

TIRSO DACANAY, ADMINISTRATOR AND APPELLEE, VS. SILVERIO HERNANDEZ, IN HIS OWN BEHALF AND AS GUARDIAN OF THE MINOR MARIA HERNANDEZ, EDUVIGIS HERNANDEZ, AND CARIDAD HERNANDEZ, OPP...

G.R. No. 27871. July 21, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an old probate case which could and should have been terminated over twenty years ago. The following facts appear from the now very voluminous record:

Justiniano Rogero Dacanay died in Bacnotan, La Union, on May 14, 1905. He left only one legitimate child, Bienvenida Julia Dacanay, the issue of his marriage to Maria Ronquillo, who died in or about the year 1875. In addition to the aforesaid legitimate child, he also left three acknowledged natural children, Hermenegilda, Tirso, and Paulina Dacanay. Bienvenida married Silverio Hernandez in the year 1886 and died on September 18, 1907, leaving three children, Eduvigis, Caridad, and Maria. Hermenegilda Dacanay died in 1919, being survived by her husband, Gelasio Belmonte, and her children, Florencio, Eduvigis, Maria, Isabelo, and Celestino Belmonte.

The deceased Justiniano Dacanay also left a will executed on September 1, 1904, and in which Tirso Dacanay was named executor. It greatly favored the natural children at the expense of Bienvenida, the testator stating that she had been disobedient and that he therefore felt justified in curtailing her inheritance. The will was presented for probate shortly after the death of Justiniano and, notwithstanding the opposition of Bienvenida Dacanay, was duly probated on April 24, 1906. Tirso Dacanay immediately qualified as administrator and on March 4, 1907, Angel Lopez, Casimiro Carbonel, and Liberate Buccat were appointed commissioners on claims and appraisal. The commissioners prepared and filed a final report in due time, but no further steps were taken towards settlement of the estate until March 19, 1913, when Judge W. E. McMahon, then presiding over the Court of First Instance of La Union, appointed Sixto Dacanay, Casimiro Carbonel, and Liberate Buccat commissioners for the partition of the estate among the heirs. On May 3d, 1913, these commissioners submitted a scheme of partition in which the provisions of the will were closely followed while the law governing succession appears to have been disregarded. Silverio Hernandez, in representation of his deceased wife and his children, opposed the approval of the scheme of partition, principally on the ground that the portions of the estate assigned to the natural children greatly exceeded the maximum shares allowed them as acknowledged natural children by articles 806, 808, 840, et seq. of the Civil Code and correspondingly diminished the legitimate shares of the children of Bienvenida. Upon hearing, Judge McMahon rendered a decision in which he among other things said:

"From an examination of the will itself, it results that the legitimate child Bienvenida Dacanay only received a part of the estate left her mother by the deceased parents of the mother and none of the property afterwards acquired by the testator, and the testator attempts to dispose of the property received from the parents of his deceased wife Maria Ronquillo as if it were his own property, giving a part thereof to the recognized natural children. From the examination of the partition made by the commissioners, it is evident that they made no

attempt to discover what was the dowry and paraphernalia property of the deceased Maria Ronquillo, if any, nor to determine what was the separate property of each of the husband and wife Justiniano Rogero Dacanay and Maria Ronquillo, if any, and later the 'gananciales' or joint property of both husband and wife, but merely attempted to follow out the provisions of the will, when it is evident that the will has not followed the provisions of the law, and in so far as it has not conformed to the law, should be disregarded. For these reasons the court disapproves the partition made by the commissioners dated the 13th of May, 1913, and orders that they proceed to make a new partition of the property left by the deceased Justiniano Rogero Dacanay in conformity with the law in such cases provided, and once having made this they will submit their report at the earliest opportunity to the Court of First Instance of La Union for its approval."

No further action seems to have been taken by the commissioners, but on July 8, 1915, the executor, Tirso Dacanay, presented a plan for the partition of the estate. Another scheme of partition was submitted by Silverio Hernandez on January 21, 1916. Both of the plans submitted were unsatisfactory to the court, but on September 23, 1916, Judge Manuel Camus, who in the meantime had been appointed judge of the district, rendered a carefully prepared decision in which he among other things provided for a complete and apparently fair distribution of the estate based upon the evidence contained in the record.

On October 3, 1916, Tirso Dacanay filed a motion for a new trial on the ground that the decision was contrary to the evidence and to the law. The motion was denied, and on January 27, 1917, he filed an exception to the order denying the motion and announced his intention of appealing to the Supreme Court. The appeal was duly perfected and the case was docketed in the office of the clerk of the Supreme Court under the number G. R. No. 12662, but on February 23, 1917, Dacanay filed a motion for the reopening of the case on the ground that after the record of the case had been transmitted to the Supreme Court, he had discovered new evidence consisting in an inventory of property alleged to have been donated to Bienvenida Julia Dacanay on the occasion of her marriage in July, 1886. On March 22, 1917, the Supreme Court granted the motion, set aside Judge Camus' decision, and ordered the case remanded to the Court of First Instance for additional proof.[1] Considerable evidence was taken in regard to the authenticity of the inventory alleged to have been newly discovered, and on August 11, 1919, Judge J. R. Burgett, then Judge of the Court of First Instance of La Union, rendered a decision in which he found that the aforesaid inventory, marked Exhibit A-1, was genuine and directed the commissioners of partition appointed in 1913 to submit a new scheme of partition of all the property belonging to the estate of Justiniano Dacanay, including by collation the property described and referred to in the document Exhibit A-1. His Honor further directed said commissioners to be careful to follow the instructions set forth in Judge McMahon's decision of August 14, 1914, and also the rulings, findings, and conclusions of Judge Camus in his decision of September 23, 1916, in so far as these two decisions were "not contrary to the present decision." From this decision Silverio Hernandez appealed to this court, but on January 15, 1920, the appeal was dismissed on the ground that it was premature in so far as the appellant should have awaited the termination of the partition of the property of the estate.[1]

The record was again remanded to the Court of First Instance, and the aforesaid commissioners submitted another scheme of partition which was opposed by Silverio Hernandez and set for hearing on January 15, 1921. The plan followed by the commissioners having been found unsatisfactory, the parties on the same date and in open court entered into stipulation which reads as follows in translation:

"STIPULATION IN OPEN COURT

"Blanco. The parties agree and stipulate:

"First. That the administrator be ordered to immediately present to the court a new inventory of all the properties of the estate in the same order in which they appear in the inventory attached to the will, including

in said inventory the properties referred to in the dowry letter Exhibit A-1, without prejudice to the allegation of the attorney for Silverio Hernandez relative to the validity of said donation; and, showing in said inventory the value given the properties, according to the valuation shown on folios 174-188, except so far as concerns the property said to have been donated to Bienvenida Dacanay, according to Exhibit A-1, and the property said to have been donated to Tirso Dacanay during their father's lifetime, according to the deed of donation on folio 303, which should be given the value they had at the time said donations were made; provided that said new inventory must exclude the properties which, according to the administrator, were destroyed by a fire which occurred in the town of Bacnotan, as per statement on folio 165.

"Second. That the administrator be ordered to immediately file a scheme of partition of all of said properties, giving the origin of each and everyone of them, the names of each and everyone of the heirs of the deceased interested therein; the products of the properties said to be collationable, from the date of the institution of these proceedings, that is, from May 19, 1905, without prejudice to the allegations of the parties relative to the validity of the donation Exhibit A-1, and the collationable character of said properties, and the proportion in which the heirs of the deceased Justiniano Rogero Dacanay have the right to participate.

"Third. That the administrator present to the court a final account of his administration of the properties of this estate, together with the general inventory and the scheme of partition.

"Fourth. That in view of this stipulation, the scheme of partition presented by the commissioners is set aside.

"Fifth. That nothing stipulated by Silverio Hernandez relative to Exhibit A-1 shall affect the allegations made by his counsel prior to these proceedings relative to the nullity of said donation propter nuptias.

"Sixth. That said Silverio Hernandez be acknowledged and considered to be the duly appointed guardian of his minor daughter Maria Hernandez y Dacanay, without prejudice to a certified copy of his appointment as such guardian being attached to the record of this proceeding.

"Seventh. That Edyvigis and Caridad Hernandez y Dacanay, children and heirs of the deceased Bienvenida Dacanay, be required to appear personally or thru counsel in these proceedings in view of the fact that both have already reached their majority and are married, the former being a resident of the municipality of Bagnio and the latter of the town of San Juan of the Province of La Union.

"Eighth. In regard to the heir Hermenegilda Dacanay, who is also deceased, it is ordered that her representatives or heirs institute intestate proceeding and obtain the appointment of an administrator to represent her in these proceedings. Hermenegilda Dacanay, according to information, has left as her only heirs, five children named Florencio, Eduvigis, Maria, Rosario, Isabelo and Celestino, had with her husband Gelacio Belmonte, who lives at 1140 Calle Azcarraga, Manila.

"BLANCO AND CASTRO. We agree to this stipulation."

The court approved the stipulation, rejected the scheme of partition presented by the commissioners, and ordered the administrator to present, with his final account, a new scheme of partition on the basis agreed upon in the stipulation. Pursuant to this order, the administrator on April 10, 1923, submitted a scheme of partition according to which Bienvenida Dacanay, or rather her successors in interest, after bringing into collation the property described in Exhibit A-1, would owe the estate the sum of P20.50, with the result that all of the property of the estate would go to the natural children of Justiniano Dacanay. This scheme of partition was, of course, objected to by Silverio Hernandez, but Judge Anastacio K. Teodoro in a decision dated August 11, 1926, overruled the objections and approved the administrator's plan of partition. The heirs of Bienvenida Dacanay excepted to the decision and the case is now before this court on appeal.

No regular final account was presented by the administrator, but annual accounts for the period from July 18, 1915, until October 31, 1925, were submitted to the court. These accounts show an income of P4,511.32 from the

estate as against expenses of administration amounting to P14,511.32, thus leaving a balance of P10,147.80 in favor of the administrator and against the estate. Silverio Hernandez and his daughters opposed the approval of the accounts. Upon hearing, Judge Teodoro in a decision dated August 6, 1926, approved the principal items of the accounts in question but disallowed some of the minor items, thereby reducing the amount alleged to be due the administrator to P7,925.97. The opposing parties duly excepted to the decision and perfected their appeal to this court where it has been argued and considered in direct connection with the appeal from the decision of August 11, 1926, though separate briefs have been filed in the two appeals.

The appellants make the following assignments of error in the appeal from the decision of August 11, 1926, which indirectly also involves the decision of Judge Burgett, dated August 11, 1919:

"1. The court erred in declaring that Exhibit A-1 is an authentic document executed by the deceased Justiniano Rogero Dacanay.

"2. The court erred in determining the rights of the parties as to the inheritance in conformity with the Civil Code and not in accordance with the earlier legislation.

"3. The court erred in approving the scheme of partition presented by the administrator, Tirso Dacanay."

The first assignment of error raises the principal question in the whole controversy. It appears from the record that in the earlier stages of the case not only the administrator but also his original counsel seem to have been under the erroneous impression that the admission of the will of Justiniano Dacanay to probate validated all of its provisions as to the distribution of the estate and that therefore Bienvenida Dacanay and her successors in interest could not successfully claim more than the share allotted to her by the will. This conception was probably dispelled by the lucid and well considered decision of Judge Camus dated September 23, 1916, and it must then have become clear to the administrator that the devises and bequests made by the testator in favor of the natural children could only be taken from the one third of libre disposition and that devises and bequests in excess of that third would be invalid, notwithstanding the fact that the will had been duly probated. Apparently with the object of overcoming this difficulty, Exhibit A-1 was manufactured. As we have already stated, that document purports to be an inventory of property donated by Justiniano Dacanay to his daughter Bienvenida on the occasion of her marriage to Silverio Hernandez. The alleged total value of the property described in the "inventory" was over P14,000 and according to the testimony of the appellee's witness, Dionisio Garcia, it constituted the greater part of Justiniano Dacanay's fortune. By bringing this property and the income therefrom into collation, Bienvenida could be very neatly excluded from further participation in the inheritance.

That the document in question is» a forgery is, in our opinion, established beyond all doubt. It is alleged to have been discovered in 1916 or 1917. Pedro Floresca, who at that time was the principal public school teacher in Bacnotan and a boarder in the house of Tirso Dacanay, testified that while there he wrote the document from a draft furnished him by Tirso, but that he did not write the signatures. Judge Burgett in his decision of August 11, 1919, discredits this testimony and bases his conclusions principally upon the "conduct, manner, and demeanor" of the witness. It must be conceded that the testimony is somewhat confused and indicates nervousness, but considering the interruptions and heckling to which he was subjected by the trial court, his nervousness is easily explained, and but very little weight can be given the deductions drawn therefrom by the trial judge. Standing alone, the testimony might possibly have been open to doubt, but it is corroborated by so many important circumstances that there cannot be the slightest doubt as to its truthfulness. The body of the document, although it is dated July 24, 1886, is written in a Spencerian hand, and is clearly the handwriting of Pedro Floresca as appearing in authentic documents introduced in evidence. It is highly improbable that that style of handwriting could have been found in Bacnotan in 1886.

But that is not all. An examination with a good lens of the alleged signature of Justiniano Dacanay appearing at the bottom of Exhibit A-1 shows clearly that the pen strokes are quite different from those of the authentic signatures of Justiniano.

It is also improbable that Justiniano, who in the inventory attached to his will claims that the property received by his wife from Bienvenida Ronquillo was community property, should have donated the greater part of the property in his possession to his daughter Bienvenida Dacanay. And can it be believed that if such an important donation had been made, Justiniano would have said nothing about it in his will where he among other things says that Bienvenida had been disobedient and that he therefore reduced her share of the inheritance?

It is further to be noted that the document Exhibit A-1 is not in the form usually followed during the Spanish regime. The date on which it is alleged to have been written appears at the end of the document instead of in the introductory clause and the town name "Namacpacan" is written "Namagpakan" (the letter K was not commonly in use prior to the insurrection of 1896 but was quite generally used thereafter).

It may also be noted that the paper on which the document is written bears indications of having been subjected to some artificial process for the evident purpose of giving it the appearance of age.

There are several other circumstances tending to support our conclusions, but which we shall not take the time and space to discuss. We may, however, call attention to Exhibits A-2 and A-3, which were offered in evidence by the appellee for the purpose of using them as a standard of comparison with Exhibit A-1. They are dated January 4, 1882, and May 24, 1880, respectively, but are signed by cross marks, a practice which was unknown in the Philippines under the Spanish regime. The paper used for the exhibits was identical with that used in Exhibit A-1 and bear the same indications of artificial aging. The documents are unquestionably forgeries.

The question discussed under the second assignment of error might possibly have been decided in favor of the appellants if it had been raised in time. But it is presented for the first time in the appellants' brief and during all the years preceding the appeal, it seems to have been taken for granted that the Civil Code, and not the earlier legislation, governs the distribution of the estate in the present case. The case has been tried on that theory and Judge Camus based his decision of September 23, 1916, thereon without objection on the part of the herein appellants and no appeal was taken by them from that decision, a decision which therefore probably would have been affirmed if this court had not been led astray by the false representations of the administrator of the estate. In these circumstances, we are not inclined to decide the case upon another and different theory, nor is it now our duty to do so.

The third assignment of error is indirectly disposed of in the discussion of the first assignment and is sustained.

The questions of accounting relate only to the administrator's accounts for the following periods:

July 28, 1915 to June 30, 1916. June 30, 1916 to June 30, 1917. June 30, 1917 to November 23, 1918. November 23, 1918 to November 30, 1919. November 30, 1919 to October 10, 1920. October 10, 1920 to December 25, 1921. December 25, 1921 to October 17, 1922. October 17, 1922 to September 12, 1923. September 12, 1923 to October 28, 1924. October 28, 1924 to October 31, 1925.

As to these accounts the appellants present the following assignments of error:

"The trial court erred:

"A. In finding the items of attorney's fees to be legitimate expenses of the administration, and in approving said items.

"B. In approving the items concerning the bundles of palay alleged to have been stolen and spoiled, and in

deducting their value from the income of the testamentary estate.

"C. In awarding the sum of P5,264 to administrator Tirso Dacanay as compensation for his services.

"D. In failing to disapprove the following items in the accounts presented by the administrator, to wit:

- (a) P264 (Appellants' Exhibit, p. 8).
- (b) P200 (Appellants' Exhibit, p. 8).
- (c) P84 (Appellants' Exhibit, p. 19).
- (d) P432 (Appellants' Exhibit, p. 31).

"E. In not holding the administrator Tirso Dacanay to be manifestly unfit, negligent, dishonest, and acting in bad faith in the performance of his duties as such administrator of this testamentary estate.

"F. In denying the petition to have the administrator Tirso Dacanay removed from his office.

"G. In approving the administrator's accounts showing a balance of P7,925.97 against the testamentary estate and in favor of the administrator."

Assignment of error A is, in our opinion, well taken. The attorney's fees referred to are entered as follows in the accounts for the periods October 17, 1920, to December 25, 1921; October 17, 1922, to September 12, 1923; September 12, 1923, to October 28, 1924; and October 28, 1924, to October 31, 1925.

"Las partidas de que se trata constan en las siguientes cuentas:

(a)

Por las ocho comparecencias del Abogado Sr. Mariano Legaspi en el Juzgado de La Union, una en la Corte Suprema, y otra en el Juzgado de Manila, todo en interes de la testamentaria, tambien se le ha pagado por todo la cantidad de

P3,200.00

(b)

Por las tres comparecencias del Abogado Sr. J. E. Blanco en el Juzgado de Primera Instancia de La Union, otras dos comparecencias de el en la Corte Suprema, una en el Juzgado de Manila, todo en interes de la Testamentaria, se le ha pagado por todo la cantidad de

2,000.00

(c)

Cantidad entregada al Abogado Sr. J. E. Blanco como anticipo de los quinientos pesos convenidos como honorarios de el como abogado que ha hecho la particion y venir al Juzgado en su vista para sostener su aprobacion, es

P200.00

(d)

Honorarios pagados al Abogado Sr. Jesus E. Blanco para completar los quinientos pesos como honorarios de el convenidos como abogado que ha hecho el proyecto de particion por orden del Juzgado y venir al Juzgado en su vista para sostener su aprobacion, entregada en septiembre 25 de 1923 es P200 entregada en diciembre 9 de 1923 es 7100, total es

300.00

(e)

Honorarios pagados al Abogado Sr. Jesus E. Blanco a cuenta de los quinientos pesos convenidos como honorarios de 61 para representar al Administrador en la aprobacion de sus cuentas y para defender su remocion que piden los abogados de Silverio Hernandez, pagado en 1.º de octubre de 1924 es P100, pagado despues de la vista del asunto 7 de octubre de 1924 ea P250 remitido por giro en 13 de octubre de 1924 por cuenta de dicha cuenta y sus gastos de viaje es P75, total es

425.00

(f)

Cantidad pagado al Abogado Sr. Jesus E. Blanco por cuenta de sus honorarios como abogado de la Testamentaria, pagado en 21 de febrero de 1925, es

50.00

Total

6,175.00"

As will be seen, all of the fees relate to services rendered for the benefit of the administrator himself and for that of the other natural children of Justiniano Dacanay and not for the benefit of the estate.

"The estate cannot be held liable for the costs of counsel fees arising out of litigation between the beneficiaries thereof among themselves, or in the protection of the interests of particular persons" (Woerner on Administration, 2d ed., sec. 516, and authorities there cited). It is true that an administrator may employ competent counsel on questions which affect his duties as administrator and on which He is in reasonable doubt and that reasonable expenses for such services may be charged against the estate subject to the approval of the court. But such is not the case here. In this case the administrator deliberately and knowingly resorted to falsified documents for the purpose of defrauding the legitimate heirs of the deceased and through his own breach of trust, brought on the litigation for which he now demands reimbursement for counsel fees. We know of no legal authority for such reimbursement in these circumstances. The claim for P6,175 is therefore disallowed.

Assignment of error B is also well taken. The administrator claims that 2,547 1/2 manojos of palay, the greater part pertaining to the estate, were lost through theft and the rest through deterioration, water having penetrated into the building in which it was stored. The administrator maintains that the losses were due to the bad condition of the storehouse, and he attributes that condition to interference on the part of the appellants and their objections to repairs. It appears, however, that repairs were made from time to time with the permission of the court, and aside from the assertions of the administrator, there is nothing in the record to show that there ever was any opposition to the making of such repairs. There is room for grave suspicions that the administrator converted to his own use at least a part of the palay alleged to have been stolen or spoiled. But be this as it may, with the exception of the item of 122 3/4 manojos alleged to have been spoiled by having been left in the storehouse for eight years, the losses occurred during the period from 1917 to 1925, when, as we have seen, the administrator was acting as such for his own benefit and not for that of the estate. He was therefore in a position in some respects analogous to that of a bailee for his own sole benefit and was bound to exercise great care and attention in the conservation of the property under administration. According to his own statements, he lost over one-fourth of the palay under his care, and that fact in itself indicates negligence on his part. Deducting the 122 3/4 manojos spoiled prior to 1916, we hold that the administrator must be held responsible for the loss or disappearance of the remaining 2,424 3/4 manojos of palay and must be ordered to pay the value of the same to the estate of the deceased at the rate of 50 cents per manajo. The total amount due the estate from the administrator upon this count is therefore P1,212.37.

Assignment of error C deals with the per diem compensation claimed by the administrator. The administrator claimed, and the court below allowed, the sum of P1,320 for 330 days during the period from March 14, 1913, until July, 1917. For the remaining periods from July 15, 1917, until October 31, 1925, the court below allowed the sum of P3,944 for a total number of 986 days. In view of the fact that according to the administrator's accounts, the total income of the estate for the ten years from July 28, 1915, to October 31, 1925, amounted only to P4,368.52, the compensation allowed the administrator seems excessive. We think, however, that the allowance of P1,320 for the period from March 14, 1913, till July 14, 1917, may be sustained. But we cannot agree with the court below in allowing the administrator compensation for the subsequent period. The prolongation of the settlement of the estate was due entirely to the efforts of the administrator to defraud the legitimate heirs, and we cannot allow him to profit by his own fraud. Moreover, his services for the period in question would have been unnecessary if he had not, by his fraudulent acts, prevented the settlement of the estate. The rule is that the per diem compensation of an administrator can only be allowed for necessary services. For these reasons the allowance of P5,264 granted by the court below will be reduced to P1,320.

Assignment of error D relates to the following items:

1.

Fees for the three commissioners, Messrs. Casimiro Carbonell, Sixto Dacanay, and Liberate Buccat, for services rendered during the 22 days which were necessarily employed in making the partition of the estate ordered by the court, at the rate of P4 per day, as provided by law

P264.00

2.

Paid to Mr. Harry Clark for services as a handwriting expert for the purpose of analyzing the newly discovered document, which was done for the benefit of the estate, according to voucher No. 52

P200.00

3.

Fees of the clerk who made a copy of Mr. Wells' deposition, of the stenographer who transcribed the notes taken down during the hearing upon the document in question, and the fees of the clerk who made a complete copy of Judge Burgett's judgment, according to vouchers Nos. 8, 9, and 15

84.00

4.

Fees of the three partition commissioners appointed by the court, Messrs. Sixto Dacanay, Liberate Buccat, Simon Cacdac and of the administrator during the 27 days which were necessarily employed in making the partition, at the rate of P4 per day each, as provided by law

432.00

980.00

As to item No. 1, the commissioners are entitled to compensation for the services rendered by them, and we can find nothing in the record showing definitely that they have received their pay. The sum of P264 is therefore allowed.

The assignment of error is sustained as to items Nos. 2 and 3. The services there referred to cannot be said to have been rendered for the benefit of the estate but for that of the administrator himself in furtherance of his fraudulent designs.

As to item 4, the record shows that during the year 1920, the commissioners referred to in said item held meetings on various dates, and performed actual work for 23 days for which they are entitled to compensation at the rate of P4 per day each. The administrator himself claims compensation in the amount of P108 for assistance given by himself personally to the commissioners, but in view of what we have said in the discussion of assignment of error C, we hold that he is not entitled to such compensation. The item in question is therefore reduced to the sum of P92 for each of the commissioners, a total sum of P276.

Assignments of error E and F are well taken and must be sustained. It is difficult to find a more glaring example of bad faith and dishonest intentions than that of the present administrator. Having been unfaithful to his trust, he has no right to be retained as administrator, and we agree with the appellant that the court below erred in not removing him from office.

From what has been said in the foregoing discussion, it follows that assignment of error G must also be sustained.

According to the accounts of the administrator, the estate on October 31, 1925, owed him the sum of P9,902.54. The total amount of the items disallowed by us, in accordance with the foregoing discussion, is P11,771.37. Instead of being a creditor of the estate, the administrator is now indebted to it in the sum of P1,868.83 plus the amount of the greater part of the shortages found by Judge Teodoro.

Reverting to the question of the partition and distribution of the estate, it must be conceded that in the confused state of the voluminous record, it is difficult to arrive at accurate results. But the former commissioners of partition have proven themselves unequal to the task, and it is evident that nothing will be gained by providing for the appointment of others. For this reason, and taking into consideration the unjustifiable delay in the settlement of the estate, the court has decided to make the distribution upon the data existing in the record and without the appointment of other commissioners. In doing so, we can do no better than to adhere to the plan of distribution formulated by Judge Camus in his decision of September 23, 1916. It is asserted by counsel for the appellee, that no evidence was taken as to the origin of the property to be distributed and that Judge Camus therefore made an arbitrary classification and distribution of said property. This assertion is not borne out by the record. The evidence is scattered throughout the first two volumes of the record and at first blush seems somewhat confused, but taken in connection with the transcript of the testimony in civil case No. 446 of the Court of First Instance of La Union, which transcript has been made a part of the record in the present case, it sufficiently sustains the findings of Judge Camus. The valuation of the property of the estate, as stated in his decision, is based on the report rendered by the committee on appraisal, and the origin of the property appears principally in the aforesaid transcript of the testimony.

The pertinent part of the decision reads as follows:

Valor
(moneda filipina)

Bienes par a females de Maria Ronquillo:

1.

Una parcela de terreno sita en Casantolan, Municipio de Bacnotan, La Union, de 0.6896 6 0.7996 hectarea de extension aproximada; lindante al N. con Hermenegilda Dacanay, al E. con Sinforoso Oropilla, al S. con Anacleto Ramos, y al O. con Ramon Hernandez

P130.00

2.

Una partida de terreno en Bacsil o Nagsimbaanan, Bacnotan, La Union, de 2.9937 hectareas de extension aproximada; lindante al N. con un arroyo, al E. con un cammo, al S. y O. con terreno de Felix Dacanay y un camino

200.00

3.

Una partida de terreno en Sapilang, en Bacnotan, La Union, de 122.6965 hectareas de extension aproximada; lindante al N. con Andrea Quiaoit, al E. con el terreno Sinilian del testadbr, al S. con el camino Cubbu, y al O. con terrenos de Rafael Lete, Antonio Balmonte y Pio Cariasos.

8,400.00

Total

8,730.00

Bienes propios del testador:

4.

Una parcela de terreno en Dan-ar, en Bacnotan, La Union, de 1.9187 hectareas de extension aproximada; lindante al N. con Alejandro Nebres y Eustaquio Carbonel, al E. con Melchor Igoy, al S. con Cayetana Carig,

Inocencio Casern, y Pascual Morales, y al O. con Andres Dacanay y Melchor Igoy

350.00

5.

Una parcela de terreno en Casantolan, en Bacnotan, La Union, de 0.4604 hectarea de extension aproximada; lindante al N. con Francisco Carias, al E. con Leona Carig, al S. con Bienvenida Julia Dacanay, y al O. con Ramon Hernandez

100.00

6.

Un terreno en Gabor, Bacnotan, La Union, de 0.8364 hectarea de extension aproximada; lindante al N. con Salomo Dacanay, Tirso Dacanay, y Telesforo Ganuelas, el E. con Lucio Sanchez y Mateo Gamboa, al S. con Cayetano Carig y Marcelo Rodriguez, y al O. con Angel Ramos y Bienvenida Julia Dacanay

150.00

7.

Un terreno en Salingcob o Ganagan, en Bacnotan, La Union, de 4.6562 hectareas de extension aproximada; lindante al N. con Francisco Carias y camino vecinal; al E. con Basilio Delmondo, Ambrosio Sarmiento, Juan Bucsit y Anselmo Almohite; al S. con Lorenzo Bucsit, Pedro Licudine, Gregoria Buccat, Francisco Balmonte, Rufo Licudine y Basilio Delmondo; y al O. con Pedro Licudine, Calixto y Casimiro Buccat, Gregorio Licudine; Cosme Buccat y Casimiro Buccat. Valor senalado por la comision de avalluo, P650; y el valor de la donacidn hecha a Tirso Dacanay es

P700.00

8.

Un terreno en Cabaroan, en Bacnotan, La Union, de 0.5500 hectarea de extensi6n aproximada, lindante al N. con Gabina Dacanay, al. con un estero; al S. con Santaromana, y al O. con Valentin Oropilla. Valor por la comision, P50; valor segtin donacion a Tirso Dacanay

100.00

9.

Un terreno en Agtipa o Agtipal, en Bacnotan, La Union, de 1.0987 hectareas de extension aproximada; lindante al N. con Fray Mariano Ruiz y un arroyo, al E. con Valentin Tangingco, al S. con Lucas Almodobar y Francisco Bacaolo, y al O. con Esteban Oredina. Valor por la comision, P300; valor segun donaddn hecha a Tirso Dacanay

150.00

10.

Un terreno en Gabor, Municipio de Bacnotan, La Union, de 0.1859 hectarea de extension aproximada; lindante al N. con Sotero Carias, al E. con Teleaforo Ganuelas, al S. con Hermenegilda Dacanay y al O. con Salome Dacanay. Valor por la comision de avaluo, P30; valor segun donacidn a Tirso Dacanay

40.00

11.

Un terreno en Sinilian o Manginat, Municipio de Bacnotan, La Union, de 29.3887 hectareas de extension aproximada; lindante al N. con Joatiniano Rogerio Dacanay, al E. con el Monte Lacong, al S. con un camino de Igorrotes, y la O. con Justiniano Rogerio Dacanay. Valor por la comision de avaluo

1,500.00

12.

Un terreno en Daya-ti-Ili, Municipio de Bacnotan, La Union, de 0.1620 hectarea de extension aproximada; lindante al N. con Julian Buccat, al E. y S. con Vicente Zalazar, y al O. con Lazaro Almodovar

35.00

13.

Un terreno en Bagutot, Municipio de Bacnotan, La Union, de 0.2500 hectarea de extension aproximada; lindante al N. y E. con Valentin Taminco, al S. con Fray Mariano Ruiz, y al O. con un arroyo

50.00

14.

Un terreno en Bacsil o Baroro, Municipio de Bacnotan, La Union, de 1.2437 hectareas de extension aproximada; lindante al N. con Severo Carbonel, al E. con el Arroyo Banufigal, al S. con Antonio de Guzman, y al SO. con el Rio Baroro

250.00

15.

Un terreno en Bossaoit, Municipio de Bacnotan, La Union, de 0.1045 hectarea de extension aproximada; lindante al N. con Luisa Pasidn, al E. con Agapito Villanueva, al S. con Victor Valin, y al O. con Liberate Buccat. Valorado por la comision de avaluo con el siguiente terreno.

16.

Un terreno en Bossaoit, Municipio de Bacnotan, La Union, de 0.0250 hectarea de extension aproximada; lindante al N. con Ignacio Batto, al E. con Tomas Delmondo, al S. con Liberate Buccat, y al O. con Ignacio Batto. Avaluado con el anterior en

25.00

17.

Un solar dentro del Pueblo de Bacnotan, La Union, de 0.1365 6 0.1375 hectarea de extension aproximada; lindante al N. con el chino Cabo, al E. con el mismo chino y Dionisio Garcia, al S. con la Galle Rosario, y al O. con la Calle Magdalena

80.00

18.

Un terreno en Mambug, Municipio de Bacnotan, La Union, de 0.3437 hectarea de extension aproximada; lindante al N. con Valentin Taminco, al E. con Pedro de Guzman, al S. con. Dionisio Parong, y al O. con Pedro de Guzman

70.00

19.

Un terreno en Cabugao, Municipio de Bacnotan, La Union, de 1.4365 hectareas de extension aproximada; lindante al NE. con Gabina Dacanay, al S. con Tomas Mayo, Mariano Guerrero y un rio, al NO. con Gabina Dacanay

100.00

20.

Un terreno en Bulala, Municipio de Bacnotan, La Union, de 0.1957 hectarea de extension aproximada; lindante al N. y E. con Paulino Dacanay, y al S. y O. con Antonio Almohite

40.00

21.

Un terreno en Daya-ti-Di, Municipio de Bacnotan, La Union, de 0.1364 6 0.1374 hectarea de extension aproximada; lindante al N. con Ciriaca Nebres, al E. con Hilario Dacanay, al S. con Leocadio Romero, y al O. con Paulino Rodriguez

30.00

22.

Un terreno en Iisqueb, Municipio de Bacnotan, La Union, de 0.3988 6 0.2726 hectarea de extension aproximada; lindante al N. y E. con Marcelo Buccat, al S. con Gayetano Delena, y al O. con Tomas Gano

150.00

23. Muebles:

(a)

Legados a Enrique Ronquillo; avaluados por el testador: 1 caraballa, P30, 1 yegua, P30; gastos de estudio e indemnizaciones, P109.60

P169.50

(b)

Donados propter nuptias a Tirso Dacanay: valores segun donacion: 1 anillo, P120; otro anillo, P60; 1 caballo, P120; 2 caballos, P80; 2 carabaos, P150

530.00

(c)

1 carabao, 960; 1 maquina de coser, 98; 1 bulto de la Virgen, 960; 1 bulto de San Jose, 930; 1 tocador, 910; 1 tocador, 96; 1 mesa, 92; 1 florero, 94; 1 sofa de Viena, 94; 1 reloj de pared, P3

176.00

No se han tornado en cuenta muebles de casa de escaso o ningun valor.

24.

Un solar con un camarin en la poblacion, en Bacnotan, La Union, de 0.0700 hectarea de extension aproximada; lindante al N. con Justiniano Rogero Dacanay, al E. con la Calle San Gelacio, al S. con la Calle Soledad, y al O. con la Calle Magdalena. Valor segun la comision, 970; segun donacion a Tirso Dacanay

120.00

25.

Un terreno en Cabaroan o Sipulo, en Bacnotan, La Unidn, de 0.1264 6 0.1274 hectarea de extension aproximada; lindante al N. y E. con Aquilino Fontanilla; al S. y O. con Melchor Igoy. Valor segun comision, P25; segun redencion hecha por el administrador

30.00

Valor total de bienes del testador

4,945.50

Bienes gananciales:

26.

Un terreno en Lanas-Cabusligan, en Bacnotan, La Union, de 0.6726 hectarea de extension aproximada; lindante al N. con Alejandro Nebres, al E. con una carretera, al S. con Paulino Dacanay, y al O. con Ramon Hernandez..

250.00

27.

Un terreno en Lanas-Cabusligan, en Bacnotan, La Union, de 0.6026 hectarea de extension aproximada; lindante al N. con Paulino Dacanay, al E. con, al S. con, y al O. con

200.00

28.

Un terreno en Lanas Pagbantayan en Bacnotan, La Union, de 0.1987 heetarea de extension aproximada; lindante al N. con Paulino Dacanay, al E. con una carretera, al S. con un camino, y al O. con Ramon Hernandez

70.00

29.

Un terreno seco en Laud-ti-di, en Bacnotan, La Union, de 0.6864 hectarea de extension aproximada; lindante al N. con Emerenciano Padua y Pio Nebres, al E. con una carretera, al S. con Gabina Dacanay, y al O. con..

100.00

30.

Un terreno en Zaragoza, Municipio de Bacnotan, La Union, de 1.0212 hectareas de extension aproximada; lindante al N. con Jose Carias, al E. con Jose Carias, al S. con Jose Carias, y al O. con Nicolas Lete

P400.00

31.

Un terreno en Camposanto, Municipio de Bacnotan, La Union, de 1.8687 hectareas de extension aproximada; lindante al N. con Paulino Dacanay, al. con Marcos Celestino, al S. con Geronima Dacanay y el camposanto antiguo, y al O. con Felisa Lagasca. Valor Begun comision y segun donacion a Tirso Dacanay

150.00

32.

Un terreno en Bigbiga o Biga, en Bacnotan, La Union, de 0.3062 hectarea aproximadamente, lindante al N. con Francis Olaes, al E. con Roman Corpus, al S. con Doroteo Almojera y al O. con Jose Pagtacconan. Valor segun comision, P60; segun donacion a Tirso Dacanay

120.00

33.

Un terreno en Gavor, en Bacnotan, La Union, de 0.3206 hectarea de extension aproximada; lindante al N. con Sotero Cariaso, al E. con Eugenio Mejia, al S. con Hermenegilda Dacanay y Mateo Gamboa, y al O. con Telesforo Ganuelas. Valor segun comision y segun donacion a Tirso Dacanay

60.00

34.

Un terreno en Tomarong, en Bacnotan, La Union, de 25.8625 hectareas de extension aproximada; lindante al N. con Gabina Dacanay, Nicolas Parchamento, Nicolas Sipangan y Dionisio Salomdn, al E. con Dionisio Salomon, Pablo Saluta, Domingo Carganilla y Ramon Hernandez, y al S. y O. con la playa. Valor segun la comision, P2,500; segun donacion a Tirso Dacanay

200.00

35.

Un terreno en Santa Cruz, Municipio de Bacnotan, La Union, de 0.5865 6 0.5875 hectarea de extension aproximada; lindante al N. con Dionisio Cariaso, al E. con Andres Dacanay, al S. con Esteban Morales, y al O. con Valentin Oropilla

120.00

36.

Cuatro partidas de terreno en Maragayap, Municipio de Bacnotan, La Union, a saber: Una de 0.3300 hectarea de extension aproximada; lindante al N. con Juan Orejudos, al E. con Bartolome, Martin y Felipe Bucago, al S. con Gregorio Arellano, y al O. con Esteban Menguita.

Una de 0.1451 hectarea de extension aproximada; lindante al N. con Casimiro Julaton, al E. con Mauricio Julaton, al S. con Miguel Bucasas, y al O. con Julian Julaton. Una de 0.3168 hectarea de extension aproximada; lindante al NE. cob Casimiro Julaton, al SE. con Rufo Orejudos, al S. con Miguel Bucasas, y al O. con Mariano Delarma. Y una de 0.1812 hectarea; lindante ad N. con Cayetano Fontanilla, al NE. con el Rio Maragayap, al SE. con Casimiro Julaton, y al O. con Cayetano Fontanilla. Valor de las cuatro partidas juntas

P200.00

37.

Un terreno en Gabor, Municipio de Bacnotan, La Union, de 3.5508 6 3.5578 hectareas de extension aproximada; lindante al N. con Cayetano Carig y Segundo Ancheta, al E. con Rafael Lete y Antonio Ramos, al S. con Petra Dacanay y el testador, y al O. con Jose Castaneda

700.00

38.

Un terreno en Bossaoit o Cabasaan, en Bacnotan, La Union, de 0.9587 hectarea de extension aproximada

350.00

39.

Un solar (qnemado) en la poblacion, en Bacnotan, La Union, de 0.1153, hectarea de extension aproximada; lindante al N. con Calle Consolacion, al E. con Calle San Gelacio, al S. con Isabel Florendo, y al O. con Calle Magdalena

120.00

Valor total de terrenos gananciales

3,040.00

40.

Seis mil treinta y tres manojos de palay, segun cuentas del administrador hasta 30 de junio, 1916, a 50 centimos

3,016.50

41.

Metalico existente segun cuenta del administrador, fecha 30 de junio de 1916

39.12

Valor total de bienes gananciales

6,095.62

Bienes vendidos por el testador, propios del mismo:

42.

Un terreno en Bagutot, en Bacnotan, La Union, de 0.1350 hectarea de extension aproximada; lindante al N. y E. con Agustin Espero y al S. y O. con Segundo Ancheta.

43.

Un solar en la poblacion en Bacnotan, La Union, de 0.0528 hectarea de extension aproximada; lindante al N. y E. con el chino Miguel Bautista, al S. con la Calle Consolacion, y al O. con Dionisia Garcia.

Fruto o produeto de terreno donadoa a Tirso Dacanay:

44.

No se ha dado cuenta por el administrador desde e incluyendo su cuenta de marzo 1, 1912, pendiente de decision del Juzgado sobre las donaciones hechas a el.

Alhajas entregadas a Bienvenida Julia Dacanay:

45.

Se adjudican a Bienvenida Julia Dacanay como parafernales de la difunta Maria Ronquillo, esposa del testador, quien manifiesta en su testamento que estas alhajas fueron entregadas a esta heredera todavia cuando la misma era soltera; manifestation que inclina al juzgado a creer eran de Maria Ronquillo, ademas del hecho de que el testador no da ni la cantidad ni el valor de estos bienes

Legados hechos por el testador:

Resultando que los siguientes legados resultan del testamento mismo ser en pago de servicios prestados el es tador por las personas a quienes se hacen, y no habiendose presentado contra ellos ninguna oposicion por parte de persona o entidad interesada, el juzgado los aprueba cargandolos contra los bienes que resultan a favor del testador, entendiendose que estos legados se pagarian en los mismos bienes en que consisten

Legados a Enrique Ronquillo—

Terrenos marcados en la clasificacion anterior como parcelas Nos. 17, 18, y 19, avalorados respectivamente en P80, P70 y P100; y muebles marcados en dicha clasificacion como No. 23 Muebles (a), valorados en P169.50
P419.50

Legados a Cornelia Dacanay—

Terrenos marcados en la clasificacion anterior como parcelas Nob. 35 y 36, valorados en P120 y P200, respectivamente
320.00

Legados a Bonifacio Cuyo—

Terrenos marcados en la clasificacion anterior como parcelas Nos. 20, 21 y 22, valorados en P40, P30 y P150, respectivamente
220.00

Legado a Honorata Villanueva—

Un terreno marcado como parcela No. 25 en la clasificacion anterior y valorado en
30.00

Valor total de bienes legados
989.50

Resultando, pues, que los bienes determinados como parafernales de la difunta Maria Ronquillo representan un valor de P8,730; que los determinados como propios del testador Justiniano Rogerio Dacanay representan un valor de P4,945.50; y que los determinados como gananciales representan un valor total de P6,095.62; dividido este ultimo valor entre uno y otro por igual, o sea asignando a cada uno bienes gananciales que representen P3,047.81, los bienes que en su totalidad deben corresponder a Justiniano Rogerio Dacanay serin por valor total de P7,993.31 que es la suma del valor de sus bienes propios y el de su mitad de gananciales, o P4,945.60 y P3,047.81, respectivamente; y los que en su totalidad deben corresponder a Maria Ronquillo representaran bienes por valor total de P11,777.81, que es la suma de sus bienes parafernales y su mitad de gananciales, o sea P8,730 y P3,047.81, respectivamente; pero como del total de bienes del testador se deben deducir los legados hechos en su testamento que montan a P989.50 como se ha visto arriba, a dicho testador solo le correspondent un total de bienes que representen P7,003.81 resto que queda del total de P7,993.31.

Resultando de autos que la finada Maria Ronquillo no dejo a su muerte mas que una sola heredera legitima que es Bienvenida Julia Dacanay, una de las partes en el presente asunto; que el testador Rogerio Justiniano Dacanay ha dejado una sola hija legitima, que es dicha Bienvenida Julia Dacanay, habida con la mencionada Maria Ronquillo, y tres hijos naturales reconocidos que son Tirso, Paulina y Hermenegilda, apellidados Dacanay; y que no consta en autos haber otro u otros herederos del testador; y resultando estar pagados todos los acreedores y demas gastos legftimos relacionados con este asunto: El Juzgado halla que Bienvenida Julia Dacanay es la unica hija legitima y por tanto heredera legitima del finado Justiniano Rogerio Dacanay, que este dejo tres hijos naturales reconocidos Uamados Tirso, Paulina y Hermenegilda, apellidados Dacanay; y en su consecuencia declara a dicha Bienvenida Julia Dacanay tinica heredera legitima del testador, con derecho a heredar dos terceras partes de cualesquiera bienes, creditos, derechos y acciones del mismo, y a dichos Tirso Dacanay, Paulina Dacanay y Hermenegilda Dacanay con derecho como hijos naturales reconocidos del testador a heredar una tercera parte de dichos bienes, creditos, derechos y acciones de Justiniano Rogerio Dacanay. Y que los bienes clasincados mas arriba deben

distribuirse en forma tal que loa parafernales y mitad de gananciales correspondientes a ta finada Maria Ronquillo, esposa legitima del testador, correspondan a la unica hija legitima de los mismos, o sea a Bienvenida Julia Daeany; que dos terceras partes de los bienes propios y mitad de gananciales de Justiniano Rogerio Daeany correspondan a dicba Bienvenida Julia Daeany y que el teroio restante de dichos bienes propios y mitad de gananciales del testador corresponda a sus tres hijos naturales reconocidos ya nombrados. Por lo tanto los bienes restantes despues del pago de los legados se repartiran como sigue:

Bienes correspondientes a la esposa del testador o sea a Maria Ronquillo:

Parafernales

P8,730.00

Mitad de gananciales

3,047.81

Suma

11,777.81

P11,777.81

Bienes correspondientes al testador:

Propios del mismo

4,945.50

Mitad de gananciales

3,047.81

7,993.31

Legado a deducir

989.50

Quedan

7,003.81

7,003.81

18,781.62

Total de bienes a dividir entre herederos como sigue:

Para Bienvenida Julia Daeany:

Parafernales de su madre

8,730.00

Gananciales de su madre

3,047.81

11,777.81

11,777.81

Dos tercios de P7,003.81, valor total de los bienes de su padre

4,669.21

Total para Bienvenida Julia Dacanay

16,447.02

Bienes para los tres hijos naturales que representan tin tercio de P7,003.81 o sea P2,334.60; distribufdos como sigue:

Tirso Dacanay, 1/3 de P2,334.60

P778,20

Paulina Dacanay, 1/3 de P2,334.60

778.20

Hermenegilda Dacanay, 1/3 de P2,334.60

778.20

2,334.60

P2,334.60

Resultando que el testador en escritura publica de 10 de septiembre de 1904 dono a su hijo natural reconocido Tirso Dacanay bienes cuyo valor total al tiempo de hacerse la donacion asciende a 72,170 y que figuran marcados como donados en la precedent clasificacion de bienes; y que dicha donacion que fue hecha por causa de matrimonio del mismo Tirso Dacanay con Isabel Florendo fue aceptada en escritura publica de fecha 15 de noviembre de 1904 por dicho Tirso Dacanay; resultando de la precedents regulacion que la porcion legitima de cada uno de los tres hijos naturales reconocidos del testador, entre los cuales se encuentra Tirso Dacanay, es solamente 7778.20 (setecientos setenta y ocho pesos y veinte centavos, moneda filipina), suma que es mucho menor que la representada por el valor total de la donacion referida, siendo por lo tanto justo anular esta en tanto cuanto excede a la porcion legitimaria de este heredero.

Resultando que como se ha demostrado en la precedente clasificacion y regulacion de bienes deben corresponder a la unica hija legitima de los finados Justiniano Rogerio Dacanay y Maria Ronquillo, llamada Bienvenida Julia Dacanay, dos tercios de todos los bienes de aquel, que representan una suma de 74,669.21 ademas de los bienes correspondientes a dicha Maria Ronquillo que ascienden a un valor total de 711,777.81; y resultando que a esta heredera solo se asignan en el testamento en cuestion bienes por valor de 76,085 descontando los bienes muebles por ser de escaso o ningun valor. Resultando, asimismo, que las otras dos herederas, hijas naturales reconocidas de Justiniano Rogerio Dacanay, llamadas Paulina Dacanay y Hermenegilda Dacanay, solo han recibido asignaciones de bienes por valor de 7360 y 7650, respectivamente, a pesar de ascender la porcion legitimaria de cada una de las' mismas a 7778.20, como se ha demoetrado en la precedente clasificacion y regulacion de bienes. Considerando que estas tres herederas aparecen lesionadas en sus respectivas porciones legitimas, ademas de haberse dispuesto por el testador de bienes parafernales de su finada esposa Maria Ronquillo en perjuicio de la heredera Bienvenida Julia Dacanay; y qae por lo tanto procede anular el testamento de que se trata en tanto cuanto lesiona dichos derechos, sin que sea suficiente obstaculo en derecho la razon alegada en el testamento de que dicha Bienvenida Julia Dacanay debe ser desheredada por causa de desobediencia pues dicha causa no esta comprendjda en el articulo 853 del Codigo Civil, aparte de no haberse pretendido por ninguna de las partes sostener como valida dicha clausula testamentaria.

Y resultando, por ultimo, de autos que las partes interesadas han objetado en el curso de la tramitacion de este asunto contra la no inclusion por Tirso Dacanay como administrador en sus cuentas como tal de los productos de bienes donados al mismo por el testador como se ha dicho.

El Juzgado es de opinidn que: las disposiciones contenidas en el testamento en cuestion, asi como las donaciones

hechas por el testador a Tirso Dacanay, deben invalidarse en cuanto perjudican las legítimas de las demás herederas del finado; que deben concederse y cargarse contra los bienes que resultan a favor del testador los legados hechos por el mismo antes de distribuirse sus bienes entre sus herederos; que dos tercios de todos los bienes remanentes del testador corresponden a su única hija legítima Bienvenida Julia Dacanay y el tercio restante en partes iguales a Tirso, Paulina y Hermenegilda, apellidados Dacanay; que los bienes parafernales y mitad de gananciales que pertenecen a la difunta Maria Ronquillo, deben separarse y entregarse a la hija de la misma, dicha Bienvenida Julia Dacanay; y que deben reservarse a las partes interesadas los derechos que crean tener a los frutos de los bienes donados por el finado Justiniano Rogerio Dacanay a Tirso Dacanay, para que los ejerciten en acción separada del presente asunto.

En su consecuencia, el Juzgado, procediendo a designar los bienes que corresponden a cada heredero y sin perjuicio de los legados mencionados en el cuerpo de esta decisión, y desaprobando los proyectos de partición presentados por las partes, designa y adjudica a cada heredero nombrado bienes como sigue:

A Bienvenida Julia Dacanay:

Todos los bienes mencionados y descritos en autos y en la presente decisión que, deducidos los correspondientes a los tres hijos naturales Tirso, Paulina y Hermenegilda, apellidados Dacanay, y a los legatarios Enrique Ronquillo, Cornelio Dacanay, Bonifacio Cuyo y Honorata Villanueva, importan:

Parafernales de la finada Maria Ronquillo

8,730.00

Gananciales para la misma

3,047.81

Dos tercios de P7,003.81 valor de bienes y gananciales del testador, después de deducidos los legados

4,669.21

Total

16,447.02

A Tirao Dacanay:

Un terreno en Camposanto, de unas 1.8687 hectareas de extension, marcado como parcela No. 31, ganancial, en la clasificacion hecha en esta decision. Valor segun tasacion de la comision de avaluo y segun escritura de donacion otorgada por el testador a favor de este heredero

150.00

Un terreno en Agtipal, de unas 1.0687 hectareas de extension, que aparece en la clasificacion como parcela No. 9, bienes propios del testador. Valor segun comision P300; valor segun donacion

150.00

Un terreno (solar) con camarin, en la poblacion, en Bacnotan, que aparece en la clasificacion como parcela No. 24, bienes del padre, de 0.0700 hectarea proximately. Valor segun comision P70; segun donacion es

120.00

Un terreno en Gabor, de 0.3206 hectarea de extension aproximada, que figura en la clasificacion como parcela No. 33 ganancial; valor segun comision y donacion

60.00

Un terreno en Tamorong, secano, de 25.8625 hectareas de extension aproximada; parcela No. 34 en la clasificacion ganancial; valor segun comision 72,500; segun donacion es

200.00

Un terreno en Cabaroan, de 0.5500 hectarea de extension aproximada; parcela No. 8 en la clasificacion, bienes del padre. Valor segun comision, P50; segun donacion

100.00

780.00

Debe pagar Tirso Dacanay a Bienvenida Julia Dacanay una diferencia de

1.80

Importa su legitima

778.20

A Paulina Dacanay:

Un terreno en Daya-ti-Ili, de 0.1620 6 0.1720 hectares de extension aproximada, que figura como parcela No. 12, propio del padre, en la clasificacion hecha en el cuerpo de esta decision

P35.00

Dos parcelas de terreno en Bossaoit, de 0.1045 y 0.2500 hectarea proximamente cada una; parcelas Nos. 15 y 16 de la clasificacion (bienes del padre)

25.00

Un terreno en Bagutot, de 0.2500 hectarea proximamente, parcela No. 13 en la clasificacion (bienes del padre)
50.00 Un terreno en Bacsil o Barroro, de 1.2437 heetareas proximamente, parcela No. 14 (bienes del padre) en la clasificacion

250.00

Ochocientos treinta y seis y cuatro decimos de manojos de palay a 50c manajo

418.20

778.20

A Hermenegilda Dacanay:

Un terreno en Gasantolan, de 0.4604 hectarea de extension aproximada; parcela No. 5, bienes del padre
100.00

Un terreno en Gabor, de 0.8364 hectarea proximamente; parcela No. 6, bienes del padre
150.00

Un terreno en Zaragoza, de 1.0212 heetareas de extension aproximada; parcela No. 30, gananciales
400.00

Doscientos cincuenta y seis y cuatro decimos manojos de palay a 50c manajo
128.00

778.20

Los siguientes son los bienes legados por el testador que por la presente decision se confirman:

A Enrique Ronquillo:

Un solar en la poblacion, partida No. 17, del testador

80.00

Un terreno en Mambug, partida No. 18, del testador

70.00

Un terreno en Cabugao, partida No. 19, del testador

100.00

Partida No. 23 (a) del testador; 1 caraballa, P30; 1 yegua, P30; gastos de estudio e indemnizaciones, P109.50

169.50

419.50

A Cornelia Dacanay:

Un terreno en Santa Cruz, partida No. 35, ganancial

P120.00

Cuatro parcelas de terreno en Maragayap, partida No. 36, gananciales

200.00

320.00

A Bonifacio Cuyo:

Un terreno en Bulala, partida No. 20, del testador

40.00

Un terreno en Daya-ti-Ili, partida No. 21, del testador

30.00

Un terreno en Lisqueb, partida No. 22, del testador

150.00

220.00

A Honorata Viilanueva:

Un terreno en Cabaroan o Sipulo, partida No. 30, del testador

30.00

The plan of distribution quoted may possibly be defective in some respects, but it is approximately correct, and as we have already intimated, it is the best which can be prepared under the circumstances of the case and is approved and adopted by us as providing: for a satisfactory distribution of the estate as of September 23, 1916,

but since that date, changes relating to the subsequent accounts of the administrator have taken place, and it will therefore be necessary to make some additional provisions for said distribution and which we shall proceed to explain.

As we have already stated, the administrator owes the estate the sum of P1,868.83 together with the shortages found by Judge Teodoro. These shortages consist of discrepancies between the accounts and the vouchers presented in support thereof as to the palay harvested from the land under administration, and which discrepancies, according to Judge Teodoro's calculations, amounted to P1,129.31. It is, however, obvious that an error was committed in regard to the palay account for the agricultural year 1921-1922, when the court below found that the administrator's accounts showed a harvest of 3,461 $\frac{3}{4}$ manojos of palay while the vouchers showed 4,208 $\frac{1}{2}$ manojos resulting in a difference of 746 $\frac{3}{4}$ manojos valued at P403.25. Upon further examination, we find that according to the accounts, the harvest for that agricultural year was only 817 manojos and that there are no vouchers showing the alleged shortage in an intelligible manner. The sum of P403.25 must therefore be deducted from the total amount of the shortage found by Judge Teodoro (P1,129.31) thus leaving a total shortage of P716.06, which added to the sum of P1,868.83 found to be due the estate under assignment of error 6, increases the administrator's debt to P2,584.43.

Judge Teodoro also found that in the accounts of 1914-1915 there was a balance of 2,540 $\frac{3}{4}$ manojos in favor of the estate and that no account thereof had been rendered in the account of 1915-1916. His Honor therefore held the administrator responsible for said palay and ordered him to pay its value to the estate. Inasmuch as this palay must be considered included in the 6,033 manojos of palay listed by Judge Camus in his scheme of distribution and there classified as community property, it may be considered eliminated as a separate item.

As to said 6,033 manojos, it may further be observed that on January 27, 1915, Judge Camus ordered that the palay in the hands of the administrator be distributed among the four heirs of the estate, on the condition that they would give bonds to respond for the value of the palay so distributed. According to the accounts, there was at that time 4,445 $\frac{2}{3}$ manojos under administration. In January, 1916, the administrator filed a statement to the effect that including the crop for 1915, there was about 5,080 manojos of palay under administration, but that in making the distribution, he found that 1,270 manojos had been destroyed by water or else stolen in 1912 and 1913. He did not definitely assert that the distribution was actually made. The fact that Judge Camus included this palay together with the crop for 1916 in his plan of distribution of the estate shows quite conclusively that, as a matter of fact, the distribution of the palay had not been carried into effect. It is also obvious that Judge Camus did not exonerate the administrator from liability for the alleged loss of over one-fourth of the palay for which he was accountable. Upon these points, we think the conclusions of His Honor were correct.

The income of the property donated to Tirso Dacanay by his father should have been brought into collation, but we have no sufficient data from which the amount of said income can be determined. For that reason Judge Camus reserved the right of the parties in interest to bring a separate suit against the administrator for the recovery of their share of the collationable income. But the case has been pending for so many years that we do not feel justified in encouraging further litigation, and that question will now be considered closed. The appellants have had ample time and opportunity to present evidence from which the approximate income might have been determined. Having failed to do so, they must suffer the consequences.

It will be noted that in Judge Camus order of distribution, the property assigned to Bienvenida Dacanay is not specifically enumerated but she is given the residue of the estate after deducting the shares of the other heirs and the legatees. In order to avoid misunderstanding, we will here state that said residue consists of the properties given the following numbers in the plan of distribution: one (1), two (2), three (3), four (4), seven (7), ten (10), eleven (11), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty-two (32), thirty-seven

(37), thirty-eight (38), thirty-nine (39), and P2,470 out of number forty (40). Number forty-one (41), the cash in the hands of the administrator on June 30, 1916, has been included in the subsequent accounts and need not be taken into consideration here. The parcels described under numbers forty-two (42) and forty-three (43) were sold by the deceased and have nothing to do with the inheritance and the distribution thereof.

In the plan of distribution Judge Camus says: "Debe pagar Tirso Dacanay a Bienvenida Dacanay una diferencia de P780." This amount should, as far as we can see, be reduced to P30 which will cover the personal property donated to Tirso Dacanay and described under item (b) of number twenty-three (23). The property there described will therefore be assigned to Tirso Dacanay. The heirs of Bienvenida Dacanay are entitled to the property described in item (c) of said number 23 and to the payment to them of P530 as aforesaid. This payment is, of course, separate and distinct from the debt to the estate incurred by the administrator subsequent to September 23, 1916, the date of Judge Camus order of distribution.

For the reasons stated, the decisions appealed from are hereby reversed and it is ordered:

(a) That Tirso Dacanay be immediately removed from his office as administrator of the estate in question and the court below is directed to appoint a suitable person as his successor.

(b) That said Tirso Dacanay be required to render strict account of his administration of the estate during the period subsequent to October 31, 1925, and that he make immediate delivery to his successor of the property under his administration. He will not be allowed compensation for his own personal services nor will he be granted any allowance for attorney's fees.

(c) That at the earliest possible moment a distribution be made of the property enumerated in the foregoing plan of distribution, such distribution to be made in accordance with said plan as far as practicable and taking into consideration the foregoing discussion. The claims against Tirso Dacanay for the value of the 6,033 manojos of palay listed under the number 40 and the P530 due Bienvenida Dacanay under number 23 (b) will be included in this distribution.

(d) That Tirso Dacanay be further required to pay the sum of P2,584.43 for which he became indebted to the estate during the period from September 23, 1916, until October 31, 1925, and that this sum together with the net credits which may have accrued to the estate subsequent to said period, be distributed among the heirs in the proportion of two-thirds to the heirs of Bienvenida Dacanay, one-ninth to the heirs of Hermenegilda Dacanay, and one-ninth to each of the two other natural children of the deceased.

Eliminating the items which we have disapproved as hereinbefore shown, the accounts of the administrator up to and including the date of October 31, 1925, are approved. No costs. So ordered.

Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

[1] Decided by resolution.

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