

4 Phil. 631

[G.R. No. 1817. August 02, 1905]

**JOSE F. OLIVEROS, PLAINTIFF AND APPELLANT, VS. ANICETA POZON,
DEFENDANT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

This is an action by a lawyer to recover from his client fees for professional services. Saturnina Hilario died on the 5th of March, 1903, leaving a will dated the 30th of June, 1900, This will was presented for probate to the Court of First Instance of Rizal on the 14th day of March, 1903, by Nicolas Asuncion, one of the beneficiaries named therein. The plaintiff appeared in court as the representative of the defendant and opposed the probate of the will, which was denied by the judge on the ground that the will had been executed without the intervention of a notary. After this decision the property of the testatrix was delivered to the defendant, and she turned over a part of it to Nicolas Asuncion.

The plaintiff relies upon a written contract alleged to have been signed by the defendant on the 25th day of April, 1903 and afterward ratified by her on the 27th day of April, 1903. This contract provided that the defendant would give to the plaintiff, as his fees for his services in the matter of the estate of Saturnina Hilario one-half of the property which she might receive.

The court below found as a fact that the defendant neither signed nor ratified this contract. The evidence supports the finding that she did not sign the contract, but the finding that she did not ratify it before a notary public is manifestly and palpably against the weight of

the evidence. The notary public testified that the defendant appeared before him and ratified the instrument. Two witnesses, whose names are signed to the document, also testified to the same thing. The defendant, in her answer, admitted that in April she had executed a power of attorney in regard to the matter, but said that that power did not contain any provision in regard to fees. At the trial she also testified that she had intrusted the matter to the plaintiff, and that she had made a contract with him. Nowhere in her testimony does she positively state that she did not appear before the notary public and ratify the contract. In fact, the only evidence in support of the finding of the court is a statement by the defendant that she did not know the notary until June, 1903, and another statement, that the contract which she had made with the plaintiff was by parol. These general and indefinite declarations by her can not overcome the positive testimony found in the record, to the effect that she did actually appear before the notary and ratify this instrument.

The judgment will have to be reversed and a new trial ordered. At the new trial the court below will have the right to take into consideration the last clause of section 29 of the Code of Civil Procedure, and also the nature of the transaction between Nicolas Asuncion and defendant, by virtue of which the latter turned over to the former a part of the property left by the deceased. He will have the right to consider this transaction for the purpose of determining whether the share, which the plaintiff is entitled to receive, should be estimated upon all the property of the estate, or only upon that portion of it which the defendant received by virtue of this arrangement with Nicolas Asuncion.

The judgment of the court below is reversed, and the case remanded to the court below for a new trial, each party in this court to pay his own costs. After the expiration of twenty days judgment will be entered in conformity herewith.

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

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