

[ G.R. No. 1890. September 22, 1905 ]

**JOHN B. EARLY, PLAINTIFF AND APPELLEE, VS. SY-GIANG, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF JOAQUIN MARTINEZ SY-TIONG-TAY, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**JOHNSON, J.:**

The plaintiff filed a complaint against the defendant in this cause, alleging:

1. That he is a lawyer, duly authorized to practice in the courts of the Philippine Islands;
2. That the defendant was duly appointed as executor of the last will and testament of one Joaquin Martinez Sy-Tiong-Tay;
3. That the plaintiff was employed as a lawyer by the defendant, as such executor, in the administration of the estate of the said Sy-Tiong-Tay from the 1st day of February, 1901, to the 20th day of November, 1902;
4. That during the said period the plaintiff performed services for the defendant in prosecuting and defending certain suits with reference to the said estate, and other analogous services, at the request of the defendant;
5. That said services on the part of the plaintiff were worth the sum of \$3,000;
6. That in the month of August, 1903, the plaintiff requested the payment of said sum of the defendant, and that the same remains unpaid.

The defendant appeared and presented a motion requesting that the plaintiff present a bill of particulars, which motion was allowed by the court.

The defendant presented a bill of particulars in accordance with the order of the court.

Later the defendant filed his answer, in substance as follows:

1. Denying all and each of the allegations contained in the complaint;
2. Denying that he was the administrator of the last will and testament of Joaquin Martinez Sy-Tiong-Tay between the 1st day of February, 1901, and the 20th day of November, 1902.

After hearing the evidence, on the 7th day of March, 1904, the judge of the court of the Court of First Instance rendered the following judgment:

“This is a cause commenced by the plaintiff against the defendant as executor of the last will and testament of Sy-Tiong-Tay for the sum of \$3,000, gold, for professional services which it is alleged have been rendered by the plaintiff to the defendant in the administration of the said estate.

“The plaintiff has declared with respect to his employment by the defendant, and also with respect to the services rendered, and he is corroborated by two or three disinterested witnesses.

“The defendant did not declare as a witness; if he had known that the contract of service had not been made with the plaintiff, or that the services had not been rendered, the court presumes that he (the defendant) would have presented himself as a witness in the cause. Virtually there does not exist any proof against the declaration of the plaintiff, and that of his witnesses, with respect to the services rendered, nor with reference to the reasonableness of the account rendered for such services.

“With reference to the question of fact presented, and of the proof, the court is of the opinion that the plaintiff has a right to recover of the defendant the sum that he claims, with the exception of the amount of \$100, rendered by the plaintiff to the defendant with respect to an action against the quartermaster of the

United States Army.

“The plaintiff did not give any proof to the contrary respecting the services rendered with reference to this \$100. It is declared, therefore, that plaintiff, John B. Early, is entitled to recover from the defendant Sy-Giang, as the executor of the last will and testament of Sy-Tiong-Tay, the sum of \$2,900, and the costs of the suit, for which sum he may have a writ of execution against the property and credits of said estate in the possession of the said Sy-Giang.”

The defendant immediately took exception to the decision of the court, and announced his intention to present at the proper time a bill of exceptions, and on the 9th day of March, 1904, presented the following motion:

“You are hereby notified that on the 12th day of March, 1904, at 8 o’clock a. m., or as soon thereafter as the parties may be heard, the defendant will ask the court to formulate his conclusions of fact in the above-entitled cause, specifying clearly what are the concrete services which the proof shows have been rendered by the plaintiff to the defendant. “Said motion is based on the provisions of section 133 of Act No. 190, and on the fact that in the decision dictated by the court in said cause the judgment has not specified the facts upon which the said decision is based.”

This motion was later denied by the judge. The question presented here is, Are the facts set out in the decision of the court sufficient to justify the conclusions of the court that the plaintiff is entitled to recover of the defendant the sum of \$2,900?

With reference to the issues presented in the pleadings the court found that there was no proof against the declarations of the plaintiff and his witnesses with respect to the services rendered by the plaintiff to the defendant, and that the amount charged by the

plaintiff for his services was reasonable, and that the plaintiff had a right to recover of the defendant the sum claimed by the plaintiff, less \$100.

This finding of the court is sufficient to show that the plaintiff performed services for the defendant, which services were reasonably worth the sum of \$2,900, but the defendant in his answer denied that he was "the administrator of the last will and testament of Joaquin Martinez Sy-Tiong-Tay during the time that the plaintiff rendered the legal and professional services for him." The plaintiff alleged that the defendant was the executor of the last will and testament of the said Sy-Tiong-Tay. By both the general and special answer of the defendant this question whether or not the defendant was in fact the executor of the estate of the said Sy-Tiong-Tay at the time the said services were rendered, was put in issue and the burden was upon the plaintiff to show that said services were in fact rendered for the defendant as executor of the said estate. The court below makes no finding upon this question. Neither does the record show that if this obligation was contracted at all, that it was created in accordance with the provisions of the Code of Procedure in Civil Actions.

Therefore the facts stated in the decision are insufficient upon which a judgment can be based against the defendant as *executor of the last will and testament of Joaquin Martinez Sy-Tiong-Tay*. Therefore the judgment of the court below is reversed, and the cause is hereby remanded to the lower court for trial *de novo*, with costs to the plaintiff, and after the expiration of twenty days judgment will be entered accordingly and the case returned to the lower court for execution. So ordered.

*Arellano, C. J., Torres, and Mapa, JJ., concur.*

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## DISSENTING

**CARSON, J.:**

I dissent.

As stated in the majority opinion, the sole question presented here is whether the facts set out in the decision of the trial court are sufficient to justify the conclusion that the plaintiff is entitled to recover of the defendant the amount allowed in the judgment.

It is stated that there is no finding in the decision that Sy-Giang was the executor of the last will and testament of Joaquin Martinez Sy-Tiong-Tay, and therefore that the judgment in this case should be reversed.

The trial court found from the evidence before it, that the plaintiff rendered professional services to the value of \$2,900 to the defendant—that is, to Sy-Giang, executor of said last will and testament. The finding necessarily involves a finding that Sy-Giang was executor of said will, for if it be true that the services were rendered to Sy-Giang, executor of the said will, then Sy-Giang, when such services were rendered, must have been the executor. To hold otherwise is to look to the form and not to the substance.

As to the suggestion that the record does not show whether the obligation was created in accordance with the provisions of the Code of Procedure in Civil Actions, it is sufficient to say that no question was raised as to this point, either at the trial or on the appeal, and the trial court having declared that the services were rendered, and that the plaintiff had the right to recover therefor, it must be considered that that court found from the evidence before it that the services were duly authorized and legally rendered. On the ground that the question had not been raised at the trial nor presented on appeal, this court affirmed the judgment in the case of John B. Early and Edward M. White against Sy-Giang, executor,<sup>[1]</sup> No. 2027, although there was no evidence in that case as to the authority of the defendant, as executor, to employ the plaintiffs to render the professional services for which judgment was allowed, I can see no reason for proceeding on a different principle in this case.

The judgment appealed from should be affirmed.

<sup>[1]</sup> 4 Phil. Rep., 730.

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