

## NAZARIA PILIIN, PETITIONER, VS. VICENTE JOCSON, JUDGE OF FIRST INSTANCE OF BATANGAS, AND FELIPE AGONCILLO, RESPONDENTS.

*G. R. No. 16363. August 03, 1920*

Ponente: MOIR, J.

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### MOIR, J.:

These proceedings in certiorari by petitioner against the respondents show:

First. That in the administration of the estate of Natalio Vizconde in the Court of First Instance of Batangas Mr. Felipe Agoncillo, was attorney for the administratrix, the petitioner herein.

Second. That in September, 1919, he presented a motion in court asking that he be allowed the sum of P4,746.82 as a balance due as attorney's fees by the estate for services from June 29, 1915 to April, 1919, having collected P624.60.

Third. This motion, it appears from Exhibit C, was properly opposed by the administratrix in a writing presented to the court in which she stated that her attorney, Mr. Paredes, had just notified her he could not appear in the case because he was an intimate friend of the respondent attorney, and that she could not get another attorney in time to appear, and she asked for a transfer of the motion in order to defend the estate against what she considered excessive and exorbitant charges, and which, it was alleged, were not in accordance with her contract with her attorney, and further that the claim for attorney's fees be litigated in a separate action.

Fourth. The court, in an order dated October 1st, 1919, made in the absence of the administratrix or any attorney representing her, but reciting that she had been duly notified, as well as Mr. Paredes; and considering that the petition to have the claim for fees presented in a separate action was for the purpose of delaying payment to Mr. Agoncillo, denied it and entered judgment for the fees, as claimed, which amount was to be deducted from the hereditary and usufructuary portion of the widow and her children without touching the legacy provided in the will.

Fifth. On the 4th of March, 1920, the court on petition entered an order over the objection of petitioner herein requiring the sheriff to make demand on the administratrix for the money due as fixed by the October 1st order, and; "in case it should not be paid, to attach the 'guarapo' or sugar on the lands of the estate, or the other personal property of the same, and, if they should not be sufficient, to extend the execution to realty, sufficient to cover the same, and ordered the administratrix to deposit in court the value of the sugar made up to that date."

Sixth. The present attorney for the administratrix excepted to the latter order, and asked to have it set aside, as well as the order fixing the fees, but the court held the first order was final and the second an order for execution of the first and not appealable, and denied both, whereupon petitioner filed the petition in this case, setting forth the facts above, and alleging that the value of the estate was only P20,000, and praying the court for a preliminary injunction, and a declaration that the court had exceeded its jurisdiction in permitting the attorney to present his

claim and in giving judgment in the testamentary proceedings, and to annul everything done since that order as without jurisdiction.

The defendants filed a demurrer to the petition alleging that the facts set out do not show a sufficient cause of action.

Before going into the question at issue, we would say that the court should have granted the very reasonable request of the administratrix to postpone the hearing on the question of the attorney's fees. The court knew that the then attorney had refused to represent the estate, and, in such cases, it is the duty of the court to see that parties are protected. There need have been no hurry about the fixing of the fees, for the administratrix could not have disposed of the property without authority of court, and the course adopted may have had the effect of crippling the work of the administratrix, as well as imposing upon the estate a large debt. The court, however, did not exceed its jurisdiction in this order. It had complete jurisdiction.

As to the right of the court to fix the attorney's fees in the testamentary proceedings, this court has held against the pretensions of petitioner in *Escueta vs. Sy-Juilliong* (5 Phil., 408), where the court said:

"The provisions of the present Code of Civil Procedure relating to the settlement of estate of deceased persons are taken from similar provisions in the United States. There the decisions, which are numerous, are practically unanimous in holding that in a case like the present, the contract made between the administrator and the lawyer does not bind the estate to such an extent that the lawyer can maintain an action against it and recover a judgment which is binding upon it. In such a case the creditor has two remedies: He can prosecute an action against the administrator as an individual. If judgment is rendered against the administrator and it is paid by him, when he presents his final account to the Court of First Instance as such administrator he can include the amount so paid as an expense of administration. The creditor can also present a petition in the proceeding relating to the settlement of the estate, asking that the court, after notice to all persons interested, allow his claim and direct the administrator to pay it as an expense of administration. Whichever course is adopted the heirs and other persons interested in the estate will have a right to inquire into the necessity for making the contract and the value of the work performed by the attorney."

The order fixing the fees must be held not to have exceeded the jurisdiction of the court, however excessive the fees may be considered. The administratrix could have and should have excepted to the order of the court fixing the attorney's fees, and she could have appealed to this court. (Section 783, Code of Civil Procedure; *Sy Hong Eng vs. Sy Lioc Suy*, 8 Phil., 594.)

No appeal having been taken within twenty days, the order became final, and we cannot touch it now. The court, having fixed the attorney's fees, seemed to think it could then issue an execution against the estate. This was entirely erroneous.

"The doctrine is well settled that property in the hands of sheriffs, constables, clerks of court, receivers, executors and administrators, appraisers, assignees in bankruptcy, etc., is regarded as being in custodia legis, and cannot be reached by execution, in the absence of statutory authority \* \* \*" (17 Cyc, 980.)

There is no statute in the Philippine Islands authorizing a levy on property of a decedent in course of administration. Chapters 36 and 37 of the Code of Civil Procedure relate to sale of estate and payment of debts and expenses.

Section 727 provides that personal property shall first be sold to pay the debts and expenses, and, if not sufficient, real property may be sold by the executor or administrator, after obtaining license therefor from the court, and section 714 provides:

"When the personal estate of the deceased is not sufficient to pay the debts and charges of administration

without injuring the business of those interested in the estate, or otherwise prejudicing their interests, and where a testator has not otherwise made sufficient provision for the payment of such debts and charges, the court, on application of the executor or administrator with the consent and approbation, in writing, of the heirs, devisees, and legatees, residing in the Philippine Islands, may grant a license to the executor or administrator to sell for that purpose real, in lieu of personal estate, if it clearly appears that such sale of real estate would be beneficial to the persons interested and will not defeat any devise of land; in which case the assent of the devisee shall be required."

Section 716 provides:

"No such license to sell real estate shall be granted if any of the persons interested in the estate give a bond \* \* \* to pay the debts and expenses of administration within such time as the court directs; etc.

Where the sale of real estate is desirable or necessary to pay the obligations of an estate, section 722 provides the manner of securing the order to sell; i. e., the executor or administrator must present to the court a petition in writing setting forth the assets of the estate, the amount of debts due by the deceased, with charges of administration, the value of the personal estate, the situation of the estate to be sold, etc., and the court shall appoint a time and place for hearing such application to sell, which notice shall be published three weeks successively previous to the hearing in a newspaper of general circulation in the neighborhood of those interested, to be designated by the court. If personal notice is given, the public notice may be dispensed with.

If the proof produced satisfies the court, the court may authorize the executor or administrator to sell the property at public or private sale. The record of the order of sale in the court and the copy of such order shall state that such of the regulations prescribed in the first four subdivisions of section 722, as are required in the case, have been complied with, and such certificate or copy of the order of sale shall be recorded in the office of the register of land titles of the province in which the land lies.

Not only does the law in the Philippine Islands not authorize a sale by the sheriff under execution of any property belonging to an estate in administration, but it denies it by specifying that an executor or administrator may sell under certain circumstances, and prescribes the steps that must be taken in order to make a valid sale of such property.

The order of the Court of First Instance of Batangas, directing the sheriff to levy on property of the estate was in excess of its jurisdiction, and null and void.

The injunction prayed for should be granted in part perpetually restraining and inhibiting the sheriff of the Province of Batangas from proceeding with the levy had on the property of the estate, and the Court of First Instance of Batangas from ordering execution issued on any of the property of the estate. Costs of these proceedings will be allowed against the respondents, except the respondent Judge. So ordered.

Mapa, C. J., Johnson, Carson, Araullo, Malcolm, Avanceña, and Villamor, JJ., concur.

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