division. When there are no debts existing against the estate, there is certainly no occasion for the intervention of an administrator in the settlement and partition of the estate among the heirs. When the heirs are all of lawful age and there are no debts, there is no reason why the estate should be burdened with the costs and expenses of an administrator. The property belonging absolutely to the heirs, in the absence of existing debts against the estate, the administrator has no right to intervene in any way whatever in the division of the estate among the heirs. They are coowners of an undivided estate and the law offers them a remedy for the division of the same among themselves. There is nothing in the present case to show that the heirs requested the appointment of the administrator, or that they intervened in any way whatever in the present action. If there are any heirs of the estate who have not received their participation, they have their remedy by petition for partition of the said estate.

The lower court rendered a judgment in favor of the plaintiff and against the defendant. From that judgment the defendant appealed. For the reasons above stated, the judgment of the lower court is hereby reversed, with costs.

Arellano, C. J., Torres, Moreland, and Trent, JJ., concur.

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