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[G. R. No. L-6622. July 31, 1957]

INTESTATE ESTATE OF THE DECEASED MARCELO DE BORJA. CRISANTO DE BORJA, ADMINISTRATOR AND APPELLANT, VS. JUAN DE BORJA, ET AL., OPPOSITORS AND APPELLEES.

D E C I S I O N

FELIX, J.:

The case.—Quintin, Francisco, Crisanta and Juliana, all surnamed de Borja, are the legitimate children of Marcelo de Borja, who, upon his demise sometime in 1924 or 1925, left a considerable amount of property. Intestate proceedings must have followed, and the pre-war records of the case either burned, lost or destroyed during the last war, because the record shows that in 1930 Quintin de Borja was already the administrator of the Intestate Estate of Marcelo de Borja.

In the early part of 1938, Quintín de Borja died and Crisanto de Borja, son of Francisco de Borja, was appointed and took over as administrator of the Estate. Francisco de Borja, on the other hand, assumed his duties as executor of the will of Quintín de Borja, but upon petition of the heirs of said deceased on the ground that his interests were conflicting with that of his brother's estate, he was later required by the Court to resign as such executor and was succeeded by Rogelio Limaco, a son-in-law of Quintín de Borja.

It also appears that on February 16, 1940, at the hearing set for the approval of the statement of accounts of the late administrator of the Intestate Estate of Marcelo de Borja, then being opposed by Francisco de Borja, the parties submitted an agreement, which was approved by the Court (Exh. A). Said agreement, translated into English, reads as follows:

1. All the accounts submitted and those that are to be submitted corresponding to this year will be considered approved;

2. No heir shall claim anything of the harvests from the lands in Cainta that came from Exequiel Ampil, deceased, nor from the land in Tabuatin, Nueva Ecija;
3. That the amounts of money taken by each heir shall be considered as deposited in conjunction with the other properties of the Intestate and shall form part of the mass without drawing any interest;
4. That it shall be understood as included in this mass the sum of twelve thousand pesos (P12,000) that the sisters Crisanta and Juliana de Borja paid of their own money as part of the price of the lands in Cainta and three thousand pesos (P3,000) the price Of the machinery for irrigation;
5. The right, interests or participation that the deceased Quintín de Borja has or. may have in Civil Case No. 6190 of the Court of First Instance of Nueva Ecija, shall be likewise included in the total mass of the inheritance of the Intestate;
6. Not only the lands in Tabuatin but also those in Cainta coming' from the now deceased Exequiel Ampil shall also form part of the total mass of the inheritance of the Intestate of the late Marcelo de Borja;
7. Once the total of the inheritance of the Intestate is made up as specified before in this Agreement, partition thereof will be made as follows:

From the total mass shall be deducted in case or in kind, Twelve Thousand Pesos (P12,000) that shall be delivered to Da. Juliana de Borja and Da. Crisanta de Borja in equal shares, and the rest shall be divided among the four heirs, i. e., Don Francisco de Borja, the heirs of Quintin de Borja, Da, Juliana de Borja and Da. Crisanta de Borja, in equal parts. (TRANSLATION)

The Intestate remained under the administration of Crisanto de Borja until the outbreak of the war. From then on and until the termination of the war, there was a lull and state of inaction in Special Proceeding No. 2414 of the Court of First Instance of Rizal, Pasig branch (In the Matter of the Intestate Estate of Marcelo de Borja), until upon petition filed by Miguel B. Dayco, as administrator of the estate of his deceased mother, Crisanta de Borja, who is one of the heirs, for the reconstitution of the records of this case, the Court on December 11, 194&, ordered the reconstitution of the same, requiring the administrator to submit his report and a copy of the project of partition.

On January 3, 1946, the administrator, Dr. Crisanto de Borja, filed his accounts for the

period ranging from March 1 to December 22, 1945, which according to the heirs of Quintín de Borja were so inadequate and general that on February 28, 1946, they filed a motion for specification. On April 30, 1946, they also filed their opposition to said statement of accounts alleging that the income reported in said statement was very much less than the true and actual income of the estate and that the expenses appearing therein were exaggerated and/or not actually incurred, and prayed that the statement of accounts submitted by the administrator be disapproved.

The administrator later filed another report of his administration, dated August 9, 1949, corresponding to the period lapsed from December 23, 1945, to July 31, 1949, showing a cash balance of P71.96, but with pending obligation amounting to P35.415.

On August 22, 1949, Juan de Borja and sisters, heirs of the deceased Quintín de Borja, filed their opposition to the statement of accounts filed by the administrator on the ground that same was not detailed enough to enable the interested parties to verify the same; that they cannot understand why the Intestate could suffer any loss considering that during the administration of the same by the late Quintin de Borja, the Estate accumulated gains of more than P100,000 in the form of advances to the heirs as well as cash balance; that they desired to examine the accounts of Dr. Crisanto de Borja to verify the loss and therefore prayed that the administrator be ordered to deposit with the Clerk of Court all books, receipts, accounts and other papers pertaining to the Estate of Marcelo de Borja. This motion was answered by the administrator contending that the Report referred to was already clear and enough, the income as well as the expenditures being specified therein; that he had to spend for the repairs of the properties of the Estate damaged during the Japanese occupation; that the allegation that during the administration of Quintin de Borja the Estate realized a profit of P100,000 was not true, because instead of gain there was even a shortage in the funds although said administrator had collected all his fees (*honorarios*) and commissions corresponding to the entire period of his incumbency; that the obligations mentioned in said Report will be liquidated before the termination of the proceedings in the same manner as it is done in any other intestate case; that he was willing to submit all the receipts of the accounts for the examination of the interested parties before the Clerk or before the Court itself; that this Intestate could be terminated, the project of partition having been allowed and confirmed by the Supreme Court and that the Administrator was alsodesirous of termina- ting it definitely for the benefit of all the parties. .

On September 14, 1949, the administrator filed another statement of accounts covering the

period of from March 1, 1945, to July 31, 1949, which showed a cash balance of P71.95, with pending obligations in the sum of P35,810.

The heirs of Quintín de Borja, Juan de Borja and his sisters, registered their opposition to said statement of accounts and prayed the Court to disapprove the same and to appoint an accountant to go over the books of the administrator and to submit a report thereon as soon as possible. The heir Juliana de Borja also formally offered her objection to the approval of the accounts submitted by the administrator and prayed further that said administrator be required to submit a complete accounting of his administration of. the Estate from 1937 to 1949. On the other hand, Francisco de Borja and Miguel B. Dayco, as the only heir of the deceased Crisanta de Borja, submitted to the Court an agreement to relieve the administrator from accounting for the period of the Japanese occupation; that as to the accounting from 1937 to 1941, they affirmed their conformity with the agreement entered into by all the heirs appearing in the Bill of Exceptions of Juliana de Borja; and that they have no objection to the approval of the statement of accounts submitted by the administrator covering the years 1945 to 1949.

On December 6, 1949, the administrator, answered the opposition of the heir Juliana de Borja, alleging that the corresponding statement of accounts for the years 1937, 1938, 1939, 1940 and 1941 were presented and approved by the Court before and during the Japanese occupation, but the records of the same were destroyed in the Office of the Clerk of that Court during the liberation of the province of Rizal, and his personal records were also lost during the Japanese occupation, when his house was burned; that Judge Peña who was presiding over the Court in 1945 impliedly denied the petition of the heirs to require him to render an accounting for the period from 1942 to the early part of 1945, for the reason that whatever money obtained from the Estate during said period could not be made the subject of any adjudication it having been declared fiat money and without value, and ordered that the statement of accounts be presented only for the period starting from March 1, 1945. The administrator further stated that he was anxious to terminate this administration but some of the heirs had not yet complied with the conditions imposed in the project of partition which was approved by the Supreme Court; that in accordance with said partition agreement, Juliana de Borja must deliver to the administrator all the jewelry, objects of value, utensils and other personal belongings of the deceased spouses Marcelo de Borja and Tárcila Quiogue, which said heir had kept and continued to retain in her possession; that the heirs of Quintín de Bbrja should deliver to the administrator all the lands and a document transferring in favor of the Intestate the two parcels of land with a total area of 71 hectares of cultivated land in Cabanatuan,

Nueva Ecija which were in the possession of said heirs, together with the house of Feliciana Mariano Vda. de Sarangaya, which were the objects of Civil Case No. 6190 mentioned in Paragraph 11 of the project of partition; that as a consequence of the said dispossession, the heirs of Quintín de Borja must deliver to the administrator the products of the 71 hectares of land in Cabanatuan, Nueva Ecija, and the rentals of the house of Feliciana Mariano or else render to the Court an accounting of the products of these properties from the time they took possession of the same in 1937 to the present; that there was a pending obligation amounting to P36,000 as of September 14, 1949, which the heirs should pay before the properties adjudicated to them would be delivered. The Court, however, ordered the administrator on December 10, 1949, to show and prove by evidence why he should not be required to include in his accounts the proceeds of his administration from 1937.

Meantime, Juliana de Borja filed a *Constancia* denying possession of any jewelry belonging to the deceased spouses Marcelo de Borja and Tarcila Quiogue or any other personal belonging of said spouses, and signified her willingness to turn over to the administrator the silverwares mentioned in Paragraph III of the project of partition, which were the only property in her care, on the date that she would expect the delivery to her of her share in the inheritance from her deceased parents.

On July 6, 1950, Juan de Borja and his sisters Marcela, Saturnina, Eufracia, Jacoba and Olimpia, all surnamed de Borja, as heirs of Quintín de Borja, filed a motion for the delivery to them of their inheritance in the estate, tendering to the administrator a document ceding and transferring to the latter all the rights, interests and participation of Quintín de Borja in Civil Case No. 7190 of the Court of First Instance of Nueva Ecija, pursuant to the provisions of the Project of Partition, and expressing their willingness to put up a bond if required to do so by the Court, and on July 18, 1950, the Court ordered the administrator to deliver to Marcela, Juan, Saturnina, Eufracia, Jacoba and Olimpia, all surnamed de Borja, all the properties adjudicated to them in the Project of Partition dated February 8, 1944, upon the latter's filing a bond in the sum of P10,000 conditioned upon the payment of such obligation as may be ordered by the Court after a hearing on the controverted accounts of the administrator. The Court considered the fact that the heirs had complied with the requirement imposed by the Project of Partition when they tendered the. document ceding and transferring the rights and interests of Quintín de Borja in the aforementioned lands and expressed the necessity of terminating the proceedings as soon as practicable, observing that the Estate had been under administration for over twenty-five years already. The Court, however, deferred action on the petition filed by the

special administratrix of the Intestate Estate of Juliana de Borja until after compliance with the conditions imposed by the project of partition. But on July 20, 1950, apparently before the properties were delivered to the heirs, Francisco de Borja and Miguel B. Dayco filed a motion informing the Court that the two parcels of land located in Cabanatuan, Nueva Ecija, produced some 21,300 cavans of palay, amounting to P213,000 at P10 per cavan, which were enjoyed by some heirs; that the administrator Crisanto de Borja had not taken possession of the same for circumstances beyond his control; and that there also existed the sum of P70,204 which the former administrator, Quintín de Borja, received from properties that were redeemed, but which amount did not come into the hands of the present administrator because according to reliable information, same was delivered to the heir Juliana de Borja who deposited it in her name at the Philippine National Bank. It was, therefore prayed that the administrator be required to exert the necessary effort to ascertain the identity of the person or persons who were in possession of the same amount and of the value of the products of the lands in Mayapyap, Cabanatuan, Nueva Ecija, and to recover the same for the Intestate Estate.

On July 28, 1950, the special administratrix of the estate of Juliana de Borja, then deceased, filed an answer to the motion of these two heirs, denying the allegation that said heir received any product of the lands mentioned from Quintín de Borja, and informed the Court that the Mayapyap property had always been in the possession of Francisco de Borja himself and prayed the Court that the administrator be instructed to demand all the fruits and products of said property from Francisco de Borja.

On July 28, 1950, the heirs of Quintín de Borja also filed their opposition to the said motion of Francisco de Borja and Miguel B. Dayco on the ground that the petition was superfluous because the present proceeding was only for the approval of the statement of accounts filed by the administrator; that said motion was improper because it was asking the Court to order the administrator to perform what he was duty bound to do; and that said heirs were already barred or estopped from raising that question in view of their absolute ratification of and assent to the statement of accounts submitted by the administrator.

On August 16, 1950, by order of the Court, the properties adjudicated to Juliana de Borja in the Project of Partition were finally delivered to the estate of said heir upon the filing of a bond for P20,000. In that same order, the Court denied the administrator's motion to reconsider the order of July 18, 1950, requiring him to deliver to the heirs of Quintín de Borja the properties corresponding to them, oh the ground that there existed no sufficient

reason to disturb said order. It also ruled that as the petition of Francisco de Borja and Miguel B. Dayco made mention of certain properties allegedly belonging to the Intestate, said, petition should properly be considered together with the final accounts of the administrator.

The administrator raised the matter by certiorari to this Tribunal, which was docketed as G. R. No. L-4179, and on May 30, 1951, We rendered decision affirming the order complained of, finding that the heirs Juan de Borja and sisters have complied with the requirement imposed in the Project of Partition upon the tender of the document of cession of rights and quit-claim executed by Marcela de Borja, the administratrix of the Estate of Quintin de Borja, and holding that the reasons advanced by the administrator in opposing the execution of the order of delivery were trivial.

On August 27, 1951, the administrator filed his amended statement of accounts covering the period from March 1, 1945, to July 31, 1949, which showed a cash balance of P36,660. Ah additional statement of accounts filed on August 31, 1951 for the period of from August 1, 1949, to August 31, 1951, showed a cash balance of P5,851.17 and pending, obligations in the amount of P6,165.03.

The heirs of Quintín de Borja again opposed the approval of these statements of accounts charging the administrator with having failed to include the fruits which the estate should have accrued from 1941 to 1951 amounting to P479,429.70, but as the other heirs seemed satisfied with the accounts presented by said administrator and as their group was only one of the 4 heirs of Intestate Estate, they prayed that the administrator be held liable for only P119,932.42 which was % of the amount alleged to have been omitted. On October 4, 1951, the adminis- trator filed a reply to said opposition containing a counter-claim for moral damages against all the heirs of Quintin de Borja in the sum of P30,000 which was admitted by the Court over the objection of the heirs of Quintin de Borja that the said pleading was filed out of time.

The oppositors, the heirs of Quintin de Borja, then filed their answer to the counterclaim denying the charges therein, but later served interrogatories on the administrator relative to the averments of said counterclaim. Upon receipt of the answer to said interrogatories specifying the acts upon which the claim for moral damages was based, the oppositors filed an amended answer contending that inasmuch as the acts, manifestations and pleadings referred to therein were admittedly committed and prepared by their lawyer, Atty. Amador E. Gomez, same cannot be made the basis of a counterclaim, said lawyer not

being a party to the action, and furthermore, as the acts upon which the claim for moral damages were based had been committed prior to the effectivity of the new Civil Code, the provisions of said Code on moral damages could not be invoked. On January 15, 1952, the administrator filed an amended counterclaim including the counsel for the expositors as defendant.

There followed a momentary respite in the proceedings until another judge was assigned to preside over said court to dispose of the old cases pending therein. On August 15, 1952, Judge Encarnacion issued an order denying admission to administrator's amended counterclaim directed against the lawyer, Atty. Amador E. Gomez, holding that a lawyer, not being a party to the action, cannot be made answerable for counterclaims. Another order was also issued on the same date dismissing the administrator's counterclaim for moral damages against the heirs of Quintín de Borja and their counsel for the alleged defamatory acts, manifestations and utterances, and stating that granting the same to be meritorious, yet it was a strictly private controversy between said heirs and the administrator which would not in any way affect the interest of the Intestate, and, therefore, not proper in an intestate proceedings. The Court stressed that to allow the ventilation of such personal controversies would further delay the proceedings in the case which had already lagged for almost 30 years, a situation which the Court would not countenance.

Having disposed of these pending incidents which arose out of the principal issue, that is, the disputed statement of accounts submitted by the administrator, the Court rendered judgment on September 5, 1952, ordering the administrator to distribute the funds in his possession to the heirs as follows: P1,395.90 to the heirs of Quintín de Borja; P314.99 to Francisco de Borja; P314.99 to the Estate of Juliana de Borja and P314.99 to Miguel B. Dayco, but as the latter still owed the intestate the sum of P900, said heirs was ordered to pay instead the 3 others the sum of P146.05 each. After considering the testimonies of the witnesses presented by both parties and the available records on hand, the Court found the administrator guilty of maladministration and sentenced Crisanto de Borja to pay to the oppositors, the heirs of Quintín de Borja, the sum of P83,337.81, which was 1/4 of the amount which the estate lost, with legal interest from the date of the judgment. On the same day, the Court also issued an order requiring the administrator to deliver to the Clerk of that Court PNB Certificate of Deposit No. 211649 for P978.50 which was issued in the name of Quintin de Borja.

The administrator, Dr. Crisanto de Borja, gave notice to appeal from the lower Court's

orders of August 15, 1952, the decision of September 5, 1952, and the order of even date, but when the Record on Appeal was finally approved, the Court ordered the exclusion of the appeal from the order of September 5, 1952, requiring the administrator to deposit the PNB Certificate of Deposit No. 211649 with the Clerk of Court, after the oppositors had shown that during the hearing of that incident, the parties agreed to abide by whatever resolution the Court would make on the ownership of the funds covered by that deposit.

The issues.—Reducing the issues to bare essentials, the questions left for our determination are: (1) whether the counsel for a party in a case may be included as a defend- ant in a counterclaim; (2) whether a claim for moral damages may be entertained in a proceeding for the settlement of an estate; (3) what may be considered as acts of maladministration and whether an administrator, as the one in the ease at bar, may be held accountable for any loss or damage that the estate under his administration may incur by reason of his negligence, bad faith or acts of maladministration; and (4) in the case at bar has the Intestate or any of the heirs suffered any loss or damage by reason of the administrator's negligence, bad faith or maladministration? If so, what is the amount of such loss or damage?

I.—Section 1, Rule 10, of the Rules of Court defines a counterclaim as:

> Section 1, *Counterclaim Defined.*—A counterclaim is any claim, whether for money or otherwise, *which a party may have against t}ie opposing party.* A counterclaim need not diminish or defeat the recovery sought hy the opposing party, but may claim relief exceeding in amount or different in kind from that sought by the opposing party's claim.

It is an elementary rule of procedure that a counter- claim is a relief available to a party-defendant against the adverse party which may or may not be independent from the main issue. There is no controversy in the case at bar, that the acts, manifestations and actuations alleged to be defamatory and upon which the counterclaim was based were done or prepared by counsel for oppositors; and the administrator contends that as the very oppositors manifested that whatever civil liability arising from acts, actuations, pleadings and manifestations attributable to their lawyer is enforceable against said lawyer, the amended counterclaim was filed against the latter not in his individual or personal capacity but as counsel for the oppositors. It is his stand, therefore, that the lower court erred in denying admission to said pleading. We differ from the view taken by the

administrator. The appearance of a lawyer as counsel for a party and his participation in a case as such counsel does not make him a party to the action. The fact that he represents the interests of his client or that he acts in their behalf will not hold him liable for or make him entitled to any award that the Court may adjudicate to the parties, other than his professional fees. The principle that a counterclaim cannot be filed against persons who are acting in representation of another—such as trustees—in their individual capacities (Chambers vs. Cameron, 2 Fed. Rules Service, p. 155; 29 F. Supp. 742) could be applied with more force and effect in the case of a counsel whose participation in the action is merely confined to the preparation of the defense of his client. Appellant, however, asserted that he filed the counterclaim against said lawyer not in his individual capacity but as counsel for the heirs of Quintín de Borja. But as we have already stated that the existence of a lawyer-client relationship does not make the former a party to the action, even this allegation of appellant will not alter the result We have arrived at.

Granting that the lawyer really employed intemperate language in the course of the hearings or in the preparation of the pleadings filed in connection with this case, the remedy against said counsel would be to have him cited for contempt of court or take other administrative measures that may be proper in the case, but certainly not a counterclaim for moral damages.

II.—Special Proceedings No. 6414 of the Court of First Instance of Rizal (Pasig branch) was instituted for the purpose of settling the Intestate Estate of Marcelo de Borja. In taking cognizance of the case, the Court was clothed with a limited jurisdiction which cannot expand to collateral matters not arising out of or in any way related to the settlement and adjudication of the properties of the deceased, for it is a settled rule that the jurisdiction of a probate court is limited and special (Guzman vs. Anog, 37 Phil. 361). Although there is a tendency now to relax this rule and extend the jurisdiction of the probate court in respect to matters incidental and collateral to the exercise of its recognized powers (14 Am. Jur. 251- .252), this should be understood to comprehend only cases related to those powers specifically allowed by the statutes. For it was even said that:

> "Probate proceedings are purely statutory and their functions. limited to the control of the property upon the death of its owner, and cannot extend to the adjudication of collateral questions" (Wossmes, The American Law of Administration, Vol. I, p. 514, 662-663).

It was in the acknowledgment of its limited jurisdiction that the lower court dismissed the administrator's counterclaim for moral damages against the oppositors, particularly against Marcela de Borja who allegedly ut- tered derogatory remarks intended to cast dishonor to said administrator sometime in 1950 or 1951, his Honor's ground being that the court exercising limited jurisdiction cannot entertain claims of this kind which should properly belong to a court of general jurisdiction. From whatever angle it may be looked at, a counterclaim for moral damages demanded by an administrator against the heirs for alleged utterances, pleadings and actuations made in the course of the proceeding, is an extraneous matter in a testate or intestate proceedings. The injection into the action of incidental questions entirely foreign in probate proceedings should not be encouraged for to do otherwise would run counter to the clear intention of the law, for it was held that:

> "The speedy settlement of the estate of deceased persons for the benefit of the creditors and those entitled to the residue by way of inheritance or legacy after the debts aud expenses of administration have been paid, is the ruling spirit of our probate law" (Magbanua vs. Akel, 72 Phil., 667, 40 Off. Gaz., 1871).

III. and IV.—This appeal arose from the opposition of the heirs of Quintín de Borja to the approval of the statements of accounts rendered by the administrator of the Intestate Estate of Marcelo de Borja, on the ground that certain fruits which should have accrued to the estate were unaccounted for, which charge the administrator denied. After a protracted and extensive hearing on the matter, the Court, finding the administrator, Dr. Crisanto de Borja, guilty of certain acts of maladministration, held him liable for the payment to the oppositors, the heirs of Quintin de Borja, of 1/4 of the unreported income which the estate should have received. The evidence presented in the court below bear out the following facts;

(a) The estate owns a 6-door building, Nos. 1541, 1543, 1545, 1547, 1549 and 1551 in Azcarraga Street, Manila, situated in front of the Arranque market. Of this prop- erty, the administrator reported to have received for the estate the following rentals:

Total rentals Umiual

Period of time	Total rentals	Unnual monthly rental
March to December, 1945.	P3.085.00	P51.42

January to December, 1946	4,980.00	69.17
January to December, 1947	8,880.00	115.70
January to December, 1948	9,000.00	125.00.
January to December, 1949	8,840.00	122.77
January to December, 1950	6,060.00	184.16
Total	P40,295.00	

The oppositors, in disputing this reported income, presented at the witness atand Lauro Aguila, a lawyer who occupied the basement of Door No. 1541 and the whole of Door No. 1543 from 1945 to November 15, 1949, and' who testified that he paid rentals on said apartments as follows:

1945

Door No. 1541 (basement)

February.	P20.00
March	20.00
April	60.00
May-December	800.00
Total	P900.00

Door No. 1543

For 7 months at P300 a month	P2,100.00

1946

Januuary-December	Pl,200.00	Jamiary-Deceraber	P4,080.00

1947

January	P100.00	January	P380.00
February	100.00	February	380.00
March	180.00	March 1-15	190.00
April-December	1,440.00	March 16-Decembcr	4,085.00
	Pl,820.00		P5,035.00

1948

January-December	Pl,920.00	January-December	P5,150.00

1949			
January-November 15	Pl,680.00	January-December	P4,315.00

From the testimony of said witness, it Appears that from 1945 to November 15, 1949, he paid a total of P28,200 for the lease of Door No. 1543 and the basement of Door No. 1541. These figures were not controverted or disputed by the administrator but claimed that said tenant subleased the apartments occupied by Pedro Enriquez and Soledad Sodora and paid the said rentals, not to the ad- ministrator, but to said Enriquez. The transcript of the testimony of this witness really bolster this contention— that Lauro Aguila talked with said Pedro Enriquez when he leased the aforementioned apartments and admitted paying the rentals to the latter and not to the administrator. It is interesting to note that Pedro Enriquez is the same person who appeared to be the administrator's collector, duly authorized to receive the rentals from this Azcarraga property and for which services, said Enriquez received 5 per cent of the amount he might be able to collect as commission. If we are to believe appellant's contention, aside from the commission that Pedro Enriquez received he also sublet the apartments he was occupying at a very much higher rate than that he actually paid the estate without the knowledge of the administrator or with his approval. As the administrator also seemed to possess that peculiar habit of giving little importance to bookkeeping methods, for he never kept a ledger or book of entry for amounts received for the estate, We find no record of the rentals the lessees of the other doors were paying. It was, however, brought about at the hearing that the 6 doors of this building are of the same sizes and construction and the lower Court based its computation of the amount this property sliould have, earned for the estate on the rental paid by Atty. Aguila for the 11/2 doors that he occupied. We see no excuse why the administrator could not have taken cognizance of these rates and received the same for the benefit of the estate he was administering, considering the fact that he used to make trips to Manila usually once a month and for which he charged to the estate P8 as transportation expenses for every trip.

Basing on the rentals paid by Atty. Aguila for 1 1/2 doors, the estate would have received P112,800 from February 1, 1945, to November 15, 1949, for the 6 doors, but the lower Court held him accountable not only for the sum of P34,235 reported for the period ranging from March 1, 1945, to December 31, 1949, but also for a deficit of P90,525 or a total of P124,760. The record shows, however that the upper floor of Door No. 1549 was vacant in September, 1949, and as Atty. Aguila used to pay P390 a month for the use of an

entire apartment from September to November, 1949, and he also paid P160 for the use of the basement of an apartment (Door No. 1541), the use, therefore, of said upper floor would cost P230 which should be deducted, even if the computa- tion of the lower Court would have to be followed.

There being no proper evidence to show that the administrator collected more rentals than those reported by him, except in the instance already mentioned, We are reluctant to hold him accountable in the amount for which he was held liable by the lower Court, and We think that under the circumstances it would be more just to add to the sum reported by the administrator as received by him as rents for 1945-1949 only, the difference between the sum reported as paid by Atty. Aguila and the sum actually paid by the latter as rents of 11/2 the apartments during the said period, or P25,457.09 1/4 of which is P6,364.27 which shall be paid to the oppositors.

The record also shows that in July, 1950, the administrator delivered to the other heirs Doors Nos. 1545, 1547, 1549 and 1551 although Doors Nos. 1541 and 1543 adjudicated to the oppositors remained under his administration. For the period from January to June, 1950, that the entire property was still administered by him, the administrator reported to have received for the 2 oppositors' apartments for said period of six months at P168.33 a month, the sum of P1,010 which belongs to the oppositors and should be taken from the amount reported by the administrator.

The lower Court computed at P40 a month the pre-war rental admittedly received for every apartment, the income that said property would have earned from 1941 to 1944, or a total of P11,520, but as We have to exclude the.period covered by the Japanese occupation, the estate should receive only *P2,880* 1/4 of which P720 the administrator should pay to the oppositors for the year 1941.

(b) The Intestate estate also owned a parcel of land in Mayapyap, Nueva Ecija, with an area of 71 hectares, 95 ares and 4 centares, acquired by Quintin de Borja from the spouses Cornelio Sarangaya and Feliciana Mariano in Civil Case No. 6190 of the Court of First Instance of said province. In virtue of the agreement entered into by the heirs, this property was turned over by the estate of Quintín de Borja to the intestate and formed part of the general mass of said estate. The report of the adminis- trator failed to disclose any return from this property alleging, that he had not taken possession of the same. He does not deny however that he knew of the existence of this land but claimed that when he demanded the delivery of the Certificate of Title covering this property, Rogelio Limaco,

then administrator of the estate of Quintin de Borja, refused to surrender the same and he did not take any further action to recover the same.

To counteract the insinuation that the Estate of Quintín de Borja was in possession of this property from 1940 to 1950, the oppositors presented several witnesses, among them was an old man, Narciso Punzal, who testified that he knew both Quintín and Francisco de Borja; that before the war or sometime in 1937, the former administrator of the Intestate, Quintín de Borja, offered him the position of overseer (encargado) of this land but he was not able to assume the same due to the death of said adminis- trator; that on July 7, 1951, herein appellant.invited him to go to his house in Pateros, Rizal, and while in said house, he was instructed by appellant to testify in court next day that he was the overseer of the Mayapyap property for Quintín de Borja from 1937-1944, delivering the yearly proceeds of 1,000 cavanes of palay to Eogelio Limaco; that he did not need to be afraid because both Quintín de Borja and Eogelio Limaco were already dead. Jiut as he knew that the facts on which he was.to testify were false, he went instead to the house of one of the daughters of Quintín de Borja, who, together with her brother, Atty. Juan de Borja, accompanied him to the house of .the counsel for said oppositors before whom his sworn declaration was taken (Exh. 3).

Other witnesses, i.e., Isidro Benuya, Federico Cojo, Emilio de la Cruz and Ernesto. Mangulabnan, testified that they were some of the tenants of the Mayapyap property; that they were paying their shares to the overseers of Franciseo de Borja and sometimes to his wife, which the administrator was not able to contradiet, and the lower. Court found no reason why the administrator would fail to take possession of this property considering that this was even the subject of the agreement of February 16, 1940, executed by the heirs of the Intestate.

The lower Court, giving due credence to the testimonies of the witnesses for the oppositors, computed the loss the estate suffered in the form of unreported income from the rice lands for 10 years at P67,000 (6,700 a year) and the amount of P4,000 from the remaining portion of the land not devoted to rice cultivation which was being leased at P20 per hectare. Consequently, the Court held the administrator liable to appellees in the sum of *P17,750* which is 1/4 of the total amount which should have accrued to the estate for this item.

But if We exclude the 3 years of occupation, the income for 7 years would be P46,900 for the ricelands and P2,800 (at P400 a year) for the remaining portion not devoted to rice

cultivation or a total of P48,700, 1/4 of which is *P12,175* which We hold the administrator liable to the oppositors.

(c) The Hacienda Jalajala located in said town of Rizal, was divided into 3 parts: the Punta section belonged to Marcelo de Borja, the Bagombong pertained to Bernardo de Borja and Francisco de Borja got the Jalajala proper. For the purpose of this case, we will just deal with that part called Junta. This properly has an area of 1,345, hectares, 29 ares and 2 centares (Exh. 36) of which, according to the surveyor who measured the same, 200 hectares were of cultivated rice fields and 100 hectares dedicated to the planting of upland rice. It has also timberland and forest which produce considerable amount of trees and firewoods. From the said property which has an assessed value of P115,000 and for which the estates pay real estate tax of P1,500 annually, the administrator reported the following;

Year	Income	Expenditures (not including administration's
1945	P625.00	P1,310.42
1946	1,800.00	3,471.00
1947	2,550.00	2,912.91
1948	1,828.00	3,311.88
1949	3,204.50	4,792.09
1950	2,082.00	2,940.91
	P12,089.50	P18.739.21

This statement was assailed by the oppositors and to substantiate their charge that the administrator did not file the true income of the property, they presented several witnesses who testified that there were about 200 tenants working therein; that these tenants paid to Crisanto de Borja rentals at the rate of 6 cavanes of palay per hectare; that in the years of 1948 and 1944, the Japanese were the ones who collected their rentals, and that the estate could have received no less than 1,000 cavanes of palay yearly. After the administrator had presented witnesses to refute the facts previously testified to by the witnesses for the oppositors, the Court held that the report of the administrator did not contain the real income of the property devoted to rice cultivation, which was fixed at 1,000 cavanes every year—for 1941, 1942, 1945, 1946, 1947, 1948, 1949 and 1950, or a total of 8,000 cavanes valued at P78,000. But as the administrator accounted for the sum of P11,155 collected from rice harvests and if to this amount we add the sum of P8,739.20 for expenses, this will make a total of P19,894.20, thus leaving a deficit of P53,105.80, 1/4 of which will be P13,276.45 which the administrator is held liable to pay the heirs of

Quintin do Borja.

It was also proved during the hearing that the forestland of this property yields considerable amount of marketable firewoods. Taking into consideration the testimonies of witnesses for both parties, the Court arrived at the conclusion that the administrator sold to Gregorio Santos firewoods worth P600 in 1941, P3,500 in 1945 and P4,200 in 1946 or a total of P8,300. As the report included only the amount of P625, there was a balance of P7,675 in favor of the estate. The oppositors were not able to present any proof of sales made after these years, if there were any and the administrator was held accountable to the oppositors for only P1,918.75.

(d) The estate also owned riceflelds in Cainta, Rizal, with a total area of 22 hectares, 76 ares and 66 centares. Of this particular item, the administrator reported an income of P12,104 from 1945 to 1951. The oppositors protested against this report and presented witnesses to disprove the same.

Basilio Javier worked as a tenant in the land of Juliana de Borja which is near the land belonging to the Intestate, the 2 properties being separated only by a river. As tenant of Juliana de Borja, he knew the tenants working on the property and also knows that both lands are of the same class, and that an area accommodating one cavan of seedling's yields at most 100 cavanes and 60 cavanes at the least. The administrator failed to overcome this testimony. The lower Court considering the facts testified to by this witness made a finding that the property belonging to this Intestate was actually occupied by several persons accommodating 13% cavanes of seedlings; that as for every cavan of seedlings, the land produces 60 cavanes of palay, the whole area under cultivation would have yielded 810 cavanes a year and under the 50-50 sharing system (which was testified to by witness Javier), the estate should have received no less than 405 cavanea every year. Now, for the period of 7 years—from 1941 to 1950, excluding the 3 years of war—the corresponding earning of the estate should be 2,835 cavanes, out of which the 405 cavanes from the harvest of 1941 is valued at P1,215 and the rest 2,430 cavanes at P10 is valued at P24,300, or all in all P25,515. If from this, amount the reported income of P12,104 is deducted, there will be a balance of P13,411.10 1/4 of which or *P3,352.75* the administrator is held liable to pay to the oppositors.

(e) The records show that the administrator paid surcharges and penalties with a total of P988.75 for his failure to pay on time the taxes imposed on the properties under his administration. He advanced the reason that he lagged in the payment of those tax

obligations because of lack of cash balance for the estate. The oppositors, however, presented evidence that on October 29, 1939, the administrator received from Juliana de Borja the sum of P20,475.17 together with certain papers pertaining to the intestate (Exh. 4), aside from the checks in the name of Quintín de Borja. Likewise, for his failure to pay the taxes on the building at Azcarraga for 1947, 1948 and 1949, said property was sold at public auction and the administrator had to redeem the same at P3,295.48, although the amount that should have been paid was only P2,917.26. The estate therefore suffered a loss of *P378.22*. Attributing these surcharges and penalties to the negligence of the administrator, the lower Court adjudged him liable to pay the oppositors 1/4 of P1,366.97, the total loss suffered by the Intestate, or P341.74

(f) Sometime in 1942, a big fire razed numerous houses in Pateros, Rizal, including that of Dr. Crisanto de Borja. Thereafter, he claimed that among the properties burned therein was his safe containing P15,000 belonging to the estate under his administration. The administrator con- tended that this loss was already proved to the satisfaction of the Court who approved the same by order of January 8, 1943, purportedly issued by Judge Servillano Flaton (Exh. B). The oppositors contested the genuineness of this order and presented on April 21, 1950, an expert witness who conducted several tests to determine the probable age of the questioned document, and arrived at the conclusion that the questioned ink writing "(Fdo)" appearing at the bottom of Exhibit B cannot be more than 4 years old (Bxh. 39). However, another expert witness presented by the administrator contradicted this finding and testified that this conclusion arrived at by expert witness Mr. Pedro Manzafiares was not supported by authorities and was merely the result of his own theory, as there was no method yet discovered that would determine the age of a document, for every document has its own reaction to different chemicals used in the tests. There is, however, another fact that called the attention of the lower Court: the administrator testified that the money and other papers delivered by Juliana de Borja to him on October 29, 1989, were saved from said fire. The administrator justified the existence of these valuables by asserting that these properties were locked by Juliana de Borja in her drawer in the "casa solariega" in Pateros and hence was not in his safe when his house, together with the safe, was burned. This line of reasoning is really subject to doubt and the lower Court opined, that it runs counter to the ordinary course of human behavior for an administrator to leave in the drawer of the "aparador" of Juliana de Borja the money and other documents belonging to the estate under his administration, which delivery has receipted for, rather than to keep it in his safe together with the alleged P15,000 also belonging to the Intestate. The subsequent orders of Judge Platon also put

the defense of appellant to bad light, for on *February 6, 1943*, the Court required Crisanto de Borja to appear before the Court of examination of the other heirs in connection with the reported loss, and on March 1, 1943, authorized the lawyers for the other parties to inspect the safe allegedly burned (Exh. 35). It is inconceivable that Judge Platon would still.order the inspection of the safe if there was really an order approving the loss of those P15,000. We must not forget, in this connection, that the records of this case were burned and that at the time of the hearing of this incident in 1951, Judge Platon was already dead. The lower Court also found no reason why the administrator should keep in his possession such amount of money, for ordinary prudence would dictate that as an administration funds that come into his possession in a fiduciary capacity should not be mingled with his personal funds and should have been deposited in the Bank in the name of the intestate. The administrator was held respon- sible for this loss and ordered to pay 1/4 thereof, or the sum of P3,750.

(g) Unauthorized expenditures—

1. The report of the administrator contained certain sums amounting to P2,130 paid to and receipted by Juanita V. Jarencio the administrator's wife, as his private secre

that he needed her services to keep receipts and records' for him, and that he did not secure first the authorization from the court before making these disbursements because it was merely a pure administrative function.

The keeping, of receipts and retaining in his custody records connected with the management of the properties under administration is a duty that properly belongs to the administrator, necessary to support the statement of accounts that he is obliged to submit to the court for approval. If ever his wife took charge of the safekeeping of these receipts and for which she should be compensated, the same should be taken from his fee. This disbursement was disallowed by the Court for being unauthorized and the administrator required to pay the oppositors 14 thereof or *P532.50*.

2. The salaries of Pedro Enriquez, as collector of the Azcarraga property; of Briccio Matienzo and Leoncio Perez, as encargados, and of Vicente Panganiban and Herminigildo Macetas as forest-guards were found justified, although unauthorized, as they appear to be reasonable and necessary for the care and preservation of the Intestate.

3. The lower Court disallowed as unjustified and unnecessary the expenses for salaries paid to special policemen amounting to P1,509. Appellant contended that he sought for the

services of Macario Kamungol and others to act as special policemen during harvest time because most of the workers tilling the Punta property were not natives of Jalajala but of the neighboring towns and they were likely to run away with the harvest without giving the share of the estate if they were not policed. This kind of reasoning did not appear to be convincing to the trial judge as the cause for such fear seemed to exist only in the imagination. Granting that such kind of situation existed, the proper thing for the administrator to do would have been to secure the previous authorization from the Court if he failed to secure the help of the local police. He should be held liable for this unauthorized expenditure and pay the heirs of Quintin de Borja 1/4, thereof or *P377.25*.

4. From the year 1942 when his house was burned, the administrator and his family took shelter at the house belonging to the Intestate known as "casa solariega" which, in the Project of Partition, was adjudicated to his father, Francisco de Borja. This property, however, remained under his administration and for its repairs he spent from 1945-1950, P1,465.14, duly receipted.

None of these repairs appear to be extraordinary for the receipts were for nipa, for carpenters and thatchers. Although it is true that Rule 85, Section 2 provides that:

> Sec. 2. *EXECUTOR OR ADMINISTRATOR TO KEEP BUILDINGS IN REPAIR.*—An executor or administrator shall maintain in tenantable repair the houses and other structures and fences belonging to the estate, and deliver the same in such repair to the heirs or devisees when directed so to do by the court.

yet considering that during his occupancy of the said "casa solariega" he was not paying any rental at all, it is but reasonable that he should take care of the expenses for the ordinary repair of said house. Appellant asserted that had he and his family not occupied the same, they would have to pay someone to watch and take care of said house. But this will not excuse him from this responsibility for the disbursements he made in connection with the aforementioned repairs because even if he stayed in another house, he would have had to pay rentals or else take charge also of expenses for the repairs of his residence. The administrator should be held liable to the oppositors in the amount of. *P366.28*.

5. Appellant reported to have incurred expenses amount- ing; to P6,304.75 for alleged repairs on the rice mill in Pateros, also belonging to the Intestate. Of the disbursements

made therein, the items corresponding, to Exhibits I, 1-1, 1-21, L-26, L-15, L-64 and L-65, in the total sum of P570.70 were rejected by the lower court on the ground that they were all unsigned although some were dated. The lower Court, however, made an oversight in including the sum of f 150 covered by Exhibit L-26 which was duly signed by Claudio Reyes because this does not refer to the repair of the rice-mill but for the roofing of the house and another building and shall be allowed. Consequently, the sum of P570.70 shall be reduced to P420.70 which added to the sum of P3,059 representing expenditures rejected as unauthorized to wit:

Exhibit L59	P500.00	Yek Wing
Exhibit L-60	616.00	Yek Wing
Exhibit L-61	600.00	Yek Wing
Exhibit L-62	840.00	Yek Wing
Exhibit L-63	180.00	Yek Wing
Exhibit Q-2	323.00	scale "Howe"
Total	*P3,059.00*	

will give a total of P3,479 1/4 of which is *P869.92* that belongs to the oppositors.

6. On the reported expenses for planting in the Cainta ricefields:—In his statement of accounts, appellant reported to have incurred a total expense of P5,977 for the planting of the ricefields in Cainta, Rizal, from the agricultural year 1945-46 to 1950-51. It was proved that the prevailing sharing system in this part of the country was on 50-50 basis. Appellant admitted that expenses for planting were advanced by the estate and liquidated after each harvest. But the report, except for the agricultural year 1950 contained nothing of the payments that the tenants should have made. If the total expenses for said planting amounted to P5,977, 1/2 thereof or P2,988.50 should have been paid by the tenants as their share of such expenditures, and as P965 was reported by the administrator as paid back in 1950, there still remains a balance of P2,023.50 unaccounted for. For this shortage, the administrator is responsible and should pay the oppositors 1/4 thereof or *P505.87*.

7. On the transportation expenses of the administra- tor:—It appears that from the year 1945 to 1951, the administrator charged the estate with a total of P5,170 for transportation expenses. The unreceipted disbursements were correspondingly itemized, a typical example of which is as follows:

"1950 "Gastoa die viuje del ado'dnistrador "From Pateros		
	60 X P4.00 .	= P200.00
"To Pasig	50 x P10.00	= P500.00
"To Manila	8 x F8.00	= P64.00
"To Cainta	P 5 x 35.00	= P175.00
"To Jalajala		
		P989.00"

(Exhibit WV-B4)

From the report of the administrator, We are being made to believe that the Intestate estate is a losing proposition and assuming *arguendo* that this is true, that precarious financial condition which he, as administrator, should know, did not deter Crisanto de Borja from charging to the depleted funds of the estate comparatively big amounts for his transportation expenses. Appellant tried to justify these charges by contending that he used his own car in making those trips to Manila, Pasig and Cainta and a launch in visiting the properties in Jalajala, and they were for the gasoline consumed. This rather unreasonable spending of the estate's fund prompted the Court to observe that one will have to spend only P0.40 for transportation in making a trip from Pateros to Manila and practically the same amount in going to Pasig. From his report for 1949 alone, appellant made a total of 97 trips to these places or an average of one trip for every 3 1/2 days. Yet We must not forget that it was during this period that the administrator failed or refused to take cognizance of the prevailing rentals of commercial places in Manila that caused certain loss to the estate and for which he was accordingly held responsible. For the reason that the alleged disbursements made for transportation expenses cannot be said to.be economical, the lower Court held that the administrator should be held liable to the oppositors for 14 thereof or the sum, of P1,292.50, though We think that this sum should still be reduced to *P500*.

8. Other expenses:

The administrator also ordered 40 booklets of printed contracts of lease in the name of the Hacienda Jalajala which cost P150. As the said *hacienda* was divided into 3 parts, one belonging to this Intestate and the other two parts to Francisco, de Borja and Bernardo do Borja, ordinarily the Intestate should only shoulder 1/3 the said expense, but as the tenants who testified during the hearing of the matter testified that those printed forms were not being used, the Court adjudged the administrator personally responsible for this amount. The records reveal, however, that this printed form was not utilized because the tenants refused to sign any, and We can presume that when the administrator ordered for

the printing of the same, he did not foresee this situation. As there is no showing that said printed contracts were used by another and that they are still in the possession of the administrator which could be utilized anytime, this disbursement may be allowed.

The report also contains a receipt of payment made to Mr. Severo Abellera in the sum of P375 for his transportation expenses as one of the two commissioners who prepared the Project of Partition, The opposiiors were able to prove that on May 24, 1941, the Court authorized the administrator to withdraw from' the funds of the Intestate the sum of P300 to defray the transportation expenses of the commissioners. The administrator, however, alleged that he used this amount for the payment of certain fees necessary in connection with the approval of the proposed plan of the Azcarraga property which was then being processed in the City Engineer's Office. From that testimony, it would seem that appellant could even go to the extent of disobeying the order of the Court specifying for what purpose that amount should be appropriated and took upon himself the task of judging for what it will serve best. Since he was not able to show or prove that the money intended and ordered by the Court to be paid for the transportation expenses of the commissioners was spent for the benefit of the estate as claimed, the administrator should be held responsible therefor and 'pay to the oppositors 1/4 of P375 or the sum of *P93.75.*

The records reveal that for the service of summons to the defendants in Civil Case No. 84 of the Court of First Instance of Rizal, P104 was paid to the Provincial Sheriff of the same province (Exhibit H-7). However, an item **for P40 appeared to have been paid to the Chief of Police** of Jalajala allegedly for the service of the same summons. Appellant claimed that as the defendants in said case lived in remote barrios, the services of the Chief of Police as delegate or agent of the Provincial Sheriff were necessary. He forgot probably the fact that local chiefs of police are deputy sheriffs *ex-officio*. The administrator was therefore ordered by the lower Court to pay 1/4 of said amount or P10 to the oppositors.

The administrator included in his Report the sum of P550 paid to Atty. Filamor for his professional services rendered for the defense of the administrator in G. R. No. L-4179, which was decided against him, with costs. The lower Court disallowed this disbursement on the ground that this Court provided that the coats of that litigation should not be borne by the estate but by the administrator himself, personally.

Costs of a litigation in the Supreme Court taxed by the Clerk of Court, after a verified

petition has been filed by the prevailing party, shall be awarded to said party and will only include his fee and that of his attorney for their appearance which shall not be more than P40; expenses for the printing and the copies of the record on appeal; all lawful charges imposed by the Clerk of Court; fees for the taking of depositions and other expenses connected with the appearance of witnesses or for lawful fees of a commissioner (De la Cruz, Philippine Supreme Court Practice, p. 70-71). If the costs provided for in that case, which this Court ordered to be chargeable personally against the administrator are not recoverable by the latter, with more reason this item could not be charged against the Intestate. Consequently, the administrator should pay the oppositors 14 of the sum of P550 or *P137.50*.

(e) The lower Court in its decision required appellant to pay the oppositors the sum of PI,395 out of the funds still in the possession of the administrator.

In the statement of accounts submitted by the administrator, there appeared a cash balance of P5,851.17 as of August 31, 1951. From this amount, the sum of P1,002.96 representing the Certificate of Deposit. No. 21619 and Check No. 57338, both of the Philippine National Bank and in the name of Quintín de Borja, was deducted leaving a balance of P4,848. As Judge Zulueta ordered the delivery to the oppositors of the amount of P1,890 in his order of October 8, 1951; the delivery of the amount of P810 to the estate of Juliana de Borja in his order of October 23, 1951, and the sum of P932.32 to the game estate of Juliana de Borja by order of the Court of February 29, 1952, or a total of P3,632.32 after deducting the same from the cash in the possession of the administrator, there will only be a remainder of P134.98.

The Intestate is also the creditor of Miguel B. Dayco, heir and administrator of the estate of Crisanta de Borja, in the sum of P900 (Exhibits S and S-l). Adding this credit to the actual cash on hand, there will be a total of P1,034.98, 1/4 of which or P258.74 properly belongs to the oppositors. However, as there is only a residue of P134.98 in the hands of the administrator and dividing it among the 3 groups of heirs who are not indebted to the Intestate, each group will receive P44.99, and Miguel B. Dayco is under obligation to reimburse P213.76 to each of them.

The lower Court ordered the administrator to deliver to the oppositors the amount of P1,395.90 and P314.99 each to Francisco de Borja and the estate of Juliana de Borja, but as We have arrived at the computation that the three heirs not indebted to the Intestate ought to receive P44.99 each out of the amount of P134.98, the oppositors are entitled to the

sura of P1,080.91—the amount deducted from them as taxes but which the Court ordered to be returned to them—plus P44.99 or a total of Pl,125.90. It appearing, however, that in a Joint Motion dated November 27, 1952, duly approved by the Court, the parties agreed to fix the amount at P1,125.58, as the amount due and said heirs have already received this amount in satisfaction of this item, no other sum can be chargeable against the administrator.

(f) The probate Court also ordered the administrator to render an accounting of his administration during the Japanese occupation on the ground that although appellant maintained that whatever money he received during that period is worthless, same having been declared without any value, yet during the early years of the war, or during 1942-43, the Philippine peso was still in circulation, and articles of prime necessity as rice and firewood commanded high prices and were paid with jewels or other valuables.

But We must not forget that in his order of December 11, 1945, Judge Peña required the administrator to render an accounting of his administration only from March 1, 1945, to December of the same year without ordering said administrator to ihelude therein the occupation period. Although the Court below mentioned the condition then prevailing during the war-years, We cannot simply presume, in the absence of proof to that effect, that the administrator received such valuables or properties for the use or in exchange of any asset or produce of the Intestate, and in view of the aforementioned order of Judge Peña, which We find no reason to disturb, We see no practical reason for requiring appellant to account for those occupation years when everything was affected by the abnormal conditions created by the war. The records of the Philippine National Bank show that there was a current account jointly in the names of Crisanto de Borja and Juanita V. Jarencio, his wife, with a balance of P36,750.35 in Japanese military notes and admittedly belonging to the Intestate and We do not believe that the oppositors or any of the heirs would be interested in an accounting for the purpose of dividing or distributing this deposit.

(g) On the sum of P13,294 for administrator's fees: It is not disputed that the administrator set aside for himself and collected from the estate the sum of P13,294 as his fees from 1945 to 1951 at the rate of P2,400 a year. There is also no controversy as to the fact that this appropriated amount was taken without the order or previous approval by the probate Court. Neither is there any doubt that the administration of the Intestate estate by Crisanto de Borja is far from satisfactory.

Yet it is a fact that Crisanto de Borja exercised the functions of an administrator and is entitled also to a certain amount as compensation for the work and services he has rendered as such. Now, considering the extent and size of the estate, the amount involved and the nature of the properties under administration, the amount collected by the administrator for his compensation at P200 a month is not unreasonable and should therefore be allowed.

It might be argued against this disbursement that the records are replete with instances of highly irregular practices of the administrator, such as the pretended ignorance of the necessity of a book or ledger or at least a list of chronological and dated entries of money or produce the Intestate acquired and the amount of disbursements made for the same properties; that admittedly he did not have even a list of the names of the lessees to the properties under his administration, nor even a list of those who owed back rentals, and although We certainly agree with the probate Court in finding appellant guilty of acts of maladministration, specifically in mixing the funds of the estate under his administration with his personal funds instead of keeping a current account for the Intestate in his capacity as administrator, We are of the opinion that despite these irregular practices for which he was held already liable and made in some instances to reimburse the Intestate for amounts that were not properly accounted for, his claim for compensation as administrator's fees shall be as they are hereby allowed.

Recapitulation.—Taking all the matters threshed herein together, the administrator is held liable to pay to the heirs of Quintin de Borja the following:

Under Paragraphs III and IV:

(a)			P7.084.27
(b)			12,175.00
(c)			16,113.95
(d)			3,352.75
(e)			341.74
(f)			3,760.00
(g)	1		532.50
	2		377.26
	4		366.28
	5		869.92
	6		505.87
	7		500.00
	8	-a	
		b	93.75
		c	10.00

d.		137.50
		P46.210.78

In view of the foregoing, the decision appealed from is modified by reducing the amount that the administrator was sentenced to pay the oppositors to the sum of P46,210.78 (instead of P83,337.31), plus legal interests on this amount from the date of the decision appealed from, which is hereby affirmed in all other respects. Without pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion and *Endencia, JJ.,* concur.

Date created: October 13, 2014