

IN THE MATTER OF THE ESTATE OF FLORA MARTINEZ, DECEASED. BELLO, PETITIONER AND APPELLANT.

G.R. No. 4453. October 01, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The appellant, Jose Bello Martinez, was duly appointed by the Court of First Instance of the Province of Ilocos Sur, executor of the will of Flora Martinez, deceased. Soon after the death of the testatrix the property was, by an agreement made out of court, divided among the heirs, in accordance with the provisions of the will. Sometime thereafter the appellant, the executor, presented his account as such, showing that there was a balance due him for fees and expenses of P605.70, and this account was approved by the court. Thereafter, an execution was issued against the heirs, for the purpose of recovering from them the amount of such balance. The execution was suspended, by an order of the court, from which order the appellant did not appeal. Afterwards, on the petition of the heirs, the court vacated its order approving the account of the administrator. The heirs presented objections to that account, a hearing was had upon the objections and they were all sustained. From that order the appellant has appealed.

The first error assigned relates to the order of the court suspending the execution against the property of the heirs. No appeal having been taken from this order, we can not consider whether the court erred in making it or not.

The second error assigned relates to the items of the account rejected by the court.

The record before us contains none of the evidence that was presented, upon the hearing of the account and of the objections. We can not, therefore, say that the court was not justified in rejecting these items, which relate to the fees of the notary public and fees of the lawyer.

In his account the executor credited himself with a commission of 3 per cent upon the entire value of the estate, claiming the right so to do under section 680 of the Code of Civil Procedure. Most of the estate consisted of real property and the court refused to allow him any commission upon the value thereof. In this there was no error.

Section 680 reads in part as follows:

"The executor or administrator shall be allowed necessary expenses in the care, management, and settlement of the estate, and for his services, two dollars per day for the time actually and necessarily employed, and a commission of three per centum upon all sums disbursed in the payment of debts, expenses, and distributive shares, if the amount of such disbursements does not exceed one thousand dollars."

This gives the executor or administrator a commission only upon the money passing through his hands. That is clearly shown by the use of the word "disbursed." As is said by the counsel for the appellee in his brief, the phrase "sums disbursed" should have been translated in the Spanish edition of the code as cantidades desembolsadas, and not, as it was, by the phrase cantidades destinadas.

The order of the court below is confirmed, with the costs of this instance against the appellant. So ordered.

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

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