

IN THE MATTER OF THE ESTATE OF JOSE MA. CEBALLOS, DECEASED. SERAPIN CANO URQUIZA, PETITIONER AND APPELLANT.

G.R. No. 4053. March 27, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 28th day of November, 1906, the said Serafin Cano Urquiza presented a petition in the Court of First Instance of the Province of Albay, asking that the committee appointed to appraise the estate of the said deceased, Jose Ma. Ceballos y Muñoz, and to allow claims against the said estate, be renewed, or that a new commission be appointed, in order that the said petitioner might present certain claims against the said estate, at the same time making a part of said petition an itemized statement of the claims which he held against the said estate.

On the 11th day of February, 1907, Angel Ortiz, claiming to be interested in the administration of the property of said estate, appeared in court and objected to the renewing of the commission as well as to the appointment of a new commission for the purpose of considering claims against the said estate.

On the 27th day of February, 1907, the court denied said petition in the words following:

"According to these records, the court, on the 12th day of May, 1903, appointed commissioners to hear the claims against this estate, and on the 2d day of October, 1905, the court extended for two months more the authority given to the commissioners; this extension was ordered on account of the fact that the report of the commissioners had not been made in due form; and from the term of said two months up to the 18th of December, 1906, the date of the filing of this petition, more than six months have elapsed, notwithstanding the fact that the claim of Sr. Urquiza appears to be just; yet, under the provisions of section 695 of the Code of Civil Procedure, this court has no authority to again renew the service of said commission."

From this order of the court the petitioner appealed, and made the following assignments of error:

- "1. The court erred in holding that it has no authority to renew the appointment of the committee on claims.
- "2. The court erred in denying the petition of the appellant.
- "3. The court erred in applying section 695 of the Code of Civil Procedure and in considering the claim of the appellant as having prescribed."

From the record brought to this court it appears that the lower court having jurisdiction in the settlement of the estate of the said Jose Ma. Ceballos y Muñoz, on the 12th day of May, 1903, appointed the commissioners provided for by the law to appraise the said estate and to consider claims presented against it, and notice was given of the appointment of said commission and of the time and place when said commission would meet and consider claims against the said estate. On the 18th day of May, 1905, the said commissioners made a report to the lower court relating to the appraisal of the property of said estate and to the claims that had been presented.

On the 2d day of October, 1905, and by virtue of the provisions of sections 689 and 690 of the Code of Procedure

in Civil Actions, the lower court extended the time for two months within which the said commissioners might consider further claims against said estate. The reason given for said extension, as was said by the lower court, was that the said report had not been made in due form. Notice of this extension was duly published in a newspaper of general circulation, known as "Libertas," and in the issues of said paper, for three consecutive weeks, upon the 2d, 8th, and 14th days of November, 1905. Upon the 25th day of January, 1906, said commission rendered its final account to the court, which was accepted and approved.

With reference to the first above assignment of error, section 689 of the Code of Procedure in Civil Actions provides that the court shall allow such time as the circumstances of the case require for the creditors to present their claims to the committee for examination and allowance, which time in the first instance shall not exceed twelve months, nor shall be less than six months, and which time shall be communicated to the said commission. Said section further provides that the time allowed in the first instance for the presentation of claims, etc., may be extended, as the circumstance may require, but that such time shall not be extended so that the whole time allowed for the presentation of claims, etc., shall exceed eighteen months.

Section 690 of the Code of Procedure in Civil Actions provides for a further extension of time upon the application of a creditor who has failed to present his claim for a period of six months. Section 690 further provides that if the committee fails to give the notice required by law, and an application is made by a creditor after the final settlement of the estate, the court may, for good cause shown, and on such terms as are equitable, renew the commission and allow further time, not exceeding one month for the committee to grant such claim. The appellant claims here that the notice which was published as above indicated in the "Libertas" was not sufficient for the reason that the same was not published for three successive weeks. As was stated above, the same was published in the issues of said newspaper upon the 2d, 8th, and 14th of the month of November.

Section 687 of the Code of Procedure in Civil Actions provides that the committee for the appraisal and allowance of claims shall appoint convenient times and places for the examination and allowance of claims, shall post a notice in four public places in the province stating the time and places of meetings, and the time limited for creditors to present their claims, and shall also publish the said notice three weeks successively in a newspaper of general circulation in the province, and shall give such further notice as the court may direct. It will be noted that one of the requirements is that the notice shall be published "three weeks successively" in a newspaper. This requirement simply means that the notice shall be published in three successive weeks, and further that three full weeks shall elapse between the time of the first notice and the time when the said commission commence the consideration of claims presented against an estate. (*Ricketts vs. The Village of Hyde Park*, 85 III, 110; *The Savings and Loan Society vs. Thompson*, 32 Cal., 347; *Early vs. Doe*, 16 How., 609.)

By reference to the calendar for the year 1905, it will be seen that the second, eighth and the fourteenth days of said month were days in three successive weeks. Of this fact the courts can take judicial notice. (Sec. 275, Code of Procedure in Civil Actions.)

Our conclusion is, therefore, that the notice given by the said commission complied with the requirements of the law.

The petition therefore of the plaintiff to have the commission renewed or a new commission appointed for the purpose of considering claims based upon the ground that said commission did not give the notice required by law was properly denied by the lower court.

Section 695 of the Code of Procedure in Civil Actions provides that where a person having a claim against a deceased person does not, after the publication, exhibit his claim to the commission as provided for by law, he shall be barred from recovering such claim. The petitioner did not present his claim in accordance with the

provisions of the law and the lower court was justified in invoking the provisions of said section 695 and denying the petition of the claimant. Therefore the judgment of the lower court is hereby affirmed, with costs.

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

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