

GUILLERMO F. BOWLER, PLAINTIFF AND APPELLEE, VS. THE INTESTATE ESTATE OF MATEA ALVAREZ Y RUBIO, DEFENDANT AND APPELLANT.

G.R. No. 7519. December 06, 1912

Ponente: TORRES, J.

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TORRES, J.:

Appeal by counsel for the judicial administrator of the estate of the deceased Matea Alvarez y Rubio, by means of a bill of exceptions, from the judgment of September 22, 1911, wherein the honorable Charles S. Lobingier, judge, held that the claim based on the document submitted by the plaintiff on July 9, 1910, in administrative proceedings No. 1024 and duplicated in case No. 7939, constitutes a legal claim against the estate of the said deceased, thereby admitting said claim and authorizing the administrator to pay it.

On October 20, 1910, counsel for the plaintiff, Guillermo F. Bowler, filed in the Court of First Instance of this city an amended complaint against the intestate estate of the deceased Matea Alvarez y Rubio, setting forth that the administration of the estate of said intestate is pending in Sala II of the court of this city under the old No. 1025; that at the time of her death, and for many years prior thereto, the said Matea Alvarez y Rubio lived in the town of Capiz, province of the same name; that she died a widow on May 26, 1897, intestate and leaving no heir by force of law, and therefore the Court of First Instance of Capiz immediately proceeded to provide for her intestate estate in accordance with article 942 of the Ley de Enjuiciamiento Civil then in force; that the next day, that is, May 27, Marcos Arcenas, legitimate son of Maria Geronimo Rubio, appeared in the case and in the court with a power of attorney executed in his favor on that date by his mother, proving the latter's relationship to the deceased Matea Alvarez y Rubio within the fourth degree, as she was the aunt of the deceased Matea; that the court held such relationship to be proven and, in conformity with article 944 of the said Ley, ordered the delivery of all the property and effects, including the business and stock, belonging to the deceased to the said Marcos Arcenas in the character of representative of Maria Geronimo Rubio, all legal intervention ceasing on May 31 of that year, 1897; that in addition to Marcos Arcenas' mother there survived the deceased Matea Alvarez, Victorina Rubio and Manuel Rubio, uncle and aunt of the deceased and brother and sister of the said Maria Geronimo Rubio, who then resided in the Island of Cebu, and who, in the month of the death of Matea Alvarez, executed powers of attorney in favor of the said Marcos Arcenas, so that he might represent them and look after their interests as heirs of the deceased; that as such representative of the three sole heirs of the deceased Matea Alvarez, Marcos Arcenas took over the business belonging to her and assumed possession of all the property, real and personal, and the live stock, of the intestate estate, until he was relieved in November, 1900, by a judicial administrator appointed by the Court of First Instance of this city; that at the death of Matea Alvarez y Rubio her intestate succession had little ready cash and, in consequence of the revolution which a little while after her death spread to the Province of Capiz, Marcos Arcenas as administrator of the property and business of the deceased had to ask for extensions of time for the payment of the debts contracted by the deceased and to borrow various sums, to carry on the business she left, and to avert great damage to the interests of the three heirs he represented;

that among said debts of the deceased Matea Alvarez y Rubio appears a note reading thus:

"I hereby acknowledge that I owe Don Guillermo Bowler thirteen thousand nine hundred and fifteen (pesos) (P13,915) which he has furnished me in cash, as a loan without interest, and obligate myself with all my property, present and, future, to return to him the said sum in two years, reckoned from this date, that is, on January tenth, eighteen hundred and ninety-eight.

"And to make his rights a matter of record I deliver the present to him in the presence of Don Marcos Arcenas, Don Antonio Laserna and Don Rafael Rodriguez, of this place.

"Capiz, January 10, 1896.

(Sgd.)

"MARCOS ARCENAS.

"ANTONIO LASERNA.

"MATEA ALVAREZ

"RAFAEL RODRIGUEZ."

This note does not express the true intention and agreement between the parties, for the sum received by Matea Alvarez y Rubio was not P13,915, but P11,500, with interest at 10 per cent compounded at the end of each year, as shown by the accounts of the deceased. Instead of stating these facts in the note, the contracting parties calculated the interest for two years and added it to the amount borrowed, that is, the sum of P2,415, and entered the total amount, P13,915 in said note, with the statement that it was without interest, then a very general custom in these Islands. When the foregoing note became due on January 10, 1898, Marcos Arcenas lacked funds with which to pay it, wherefore he sought and obtained from the creditor an extension of one year, thereupon executing in Bowler's favor the following document:

"In view of the circumstances that have not permitted nor permit the payment of the P13,915 called for in the preceding document, it has been agreed between the creditor Don Guillermo Bowler and Don Marcos Arcenas, the latter as the representative of Dona Geronima Rubio, who is by judicial order now in possession of the property left by Dona Matea Alvarez Rubio, to extend the time of settlement for one year, reckoned from the date it became due, that is, until January 10, 1899.

"Capiz, July 1, 1898.

"G. BOWLER.

"MARCOS ARCENAS."

When the extension agreed upon had elapsed, the intestate succession of the deceased was in a worse financial condition than before, on account of the insurrection in the country, so Marcos Arcenas was obliged to ask the creditor for another extension, and when he had secured it, Marcos Arcenas as representative and agent of the heirs and also as an heir himself, for his mother Maria Geronimo Rubio had died in the meantime, executed the document herewith reproduced:

"The undersigned, in his own name and as the general representative of the heirs of Maria Geronimo Rubio, acknowledging to be true and genuine the obligation of payment contracted by Dona Matea Alvarez y Rubio

on January 10, 1896, in favor of Don Guillermo Bowler, to which obligation the present document refers, will pay to the said Don Guillermo Bowler the sum of thirteen thousand nine hundred and fifteen pesos on January 10, 1900, and in addition, as interest on the said sum, ten per cent thereof annually, reckoning from January 10, 1898, until the date of payment, without prejudice to Don Guillermo Bowler's right, in case of insolvency, to proceed against the intestate estate of the said Dona Matea Alvarez y Rubio for the amount stated. I will make payment of the capital and interest stated in the city of Iloilo, to the order of Don Guillermo Bowler or his duly authorized representative.

"Capiz, March 5, 1899.

(Sgd.) "MARCOS ARCENAS."

Neither does the foregoing document express the true intention and agreement between the parties, because the interest, according to the agreement, was payable at the end of each year, while in fact it was paid on September 26, 1900, by Pedro Arcenas Rubio, the successor of said Marcos Arcenas Rubio, who on July 11, 1900, appointed the said Pedro Arcenas his successor in the office of representative and agent of the three heirs, Maria Geronimo Rubio, Victoriha Rubio, and Manuel Rubio, with full powers, granted by them. The balance struck is shown in a document, a copy whereof follows:

"Don Guillermo Bowler, according to current account and reciprocal interest at 10 per cent a year:

DEBIT.

CREDIT.

1900.

1898.

July 12. Paid through

Dona Felisa- F. de

Viaplana..... \$1,350.00

Jan. 10. Balance

1899.

\$13,915.00

Jan. 10. Interest for one year.....

1,391.50

Dec. 31. Interest from Jan. 10 to date.....

1,488.13

1900.

June 30. Interest from Jan. 10 to date.....

839.73

17,634.36

."Capiz, September 24, 1900

(Sgd.) "Pedro Arcenas.

"Accepted:

(Sgd.) "WM. F. BOWLER.

"BACOLOD, NEGROS, October 8, 1900."

Nor was any payment made when the second extension expired, but five months after that date Marcos Arcenas began to make payments as interest, thus:

July 12, 1900. Paid through Dona Felisa J. de Viaplana, of Silay, Occidental
Negros.....

\$1,350.00

Sept. 27, 1900. Idem, Messrs. Hoskyn & Co., of Iloilo.....

1,440.00

Oct. 20, 1900. Idem, Mr.,Buchanan, of Iloilo.....

27.25

Nov. 28, .1900. Idem, the Chinaman Conclu

28.99

Nov. 28, 1900. Proceeds from firewood

91.77

Nov. 28, 1900. Paid through N. Azcona. ...:

182.50

3,120.51

On October 12 of the same year, 1900, the plaintiff sold and delivered to Pedro Arcenas 252 demijohns for his use in the nipa wine distillery belonging to the intestate estate, the operation of which was continued after the death of Matea Alvarez y Rubio. The price stipulated for said demijohns was 311.25 Mexican pesos, so that on November 30, 1900, the result of all said transactions between the intestate estate and the plaintiff was a balance in the latter's favor of \$15,497.32 Mexican, as appears from the account books of said deceased, which were kept up by Marcos and Pedro Arcenas, and from which the last-named took and delivered to the plaintiff the following account;

"Don Guillermo Bowler, according to current account, and interest at 10 per cent up to November 30, 1900.

DEBIT.

Paid through J. Viaplana.....

Idem, on account to Hoskyn.....

Received from Buchanan.....
Idem, from Chinaman, V. Conclu.....
Proceeds from firewood and nipas.....
Received from D. N. Azcona.....
14,826.10 trial balance.....
Balance in his favor on new account.....

July 12

Sept. 27

Oct. 20

Nov. 28

...do....

...do...

...do...

...do...

1,350.00

1,440.00

27.26

28.99

91.77

182.50

.....

15,497.32

18,617.83

12

89

112

151

151

151

153 _____

16200

128160

3024

4228

13741

27482

268225

2461060

CREDIT.

Balance in his favor.....

262 demijohns.....

Interest, in his favor, 2420008/3600.....

Balance in his favor.....

June 30

Nov. 9

.....

Nov. 38

17,634.36

311.25

672.22

 18,617.83

 15.497.32

.....

132

.....

.....

41052

2420008

 2461060

Not only did Marcos Arcenas seek extension for the debt to plaintiff but he also, under the same authority and power, borrowed from various persons sums that amounted to \$20,000, which have been allowed and paid by judicial order and wholly for the benefit of the entire estate and its heirs, in order to avoid loss and damage to them. All the acts executed by Marcos Arcenas and his successor in the management of the estate and business of the intestate estate were performed with full knowledge and approval of all the heirs. Since the appointment of the judicial administrator in November, 1900, the plaintiff has tried by all possible means, friendly and judicial, to collect said debt, the validity whereof the heirs have acknowledged, and they assured him of the payment thereof, with the interest stipulated by Marcos Arcenas, as soon as the property of the intestate estate should be adjudicated. In spite of the fact that the present administrator, appointed in 1903, knew perfectly well that the intestate estate owed large sums, yet he did not ask for the appointment of a commissioner until the close of 1906. In May, 1907, the plaintiff presented his claim to said commissioners and it was allowed to the extent of

\$23,971.80, without any objection by the heirs, although the administrator appealed to the Court "of First Instance; but on the face of the evidence said court affirmed the decision of the commissioners in the plaintiff's favor for the sum of \$23,072.25, and after the matter had been carried to this Supreme Court on appeal it was decided, as appears in 13 Phil. Rep., 282. Since the appointment of the judicial administrator in November, 1900, up to date, all the property of the intestate estate has been in administration under the direction of the Court of First Instance of Manila, with the exception of \$9,000 in cash, which have at various times been delivered to the heirs by the present administrator without any authorization, although sufficient property remains to settle all the debts of the intestate estate. Outside of their respective shares in the intestate inheritance, the majority of the heirs is composed of insolvent persons who are financially unable to answer proportionally for the payment of the sum claimed in this suit, they having unlawfully taken to meet their expenses said \$9,000, as follows:

Victorina Rubio (original heir).....

P2,599.25

Francisco Rubio (heir of the original heir Manuel Rubio).....

793.21

Heirs of the original heir, Maria Geronimo Rubio:

Maria Rubio.....

1,037.49

Candelario Arcenas:

680.21

Cornelio Aldea

509.10

Roque Arcenas

496.19

Isidora Arcenas.....

764.42

Basilio Arcenas'

169 00

Pedro Arcenas

1,156.41

Anastacia Batauigaa.....

543.90

Esteban Arcenas.....

104.00

Agustin Aldea.....

74.00

Lucio Aldea.....:

9.00

8,936.77

On July 13, 1910, the plaintiff received on the principal debt in question the sum of P8,000 Philippine currency, without prejudice to the question of interest pending, and has not to date received any amount as interest on said debt; therefore he begs that judgment be rendered against said intestate estate for the sum of 311.25 pesos Mexican, or its equivalent in current money, as requested in paragraph 15 of the complaint; and also for annual interest at the rate of 10 per cent, compounded at the end of each year, from November 30, 1900, upon the balance of 15,497.35 pesos Mexican, according to the final statement quoted in said paragraph 15 of the complaint, less the reciprocal interest for the sum of 3,120.59 Mexican pesos paid on account since the same date.

The demurrer interposed by counsel for the defendant having been overruled by order of March 17, 1910, said defendant, as judicial administrator of the property of the deceased Matea Alvarez Rubio, excepted and in reply to the previous complaint generally and specifically denied each and all of the facts therein alleged, with the exception of those expressly admitted, and in special defense alleged that, for the collection of the interest at 10 per cent a year on the principal stipulated in the note signed by Matea Alvarez Rubio on January 10, 1896, the plaintiff presented a claim to the commissioners appointed, who saw fit to admit it and decide that the plaintiff was entitled to collect said principal with interest at the rate of 10 per cent a year, that is, the sum of 23,971.08 pesos Mexican. The plaintiff appealed from this decision and the Court of First Instance held that the administration of the property of said deceased was liable for the settlement of said interest and therefore sentenced the administration to the payment of the sum of 27,072.25 pesos Mexican with interest at 10 per cent a year from September 10, 1908; but the administrator appealed and this court, reversing the judgment of the court below, held that the intestate succession of said deceased was not obligated to pay the interest claimed by the plaintiff and merely sentenced said administration to pay 10,794.49 pesos Mexican with interest at the rate of 6 per cent a year from the date when the claim was presented to the commissioners. In view of this decision, the question regarding the payment of interest of 10 per cent claimed by the plaintiff has already been discussed and definitely decided in a final decision rendered by a competent court and is *res adjudicata*. To carry out that decision of the Supreme Court the defendant on July 9, 1910, deposited with the clerk of the Court of First Instance the sum of P11,384.12 Philippine currency, which represents the amount to which the plaintiff is entitled, with interest at the rate of 6 per cent a year, according to that decision of the Supreme Court, and it was necessary to make said deposit because the plaintiff refused to accept the amount offered by the defendant under that decision, although subsequent to the date of the deposit counsel for the plaintiff took from the clerk, on account of the claim, the sum of P8,000 Philippine currency. In order to base his action for the collection of interest at the rate of 10 per cent a year on the document dated March 5, 1899, signed by Marcos Arcenas in his own behalf and as representative of the heirs of Maria Geronimo Rubio, the plaintiff should proceed against the said Marcos Arcenas and the heirs of the said Maria Geronimo Rubio, or against all the heirs of the deceased Matea Alvarez Rubio and not against the latter. On the hypothesis that the extension for the payment of the principal owed by the deceased Matea Alvarez y Rubio has been beneficial to the administration of her property, a fact which the defendant expressly denies, then the plaintiff should present a petition to the Honorable A. S. Crossfield, judge, who is familiar with the orders of said administration, requesting that, after investigation of the validity and

admissibility of the claim for payment of interest of 10 per cent and for the value of the 252 demijohns, he order the payment of said interest and the value of the demijohns, which should be charged, as expenses of administration. Wherefore his action in the form presented, or a separate suit against the intestate estate of the deceased Matea Alvarez y Rubio, would be improper, and therefore the defendant begs that the administration of the property of this deceased be absolved from the amended complaint presented in this case, with the costs against the plaintiff.

After trial and examination of the evidence submitted by both parties, the court on September 22, 1911, rendered judgment declaring that the claim presented by the plaintiff against the property of the deceased Matea Alvarez y Rubio was legal and therefore allowed and the administrator authorized to pay it, with the costs.

The defendant excepted to this judgment and asked for a new hearing, which motion was denied by the court, whereupon the defendant excepted and filed the corresponding bill of exceptions, which was approved, certified and forwarded with the evidence to the clerk of this court.

The plaintiff sets up as the principal cause of action his claim for the payment of interest at the rate of 10 per cent a year compounded at the end of each year since November, 1900, on the balance of 15,497.36 pesos Mexican, according to the liquidation inserted in paragraph 15 of the complaint.

The defendant objected, averring that said claim for the payment of interest has already been discussed, adjudicated and finally decided by judgment of this court rendered in the suit entered by the same plaintiff, Guillermo F. Bowler, against the defendant Pastor Alcazar, as administrator of the property of the deceased Matea Alvarez Rubio, which judgment appears in 13 Phil. Rep., 282. Therein this court reversed the judgment appealed from and directed the Court of First Instance to render judgment allowing the plaintiff's claim for the sum of 10,794.49 pesos Mexican, reduced to Philippine currency, with interest at the rate of 6 per cent per annum from the date of the presentation of the claim by said plaintiff to the commissioners.

In the judgment reversed, the administration of the property of the deceased Alvarez was held to be liable for the payment of the principal and interest at the rate of 10 per cent a year and was sentenced to pay 27,072.25 pesos and interest thereon at 10 per cent a year from September, 1908.

So the question submitted to the court for decision is this: The contention between the plaintiff and counsel for the intestate succession of the deceased Matea Alvarez concerning interest on a certain sum which she owed at death having already been decided in its previous judgment, can the same question again arise in the present litigation?

In the said decision of this court, the following grounds were assigned as headnotes:

"The inclusion, in the amount for which a promissory note is given, of interest in advance of the maturity of the note, is not of itself sufficient evidence to prove an agreement to pay interest after maturity.

"Commissioners appointed to hear claims against an estate of a deceased person have no authority to allow a claim which arose after the death of such person, as for example interest due on a promissory note by virtue of an agreement made by the creditor with one of the heirs.

"When no agreement as to interest is made, the interest does not commence to run on loans not mercantile until some demand for payment is made."

The plea of res adjudicata in a subsequent suit may be supported by a judgment of execution in a preceding one, and is admissible, when identity of persons, things, and grounds of action exists in both suits,, requisites that must be present in common between the first suit already terminated by judgment of execution and the subsequent one in which judgment is pending as a result of the presentation in the second litigation of a complaint over the same

thing, the allegation upon the same ground and between the same parties.

Every question decided by final judgment in litigation before the courts is held to be *res adjudicata* or, as rule 3&, title 34, partida 7, says:

"Furthermore, we hold that a matter which has been adjudicated by a judgment that cannot be appealed from must be accepted as truth."

Therefore, a question which is *res adjudicata*, constitutes a legal truth, and every judgment or judicial decision against which no appeal lies is said to have become *res adjudicata*, as Law 19, title 22, of the seventh partida says:

"A complete judgment, justly rendered by the trial judge, has such great force that thenceforth the parties and their heirs are bound to submit thereto."

Article 1252 of the Civil Code, paragraph 1, provides:

"In order that the presumption of the *res adjudicata* may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such."

The effect of a judgment or final order in a suit, outside of the cases enumerated in paragraph 1 of section 306 of the Code of Civil Procedure, is conclusive, according to paragraph 2, with reference to the subject matter of the litigation between the parties and their successors in interest who may litigate for the same thing, under the same title and in the same capacity.

The claim presented by the plaintiff to the commissioners appointed in the proceedings for administration of the property of the deceased intestate, Matea Alvarez, for the collection not only of the principal owed, which is set forth in the said document of January 10, 1896, but also for interest at the rate of 10 per cent a year allowed by said commissioners and affirmed by the Court of First Instance, has nevertheless been corrected by this court in its said decision of March 23, 1909, since it declared that, in addition to the principal, the defendant only owed interest at the rate of 6 per cent. But, notwithstanding this final judgment, the plaintiff, on October 20, 1910, again instituted the present litigation, asking in his complaint that the court render judgment among other matters for the payment of the same interest at the rate of 10 per cent a year compounded at the end of each year from November 30, 1900, on the balance of 15,497.35 pesos Mexican. The suit having been tried and the representative of the intestate succession of the deceased Matea Alvarez having been heard, the Court of First Instance rendered judgment on September 22, 1911, declaring that the plaintiff's claim is legal and authorizing the administrator to pay the amount thereof.

There can be no doubt that there exists identity of persons, things, and rights of action between the present suit and the previous one which was finally decided by this court. The previous suit, like the present, was instituted by the plaintiff, Guillermo F. Bowler, against the administrator of the property of the intestate Matea Alvarez; and the complaint upon which the present is based is directed against the same intestate succession. In that suit, as well as in this one now submitted to the decision of the court, interest was claimed on the principal the intestate owed at the rate of 10 per cent a year, and for the same reason, that the payment of such interest at 10 per cent had been stipulated in the note quoted.

It cannot be denied that the right of action exercised in the previous suit is reproduced in the present, for each is based on the same cause and reason, to wit, stipulation for payment of interest at the rate of 10 per cent a year in the said note, so there can be no question that the requisites of identity of persons, things, and rights of action are present in common between the former suit, already terminated, and the one now pending in this second instance on appeal. Therefore, the question now raised in this suit has already been decided by final judgment in the former

one and has acquired the authority of *res adjudicata*, and it would be improper to present a new complaint for collection of the same interest, already definitely decided, in order to be again tried and determined in this suit.

So it cannot be denied that there exists perfect identity of things, the interest claimed, between this case and that decided by the said judgment of this court; the causes, an alleged agreement for the payment of said interest at the rate of 10 per cent a year; the litigants are the same parties as creditor and debtor. The apparent difference between the defendant in the said former suit decided by this court on appeal and the defendant in this suit is not an obstacle to sustaining the plea of *res adjudicata* herein; Pastor Alcazar was the defendant in that former suit, as administrator of the intestate succession of the deceased Matea Alvarez, and he represents said intestate succession herein as such administrator, in such wise that, in case of judgment, the only party responsible for the payment of the interest at 10 per cent, claimed by Bowler, would be the same intestate succession of the deceased Alvarez, especially when the principal debt was contracted by her when alive and to her is attributed, after her death, the agreement with the creditor to pay the interest at 10 per cent a year on the principal set forth in the said note, for it was not sustained in that suit terminated by a final judgment of execution; and if in the said former suit Pastor Alcazar was the defendant, he was such in the character of administrator of the intestate estate of the deceased Matea Alvarez, which is the defendant herein and represented by the same Alcazar as such administrator, for collection of the same interest at 10 per cent a year, a point already discussed and decided by this court in final form.

On this hypothesis it is improper to repeat herein the reasons and legal grounds assigned in the former decision of this court, rendered in said case No. 5045 of the General Docket and reported in 13 Phil. Rep., 282.

The question of payment of the sum of 311.25 pesos Mexican, or its equivalent in current money, for 252 demijohns for wine, which the plaintiffs sold to Pedro Arcenas, one of those who formerly acted as administrator of the property of the deceased Alvarez, lies especially within the jurisdiction of the court which heard the proceedings in said intestate succession and it may determine the nature and conditions of the said debt and the person or party liable for payment thereof. It was improper to add the action for collection thereof to that exercised for collection of the interest with which the value of said demijohns has no connection whatever, for if it constitutes a debt it would be for the administrator who contracted it; so no legal grounds exist whereby, in this suit, said claim may be duly decided with reference to the price of said demijohns against the intestate estate of the deceased Matea Alvarez.

For all the foregoing reasons, we hold that the judgment appealed from should be reversed and that we should absolve from the complaint, as we hereby do, the intestate succession of the deceased Matea Alvarez, represented by its administrator, Pastor Alcazar; without special finding as to costs in either instance.

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

DISSENTING

TRENT, J., with whom concurs Carson, J.,

I dissent. This court says:

"So the question submitted to the court for decision is this: The contention between the plaintiff and counsel for the intestate succession of the deceased Matea Alvarez over interest to be paid on a certain sum which she owed at death having already been decided in its previous judgment, can the same question again arise in the

present litigation?

* * * * *

"There can be no doubt that there exists identity of persons, things, and rights of action between the present suit and the previous one which was finally decided by this court.

* * * * *

"It cannot be denied that the right of action exercised in the previous suit is reproduced in the present, for each is based on the same cause and reason. * * *"

I assert that this court did not decide in the former suit that the estate is not liable for the interest which the plaintiff is seeking to recover. In that case (13 Phil. Rep., 282, 286) the court said:

"The question to be considered is, What class of demands should be presented to the commissioners appointed to hear claims against the estate, and had the commissioners any authority to allow a claim for interest which claim did not exist at the time of the death of the deceased, but arose from dealings between the heirs and the creditor which took place after such death. This question has already been considered and decided in the case of Philippine Trading Company vs. Crossfield (5 Phil. Rep., 400).

* * * * *

"This claim for interest not existing prior to the death of the deceased, and the cause of action therefor having arisen after the death of Dona Matea, the commissioners erred in allowing it."

It is therefore clear that the court did not decide that the plaintiff could not recover from the estate the interest on the original debt. The only question decided was to the effect that the commissioners did not have the power to pass upon this claim for the reason that the same did not exist prior to the death of the deceased. This was the principal question in the case and the only one decided. The court, in speaking of the instrument sued upon, said:

"It is not necessary to consider in this case the legal effect of this document. It is not necessary to consider whether it made the heirs of the deceased personally liable for the payment of this debt."

The plaintiff contends and the trial court so found "that it was necessary, in order to maintain a business constituting a part of the estate to renew this loan and to pay interest on the same, and that this being true it should be a proper charge against the estate as a necessary expense of administration. This is, I might say, the only question seriously discussed in the present litigation; that is, whether or not the renewal of the note and promise to pay interest were necessary to carry on the business of the estate, and whether the same should be taxed as a necessary expense of administration. This question is not touched upon in the majority opinion. It is not even mentioned. The plaintiff contends that the court expressly refrained from deciding whether or not the estate is liable for the interest and that the only question decided related to the power of the commissioners to pass upon the claim which arose after the death of the deceased. In the face of these contentions, which are supported by the judgment of the trial court, this court assumes without argument that the plaintiff's right to recover interest from the estate was finally and definitely decided adversely to him in the former suit, and then argues that this question cannot again be litigated. Of course, if the court's assumption is true, the reasons advanced in support of the doctrine of res adjudicata are well founded; but the court reasons from a false premise. It assumes the whole controversy on this point. It has simply taken for granted that the question was decided in the former suit, when, as a matter of fact, it was not. Even the syllabus (which is never the decision of the court), quoted in the majority opinion, does not support the proposition upon which that opinion rests. The only question before the court in the former suit was whether or not the commissioners had the power to pass upon this claim for interest, and not whether the estate was liable for said interest. That this is true there can be no doubt, and the only way the court

can get around this fact is by assuming the contrary to be true. Such an assumption is wholly unwarranted. It is contrary to the plain and positive holding in the former suit. The question whether or not the estate is liable for the interest not having been heretofore decided, the doctrine of res adjudicata is certainly not applicable.

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