

ROBERT B. VAN STAVERN, ADMINISTRATOR OF THE ESTATE OF THE LATE W. H. SCHNUPP, DECEASED, PETITIONER, VS. PEDRO MA. SISON, JUDGE OF FIRST INSTANCE OF MANILA, AND VICTORIANO YAMZON...

G.R. No. 40133. September 12, 1933

Ponente: HULL, J.

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HULL, J.:

Original application for certiorari based on the orders of the Court of First Instance of Manila approving the entry and payment of an attorney's lien in behalf of respondent Victoriano Yamzon for P1,200.

The original orders were issued shortly after the death of Schnupp and before any personal representative was appointed. The attorney's lien was based on a written contract which authorized the payment of P1,000 when the amount of the judgment had been collected, though at the time that the attorney's lien was enforced only a portion of the judgment had been collected.

The motion requesting approval of the attorney's lien was served upon the opposite parties in the original action, and it is claimed that the adverse party, section 37 of the Code of Civil Procedure, is the original adverse party in the action, but this is not a true interpretation of that section. The adverse party is one whose interest is adverse to the claims presented. If it is taxing attorney's fees in the original action, the original parties would be the adverse party, but here desiring the payment of money which otherwise would pass to the administrator, the administrator is obviously the adverse party, and the motion should have been served upon him. However, it is to be noted that after the appointment of the administrator and after the full amount of the judgment had been collected, a motion was made to vacate the former orders of the Court of First Instance of Manila. As the contract was in writing, as at that time the services had been fully performed, and as there is no claim that the amount to be paid was excessive, notwithstanding that the original orders might have been improvidently and prematurely issued, the facts did not require the lower court to set aside and vacate the original orders relating to the fees of P1,000, and the orders complained of will be allowed to stand so far as the P1,000 attorney's fees are concerned.

As to the P200 item an entirely different state of facts is shown. When respondent Yamzon learned of the death of Schnupp, he sent a telegram of condolences to the widow and likewise sent her P200 by telegram. Whether this was an advance to the estate, to the widow, or a mere gratuity to the widow, it is not necessary at this time to determine. It certainly was not an advance of an attorney in connection with the necessary expenses of litigation that would permit it to be included as a part of an attorney's lien, and so far as this P200 item is concerned, the orders of the Court of First Instance of Manila approving of such an item as an attorney's lien are in excess of its jurisdiction and are null and void.

Petition for certiorari based on the P1,000 item is denied but is granted as to the P200 which respondent should be required to forthwith repay to the estate, without prejudice to whatever right respondent Yamzon may have, if any, to recover from either the estate or the widow.

In view of the nature of the case, it will not be necessary to elevate the record, but the Court of First Instance of Manila is directed to take action in accordance with the above opinion.

Petitioner submitted for the consideration of this court as Exhibit D, a letter making reflections upon the courts and upon an attorney. The letter contains what are obviously the emanations of a person of unsound mind. It was incompetent, immaterial, and irrelevant to the question presented in the application for certiorari in this case and should not have been submitted by the attorney for petitioner. It is stricken from the record, and the court trusts that our emphatic disapproval of submitting such matters will cause the attorney for petitioner not to engage in a similar-practice in the future.

No pronouncement as to costs. So ordered.

Malcolm, Villa-Real, Abad Santos, and Imperial, JJ., concur.

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