

ANTONIO ZARAGOZA, PLAINTIFF AND APPELLANT, VS. THE ESTATE OF THE DECEASED RAMON M. DE VIADEMONTTE, DEFENDANT AND APPELLEE.

G.R. No. 3782. January 25, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 20th day of July, 1905, the plaintiff presented a claim to the commissioners of the estate of the said deceased Ramon M. de Viademonte, in the sum of 2,000 against the said estate. The plaintiff claimed that the said estate owed him the sum of 2,000 for assisting in making a survey of certain lands belonging to the said estate and for preparing plans of the same. The administrator of said estate opposed the payment of the said claim. On the 17th day of April, 1906, the said commissioners allowed the claim against the said estate in the sum of 2,000. From this decision of the commissioners the administrator appealed to the Court of First Instance.

After a consideration of the facts presented to the Court of First Instance of the city of Manila, the judge thereof, on the 20th day of October, 1906, rendered the following decision. The judge said:

"From the evidence presented at the trial it appears that the above-named deceased, during his lifetime, by letter contracted with the plaintiff and one Manuel Garcia Gavieres for the survey of certain property belonging to him; that the sum understood to be paid for the survey was the sum of P4,000, and that a survey should be made which would be accepted, for the purpose of registering the land before the proper tribunal; that the deceased settled with the said Gavieres for his share of the services performed, but did not settle with the plaintiff; that the plan of survey made was not acceptable to the proper tribunal of registration and did not comply with the contract, but that there were services rendered in the performance of the contract is clear, and the result of such services was, to some extent, accepted by the said deceased.

"The evidence clearly discloses that there was not a compliance with the contract and that the amount charged for the services performed is far in excess of its value. From the evidence it is clear that the value of the whole services performed by the plaintiff and by the said Gavieres does not exceed the sum of 500.

"The conclusions are that the plaintiff is entitled to a reasonable compensation for the services performed by him for the said deceased, and that the value of his part thereof is the sum of 250, which he is entitled to recover from the above-named estate, together with interest thereon since the allowance of his claim by the commissioners, which was on the 17th day of April, 1906.

"Let judgment be entered in favor of the plaintiff, Antonio Zaragoza, and against the estate of Ramon Martinez de Viademonte y Gonzalez, deceased, for the sum of P250, with interest thereon at 6 per cent per annum since the 17th day of April, 1906, and for the costs of this action."

On the 17th day of November, 1906, the plaintiff excepted to the judgment of the court below and gave notice of his intention to present a bill of exceptions. No motion for a new trial was made in the court below.

In this court the plaintiff presented the following assignments of error:

First, The court committed error in not taking into account the decision announced by the commissioners, appointed to consider claims against the said estate.

Second. The court committed error in not admitting "Exhibit E" as evidence in the trial of said cause. Third. The court committed error in not rendering a judgment against said estate in favor of the plaintiff in the sum of P2,000.

Section 773 of the Code of Procedure in Civil Actions contains a provision for an appeal to the Courts of First Instance by an executor or administrator, from the allowance or disallowance of a claim presented by commissioners.

Section 775 provides how the appeal shall be perfected.

Section 776 provides for the proceedings in Courts of First Instance on such appeal. The proceedings are:

"Upon the lodging of such appeal with the clerk [of the Court of First Instance], the disputed claim shall stand for trial in the same manner as any other action in the Court of First Instance, the creditor being deemed to be the plaintiff and the estate the defendant, and pleadings as in other actions shall be filed."

An examination of the record brought to this court shows the following facts :

First. That after the appeal had been perfected, the plaintiff relied upon a complaint in the Court of First Instance, which was the petition presented to the said commissioners.

Second. That the defendant presented an answer.

Third. The only proof which was offered according to the record was the same proof which had been presented to the said commissioners.

The record does not disclose that the cause was tried in the Court of First Instance in accordance with the provisions of the new code.

Section 777 of the Code of Procedure in Civil Actions provides that—

"The Supreme Court shall have final jurisdiction of actions named in the last preceding section, by hills of exception, as in other actions. * * *."

Under the provisions of this section, therefore, in cases like the present, if the appellant desires to have this court examine the evidence adduced during the trial a proper motion for a new trial must be made in the lower court, and if overruled an exception must be made thereto.

There having been no motion made in the court below for a new trial in the present case, we can not examine the evidence presented to that court, for the purpose of ascertaining whether or not his findings of fact were in accordance with the weight of the evidence adduced during the trial of the cause. The only question presented to us in the present appeal is, whether the facts admitted in the pleadings and the facts stated in the decision considered together are sufficient to support the conclusions of the decision of the lower court.

These facts, in our opinion, are sufficient to justify the conclusions of the lower court.

The theory of the lower court was that the plaintiff had performed certain services for the defendant and that the defendant had accepted and had received certain benefits as the result of the services so rendered by the plaintiff, and upon this theory rendered a judgment in favor of the plaintiff for what it found to be the reasonable value of said services.

The defendant and appellee, in his brief, asked this court to revoke the judgment of the lower court. The defendant

made no exception to the judgment of the court below, did not appeal, and has made no assignment of error here.

Therefore we can not consider any question or questions except those presented by the appellant in his assignments of errors.

The judgment of the court below is hereby affirmed. Let judgment be entered in favor of the plaintiff, and against the defendant, in the sum of 250, with interest at 6 per cent from the 17th day of April, 1906. So ordered.

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

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