

PETRONA QUIMPO, AS ADMINISTRATRIX OF THE DECEASED, JUAN MORALES, PETITIONER, VS. FERNANDO SALAS, JUDGE OF THE COURT OF FIRST INSTANCE OF CAPIZ, MARCELA SALAZAR AND MARIA RODRIGU...*G. R. No. 16740. January 04, 1921*

Ponente: STREET, J.

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This is an original petition for a writ of prohibition, to be directed to the Hon. Fernando Salas, Judge of the Court of First Instance of Capiz, requiring him to desist from entertaining, approving, or recognizing a claim which has been approved by the committee appointed to appraise the estate and allow claims in the intestacy of Juan Morales, deceased. The matter is now before us upon demurrer interposed in behalf of the respondents.

It appears that the petitioner, Petrona Quimpo, was appointed as administratrix of the estate of Juan Morales on July 14, 1917, and in due time qualified as such. On November 22, 1917, the court appointed a committee, consisting of Felipe Fernandez and Cirilo Laserna, to appraise the property and allow claims against the estate of the deceased. On December 28, 1917, however, the appointment of Felipe Fernandez was revoked, and Nicanor Gonzales was appointed in his stead. The commissioners duly qualified for the exercise of their office, Nicanor Gonzales on March 16, 1918, and Cirilo Laserna on July 10, of the same year.

Section 687 of the Code of Civil Procedure directs that, "within sixty days from the time of their appointment," the committee shall, in the manner prescribed in that section, give notice of the times and places of their meeting and of the time limited for creditors to present their claims. Instead of observing this precept of the statute with reference to the time of giving of notice, the commissioners allowed a period of more than four months to elapse from the date when the last commissioner qualified before the notice was given; and it is alleged that publication of said notice was finally made in the weekly newspaper, called *El Adalid*, in the issues of December 16, 23, and 29, 1918.

On April 13, 1919, the respondents, Marcela Salazar and Maria E. Rodriguez, as creditors, presented to the committee certain claims against the estate of Juan Morales for the sum of P349, which claims were allowed by the committee. Later the creditors moved the Court of First Instance to approve the report of the commissioners, which motion was resisted by the petitioner as administratrix on the ground that the commissioners were without jurisdiction to entertain said claims. The court, nevertheless, on June 26, 1920, declared the committee to have been properly constituted, and admitted the appeal which the petitioner had interposed to the action of the committee. By this means, as will be seen, the contention was brought before His Honor, Judge Fernando Salas, who, it would appear, is prepared to proceed with the matter in the usual course.

It is alleged in the petition that the Judge of the Court of First Instance, pursuant to section 689, of the Code of Civil Procedure, allowed a period of only six months to the commissioners to receive and pass upon claims presented against the estate of the deceased; and one of the grounds upon which the writ of prohibition is now

sought is that more than six months had passed before the claims in question were presented to the committee.

We are of the opinion that the petition is without merit. The demurrer will, therefore, be sustained, and the petition will be dismissed.

In the first place, even supposing that the authority of the commissioners had expired by the effluxion of time and that the committee had become incompetent to act, the question was one that could properly be ventilated upon appeal before the Judge of First Instance; and this was more proper because the Judge of First Instance, upon discovering any irregularity of the kind denounced by the petitioner, would have had the power, if necessary, to renew the commission. The petitioner, therefore, had a speedy and adequate remedy by appeal; and recourse to the writ of prohibition from this court would in our opinion constitute more of an obstacle to the effectuation of justice than a means of realizing it.

In the second place, we are of the opinion that the commissioners had jurisdiction to entertain and allow the claims in question notwithstanding their failure to give the notice presented in section 687 of the Code of Civil Procedure within the period of sixty days. It can not be admitted that the valid claims of creditors against the estate of a deceased person can be destroyed by undue delay on the part of the commissioners in giving the required notice. The creditors have no control over the actions of the commissioners and hence they should not be prejudiced by their delay. The requirement that the notice shall be given within sixty days is intended to expedite the course of the administration; and as has been repeatedly said by the American courts, this provision is intended as a protection to the administrator. At any rate, it is not a weapon by which the rightful claims of creditors can be cut down.

In *Johnson vs. Barker* (57 Iowa, 32), it was claimed the failure of an executor to give notice of his appointment, as provided by statute, had the effect of annulling the appointment. But the Supreme Court of Iowa said: "The statute is directory and the omission to give the notice does not have the effect to annul the appointment or prevent the incumbent from discharging the duties pertaining thereto."

In *Field vs. Field* (77 New York, 294), the Supreme Court, speaking upon a similar point, observed:

"Claims may be presented at any time after the executors qualify and enter upon the discharge of their duties, and while they are entitled to a reasonable time to examine and decide upon the justice of claims presented, when they do decide, even though no notice has been published, the effect of their decision is the same as though the claim was presented after publication. The notice is for the protection of executors, and the estates which they represent, and there is no absolute legal obligation to give it at all."

It results that the delay of the committee in giving notice has the effect of extending by just so much time the period within which claims can be presented; and it must of course be understood that the time fixed by the court under section 689 of the Code of Civil Procedure for creditors to present their claims must be counted from the beginning of the time within which, according to the notice, claims may be presented. In this case the claims in controversy were presented less than six months after the publication of notice was completed and therefore within the period fixed by the court.

In order not to be misunderstood, we will add, that the question whether the bar created by section 695 could be invoked against a creditor when the notice required by section 687 has not been given, is a totally different one from that now before us. The point now under consideration is whether the committee loses jurisdiction to entertain a claim by undue delay on its part in giving the notice required by section 687. We hold that it does not lose such jurisdiction, and that the creditor is not prejudiced by such delay, where he in fact presents his claim within the period fixed for the presentation of claims after notice given. In such case a renewal of the commission under section 690 of the Code of Civil Procedure is unnecessary.

The petition will be dismissed, with costs against the petitioner. So ordered.

Mapa, C. J., Araullo, Malcolm, and Avaneena, JJ., concur.

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