

G.R. No. 847

[G.R. No. 847. February 12, 1903]

**EULALIO HERNAEZ, PLAINTIFF AND APPELLANT, VS. ROSENDO HERNAEZ,
DEFENDANT AND APPELLEE.**

D E C I S I O N

This action was brought in connection with the proceedings on the administration of the intestate estate of Pedro Hernaez, father of the plaintiff and of the defendant. The purpose of the action is

This action was brought in connection with the proceedings on the administration of the intestate estate of Pedro Hernaez, father of the plaintiff and of the defendant. The purpose of the action is to obtain the inclusion in the estate by collation of the values of the Naga and Panaogao properties, owned by the defendant, that the same may be included in the inventory of the mass of the intestate succession. The facts set up in the complaint are the following: (1) That as Eosendo Hernaez was a poor man after his return from his student life in Manila, he was supported by his father. (2) That shortly afterwards he purchased the Naga estate, he at that time not being engaged in any profitable trade or industry. (3) That he was the administrator of the property of his parents. (4) That the money with which he purchased the Naga estate belonged to his father. (5) That the Panaogao estate was purchased by Rosendo after the death of his father.

The legal principle upon which the plaintiff relies is that established by article 1035 of the Civil Code, in accordance¹ with which a forced heir in certain cases is required to bring into the mass of the succession properties or moneys which he may have received gratuitously from the decedent during the lifetime of the latter. Therefore it is evident that of the facts set up in the complaint the only one relevant to the issue is the fourth, concerning the acquisition of the Naga estate. With respect to the fifth, as to the Panaogao estate, apart from the fact of its irrelevancy, it is not apparent what connection the simple statement that a forced heir acquired the said estate after the death of the *causante* can possibly have with

the question of collation.

But, whatever might be said about the facts alleged, none of them have been proven. In the replication an allegation was added to the effect that Rosendo Hernaez was never in partnership with Julian Hernaez, his brother, this fact having been set up in the answer of the defendant.

Two witnesses, Miguel Solis and Severino Duran, testified that they had never seen any articles of copartnership recorded in a public or private instrument. Rosendo, however, in answering interrogatories, testified that he had been an industrial partner and that no written articles had been executed. Of the nine witnesses presented by the defendant, Domingo and Magdalena Hernaez and Peregrina Jarapa, the latter a nephew and the former brothers of both the contending parties, denied that Rosendo purchased the Naga estate with money belonging to his father, but testified that it was purchased with money acquired by his own labors.

The Naga and Panaogao estates were acquired by the defendant, the first from his brother Julian on the 25th of November, 1881, and the second from Pedro Garganera on the 2d of November, 1898. There is not the slightest indication that the money with which these estates were purchased was or could be other than that of the purchaser himself. (Public instruments on pp. 350 and 401 of the record.)

It not having been proven that the property which it is sought to require one of the forced heirs, the defendant herein, to bring into collation was acquired gratuitously from the intestate, the action can not be maintained. We therefore dismiss the complaint, with the costs of both instances to the plaintiff. So ordered.

Torres, Cooper, Willard, Mapa, and Ladd, JJ., concur.