

**TOMAS SISON, GUARDIAN OF THE MINOR CHILDREN OF THE
DECEASED IGNACIO BELLOSILLO, PLAINTIFF AND APPELLEE, VS.
LEODEGARIO AZARRAGA, DEFENDANT AND APPELLANT.**

G.R. No. 8470. March 19, 1915

Ponente: TORRES, J.

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TORRES, J.:

Appeal filed by the defendant, testamentary executor of the property of the deceased Isidro Azarraga, from the judgment dated April 10, 1912, whereby the Honorable J. S. Powell, judge, ordered the appellant executor to deliver to his successor Jose Albar, administrator appointed de bonis non cum testamento annexo, all the real and personal property, money, jewelry, and other objects belonging to the estate of said deceased with the papers, instruments of credit, pawn tickets, and other documents therefor, and also the sum of P8,000 which the appellant paid to himself from the funds of the estate, and the lands and carabaos which he claims as his property and which are included in the inventory of the property left by the deceased Azarraga. The court in its decision further ordered that the said executor, Leodegario Azarraga, present at the proper time to the new administrator, Jose Albar, his claim against the estate, to the end that the property which he claims as his be excluded from the inventory of the property of the estate of said deceased.

On April 27, 1911, Isidro Azarraga executed his final will and testament, in which he appointed his son Leodegario Azarraga, the herein appellant, executor, and distributed his property among his children and other relatives, the said Leodegario receiving a certain number of carabaos (clause 5 of the will) and a legacy of P8,115.72 for the valuable services rendered to the testator (clause 6) ; he further instituted as his sole and universal heirs his two grandchildren called Maria Felisa and Jesus, both surnamed Bellosillo y Azarraga, children of the deceased spouses Ignacio Bellosillo and Filomena Azarraga, the last named being the testator's daughter (clause 4). Said testator also directed that his son Leodegario Azarraga and his son-in-law Miguel Robledo be appointed guardians of his said grandchildren without being required to furnish bond therefor. In said will is given a list of the real and personal property of the testator and of his assets and liabilities.

There can be no doubt that the defendant executor collected large sums of money belonging to the estate in his care and paid some eight hundred or a thousand pesos of debts against the same without the knowledge or prior approval of the committee of appraisal or of the Court of First Instance; wherefore, on February 27, 1912, counsel for Tomas Sison, guardian of the minor children of Ignacio Bellosillo, presented to the competent court a motion praying that the said executor Leodegario Azarraga be cited to show cause why he should not be removed from his office, since by his illegal acts in collecting large sums of money belonging to the estate in his care and in paying them out without due authorization of the court, the said minor children of Ignacio Bellosillo, as universal heirs of the deceased Isidro Azarraga, are in danger of losing their interests and claims in his estate, especially as the executor requests that the estate be declared insolvent.

The appellant executor appeared and stated under oath that he had made the payments without the proper prior

authorization for the purpose of saving, as he succeeded and forestalling the presentation of claims for greater amounts to the committee of appraisal; that from the P19,000 collected by him on account of the largest credit, he had deducted for himself the sum of P8,000, the value of the machinery of the hacienda that his deceased father had sold, which machinery was his property and had never belonged to his father. At the direction of the court the appellant executor submitted on April 10, 1912, an inventory of the property of his deceased father that was in his possession, making therein the notation that the sum of P8,000 belongs to him as the value of two steam engines which are his property and which were sold by his father along with his hacienda; that the properties indicated by the letters G and H of the inventory, along with some 30 carabaos, also belong to him; and that the property indicated by the letter F therein belongs to Feliciana Panis.

In spite of the fact that the said executor stated in open court and repeated at pages 3 and 11 of his printed brief that he was ready to resign from the administration of the said estate so that he might be able to maintain his rights by presenting his claim against the same, he now alleges that he has never desired to present claims against said estate, for, aside from the impossibility of doing so, it would amount to acting against common sense, since being in possession of his own property in the character of absolute owner, he is required to deliver it with the documents therefor to the administrator of the estate because of a suspicion that it belongs thereto, only to claim it from said administrator afterwards.

It is to be noted that the appellant does not question that portion of the judgment which relieves him from office as executor of the property of the deceased Isidro Azarraga, but that he alleges to be erroneous the finding of the court directing him to deliver without due process of law to the new administrator all the lands, carabaos, and other property that he claims, along with the documents relating thereto, as well as to return the P8,000 which he paid to himself, and that after such delivery he present his claim to the property specified to the administrator so that it may be excluded from the inventory of the property left by the deceased.

To offset this claim we have the statement of the appellant himself, who says in his brief that the property which, according to the notation inserted at the bottom of the inventory, belongs to him and to other persons "at first belonged to Isidro Azarraga, but in time and even long before his death became the property of the persons named in the notation" of the inventory dated April 10, 1912. In the said inventory of the property of the deceased Isidro Azarraga, appellant records that he had received from Timoteo Unson the sum of P19,971.44; then giving a description of the real and personal property, and stating that Timoteo Unson still owes the estate the sum of P15,000, and he closes with the remark that certain property mentioned in said inventory belongs to the persons named therein.

The property belonging to the estate of the deceased Isidro Azarraga should forthwith be taken into legal custody and liquidation thereof made; for the unsupported statement of the executor is insufficient to exclude certain property, as is also the statement that of the P19,971.44 collected from Unson P8,000 belonged to the appellant as the value of the machinery his father Isidro Azarraga had sold to him, for, in addition to the fact that the genuineness of the executor's claim against the deceased does not appear in the record, the inventory submitted by said executor demonstrates that the sum of P19,971.44 belongs to the estate; and moreover, this amount, added to the P15,000 still owed by the said Unson, makes the sum of P34,971.44, which the testator Isidro Azarraga set down in his will as owed by the said Timoteo Unson for the sale to the latter of certain haciendas in Binantucan, Capiz (clause 6 of the will), so that if the said Timoteo Unson owed anything for these haciendas he owed it to the estate of the said Isidro Azarraga and not to the executor personally.

The fact is indisputable that the herein appellant as executor paid certain claims against the estate and retained for himself, without the prior approval of the court or of the committee of appraisal, the sum of P8,000 and certain real and personal property by reason of some claims he had against the deceased and his estate. Aside from certain

payments made by him to other persons who had claims against the estate, it is improper for the executor to make payments to himself and to take possession of the property of the deceased that he might claim from the estate, for Chapter XXXII of the Code of Civil Procedure, which treats of the duties of executors and administrators, contains no provision authorizing them to perform such acts, but on the contrary, section 686 et seq. of that code provide that the collection of claims against an inheritance must be presented to the committee of appraisal. (Susara vs. Martinez, 17 Phil. Rep., 254.)

The executor who alleges that he has claims against the estate in his care is under the obligation, according to section 697 of the Code of Civil Procedure, to give notice thereof, in writing, to the court, so that a special administrator may be appointed to adjust his claim; this the appellant has not done, although when the occasion arose he stated that he was ready to resign from the office of administrator of the property of the deceased Isidro Azarraga. It has been declared in the case of Dariano vs. Fernandez Fidalgo (14 Phil. Rep., 62) that courts of probate jurisdiction should be very jealous in guarding the estates of deceased persons, and said courts will always intervene for the purpose of remedying any injury the estate may suffer.

If the appellant has any lawful claims against the estate of the deceased Isidro Azarraga he can present them to the administrator recently appointed and prove the legality of his rights to the property he claims, without prejudice to the rights that other interested parties may have in the said estate.

For these reasons, whereby the errors assigned to the judgment appealed from are deemed to be refuted, said judgment should be affirmed, as we do affirm it, with the costs against the appellant. So ordered.

Arellano, C. J., Johnson, Carson, Moreland, Trent, and Araullo, JJ., concur.

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