

**IN RE ESTATE OF THE DECEASED INES BASA DE MERCADO.
JOAQUINA BASA ET AL., PETITIONERS AND APPELLANTS, VS.
ATILANO G. MERCADO, RESPONDENT AND APPELLEE.**

G.R. No. 42226. July 26, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

By virtue of an order dated June 27, 1931, the Honorable Hermogenes Reyes, Judge of the Court of First Instance of Pampanga, allowed and probated the last will and testament of Ines Basa, deceased. On January 30, 1932, the same judge approved the account of the administrator of the estate, declared him the only heir of the deceased under the will and closed the administration proceedings. On April 11, 1934, the herein petitioners-appellants filed a motion in which they prayed that said proceedings be reopened and alleged that the court lacked jurisdiction to act in the matter because there was a failure to comply with requirements as to the publication of the notice of hearing prescribed in the following section of the Code of Civil Procedure:

"Sec. 630. Court to appoint hearing on will.—When a will is delivered to a court having jurisdiction of the same, the court shall appoint a time and place when all concerned may appear to contest the allowance of the will, and shall cause public notice thereof to be given by publication in such newspaper or newspapers as the court directs of general circulation in the province, three weeks successively, previous to the time appointed, and no will shall be allowed until such notice has been given. At the hearing all testimony shall be taken under oath, reduced to writing and signed by the witnesses."

In this motion the appellants claim that the provisions of section 630 of the Code of Civil Procedure have not been complied with in view of the fact that although the trial judge, on May 29, 1931, ordered the publication of the required notice for "three weeks successively" previous to the time appointed for the hearing on the will, the first publication was on June 6, 1931, the third on June 20, 1931, and the hearing took place on the 27th of that month, only twentyone days after the date of the first publication instead of three full weeks before the day set for the hearing.

Section 630 of our Code of Civil Procedure is taken from the Code of Civil Procedure of the State of Vermont. The Supreme Court of that State, commenting on the phrase "three weeks successively", held:

"The date of examining and allowing P. A. Barlett's final account of administration, and for decreeing the residue of the estate to the lawful claimants of the same, was set by the probate court for December 19, 1919, at the probate office in Brighton, and an order was made to this effect on November 28, 1919. The order provided also that notice should be given by publication for three weeks successively in the Essex County Herald. In accordance with this order, the notice was published in the issues for December 4, 11 and 18, respectively. This was 'public notice to all persons interested of the time and place of examining and allowing said account and making decree of distribution, and was sufficient under the provisions of G. L. 3276. (Lenehen vs. Spaulding, 57 Vt., 115.) 'The proceeding was according to law in all respects, and being in the nature of a proceeding in rem, it binds everybody by its legal effect (Burbeck vs. Little, 50 Vt., 713.) At the

time and place set for the hearing none of the petitioners or other legatees under the will of Nickerson Warner appeared. Thereupon the judge of probate then and there continued the hearing until April 6, 1920, at which time the final account of P. A. Barlett as administrator de bonis non with will annexed was filed and, no one appearing to object, the same was allowed, and the decree of distribution was entered." (In re Warner's Estate [Supreme Court of Vermont] 1925; 127 Atl. Rep., 362, 364; 98 Vt, 254, 261.)

It will be noted that in the above cited case the last of the three publications was on December 18, 1919, and the hearing on the administrator's final account was set for December 19 of that year, only fifteen days after the date of the first publication.

In view of the foregoing, it is held that the language used in section 630 of the Code of Civil Procedure does not mean that the notice, referred to therein, should be published for three full weeks before the date set for the hearing on the will. In other words the first publication of the notice need not be made twenty-one days before the day appointed for the hearing.

The appellants also contend that the trial court erred in ruling that the weekly newspaper, Ing Katipunan, in which the notice of hearing was published, was a newspaper of general circulation in the Province of Pampanga.

The record shows that Ing Katipunan is a newspaper of general circulation in view of the fact that it is published for the dissemination of local news and general information; that it has a bona fide subscription list of paying subscribers; that it is published at regular intervals and that the trial court ordered the publication to be made in Ing Katipunan precisely because it was a "newspaper of general circulation in the Province of Pampanga."

Furthermore no attempt has been made to prove that it was a newspaper devoted to the interests or published for the entertainment of a particular class, profession, trade, calling, race or religious denomination. The fact that there is another paper published in Pampanga that has a few more subscribers (72 to be exact) and that certain Manila dailies also have a larger circulation in that province is unimportant. The law does not require that publication of the notice, referred to in the Code of Civil Procedure, should be made in the newspaper with the largest number of subscribers. No fixed number of subscribers is necessary to constitute a newspaper of general circulation.

The assignments of error of the appellants are overruled and the appealed order of the trial court is affirmed with costs in this instance against the appellants.

Malcolm, Villa-Real, Imperial, and Butte, JJ., concur.

Order affirmed

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