

IN RE ESTATE OF THE LATE MRS. R. H. FRANKEL. PHILIPPINE TRUST COMPANY, ADMINISTRATOR AND APPELLEE, VS. CLARA WEBBER ET AL., APPELLANTS. FREMA FISCHLER, APPELLEE.

G.R. No. 34480, February 16, 1932

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This appeal has been taken from an order of the Court of First Instance of Manila entered in the course of the present proceedings, and providing as follows:

"In view of the foregoing (1) the item of two thousand pesos (P2,000) for attorney's fees in the final account submitted by the administrator is hereby approved; but the scheme of partition must be amended so as to charge this sum proportionally to the estate of each of the spouses, Herman Frankel and Mrs. Frankel. In other words, this sum must be taken from the value of the estate of the husband and of the wife pro rata.

"(2) The opposition of Anna Hartske, her son Charles Robinson, Clara Webber and her daughter, Gertrude Webber, to the scheme of partition is disallowed, together with every other opposition to the final account based upon the amount of the interest due on the sum of forty thousand eight hundred three pesos and seventy-three centavos (P40,803.73). To this sum, however, must be added the interest for the month of May, 1930, which, according to the report, amounts to eighty-three pesos and twenty-three centavos (P83.23), and the interest thereon at the same rate from the date last mentioned until these funds are finally delivered.

"(3) Clara Webber's opposition in the matter of the jewels is also overruled.

"(4) Lastly, Frema Fischler's opposition with reference to the payment of interest upon the principal of her legacy is also overruled.

"The judicial administrator shall file a scheme of partition, amended in accordance with this order, within five (5) days after it becomes final under the law." (Pp. 54 and 55, Bill of Exceptions.)

The appellants, through counsel, assign the following alleged errors as committed by the trial court:

"1. In overruling the oppositions of the appellants to the final account and project of partition filed on May 19, 1930, and to the report filed on June 26, 1930.

"2. In overruling Mrs. Clara Webber's additional objection to the project of partition with reference to the jewelry."

These proceedings deal with a final account, a report, and a scheme of partition filed by the administrator of the estate of the late R. H. Frankel.

The appellants objected to said final account, scheme of partition, and report, upon the following grounds:

(1) That the value of the estate belonging to the conjugal partnership of Herman Frankel and his wife, at the time of the latter's death, is not shown; (2) that the additional item of P2,000 for the administrator's services is

improper, unlawful, and exorbitant; (3) that the administrator did not invest the funds belonging to the estate adequately and advantageously; and (4) that the interest earned, according to the report filed by the administrator on June 26, 1930, is not accurate, and the statement of the income and the expenses cannot be understood by the parties.

The value of the conjugal estate has been finally decided by a competent court, and is now *res judicata*.

To grant an additional allowance for the services rendered by the judicial administrator was discretionary with the trial court, and we find no reason for holding that said court abused that discretion or made improper use of it, in view of the importance and duration of the work in question.

With reference to the investment of the inheritance funds, we find that the trial court rightly held such investment to be in no way exceptionable or contrary to any law.

The conduct of the administrator of an inheritance who deposits the funds entrusted, to his care in a current account with a solid and responsible bank, instead of depositing them in a fixed account at a higher rate of interest, with a view to having them subject to withdrawal at a moment's notice, is not unlawful or even improper, but rather worthy of approval; and he is not answerable for the low rate of interest thus obtained, because, generally speaking—and there is no reason for applying any special rule—in default of instructions to the contrary, a judicial administrator of an inheritance is not called upon to speculate with funds in his custody or to place them where they may not be withdrawn at once at the order of a competent court, but rather to manage them in accordance with the law, keeping them subject to the orders of the proper court. (Sec. 643, Code of Civil Procedure.) To this end when the administrator happens to be a trust company engaged in banking, as in this case, there is nothing wrong in its depositing the inheritance funds in its own banking department rather than in another bank, if there is no evidence that its own bank is lacking in security.

No question is raised regarding the rate of interest earned by such funds, but the computation of interest is said to be inaccurate. There is no merit in this contention, considering the administrator's report covering the period from August, 1926, to April 25, 1930. Furthermore, with reference to the deposit and the rate of interest obtained, we consider the following remarks of the administrator appellee just and sound:

"The Philippine Trust Company has had at all times and still now has sufficient lawful money of the Philippine Islands to pay all the cash of said estate on deposit with it. It has not invested the funds of the estate because it considers that in view of the will, the action of the residuary legatees, and the nature of its duties, any such investment would make the funds unliquid, and would violate the duties of its trust, which were to assemble the assets, in order to distribute as this Honorable Court may decree." (Pp. 9 and 10, Brief of the administrator-appellee.)

As to the second assignment of error with reference to Mrs. Clara Webber's objection, we find no merit in it, considering the proposed adjudication of the jewelry according to the scheme of partition, and the grounds upon which the trial court overruled this additional objection, to wit:

"Mrs. Clara Webber filed an additional opposition to the scheme of partition in so far as it gives her one-half of the jewelry. She contends that inasmuch as the will gives her one-half of said jewelry, and as its value has depreciated considerably, being hardly worth P500 at present, it is a serious error and a manifest lack of equity to appraise its value at P2,995.50, adjudicating to her one-half thereof. She proposes that the jewelry be sold and the proceeds divided equally between her and the other legatee. This contention is not well taken; first, because the will of the testatrix must be carried out where it provides that one-half of the jewelry itself is to be given to this opponent; and secondly, because there is no need of selling the jewelry; as for the value, that is reasonable because it was fixed by the committee of appraisal, and no proper objection was entered in due time. This additional opposition must be rejected.

"The last opposition is that filed by Frema Fischler, who claims the legal interest upon her legacy of P10,000. It is argued that since this sum of money has been in the administrator's hands for many years, this legatee is entitled to the legal interest upon it from the time of the testatrix's death. There is no merit in this opposition. While it is true that under article 882 of the Civil Code the legacy of a specific determinate thing vests in the legatee upon the testator's death, as well as any pending fruits or income, inasmuch as we are here concerned with a generic or a so-called legacy of quantity, article 884 of the Code must be applied, which provides that interest from the time of the testator's death shall be given the legatee if the testator has expressly so provided. With reference to the present opponent, it appears that the testatrix has not clearly and expressly provided for the payment of the interest upon the P10,000 legacy; according to the last-named article it is clear that the opponent is not entitled to the interest claimed. In *Fuentes vs. Canon* (6 Phil., 117), and *Chiong Joe-Soy vs. Vafio* (8 Phil., 119), the Supreme Court ruled that generic legacies or legacies of quantity, like the one adjudicated to the opponent, do not draw legal interest until a demand is made for them; and a legacy cannot be legally demanded before the scheme of partition is duly approved by the probate court. And in the case cited by counsel for Fred Frankel (*Ongpin vs. Rivera*, 44 Phil, 808), the Supreme Court held that a cash legacy does not earn interest until the person bound to deliver it—in this case the judicial administrator—is in default. The administrator in the present case is not in default, for the scheme of partition not only has not yet been approved, but is actually the subject matter of many oppositions filed by the legatees and the heir." (Pp. 52, 53, and 54, Bill of Exceptions.)

Finding the order appealed from to be justified by the merits of the case, we hereby affirmed it, with costs against the appellants. So ordered.

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

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