

[G. R. No. 19153. June 30, 1922]

B. E. JOHANNES, AS PRINCIPAL ADMINISTRATOR OF THE ESTATE OF CARMEN THEODORA JOHANNES, RELATOR, VS. CARLOS A. IMPERIAL, AS JUDGE OF THE COURT OF FIRST INSTANCE, CITY OF MANILA, RESPONDENT.

D E C I S I O N

STATEMENT

Case No. 18600,^[1] in which B. E. Johannes, husband of Carmen Theodora Johannes, deceased, as administrator, et al., were relators, and the Honorable George R. Harvey, as judge of the Court of First Instance of Manila, et al., were respondents, was a petition for certiorari and a temporary injunction, in which the relators prayed for an order of this court:

“(A) To annul the appointment of Alfred D’Almeida as administrator of said deposit in the Philippines; and all acts and proceedings taken by him as said administrator; and,-

“(B) To issue an order itself, or one to the said Judge George R. Harvey, directing the manager of the ‘Philippine National Bank,’ to place to the credit of B. E. Johannes, as administrator of the estate of Carmen Theodora Johannes, all of the funds of said Carmen D’Almeida (Johannes), now on deposit with said bank, subject to the order of said court. And, as the act of the said Alfred D’Almeida in having himself appointed administrator was in evident bad faith, as clearly appears from the petition asking his appointment, the court is requested to grant relators five thousand pesos (P5,000), as damages caused by delay, expensive and unnecessary litigation, and such other relief as the court may deem in equity proper.”

Upon a hearing, the prayer was denied, and the petition dismissed in an opinion written by Justice Malcolm and concurred in by all the other members of this court.

After that opinion was rendered, B. E. Johannes, as principal administrator of the estate of Carmen Theodora Johannes, applied to his Honor Carlos A. Imperial, as judge of the Court of First Instance of the City of Manila, by petition, which, among other things, alleges:

That "he is the duly appointed principal administrator of the estate of his late wife at the place of her domicile, Singapore, Straits Settlements, as appears from a certified copy of his appointment now on file * * *

"Second. The said Carmen Theodora Johannes, at the time of her death, was a subject and citizen of Great Britain, domiciled in Singapore, Straits Settlements, and your petitioner, the said B. E. Johannes, her lawful husband, at the time of her death was a subject and citizen of Great Britain and resident of Singapore, Straits Settlements.

"Third. Under British law, (22 and 23, Charles II c-10, 29 Charles II c-3, and James II c-17), the husband of a deceased wife is the sole heir, to the exclusion of all others, of the property of his wife when she dies intestate, as the said Carmen Theodora Johannes did die.

"Fourth. This Honorable Court at a prior date on application of Mr. Alfred D'Almeida, the brother of the deceased, appointed him as administrator of the property of the deceased situated within the Philippine Islands, in the absence of, and without notice, knowledge or consent of her husband, your petitioner.

"Fifth. Your petitioner is now within the jurisdiction of this court and has come here and established his residence at The Manila Hotel, 'in the City of Manila, for the sole purpose of taking over from the said Alfred D'Almeida the administration of said estate;" and

"To relieve the said Alfred D'Almeida as administrator of said estate within the jurisdiction of this court and appoint in his stead your petitioner, the said B. E. Johannes, and principal administrator, 'the ancillary administrator' of said estate now subject to administration within the Philippine Islands."

From an order denying and overruling the petition, the relator filed certiorari proceedings in this court against the respondent, as judge of the Court of First Instance, and later made Alfred D'Almeida, a brother of the deceased, ancillary administrator, defendant, in which he prays for an order of this court:

“(a) To substitute your petitioner, the principal administrator, the husband of the deceased and the owner of the deposit, instead of Alfred D'Almeida, as ‘the ancillary administrator’ of said estate, in this jurisdiction; and-

“(b) Order the said Judge to disapprove and disallow all of the amounts claimed to have been paid for attorneys’ fees to Messrs. Fisher & DeWit, and cables, amounting to P2,860.05; and- “

“(c) To disapprove and disallow the amount of P1,093.75, claimed due but *proven false*; and-

“(d) To cancel the appointment of ‘the special administrator’ appointed by virtue of these *false claims*; and-

“(e) Order the said Judge to order the manager of the Philippine National Bank to place to the credit of the said substituted ancillary administrator, Mr. B. E. Johannes, all of the funds now on deposit in said bank, the property of the deceased Carmen Theodora Johannes.”

The defendant claims that the petition here does not state sufficient facts, and that at the time the appointment was made, the court had jurisdiction to appoint Alfred D'Almeida as ancillary administrator of the estate of the deceased Carmen Theodora Johannes, who was then a resident of the Philippine Islands, and that his appointment is not subject to review in this court.

Johns, J.:

The legal questions presented are well stated in the former opinion of this court in case No. 18600. It appears that the petitioner is the husband of Carmen Theodora Johannes, deceased, who, at the time of her death, was a resident of Singapore, Straits Settlements, and a citizen of Great Britain ; that he is also a foreigner and a citizen of Great Britain and an actual resident of Singapore,” that Alfred D'Almeida is a brother of the deceased Carmen

Theodora Johannes, and a bona fide resident of the City of Manila; that at the time of her death Carmen Theodora Johannes had P109,722.55 on deposit in one of the banks in the City of Manila; and that the petitioner, her surviving husband, was indebted to a bank in Manila for about P20,000. That the deceased left no will in the absence of which the petitioner claims to be her sole heir and entitled to all of her estate. That there were no debts against the estate of the deceased. Upon the death of his wife, the petitioner was duly appointed as administrator of her estate by the court at Singapore, and qualified and entered upon the discharge of his duties. After the decision was rendered by this court in case No. 18600, *supra*, the petitioner came to Manila and claims to have established a temporary residence at the Manila Hotel, based upon which, in legal effect, he asked for an order of court that Alfred D'Almeida be removed as ancillary administrator, and that he be appointed.

From an order of the lower court denying that petition, an original petition was filed here to review the proceedings of the lower court.

There is a marked legal distinction between the authority of a court to appoint and the authority to remove an administrator after he is appointed. Here, the appointment was made and the administrator had qualified and entered upon the discharge of his duties. There was no contest over the appointment, and the court had jurisdiction of the petition and of the subject-matter. It was not a case of where two or more petitions were filed, in which each was claiming the right to be appointed, or in which the court decided which one of the petitioners should be appointed. It was a case in which only one petition was presented to the court, and to which no objections were filed and in which it appeared the petitioner was a brother of the deceased, and that the estate was the owner of property in the City of Manila. The court, having jurisdiction and the appointment having been made, the only question here presented is whether Alfred D'Almeida should be removed and the petitioner substituted as ancillary administrator.

As this court said in case No, 18600 (Johannes vs. Harvey, *supra*) :

“The ancillary administration is proper, whenever a person dies, leaving in a country other than that of his last domicile, property to be administered in the nature of assets of the decedent, liable for his individual debts or to be distributed among his heirs.

“It is almost a universal rule to give the surviving spouse a preference when an

administrator is to be appointed, unless for strong reasons it is deemed advisable to name someone else. This preference has particular force under Spanish law precedents. However, the Code of Civil Procedure, in section 642, while naming the surviving husband or wife as the case may be, as one to whom administration can be granted, leaves this to the discretion of the court to determine for it may be found that the surviving spouse is unsuitable for the responsibility. * * *

“Undoubtedly, if the husband should come into this jurisdiction, the court would give consideration to his petition that he be named the ancillary administrator for local purposes. Ancillary letters should ordinarily be granted to the domiciliary representative, if he applies therefor, or to his nominee, or attorney; but in the absence of express statutory requirement the court may in its discretion appoint some other person.”

The real contention of the petitioner is that, because he had the legal right to apply for and be appointed in the first instance, such right is continuous, and that he could be appointed any time on his own application. That is not the law. Although it is true that in the first instance everything else being equal and upon the grounds of comity, in ordinary cases, the court would appoint the petitioner or his nominee as ancillary administrator, but even then, as stated in the above opinion, the appointment is one of more or less legal discretion. But that is not this case. Here, in legal effect, it is sought to oust an administrator who was appointed without protest or objection where the court had jurisdiction of the petitioner and of the subject- matter.

Again, it appears that Carmen Theodora Johannes died August 21, 1921, and on September 19, 1921, the petitioner was appointed administrator of her estate by the Supreme Court of Straits Settlements on his own petition, and on October 1, 1921, based upon his petition, Alfred D’Almeida, the brother of the deceased, was appointed administrator of her estate in Manila. The initial proceeding against the appointment of Alfred D’Almeida, as administrator, was filed in this court on January 21, 1922.

At the time of the appointment here, the court had primary and original jurisdiction, and no objections were then made. The question as to who should have been appointed ancillary administrator, if presented at the proper time and in the proper way, is not before this court. Here, the appointment was made on the 1st day of October, 1921, and no formal objections were made until the 21st day of January, 1922.

The petition is denied, the injunction dissolved and the case dismissed.

It appears that the debts of the estate, if any, are nominal, and that the only asset here is the money on deposit in the bank. Hence, the administration of the estate itself is a matter of form only and should be very simple and inexpensive. Even though it is foreign money, it is the duty of the court to protect it from any illegal, unjust, or unreasonable charges. All claims against the estate should be for just debts only, or for the actual expenses of administration, and those should be reasonable. No other claims should be allowed.

If, as claimed, the real dispute here is whether the brothers and sisters of the deceased are entitled to share in her estate, or whether the petitioner only, as the surviving husband, is entitled to all of it, that question is not one of administration, and any expense and attorneys' fees incurred by either party for the settlement of that question is a personal matter to them, and should not be allowed as claims against the estate. Claims against the estate should only be for just debts or expense for the administration of the estate itself.

Costs in favor of the respondent. So ordered.

Araullo, C. J., Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

^[1]Johannes vs. Harvey, p. 175, *ante*.
