

**JOSE MCMICKING, ADMINISTRATOR OF THE ESTATE OF
MARGARITA JOSE, PLAINTIFF AND APPELLANT, VS. BENITO SY
CONBIENG, ADMINISTRATOR OF THE ESTATE OF PIO DE LA
GUARDIA BARRETTO SY PIOC...**

G.R. No. 6871. January 15, 1912

Ponente: MORELAND, J.

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MORELAND, J.:

On or about the 5th of February, 1902, one Margarita Jose, a native of the Philippine Islands, died at Amoy, in the Empire of China, leaving an estate consisting of personal property partly in Hongkong and partly in the Philippine Islands. On the 16th of April, 1902, one Engracio Palanca was appointed administrator with the will annexed of the estate of the said Margarita Jose, deceased, by the Court of First Instance of the city of Manila, and Mariano Ocampo Lao Sempco and Dy Cunyao became his sureties and qualified as such in the sum of P60,000. After the execution of this bond the said Palanca, as such administrator, took possession of all the property of said Margarita Jose, amounting in all to \$58,820.29 Hongkong currency. On the 22d of April, 1904, the said Mariano Ocampo Lao Sempco died in the city of Manila, testate. The fact of his death was brought to the attention of the Court of First Instance of said city on the 2d of November, 1904, by an application made by one of the legatees of said Margarita Jose, deceased, for an order directing said administrator to furnish a new bond. Pursuant to this application the court, on the 10th of November, 1904, made an order directing the said Palanca to furnish a bond in the sum of P60,000 to take the place of the undertaking upon which said Mariano Ocampo, deceased, and Dy Cunyao were sureties. The bond thus required was duly filed on the 22d of November, 1904, the sureties thereon being Juan Fernandez, Luis Saenz de Vismanos and Alejandro Palanca. On the 11th of May, 1904, one Doroteo Velasco was appointed administrator with the will annexed of said Mariano Ocampo Lao Sempco, deceased, and on July 7 following Mariano Velasco and Pio de la Guardia Barretto qualified as sureties of the said administrator in the sum of P30,000. Said Mariano Ocampo Lao Sempco left him surviving as his only heirs at law and devisees and legatees one daughter, to whom he devised two-thirds of his estate, and three sons in China, to Whom he devised the remaining one-third. On the 27th of July, 1904, said Doroteo Velasco, as such administrator, filed with the court a complete report and inventory of the property of the deceased, together with a statement of all his debts and liabilities. As a part of this report and inventory said administrator filed an instrument signed by all of the persons interested in the estate of the said Mariano Ocampo agreeing to the partition of the estate among themselves without proceedings in court, at the same time assuming the payment of all obligations against the estate. This agreement of partition was drawn and executed under sections 596 and 597 of the Code of Civil Procedure for the purposes and to attain the ends therein mentioned. On the 28th of July, 1904, the Court of First Instance of the city of Manila, upon the request of the administrator with the will annexed and of all parties interested in the estate of the said Mariano Ocampo, deceased, entered an order affirming and approving the partition as set forth in said agreement. Pursuant to such agreement and order of the court approving the same, and after all of the liabilities under which said estate lay had been fully paid and satisfied, the said Doroteo Velasco, as said administrator, delivered to the devisees and legatees of the said Mariano Ocampo, deceased, all of the

property of said decedent pursuant to the terms of said agreement of partition, leaving in the hands of said administrator no property or thing of value whatever belonging to said estate. From that time forward said administrator has not had in his possession or control any of the assets of the said estate and has not had any participation in the management thereof. At the time the agreement for partition was made and signed and at the time of the distribution of the property of the estate pursuant thereto, no committee had been appointed to hear claims against the estate of the said Mariano Ocampo, deceased, and no notice had been published to creditors of the said deceased to present their claims against the said estate in the manner prescribed by law.

On the 30th of March, 1908, by virtue of an order made by the Court of First Instance of the city of Manila, upon application of all parties interested, the said Engracio Palanca was removed from office as administrator of the estate of said Margarita Jose, deceased, and the plaintiff herein, Jose McMicking, was appointed in his stead. The said Palanca was removed from office by reason of the fact that he failed and refused to render an account of the property and funds of the estate of the said Margarita Jose, deceased, which had come into his possession as such administrator, and failed and refused, on order of the court, to deliver said property and funds or any portion thereof to the court or to the said Jose McMicking, his successor. Instead of so doing, he retained possession of said property and funds, absconded with the same, and never returned to the Philippine Islands. At the time of his removal he was indebted to the estate in the sum of P41,960.15, no part of which has ever been received by the estate or by its representative.

On the 30th of June, 1909, Jose McMicking, as administrator, made an application to the court for the appointment of commissioners of the estate of said Mariano Ocampo for the purpose of hearing claims against his estate. The commission having been appointed and qualified, a claim was presented to it by the plaintiff based upon the defalcation of said Engracio Palanca, as administrator with the will annexed of Margarita Jose, deceased, which claim was allowed by said commission and later approved by the court, which directed that said claim be paid by Doroteo Velasco, if he had sufficient funds to make such payment. No part of the sum thus found to be due by the commission has been paid to the representative of the estate of said Margarita Jose, deceased.

On the 3d of November, 1905, Pio de la Guardia Barretto, who, it will be remembered, was one of the sureties on the undertaking of Doroteo Velasco, as administrator with the will annexed of Mariano Ocampo, deceased, died in the city of Manila, leaving an estate consisting of real and personal property located in said city. Said deceased left a will which was admitted to probate by the Court of First Instance of the city of Manila on the 3rd day of February, 1906, and letters of administration with the will annexed were issued to Benito Sy Conbieng, the defendant in this case. On the 4th of June, 1909, upon the application of the plaintiff in this case, a committee was appointed by the Court of First Instance of the city of Manila to appraise the estate of the said Pio de la Guardia Barretto, deceased, and to hear claims presented against his estate. Thereafter and within the time prescribed by law the plaintiff herein presented to said committee a claim for the sum of P30,000 "based upon the fact that a claim for a larger amount had been allowed in favor of the estate of said Margarita Jose, deceased, against the estate of the said Mariano Ocampo Lao Sempco, deceased;" and based upon the further fact "that the Court of First Instance had ordered the said Doroteo Velasco, as administrator of the estate of said Mariano Ocampo Lao Sempco, deceased, to pay the said claim if there were funds sufficient to make such payment, but that it has not been paid by the said Doroteo Velasco, or any part thereof." The claim so presented against the estate of Pio de la Guardia Barretto, deceased, was disallowed by the committee thereof. The plaintiff herein within the time allowed by law appealed to the Court of First Instance of the city of Manila from the order of the committee disallowing said claim.

It is undisputed in the case that all of the claims against the estate of Mariano Ocampo were fully paid and satisfied at the time of the partition of said estate, with the exception of the alleged claim arising by virtue of his

having been a surety of the defaulting Palanca. It nowhere appears in the evidence or the record exactly when this claim arose except it may be inferred from the time of presentation in 1909, and we have no means of determining whether the defalcation represented by the said claim occurred before or after the substitution of sureties heretofore referred to.

Upon these facts it was contended by counsel for plaintiff that judgment should be rendered in his favor for the sum of P30,000, with costs, while counsel for defendant contended that upon said facts judgment should be rendered in favor of defendant, dismissing the complaint, with costs. The court, having heard the evidence and the arguments of counsel, rendered judgment in favor of defendant and against plaintiff, dismissing the complaint upon the merits, without costs. This appeal is from that judgment.

We are of the opinion that the judgment must be affirmed. We base our affirmance upon the ground that Doroteo Velasco, for whom the deceased Pio de la Guardia Barretto was surety, would not have been liable himself had this action been commenced against him. If the principal is not liable upon the obligation, the surety cannot be.

At the head of the law of administration of the Philippine Islands stand sections 596 and 597 of the Code of Civil Procedure. They are as follows:

"SEC. 596. Settlement of intestate estates, without legal proceedings, in certain cases.—Whenever all the heirs of a deceased person are of lawful age and legal capacity, and there are no debts due from the intestate estate, or all the debts have been paid by the heirs, the heirs may, by a family council as known under Spanish law, or by agreement between themselves, duly executed in writing, apportion and divide the estate among themselves, as they may see fit, without proceedings in court.

"SEC. 597. In such case distributees liable for debts.— But if it shall appear, at any time within two years after such settlement and distribution of the estate, that there are debts outstanding against the estate which have not been paid, any creditor may compel the settlement of the estate in the courts in the manner hereinafter provided, unless his debt shall be paid, with interest; and the administrator appointed by the court may recover the assets of the estate from those who have received them, for the purpose of paying the debts; and the real estate belonging to the deceased shall remain charged with the liability to creditors for the full period of two years after such distribution, notwithstanding any transfers thereof that may have been made."

These sections provide for the voluntary division of the whole property of the decedent without proceedings in court. The provisions which they contain are extremely important. The wisdom which underlies them is apparent. It is the undisputed policy of every people which maintains the principle of private ownership of property that he who owns a thing shall not be deprived of its possession or use except for the most urgent and imperative reasons and then only so long as is necessary to make the rights which underlie those reasons effective. It is a principle of universal acceptance which declares that one has the instant right to occupy and use that which he owns, and it is only in the presence of reasons of the strongest and most urgent nature that that principle is prevented from accomplishing the purpose which underlies it. The force which gave birth to this stern and imperious principle is the same force which destroyed the feudal despotism and created the democracy of private owners.

These provisions should, therefore, be given the most liberal construction so that the intent of the framers may be fully carried out. They should not be straitened or narrowed but should rather be given that wideness and fullness of application without which they cannot produce their most beneficial effects.

Standing, as we have said, at the head of the law of administration of these Islands, they are the first provisions to which our attention is directed in seeking a legal method for the division and distribution of the property of deceased persons. They are thus made prominent. And justly so. The purpose which underlies them, as we have already intimated, is to put into one's hands the property which belongs to him not only at the earliest possible

moment but also with the least possible expense. By permitting the partition and division without proceedings in court no time is lost and substantially all expense and waste are saved. This is as it should be. The State fails wretchedly in its duty to its citizens if the machinery furnished by it for the division and distribution of the property of a decedent is so cumbersome, unwieldy and expensive that a considerable portion of the estate is absorbed in the process of such division. Where administration is necessary, it ought to be accomplished quickly and at very small expense; and a system which consumes any considerable portion of the property which it was designed to distribute is a failure. It being undoubted that the removal of property from the possession of its owner and its deposit in the hands of another for administration is a suspension of some of his most important rights of property and is attended with an expense sometimes entirely useless and unnecessary, such procedure should be avoided whenever and wherever possible.

In the case at bar we are of the opinion that, under the broad and liberal policy which we must adopt in the interpretation and application of the provisions referred to, the division of the property of Mariano Ocampo, deceased, in the form, in the manner and for the purposes expressed, falls within the provisions of said sections and may be termed, therefore, and we hold it to be, a partition of the property of a decedent without legal proceedings within the meaning of those sections. The fact of the prior appointment of an administrator and the filing of an inventory before such partition is of no consequence so far as the right of the owners to partition is concerned. The only requisite for such petition prescribed by the law is that "there are no debts * * * or all the debts have been paid by the heirs." When this condition is fulfilled the partition can take place, no matter what stage the administration may have reached. By this it is, of course, not meant that the partition after the appointment of an administrator will interfere with the rights acquired by third persons dealing with said administrator within the limits of his authority and prior to the partition; nor that the administrator can be deprived of the property of which he is legally in possession without proper proceedings and the consent of the court.

As we have already indicated, the basis of the liability of a surety on an administrator's bond is the fault or failure of the principal. The liability of the principal precedes that of the surety. If Velasco incurred no liability, then his surety incurred none. The question that naturally suggests itself is, then, In what was Velasco at fault or in what did he fail? When the persons interested in the estate of Mariano Ocampo agreed voluntarily upon a partition and division of the property of said estate and the actual partition followed, the matter passed out of the hands of Velasco as administrator. The parties to the partition stood invoking their rights under sections 596 and 597. Velasco was helpless. He was powerless to prevent the parties from taking the property to which they were entitled under the agreement, it being conceded that they were actually entitled thereto in law. Those sections were applicable to the situation and there was nothing that Velasco could do to prevent the estate from being divided according to their provisions. In giving his consent to the partition and in assisting the parties to obtain the approval of the court thereto he did no wrong. He simply aided, in carrying out the provisions of the sections referred to. It is a universal principle that one who follows a law commits no fault, incurs no failure and wounds no rights. If one obeys the law he is free not only in person but in property. Observance of the law discharges obligations; it does not create them; and an obligation once discharged cannot be re-created by the act of others in which the person as to whom it was discharged takes no part. The proceedings under the sections referred to were, after the partition was actually made and the property duly turned over by the administrator under the proper proceedings, a complete settlement of the estate of Mariano Ocampo, deceased, as it then stood, so far as the administrator was concerned. Nothing further needed to be done. Every duty which Velasco owed up to the time of the partition had been met. All debts presented or known had been paid. The court had given its approbation to the delivery of the property by the administrator to the partitioning parties. Every obligation which lay upon him had been removed. Nor could there arise against him any obligation in the future in relation to the same property. The instant that the partition occurred, in the form and manner stated, he stood stripped of all responsibility to the

estate, to its creditors, to the heirs and to the court. He stood divested of every official duty and obligation, as fully as before his appointment—as completely as if he had not been appointed at all. In law, therefore, he was no longer administrator with the will annexed of the estate of Mariano Ocampo, deceased. He was in effect, discharged. As to him the estate had been wiped out as a legal entity. It had ceased to exist. And, while at any time within two years after the partition the property, or a portion thereof, then in the possession of the partitioning persons could have been placed in administration upon the happening of certain events, it would not have been the same estate that had been represented by Velasco, nor would Velasco have been the administrator of the new estate by virtue of his appointment in the old. It would have been necessary for the court, upon the proper application setting forth the conditions prescribed by the sections, to appoint another administrator for the purposes specified therein. It might have been Velasco, if he would have accepted the appointment, or it might have been another. The point is that it would have been necessary to appoint a new administrator just as if one had not been named before. The new administrator would have had new duties, some of which would have been quite different from those of the administrator appointed originally. He would have had different sureties, who would have bound themselves to different obligations.

That on the partition under said sections the estate was, in this case, completely wiped out and the administrator as completely discharged cannot be doubted for the following reasons:

1. The whole estate was, by virtue of these sections, taken from the administrator and turned over to the partitioning persons. No security was required or given for its safekeeping or return.
2. The persons to whom the estate was thus turned over became absolute owners of the same, subject to be divested, wholly or only partly, on the happening of certain events and the taking of certain proceedings thereon. But even such divestiture could have been avoided by the payment by the parties, or any of them, of the debt which was the moving cause thereof.

From these premises it is the merest conclusion to say that the decedent's estate was merged in the partitioning parties; and this no matter whether the partition occurred before or after the appointment of an administrator. When one has been named to perform certain acts in relation to a given thing, and before said acts have been begun, or, having been begun, are completed, the appointing power has placed the thing upon which those acts were to operate wholly beyond the possession, jurisdiction and control of the one so appointed, there is a complete revocation of such appointment, so far as all subsequent acts are concerned. An administrator cannot be held to any accountability for property over which he has absolutely no power or jurisdiction and in which he has not the slightest legal interest. The thing on which he was appointed to operate having been withdrawn wholly beyond his ken by the very power (the law) which appointed him, there is a complete revocation of the original appointment.

Moreover, the sureties of an administrator so appointed can not be held liable for property which by force of law has been taken from the principal and its ownership and control turned over to others. Their obligation is that their principal shall obey the law in the handling and distribution of the estate. Their obligation is discharged when the estate is legally turned over to those entitled thereto. The law requires the principal to turn it over to those who bring themselves within the provisions of section 596. Having turned over the whole estate under the compelling power of the law, his obligation ceased. The responsibility of the sureties ceased at the same time. Without their consent another obligation could not be imposed upon them in relation to the same principal, and the same property, or a part thereof, especially after the lapse of two years. Their undertaking was that their principal should discharge one obligation, not two.

It requires no argument to demonstrate that the duties and obligations imposed upon an administrator appointed under section 597 might and probably would be different in many respects from those of an administrator

appointed in the first instance; and that, therefore, the obligation of his sureties would not be the same as that of the sureties of the administrator appointed originally. The administration contemplated by section 597 is a new administration and one entirely apart from any other administration theretofore had. This section requires the appointment of a new administrator, with a new undertaking. The administration under that section is distinct and separate from any administration which may have been in progress at the time of the partition and division under section 596. This is clear for the following reasons:

After the partition and division provided for in sections 596 and 597 have been fully consummated, no further administration of the estate can be had unless there occur the following requisites:

1. There must have been discovered a claim against the estate "within two years after such settlement and distribution of the estate."
2. The creditor holding the claim must be the person who moves the court for the appointment of an administrator.

If those requisites are lacking, there can be no administration. When one fails the right to such administration does not arise and any person interested in the estate may oppose any effort to administer under such circumstances. These requisites combined are that and that alone which give to the administrator when appointed the right to recover the assets from the persons who received them on the partition. Indeed, if these requisites are lacking no administrator can lawfully be appointed, and, if improperly appointed, he fails of legal power to maintain an action to recover the assets in the hands of those among whom they have been partitioned; in other words, he is powerless to administer. If these requisites fail, then the real estate in the hands either of the persons among whom it has been partitioned or of their assignees is free from the lien created by section 597 and any attempt to enforce such lien can be successfully opposed by any person interested in such property. The appointment of an administrator without the concurrence of these requisites is without warrant of law and the appointee is powerless to perform any act of administration. The statute must be strictly complied with in every essential before it operates. Every essential requirement must be fulfilled before it will be permitted that a partition which has the clear sanction of the law and which is strictly in accord with public policy of the state shall be set aside and destroyed with all the evil consequences thereby entailed.

It is a necessary deduction from the provisions of the sections mentioned that the appointment of an administrator ought not to be permitted, even when the requisites above mentioned concur, unless the heirs or the persons among whom the property was partitioned have been given an opportunity to be heard on that application. It would be extremely unusual to proceed to the appointment of an administrator under section 597, by virtue of a debt which had been discovered after the partition and division, without giving the heirs an opportunity to avoid such administration by the payment of the debt, it being kept in view that the object of the law in originally giving the right to pay the debts and have partition without proceedings in court was to avoid that very administration. Such a proceeding would be unusual and irrational. Such a course would be in direct opposition to the purposes which animated the provisions authorizing the original partition.

(1) In the case at bar no debt was discovered during the prescribed period. It was nearly four years after the partition of the estate and the taking possession by the heirs of their respective portions before it was even discovered that Palanca had been guilty of converting the property of the estate to his own use; and, so far as the record shows, it was nearly five years before the alleged claim against the estate of Mariano Ocampo was fixed.

(2) No creditor made his application. The requirements of section 597 not having been met, there could be no administration under said section. Therefore, the appointment of commissioners for the hearing of the claim against the estate of Mariano Ocampo presented by the plaintiff in this case was an appointment without warrant or authority of law. It was an appointment in respect to an estate that did not exist and in relation to an

administration that had never been inaugurated. Under section 597 the commencement of the administration is the application of the creditor and the appointment of the administrator pursuant to such application. Without such appointment there is no administration. As we have before stated, when the property was partitioned as described heretofore, the estate, as such, ceased to exist and the administration thereof by Doroteo Velasco was wiped out. There was no administrator to carry on an administration. By operation of law the estate had been passed on to the heirs who had become the absolute owners of it. They were not subject to the orders of the old administrator and they held rights inferior to no one. To be sure, as we have already stated, those rights might be modified to a certain extent by the happening of subsequent events; but until those events transpired their rights were absolute. Those conditions never having been met, a fact admitted by both parties in the case at bar, there was absolutely no estate at all, much less one in the process of administration, at the time the commissioners were appointed to hear the claim for P30,000 presented against the estate of Mariano Ocampo, deceased, by the plaintiff herein. Add to this the fact that there was no administrator of said estate in existence at the time, and we have before us the absurdity of the appointment of the commissioners to report on a claim against an estate which did not exist and under the direction of an administrator that had never been appointed.

The necessary conclusion is that the appointment of commissioners to hear the claim above referred to was beyond the powers of the court and was without jurisdiction. The finding of the commissioners had no force or effect. It gave no rights against the estate and none against the so-called administrator.

It must be remembered that it is only debts discovered within the prescribed period that can be made the reason for an administration of the estate subsequent to its partition. The necessary result is that a debt not discovered within that period cannot be made the reason for an administration of the estate. The debt in the case at bar having first been discovered more than four years after the partition of the estate of Mariano Ocampo, deceased, an administrator, even though appointed under section 597, would have no authority in law, over the objection of one interested, to pay the debt in question or to maintain an action or other proceeding for the recovery of property for that purpose. This section creates a statute of limitations which deprives all debts which are not discovered within the prescribed time of the power of requiring an administration of the estate. The administration of the estate after the partition under the law has been accomplished depends upon the discovery of the debt "at any time within two years after such settlement and distribution of the estate." The law does not operate unless that discovery is made within the time prescribed.

We have not overlooked the contention that at the time this partition took place there was a contingent claim against the estate partitioned, namely, the claim which would arise on the contingency that the administrator for whom Mariano Ocampo was surety might default or other wise fail to perform his duties thus rendering Mariano Ocampo liable on his bond; and that said contingent claim, being one expressly recognized by sections 746 to 749 of the Code of Civil Procedure as a claim entirely proper to present, no partition of this estate under section 596 and 597 was legally possible until such claim was provided for by the partitioning parties. This contention goes upon the assumption that a partition under the sections of the Code of Civil Procedure so often referred to is void unless every debt is paid or provided for by the partitioning parties, and may therefore be entirely disregarded by the creditor holding a claim either unpaid or unprovided for. We do not believe that this assumption is warranted. In the first place, we must remember that the partition proceedings in question are proceedings out of court. Consequently there is no prescribed method of ascertaining and settling claims. The appointment of commissioners, the publication of notice to creditors, and all the other proceedings necessary in cases of administration in court are not required in partition out of court. The law is silent as to how the claims are to be ascertained, presented and determined. We must assume, therefore, that the method of ascertaining them and determining their validity was left to the good sense and sound judgment of the persons concerned. Usually no difficulty will be experienced in solving the problem presented by this conclusion. It is obvious that creditors

always know who owes them and that debtors generally know whom they owe. It is equally obvious that, generally speaking, a creditor is one of the first to learn of the death of his debtor, and that heirs of the latter are the first to begin to calculate how much of his property they are to receive. This cannot be known until the debts are determined. The heirs know they cannot escape payment of the debts. A surreptitious division behind the backs of the creditors would not avail as the latter have two years thereafter in which to throw at least a portion of the estate into administration and thereby nullify the attempt to overreach them. Even the transfer by the partitioning persons of the property received on the partition to third persons would not profit them, inasmuch as the consideration received on such transfer would, if necessary, be subject to seizure to pay the debt presented and the real estate would go into the hands of the vendees charged with the lien of said debt.

The method of ascertaining claims against the decedent's estate not being prescribed, it is apparent that no objection to a partition can be urged by a creditor whose claim has not been paid, due to the faulty method adopted by the partitioning parties to ascertain claims, or, even, the absence of any effort at all to ascertain them.

In the second place, it must be observed that express provision is made by sections 596 and 597 for the payment of a claim discovered by them or presented after the partition. That is one of the main provisions. It is a necessary deduction, therefore, that it was not the intention of the law to pronounce the partition void or of no effect simply because not all of the debts were, paid before the partition was made. The fact of nonpayment cannot, then, be used by the creditor as a reason for attacking the partition directly; that is, by asserting that, inasmuch as a payment of all the debts is a condition precedent to the right of partition, such partition cannot legally and validly take place while a debt is outstanding. While a partition manifestly fraudulent in inception and result might possibly be attacked directly by an action to set aside, a question which we do not discuss or decide, the manner of attacking the partition prescribed by law is the one, generally speaking, preferably to be followed; and that is to throw into administration so much of the estate as is necessary to pay the outstanding claim. The method, though indirect, accomplishes a better result than a direct attack. The latter, by destroying the validity of the partition, would throw the whole situation into confusion and uncertainty, something always to be avoided. The former does not produce that result. Where there is no fraud, and possibly where there is, a direct attack on the partition is impossible under the provisions under discussion. A claim discovered and presented within the two years serves not to destroy, primarily, the partition. It does not even permit the whole estate to be thrown into administration. Only such portion as is necessary to pay the discovered debt can be administered. This is apparent when it is observed that on such administration the administrator is authorized to recover only the amount of property necessary to pay the debt presented, leaving the partitioning parties in undisturbed possession of the remainder. Moreover, the partitioning parties may still pay the debt and preserve undisturbed the partition in all its parts and thus assure and maintain the rights of the parties thereunder. The mere fact, therefore, that a creditor was not paid before the partition took place furnishes no ground for a revocation of the partition. It simply provides a fact which he may urge as a reason for the appointment of an administrator and the consequent administration of so much of the estate as may be necessary to pay the debt discovered.

But, as already seen, in order that it be a reason for such appointment and administration, the claim must be presented within two years from the date of the partition and distribution.

Summarizing, we have seen that lack of opportunity, either by want of notice or otherwise, and the consequent failure to present a claim before partition, is, under the sections we are discussing, of no consequence whatever in so far as the validity of the partition is concerned.

We have also seen that the fact that there were debts outstanding and unpaid at the time the partition took place is of no importance so far as the validity of the partition is concerned, leaving out of account the question of fraud to which we have already adverted and left undecided.

We have also seen that the fact that such claim exists and is valid and subsistent against the estate is of no consequence whatever with respect to the right of its holder to require an administration of the estate unless such claim is discovered and presented within two years.

The fact that the claim in the case at bar was, during a certain period, a contingent one is of no importance. The sections under discussion make no distinction between claims.

The creditor himself is not without duties. In the case at bar it was five years after the partition before the alleged creditor made any attempt whatever to "discover" or present his claim. He knew of the death of Ocampo very soon after it occurred. He knew that it was among the possibilities that Ocampo's estate might be called upon to respond for the failure of Palanca to perform his duty as administrator. It was his duty to see to it that he would be protected in that event. Nevertheless he permitted the estate of Ocampo to be partitioned and distributed without protest and without the presentation of his contingent claim, and sat quiet and passive for nearly five years thereafter knowing that it was very probable that the property of the estate was being consumed, incumbered, and transferred by the persons among whom it had been distributed.

The judgment appealed from is hereby affirmed, without special finding as to costs.

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

Carson and Trent, JJ., concur as to the dispositive part.

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