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before the actual foreclosure sale, is not precluded from recovering the unpaid balance of the price although he has filed an action of replevin for the purpose of extrajudicial foreclosure, or if a mortgage creditor who has elected to foreclose but who subsequently desists from proceeding with the auction sale, without gaining any advantage or benefit, and without causing any disadvantage or harm to the vendee-mortgagor, is not barred from suing on the unpaid account (Radiowealth, Inc. *vs.* Lavin, et al., G.R. No. L-18563, April 27, 1963 [7 SCRA 804, 807]), there is no reason why a mortgage creditor should be barred from accepting, before a foreclosure sale, payments voluntarily tendered by the debtor-mortgagor who admits a subsisting indebtedness.

PREMISES CONSIDERED, the judgment appealed from is modified by setting aside the portion thereof which orders plaintiff-appellant to pay defendant-appellee Sapinoso the sum of ₱1,250.00, with costs in this instance against the said defendant-appellee.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando and *Teehankee, JJ.*, concur.

Barredo, J., in the result.

Ruiz Castro, J., is on official leave.

[G.R. No. L-29306. May 29, 1970]

TESTATE ESTATE OF GLICERIA A. DEL ROSARIO, deceased, CONSUELO S. GONZALES-PRECILLA, administratrix-appellee *vs.* DR. JAIME ROSARIO and CHILDREN, FATHER LUCIO V. GARCIA, ANTONIO JESUS DE PRAGA, MARIA NATIVIDAD DE JESUS, oppositors-appellants.

SYLLABUS

1. REMEDIAL LAW; SETTLEMENT OF ESTATE OF DECEASED; STATEMENTS OF ACCOUNTS FILED BY AN ADMINISTRATRIX, NO REQUIREMENT TO APPLY SECTION 344, TAX CODE; CASE AT BAR.— The requirement in Section 344 of the Tax Code, as amended, that the balance sheets, profit and loss

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statements, etc., of corporations, companies, partnerships, whose sales, earnings, receipts or output exceed ₱25,000.00 would be certified by independent certified public accountants, does not apply to statements of income and expenses submitted to the court by the administratrix in a special proceeding for the settlement of the estate of a decedent. An examination of the said legal provision shows that the requirement is only for tax purposes.

2. ID.; ID.; ID.; APPROVAL; PROPER HEARING; NO GROUND TO SET ASIDE ORDER IN THE INSTANT CASE.— There is no merit in the claim that the order under review should be set aside on the ground that the administratrix' accounts were approved without a hearing. *First* - The question of whether there was such a hearing or not is one of fact, hence, may not be raised in this appeal. *Second* This question was not raised in the court below, and may not be raised for the first time on appeal (Rule 46, Section 18). *Third* - A hearing, with previous notice, was held on June 1, 1968, at which only the administratrix and her counsel appeared; and this is finally admitted by the oppositors-appellants in their reply brief.

APPEARANCES OF COUNSEL

Sevilla, Aquino & Melquiades M. Virata, Jr. for administratrix-appellee.

Pedro V. Garcia for oppositors-appellants Dr. Jaime Rosario and children.

Antonio Enrile Inton for oppositors-appellants Fr. Lucio V. Garcia, et al.

DECISION

VILLAMOR, *J.*:

Direct appeal to this Court from the order of the Court of First Instance of Manila in its Special Proceeding No. 62618 approving the statement of accounts for the year 1967 submitted by the special administratrix.

On May 27, 1968, special administratrix Consuelo S. Gonzales-Precilla submitted to the court below, in connection with the testate estate of Gliceria A. del Rosario, an itemized statement of income and expenses for the year 1967. The statement reflected a total income of ₱129,923.99 during the year. On May 28, 1968, certain claimants in the special proceeding filed an opposition to the accounting on the grounds that the statement of accounts

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should have been duly certified by an independent certified public accountant, pursuant to Section 334 of the National Internal Revenue Code, as amended, which requires such certification if as in the present case - the gross receipt is in excess of ₱25,000.00 per quarter; and that certain expense items in the statement of accounts were not properly chargeable to the estate. On May 29, 1968, the special administratrix filed a reply contending that Section 334 refers to income tax returns and not to an accounting by the administrator of a decedent's estate, and justifying the particular items being questioned by the oppositors.

On June 1, 1968, the court issued an order finding the opposition unmeritorious and approving the accounts submitted by the special administratrix. Hence, this appeal by the oppositors, where they now contend that the lower court erred in approving the statement of accounts of the special administratrix (a) without the certification of an independent certified public accountant and (b) without holding a hearing on the correctness and truth of the entries therein.

There is no merit in this appeal.

The requirement in Section 334 of the Tax Code, as amended, that the balance sheets, profit and loss statements, etc., of corporations, companies, partnerships or persons whose gross quarterly sales, earnings, receipts or output exceed ₱25,000.00 should be certified by independent certified public accountants, does not apply to statements of income and expenses submitted to the court by the administrator in a special proceeding for the settlement of the estate of a decedent. An examination of the said legal provision shows that the requirement is only for tax purposes. The law in question reads:

"SEC. 334. *Corporations, companies, partnerships, or persons required to keep books of accounts.*- All corporations, companies, partnerships, or persons required by law to pay internal revenue taxes shall keep a journal and a ledger, or their equivalents: *Provided, however,* That those whose gross quarterly sales, earnings, receipts, or output do not exceed five thousand pesos shall keep and use a simplified set of Bookkeeping Records duly authorized by the Secretary of Finance wherein all transactions and results of operations are shown and from which all taxes due the government

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may readily and accurately be ascertained and determined anytime of the year: *And provided, further,* That in the case of corporations, companies, partnerships, or persons whose gross quarterly sales, earnings, receipts, or output exceed twenty-five thousand pesos, shall have their Books of Accounts audited and examined yearly by Independent Certified Public Accountants and their income tax returns accompanied by certified balance sheets, profit and loss statements, schedules listing income-producing properties and the corresponding incomes therefrom and other relevant statements." (As amended by Rep. Acts Nos. 438 and 658.)

Thus, under the first proviso, corporations, etc., whose gross quarterly sales, etc., do not exceed ₱5,000.00, are required to keep and use a simplified set of bookkeeping records wherein all transactions and results of operations are shown *"and from which all taxes due the government may readily and accurately be ascertained and determined any time of the year;"* and in the second proviso (the one in question), where the quarterly sales, etc., exceed ₱25,000.00, the corporations, etc.,concerned are required to have their books of accounts audited and examined yearly by independent certified public accountants *"and their income tax returns accompanied with certified balance sheets, profit and loss statements, schedules listing income-producing properties and the corresponding incomes therefrom and other relevant statements."* It is obviously for the reason that the requirements in Section 334 are for tax purposes that Section 8-A, Rev. Reg. No. V-1, as inserted by Rev. Reg. No. V-20 (48 Off. Gaz., 13), issued by the Secretary of Finance, prescribes, in connection with the second proviso of Section 334, that "[t]he accountant's certificate shall be dated, signed manually, and shall identify without detailed enumeration the financial statements covered by the certificate and shall be submitted and filed with the taxpayer's income tax return;" and that Sec. 8-B, Rev. Reg. No. V-1, as inserted by Rev. Reg. No. V-58 (53 Off. Gaz., 6486), prescribes that "[c]orporations x x x whose quarterly sales x x x exceed ₱25,000.00, shall have their income tax returns accompanied with comparative profit and loss statements x x x." Nowhere from its provisions can it be implied, even remotely, that Congress intended Section 334 to apply as well to accounts rendered to the court by the administrator of an estate. Neither is there, as conceded by the parties, any provision in the Rules

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of Court governing the matter. The protection sought by the oppositors-appellants is, however, accorded to them both by the bond posted by the special administratrix conditioned upon her rendering true and just accounts of her administration (Cf. Pacific Union Insurance Co. *vs.* Narvasa, etc., et al., L-10696, May 28, 1958), and by the hearing on the accounts held by the court. This leads us to the other question raised by the oppositors-appellants, namely, the alleged absence of a hearing on the correctness and truth of the entries in the administratrix' statement of accounts.

We find no merit in the claim that the order under review should be set aside on the ground that the administratrix' accounts were approved without a hearing. *First*- The question of whether there was such a hearing or not is one of fact, hence, may not be raised in this appeal. *Second*- This question was not raised in the court below, and may not be raised for the first time on appeal (Rule 46, Section 18). *Third*- A hearing, with previous notice, was held on June 1, 1968, at which only the administratrix and her counsel appeared; and this is finally admitted by the oppositors-appellants in their reply brief, although they now contend that it was not the proper hearing required by law since the accounts were not yet in order, not having been certified by an independent certified public accountant, which, of course, is beside the point.

PREMISES CONSIDERED, the order appealed from is affirmed, with costs against the oppositors-appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee and *Barredo, JJ.*, concur.

Ruiz Castro, J., is on official leave.

[G.R. Nos. L-30588-89. June 10, 1970]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* ROMAN GALLEMA, ET AL., defendants, RODOLFO LACADEN alias RUDY LACADEN, VICENTE GAGARIN and MAXIMO CAPINDING, defendants-appellants.