

RAMON M. DE VIADEMONTTE, PLAINTIFF AND APPELLEE, VS. M. G. GAVIERES, DEFENDANT AND APPELLANT.

G.R. No. 3639. December 01, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 17th day of December, 1903, the defendant and appellant was appointed administrator of the estate of Francisco Serratos y Milla and duly entered upon the administration of said estate.

In the administration of the said estate he collected the following sums of money belonging to the estate:

Feb. 4, 1904, from Greilsammer Hermanos

200.00

Feb. 9, 1904, from Eduardo Vidal

107.00

Feb. 12, 1904, from Chartered Bank.....

972.70

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Total

1,279.70

The defendant and appellant, from time to time, made report of the expenses incurred and debts paid by him in the settlement of the estate, the items of which are as follows:

Jan. 4, 1904, expense of bond, 5 per cent.....

P60.00

Jan. 4, 1904, funeral expenses.....

602.25

July 29, 1904, carromata hire.....

1.00

Aug. 1, 1904, paid Spanish consul.....

8.13

Aug. 1, 1904, carromata hire.....	
0.50	
Aug. 1, 1904, for 100 days employed by administrator, at P4.....	
400.00	
Aug. 1, 1904, 3 per cent on amounts collected and disbursed.....	
58.70	
Aug. 1, 1904, paid commissioners of said estate.....	
80.00	
Aug. 1, 1904, for five days' Service by administrator, at P4.....	
20.00	
Aug. 1, 1904, paid "Libertaa" (newspaper).....	
15.70	
Aug. 1, 1904, amount due Dr. Lopez.....	
30.00	
Aug. 1, 1904, 3 per cent on amount paid by admr.....	
4.37	

Total.....	
1,280.65	

On the 1st day of June, 1906, Rafael Celestino de Ynchausti, by his attorney, appeared in said court and stated in writing that he was the only and universal heir of all of the property of the deceased, Ramon Martinez de Viademonte y Gonzalez, and that as such heir he opposed the approval of the account of said administrator, giving his special reasons therefor. After hearing the respective parties, the administrator in support of his account, and the heir in opposition thereto, the lower court made the following order:

"This case is now before the court for trial upon the final accounts of the administrator, and an objection having been presented by one of the creditors, the court finds that: after a careful examination of the accounts, the administrator received the sum of one thousand two hundred and seventy-nine pesos and seventy cents (P1,279.70), as the only funds belonging to the estate, the larger part of which are deposits in the banks, and the balance collected without any difficulty from two debtors of the estate. It is true that the administrator has been occupied for some time in looking for some property which he supposed to belong to the estate and which he could not find; and, as regards to this, the items for payments made to him for his services during 102 days, at the rate of four (P4) pesos per day, are exorbitant, and there were no such services rendered. The court finds, further, that the accounts paid for funeral expenses are exorbitant and can not be approved. The court finds, further, that the items which he insists upon collecting as allowances, besides the amounts for his daily services, are very exorbitant and more than those prescribed by law. The items to be approved by the court, are the following: The funeral expenses, P301.13; the expense of bond, P60, the commissioners' fees, P80; the

publication in the newspaper 'Libertas P15.70; the amount paid to Dr. Lopez, P30; and for miscellaneous expenses, P9.63, making a total of four hundred and ninety-six pesos and forty-six cents (P496.46). Of this amount, the court finds that the administrator is entitled to three per centum upon the amounts disbursed, that is P14.90. After a careful examination of the work done, and of the statements made by the administrator, the court is of the opinion that the period of 25 days for services is sufficient, and he is therefore entitled to an allowance of one hundred pesos (P100), all together making a total of six hundred and eleven pesos and thirty-six cents (P611.36), and leaving a balance of six hundred and sixty-eight pesos and thirty-four cents (P668.34:) in favor of the estate and now in the hands of the administrator.—Manila, P. L., June 26, 1906.—(Sgd.) A. S. Crossfield, Judge."

From this order of the lower court the defendant appealed and made several assignments of error.

The appellant made no effort to sustain his accounts in this court further than to present a mere itemized statement of the expenses which he had incurred and the amounts which he had paid. The lower court evidently had before it the vouchers which the administrator presented in support of his account. The lower court found that the amount which the administrator had paid for funeral expenses and the amount which he had allowed himself for services rendered to the estate were exorbitant, and therefore reduced these amounts, for funeral expenses from P602.25 to P301.13, and for personal services rendered from P420 to P100.

In view of the fact that the lower court heard, the explanations given by the defendant in support of these items, and in view of the fact that the defendant has failed to bring any proof whatever into this court in support of these items of expense incurred by him and charged against the estate, the findings and conclusions of the lower court on these two items are hereby affirmed.

By reference to the report of the defendant, of the expenses incurred by him in the settlement of the estate, it will be seen that he charged the estate P63.07 which, as he claimed, was 3 per cent on the amounts collected and disbursed. The lower court found that this amount was incorrect and was not justified by the law, holding that the defendant had, in fact, disbursed only P496.46 and had a right to collect 3 per cent on this amount, and that 3 per cent on this amount is P14.90.

It is difficult to see in what way the defendant was able to conclude that he was entitled to the sum of P63.07. Section 680 of the Code of Procedure in Civil Actions provides that the executor or administrator shall be allowed necessary expenses in the care, management and settlement of the estate, and for his services \$2 (P4.00) per day for the time actually and necessarily employed, and a commission of 3 per cent upon all sums disbursed in the payment of debts, expenses, and distributive shares, if the amount of such disbursement does not exceed \$1,000 (P2,000). It will be noted that this section only allows the defendant a percentage upon disbursements. By reference to the account of the defendant, it will be seen that he charged 3 per cent on the amounts collected and disbursed. He can only be paid for the amount legally disbursed. (In the matter of the Estate of Martinez, 6 Off. Gaz., 1565.[1]) Of course the law did not contemplate that he should collect 3 per cent on the amounts which he himself was entitled to as necessary expenses or for actual services rendered, as a part of the funds disbursed. In the present case the lower court allowed the defendant P100 for actual services rendered. Certainly the defendant can not claim 3 per cent on this amount, upon the theory that it was a part of the funds distributed of the estate.

The lower court approved the accounts of the defendant to the amount of P496.46, holding that this was the amount which the defendant had legally distributed up to that time, and that this was the only amount upon which he was entitled to collect the 3 per cent mentioned in section 680.

With this conclusion of the lower court we agree and his order to that extent is hereby affirmed. Adding to this Phil. Rep., 380. amount (P496.46) the sums of P100 and P14.90, respectively, the amount for actual services and the 3 per cent, we have the sum of P611.36, the amount for which the said administrator should have credit

against the estate. The amount which the defendant had in his hands as administrator was P1,279.70. Deducting from this amount the amount which he had legally distributed (P611.36) we have the amount (P668.34) which the defendant still has in his possession belonging to the estate. When the defendant distributes the balance of the estate, he will be entitled to collect a percentage on that amount, in accordance with the provisions of section 680.

Upon all the facts presented here, we find that the order of the lower court should be affirmed, with costs to the defendant and appellant. So ordered.

Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

[1] 11 Phil. Rep., 389.

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