IN RE TESTAMENTARY PROCEEDINGS OF MAMERTO PORTILLO, DECEASED. JESUSA PORTILLO-RIVERA, ADMINISTRATRIX AND APPELLEE, VS. STRACHAN, MACMURRAY & CO., LTD., CLAIMANT AND APPELLANT.

G.R. No. 46026. April 29, 1939

Ponente: MORAN, J.

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MORAN, J.:

Appellant Strachan, MacMurray & Co., Ltd., thru its attorney, filed a claim for P677.13 with the committee on claims appointed in the testamentary proceedings of the deceased Mamerto Portillo. The committee filed its report with the court, of which the claimant was notified on March 17, 1936. On the same date claimant filed a motion in court stating its desire to appeal and asking, at the same time, that its claim, after hearing, be approved by the court. This motion was set for hearing on September 11, 1936. In the meantime, claimant failed to take the other steps necessary to perfect its appeal. The court denied the motion on the ground that the claimant failed to file its complaint in accordance with law. Claimant appealed.

The procedure followed by the claimant-appellant was not in accordance with law. After the committee had filed its report in court, the latter had no power to act thereon by approving or disapproving it. (Concepcion vs. Tambunting and Tambunting, 46 Phil., 457, 459.) That report becomes final and binding upon all the parties interested therein if no appeal is taken therefrom within the time provided by law. (De la Vina vs. F. M. Yaptico & Co., 48 Phil., 202, 204.) Accordingly, the claimant-appellant, instead of asking the court that its claim be set for hearing with a view to its approval, should have completed all the steps necessary to perfect its appeal. The appeal shall be perfected by filing with the clerk of court, within 25 days after the committee's report is filed, a notice of appeal (sec. 775, Act No. 190) copy of which shall be served upon the adverse party, and by filing, in the proceedings, a complaint within 30 days from service of the notice of appeal upon the opposing party, unless the time is extended by the court (sec. 17, Rules of Courts of First Instance, as amended by Act No. 4229).

In the instant case, the claimant filed in time a statement of its desire to appeal, but failed to file the corresponding complaint within 30 days from service of the notice of appeal upon the adverse party. Consequently, it has lost its right to object to the report of the committee which became final and binding upon it.

We find, however, that in the report filed in court no express statement is made as to whether appellant's claim has or has not been approved by the committee. Perhaps it may be said that, as the report contains a statement of the claims approved, all the claims not included therein are deemed disapproved. But the report constitutes the committee's decision, and, therefore, it must expressly approve or disapprove each claim. A disapproval is not sufficient where it is made inferentially, as in this case. Consequently, as there was no statement in the report admitting or rejecting appellant's claim, there was nothing from which the appellant could appeal (Lyons vs. Rosenstock and Elser, 48 Phil., 861).

The order appealed from is reversed, and let the case be remanded to the lower court with instruction that the

committee on claims be ordered to file an additional report wherein a decision as to appellant's claim be made expressly. Without costs.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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