

**IN RE WILL OF DIEGO DE LA VINA, DECEASED. JOSE M.A DE LA VIÑA,
ADMINISTRATOR AND APPELLANT, VS. NARCISA GEOPANO ET AL.,
OPPONENTS AND APPELLEES.**

G. R. No. 23747. January 25, 1926

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This appeal is from the judgment of the Court of First Instance of Oriental Negros, rendered on October 9, 1924, the dispositive part of which is as follows:

"The doctor is hereby ordered to pay the sum of P269,382.72 to the testamentary estate as the balance of these accounts for which the doctor is liable as administrator. "It is ordered that the Fidelity & Surety Co. be notified of such liability of the doctor for the purposes of the P25,000 bond executed by said company for the doctor, as administrator of the testamentary estate.

"It is furthermore ordered that a copy of this decision, and other necessary data be furnished to the provincial fiscal of Oriental Negros, for the purpose of investigating such criminal liability as may arise from said account, especially with respect to the item of 2,934.37 piculs of sugar, wholly and exclusively belonging to the hacienda, or the administrator, of which the doctor made no delivery.

"The sum of twelve thousand pesos (P12,000) is awarded to the doctor in payment of his per diems during the whole time of his management, which sum is to be deducted from the P269,382.72."

That judgment was rendered on the administration accounts of this testamentary estate presented by the former executor to Dr. Jose M.a de la Viña, who is the "doctor" mentioned in that decision, and who, dissatisfied with said decision, appeals to this court therefrom, his counsel assigning the following errors:

- "1. The lower court erred in holding that no accounts of the doctor were ever approved by any court.
- "2. The trial judge, Honorable N. Capistrano, erred in setting for a new hearing the accounts of Doctor Jose Maria de la Viña y de la Rosa, after it was definitely closed, on agreement of the parties, by the former judge presiding that court, his predecessor, the Honorable Fermin Mariano.
- "3. The lower court erred in admitting Exhibit 1 of the opposition.
- "4. The lower court erred in admitting Exhibits 2, 2-a, 2-b, 2-c and 3 of the oppositors.
- "5. The lower court erred in declaring that the fees paid and to be paid to Messrs. Block, Johnston and Green-baum, attorneys for the estate, are not necessary expenses of administration chargeable to the estate.
- "6. The lower court erred in declaring that the debt of P20,000 owed to F. M. Yaptico & Co. was not a legitimate debt of the estate, and that it was a personal obligation of the former executor.
- "7. The lower court erred in declaring that the portions of sugar crop corresponding to the doctor and to Mariano Lim as aparceros belong to the estate exclusively.
- "8. The lower court erred in declaring that the doctor owes to the estate, before the death of the testator, the sum of P7,881.77 (Decision, Ra, 173), besides the amount of P7,541.86 of receipt item 'G' (Ra, 170).
- "9. The lower court erred in declaring that the doctor owes to the estate the sum of P1,374.38, representing the original debt of the aparcero Mariano Lim.

"10. The lower court erred in declaring that the doctor is liable to pay to the estate the sum of P5,574.

"11. The lower court erred in declaring four pesos (P4) to be the expenses of cultivation for every picul of centrifugal sugar, and in declaring that the expenses of cultivation to be allowed to the doctor amount only to P78,554.80.

"12. The lower court erred in denying the petition of counsel for the doctor to have the books of accounts of Juan Perez exhibited in court.

"13. The lower court erred in declaring that the doctor is liable to pay P126,215.88 in favor of the estate, for the depreciation in price of sugar crops under his care.

"14. The lower court erred in declaring that the doctor was liable to pay to the estate the sum of P95,553.12.

"15. The lower court erred in not allowing income item of P132,658.46, and disbursement items for P85,162.40 and P5,822.79.

"16. The lower court erred in not allowing the final accounts of the doctor.

"17. The lower court erred in declaring that the doctor is entitled to only to a compensation amounting to P12,000, instead of P16,693.13.

"18. The lower court erred, and acted beyond its jurisdiction, in surcharging the accounts filed by the doctor."

The appellant, as executor of the estate, on May 15, 1922 presented an account of his administration referring to the period included between March 28, 1920, which was the day following the death of the testator Don Diego de la Viña, and October 31, 1921, both dates inclusive. (See pages 1372 to 1440 of the third file of exhibits.)

On May 16, 1922, Dona Narcisa Geopano, widow of the testator, filed an opposition to said accounts, praying for their disapproval, on the ground of lack of detail, and that the executor be ordered to present new and more detailed accounts. (Pp. 47-48, Record on Appeal.)

On May 17, 1922, the said Dona Narcisa Geopano filed an amendatory opposition. (Pp. 51-52, Record on Appeal.)

On the said date, May 17, 1922, Dona Maria de la Viña, viuda de Serion, and Dona Saturnina de la Viña de Perez also filed oppositions to the executor's account, joining in the objection of Doña Narcisa Geopano. (P. 52, Record on Appeal.)

On December 15, 1922, the court appointed Eugenio P. Escalante, accountant, to examine the accounts in question. (Order shown on pages 76 and 77 of the Record on Appeal.)

On January 5, 1923, after the accountant had reported the result of his examination, the said court granted the opponents five days' time to specify their objections and to present their evidence. (Pp. 84-86, Record on Appeal.)

On February 26, 1923, the court ordered the executor De la Viña to exclude the domestic expenses from the accounts and to present his subsequent and final accounts. (Pp. 92, 93, Record on Appeal.)

The accounts demanded in the order last quoted, were presented on June 18, 1923 (Pp. 1441-1499, file 3 of exhibits), and on June 25, 1923, the court fixed the period of one month for the opponents to prepare their objections to the accounts. (Pp. 93, 94, Record on Appeal.)

On August 11, 1923, said period was extended to August 30, 1923. (P. 94 of the Record on Appeal.)

On August 30, 1923, the lower court granted the oppositors to said accounts a new period, which was to expire on the 3rd of September. (Page 95, Record on Appeal.)

When the said date of September 3, 1923 arrived, after and in spite of many extensions for the presentation by the heirs of a specific opposition, such objections and specifications repeatedly ordered by the court were not forthcoming, for which reason the latter, by its order of September 3, 1923 shown on page 96 of the Record on

Appeal, considered such accounts as submitted.

In passing upon the opposition duly entered by the Pacific Commercial Company to said accounts, the court, on September 17, 1923, issued the order shown on page 99 of the Record on Appeal, the declarative and dispositive part of which is as follows:

"After considering the explanation given in open court by the former administrator Jose M.a de la Viña y de la Rosa, the court is of the opinion that the sum of P67,000 paid to the Monte de Piedad was a payment duly authorized by the court by virtue of its order of November 27, 1920. As to the other items mentioned in the opposition, with the exception of the P1,430.15, they were administration expenses to meet the ordinary requirements of the hacienda and therefore duly made. With respect to the item of P1,430.15 (p. 890) for the payment of various accounts of the deceased Diego de la Viña, inasmuch as said sum comprises several different objects, the court is of the opinion that the propriety or impropriety of said item would better be passed on at the time of considering the general and final accounts presented by the former administrator Jose M.a de la Viña y de la Rosa.

"Wherefore, the court dismisses the opposition presented by the Pacific Commercial Co. of Cebu, to the general and final account of the former administrator Dr. Jose M.a de la Viña y de la Rosa, and reserves its decision only with respect to the item of P1,430.15 for the time when it considers that the accounts of said former administrator have already been submitted."

It appears, however, from the order of May 14, 1924 (Pp. 115-119, Record on Appeal), that until May 13, 1925, proceedings were held with respect to those accounts, as described in said order, the dispositive part of which is as follows:

"On September 3, 1923, this case of the accounts of the former executor Jose de la Viña y de la Rosa was called for trial, and no specific opposition was filed, nor did the counsel for the opponents appear; wherefore, the court considered said accounts submitted for approval or disapproval; and inasmuch as the court has some doubts concerning the said accounts, it had to ask the accountant Escalante and the former executor himself for explanations with respect to some of the items; and it also called for the production of the vouchers which were recorded on January 21st. The court summoned the former executor Dr. Jose de la Viña in order to be sworn and examined with regard to said accounts; and the heirs and other interested parties were notified so that they might appear on May 13, 1924, in accordance with section 681 of the Code of Civil Procedure."

And as a telegram was received from Filemon Sotto, counsel for the opposing heirs, praying that the hearing of the case of the accounts be postponed because he had failed

to catch the boat, the court, in said order of May 14, 1924, decreed as follows:

"* * * The purpose of the last order of this court was, as has been said, to examine the administrator and the interested parties under oath upon said accounts, and the hearing of the opposition took place on September 3, 1923. Counsel for the heirs did not amend the former opposition, nor does it appear that he appeared on said September 3d when the case was called for hearing, for the approval or disapproval of the account; nevertheless, the court is disposed to hear the heirs in order to examine them, also under oath, if they are present, to give the court information on the matter, before this account is approved. Counsel for the former executor Dr. Jose de la Viña insists upon having said Dr. Jose de la Viña being sworn, so as not to delay the approval of these accounts. The court suggested to Juan Perez who was the bearer of attorney Sotto's telegram, and husband of one of the heirs, that he look over the accounts prepared by accountant Escalante and to see, with the latter's aid, the items as to which they had any objection, and inform the court about said objections and examine Dr. Jose de la Viña in order that he might explain the observations made, to the end that said former executor's declaration no longer be deferred, but the former (Juan Perez) informed the court that he had no time. It may here be noted that on May 5, 1924 the court ordered the appearance of the former executor Jose

de la Viña, and the heirs and creditors on May 14, 1924, and that notifications were sent to them and to attorney Filemon Sotto of Cebu; for these reasons, the court denies the telegraphic motion of attorney Filemon Sotto of Cebu, and this matter will again be called for hearing at 8 o'clock tomorrow morning because it is already six o'clock in the evening; and Juan Perez and Jose Valmayor, husbands of said heiresses, were directed to read the accounts prepared by the accountant Escalante, and they will be allowed to state their objections to the court, in order that they may be explained by said former executor Dr. Jose de la Viña, because the court knows that these are agriculturists and are informed of agricultural works, and are well acquainted with the Vallehermoso estate which formerly belonged to their father-in-law, Diego de la Vina."

For this reason the hearing of said accounts was held, the opponents presenting their objections in writing, as shown on pages 111-115 of the record on appeal. In this statement signed by attorney Jose V. Romero, the objections are set forth as follows:

"That the present counsel is informed by his clients that there are weighty reasons to support any opposition which may be presented against the said former executor's claim, consisting in (1) that the exact sum that may be adjudged to him for his co-partnership on shares cannot be determined, unless the interested parties can examine the books of the Vallehermoso estate which are still in his possession and have not been delivered to the present executor; (2) that it is doubtful if his co-partnership on shares has not been run with the funds of the administration of which he has disposed and which amounted to some four hundred thousand pesos; (3) that if he was a co-partner on shares of the Vallehermoso estate it would be an extravagance to grant him special fees since he presumably did not devote all his time to the administration, nor worked wholly in the interest, and for the exclusive benefit, of the same. "

That the present attorney is further informed that on entering upon the performance of his office as administrator, the deceased Diego de la Viña left a crop of about eight thousand piculs of centrifugal sugar net on the Vallehermoso estate for said estate, and that the former executor did not sell it in due time notwithstanding the offers made him by several commercial houses at a price ranging from forty-five to fifty-two pesos a picul; and by reason of his negligence in this respect, he caused the estate of the deceased Diego de la Viña a loss of approximately two hundred thousand pesos; and the present attorney believes that if these facts are true, the same may be considered as waste, and the losses suffered by the estate charged to his account in accordance with section 678 of the Code of Civil Procedure."

In the same petition an extension of five days was prayed for, "to oppose Dr. De la Viña's petition which is the object of this petition, and to present a counterclaim substantially as set forth therein."

This petition of opponents' counsel was denied during the hearing, as appears from the transcript of the stenographic notes of the trial of May 15, 1924, page 2, where the following appears:

"The motion for a postponement of the hearing is denied, because more than one extension of time for the hearing of the motions of attorneys Espina & Espina of Cebu have already been granted last year, and for the reasons stated in the preceding order, denying the postponement of the hearing of the said accounts."

This hearing upon the accounts ended after 10 o'clock of the night of May 15, 1924, both parties having presented their evidence, as appears in the following note placed at the end of the said stenographic notes taken during the said hearing:

"NOTE.—Session concluded at 10.17 p. m., both parties having presented their evidence."

The Honorable Fermin Mariano, Judge, who presided over said hearing, did not decide the matter of said accounts pending after the hearing of May 15, 1924, said judge having been transferred to another judicial district.

When said Judge Fermin Mariano left the Court of First Instance of Oriental Negros, the status of the case of approval of the accounts of the appellant herein was as follows:

There were presented the appellant's original accounts revised later on by the accountant Escalante, and also his final account.

Of the objections to said accounts the court considered only that of the Pacific Commercial Company which was decided in favor of the former executor De la Viña except in regard to the item of P1,430.15 shown on page 1465, lower paging, third file of exhibits the decision whereon was reserved for a future date. (See order of September 17, 1923, referred to above, shown on pages 96-100 of the Record on Appeal).

With respect to the objection to these accounts presented by the opponents, such objection was not sustained or considered by the court, in view of the fact that no details thereof were specified in due time, notwithstanding repeated extensions granted for that purpose. So, on May 15, 1924, when the court proceeded with the hearing of the accounts in question, after the last petition for an extension had been denied by the order which appears at the beginning of the transcript of the stenographic notes taken at said hearing and which order is set out on the foregoing pages, and was not excepted to in any form whatsoever, no objection whatever had been presented by any opponent to said accounts, except the objection of the Pacific Commercial Company with respect to the item of P1,430.15 referred to above.

And all the questions raised concerning the accounts mentioned and pending on May 15, 1924 were definitely submitted to the court by the parties for judgment on said May 15, 1924, as appears from the transcription of the corresponding stenographic notes.

Months passed without any question being raised in that court with regard to said accounts.

After more than three months had elapsed Judge N. Capistrano, who had presided over that court as successor to Judge Mariano on August 30, 1924, ordered former executor De la Viña to appear on the following September 6th for the examination and approval of said accounts.

On September 8th, of that year, the 11th of the same month was fixed as the day for the consideration of such accounts.

On September 11, 1924 the court proceeded to examine the former executor De la Viña on the accounts presented by him, and this hearing continued on the 12th, 16th, 19th, 20th, 22d, 24th, 25th and 26th of the said month of September, 1924.

On the same day, September 26, 1924, the heirs of the estate who objected to the accounts of the former executor De la Vina, through their attorney, filed a petition entitled "Petition and Claim" which, in effect, constitutes also an objection to the accounts of the said former executor De la Viña.

The said De la Viña, who rendered the account through his attorney, objected to this petition of the opponents in an answer with a special defense (Pp. 136, 137, Record on Appeal), the text of which is as follows:

"(a) That the said petition dated September 26, 1924, was presented out of time, because the legal period for contesting the general accounts of the undersigned former executor and introducing evidence in support thereof had already expired, and that the examination by this court of said general accounts was finished and closed on May 15, 1924, on which date the said opponents, represented by their own attorney, closed their objection to said general accounts.

"(b) That said former executor who has rendered his account, reproduces herein all his objections appearing in the stenographic notes taken from September 11, 1924, up to the present date, to the presentation of evidence by the opponents who are contesting the general accounts, on the ground that said evidence was presented and is being presented out of the legal period.

"(c) That the aforesaid former executor who is rendering his account, does hereby respectfully object to the

presentation of any evidence upon the acts alleged in the petition referred to dated September 26, 1924, for the same reason that if presented they must of necessity be presented out of the legal period.

"Wherefore, it is prayed that the Honorable Court consider said petition of September 26, 1924 as not presented; and that it deny the presentation of any other evidence upon said petition.

"Dumaguete, Oriental Negros, September 29, 1924."

Notwithstanding this objection of the former executor, the hearing which had commenced on September 11, 1924, was continued on the 29th of the same month and year, counsel for the opponents putting in an appearance and taking part in the hearing, having introduced evidence in support of his petition above referred to, which evidence the lower court admitted over the objection of counsel for the former executor De la Viña (p. 212, t. s. n.).

And on October 9, 1924 said lower court rendered the judgment which is the subject matter of the present appeal.

The first assignment of error refers to the court's holding that no account of the appellant, former executor, had ever been judicially approved. We find this assignment of error well taken. The Court of First Instance of Oriental Negros presided over by Judge Mariano had approved the items objected to by the Pacific Commercial Company, except that of P1,430.15 (See order of September 17, 1923, p. 96, Record on Appeal) ; it had also approved the payment of P8,407.83 to the attorneys Block, Johnston & Greenbaum as necessary expenses of the administration (See order of same date, p. 100, Record on Appeal). It had also passed upon several items during the hearing on May 13, 1924.

Although the trial court had the right to examine the administrator under oath with respect to the accounts presented by him (sec. 681, Code of Civil Procedure), yet, since the opponents objecting to said accounts had failed to present the specification of their objections when the court repeatedly gave them the opportunity to do so, and at the end of the hearing on May 15, 1924 they had definitely submitted the question of the approval of said accounts to the decision of the court, we find that the lower court erred in setting again for hearing the matter of the approval of the said accounts, when none of the interested parties had applied for it. Such is the second assignment of error of the appellant.

The third and fourth errors refer to the admission of certain documentary evidence presented by the opponents. The objection filed by the opponents on September 26, 1924 contesting the accounts in question should not have been admitted, having been presented out of time; neither should it have been admitted as a petition for affirmative relief against the former executor and for a declaration of the latter's liability, because such an action should have been instituted separately from the proceeding for the approval of the accounts of said former executor.

"The probate courts can make necessary orders for the settlement of the estates of deceased persons, but cannot render judgments against administrators for receiving moneys belonging to estates and failing to account therefor." (Deer Lodge County vs. Kohrs, 2 Mont., 66.)

"Where an executor receives money belonging to a third person, and does not use it for the benefit of the estate, but for his own use, and reports it as estate property, such person cannot hold the executor liable on objections to his account in the probate court, even though the exceptions were broad enough to show that the executor was individually liable. Since it is not the office of such exceptions to demand affirmative relief and the report was so framed that acquiescence would have been fatal to holding the executor liable as an individual, the objector must as to that individual liability, resort to an action in a court of competent jurisdiction." (In re Brown's Estate, 113 Iowa, 351.)

This being so, all of the lower court's action with regard to such petition of the opponents is null and without any

effect, and hence the evidence adduced by said opponents in such proceedings was unduly admitted on account of the court's lack of jurisdiction to pass upon that matter.

It is unnecessary to resort to the reasons adduced by the appellant, for the foregoing, is sufficient to hold that errors three and four assigned by him really exist.

The fifth error refers to the attorney's fees of the firm of Block, Johnston & Greenbaum as attorneys for the estate. These fees have already been approved by the trial court in its orders dated January 24, 1922, September 17, 1923 and March 14, 1924. Such orders brought an end to the matter, as no exception or appeal was taken therefrom. Moreover, we find no sufficient reason in the record for setting aside the approval given by the court with respect to such fees. We take it, therefore, that an error was committed in holding that such attorney's fees are not necessary expenses chargeable to the estate.

The sixth assignment of error deals with the debt in favor of F. M. Yaptico & Co. In the judgment appealed from this debt is held to be illegal, and the appellant's personal obligation.

This claim of F. M. Yaptico & Co. had been approved by the court through an order issued by Judge Fermin Mariano. Such approval has already been confirmed by this court in the appeal taken in the case of De la Viña vs. F. M. Yaptico & Co. (48 Phil., 202.)

The seventh assignment of error is the declaration that the portions of the cane plantation, corresponding to Doctor De la Viña and Mariano Lim as co-partners on shares, belong exclusively to the estate. In view of the fact that the conclusions of the lower court which are the subject matter of this assignment of error, are based upon evidence adduced by the opponents, which should not have been admitted, as we have said in considering errors two, three and four, we find that the seventh assignment of error is well taken.

The eighth, ninth and tenth assignments of error refer to the court's holding that the appellant owes the estate the sum of P7,881.17, besides the sum of P7,541.86; as well as the sum of P1,374.38 and the sum of P5,574. Such conclusion finds no support either in the accounts or in the evidence adduced. Furthermore, with respect to the eighth assignment of error, it merely involves a mistaken repetition: the sum of P7,881.17 is no other than the sum of the two amounts of P7,541.86, the former balance in favor of the testator, and P339.31 which is the interest on the former sum agreed upon by and between said testator and the co-partner on shares. (See p. 1482, 3d file of exhibits.) At any rate, such declarations of liability are erroneous not being proper in this proceeding for the approval of accounts, and are legally ineffective, having been made without jurisdiction.

The eleventh assignment of error hinges on the trial court's holding that the expenses of cultivation of each picul of centrifugal sugar is P4 and that the expenses of cultivation granted to the appellant amount only to P78,554.80, instead of the expenses set forth in the accounts.

The result is that the evidence does not support the conclusion that the expense of cultivation reasonably employed by the appellant for each picul of centrifugal sugar was P4.

The non-presentation of the old books, as required by the lower court, has been sufficiently explained by the petitioner.

In view of the conclusion at which we have arrived on considering the eleventh assignment of error, it is unnecessary to decide the question involved in the twelfth assignment. The purpose of the appellant's counsel in asking the court that the books of account of the witness Juan Perez be produced, was to rebut his testimony upon the cost of production of sugar; and as above indicated we find the preponderance of the evidence contrary to said witness's declaration, so it is unnecessary to discuss the twelfth error.

It is also assigned as an error (the thirteenth) that the trial court held the appellant liable in the sum of P126,215.88 for the depreciation of the sugar.

We have already said that in this matter of the approval of the former executor's accounts, no final pronouncement can be made regarding the individual liability of the former executor. But, apart from this reason, we hold that such liability for the depreciation of the sugar, considering the peculiar circumstances then prevailing, under which the appellant former executor disposed of the sugar under his administration, cannot be held to exist, inasmuch as said former executor did not act in bad faith, nor with imprudence or negligence.

Said former executor is a legatee of the testator, and it must be presumed that he took special care to protect the interests of the estate. The lower court so understood and held, when on April 6, 1920 it authorized him to use his discretion in disposing of the sugar and copra belonging to the estate.

During the period of extraordinary instability of sugar prices, the former executor, herein appellant, was in constant communication with an agent in Manila, Ricardo Fernandez, who kept him informed of the market fluctuations. It appears to have been sufficiently established that said former executor, in view of the information received from said agent Fernandez, honestly believed that the price of sugar would advance over P45 during the year 1920. We find that under the circumstances of the case, it was neither imprudence nor recklessness on the part of the former executor to hold to such a belief which was the one also entertained by the other planters of San Carlos.

The petitioner's fourteenth assignment of error refers to the 7,962.75 piculs which the court held to be in the former executor's possession and which, at the rate of P12 a picul, amount to P95,553.12. We find no evidence in the proceedings sufficient to show that said sugar is in the possession of the former executor, or any reason why he should be held liable therefor. The fifteenth assignment of error deals with the loans amounting to P132,658.46 and to the payments of P85,162.46 and the interest paid amounting to P5,822.79.

Such loans are justified and explained. The exigencies of the estate under administration demanded them. The payments made, both to liquidate the loans and to satisfy the interest were established.

With respect to the sixteenth assignment of error as to whether the lower court should have approved the final accounts presented, we find that said final accounts cannot be approved without amendment, in view of the fact that some items with which we shall deal later on, have been the subject matter of resolutions passed by the court prior to the judgment appealed from. With regard to the P12,000 compensation instead of P16,693.33 to which the seventeenth assignment of error refers, we find that since the former executor has rendered services administering this estate from March 27, 1920 up to February 7, 1923, he is entitled to the compensation of P12 a day which was approved by the court on April 12, 1924. This period of service consists of 1,046 days, which, at the rate of P12 a day, gives P12,552. The former executor is also entitled to a commission on the payments amounting to P406,132.99, at the rate fixed in section 680 of the Code of Civil Procedure, which commission amounts to P4,141.33, which, added to the compensation for services, or P12,533, makes a total of P16,693.33. We see no reason why the compensation and commission referred to above should not be granted to the former executor.

The last assignment of error which alleges that an error was committed, which consists in overcharging the accounts in question against the appellant former executor, is a consequence of the preceding ones.

Now then. Some items of the accounts before us were passed upon by the lower court during the hearing of March 15, 1924 on the said accounts, and its rulings are as follows:

Those appearing on pages 11, 12 and 15, respectively, of the transcript of the stenographic notes taken during the aforesaid hearing, and which are as follows:

"COURT. The court believes that equity demands that you should pay P5 and the estate P5. The former executor agrees that one-half of the cook's wages of P10, that is F5, be deducted therefrom, and the other half (be paid by the) former executor, Dr. Jose de la Viña."

"COURT. And that the administration expenses are P600.38, one-half of which sum must be paid by the administration, and the other half by Dr. Jose Maria de la Viña, for the reasons alleged by him."

"COURT. The following amounts are excluded from the executor's accounts: P300.19 for administration expenses and P60 for the cook's wages; the P100 paid to Alipio Bernales should be deducted."

By virtue of these orders, the following sums must be deducted from the list of disbursements given in said accounts: P60 which is half the annual wages of a cook (p. 1452, file 3 of exhibits); P300.19, which are administration expenses (p. 1454, file referred to); and "P100 paid to Alipio Bernales (p. 1455, file referred to).

The text of the decree appearing on page 27 of the transcript of the aforecited stenographic notes, is as follows:

"COURT. From this sum under the caption 'Expenses House-Estate,' P720 should be deducted for maintenance of a bookkeeper and servants, and, from the balance, deduct one-half for administration expenses."

The minuend sum referred to in this order is that corresponding to the caption "A. Expenses House-Estate," shown on pages 1458 and 1459 of file 3d of the exhibits. In accordance with said order, the sum of P527.33 must be stricken from said chapter.

We also understand that the amounts appearing on page 1459 of the said file 3 of exhibits, under the heading "Attorney's Fees" should also be stricken from the list of disbursements of said accounts, for the reason that according to the testimony of the former executor who has rendered his account, given at the hearing of March 15, 1924 (pp. 31-33, t. s. n.) Attorney Manuel Blanco to whom said sums were paid, had rendered his professional services as associate counsel, without said attorney having been employed by the then executor, who. had only given his assent to the designation made to him to that effect by the attorney of the estate, Mr. Johnston. The total sum of such fees is P450.40, which must be stricken from the said list of disbursements.

In virtue of all of the foregoing, the judgment appealed from is reversed, and it is held that the final accounts presented by the appellant, former executor, shown on pages 1441 to 1497, both inclusive, as amended and corrected during the hearing of the same which took place on May 15, 1924, striking from its list of disbursements the sum just mentioned, amounting to P1,437.92, must be, -as they are hereby, approved, with the said amendments and corrections. Without express finding: as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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