

FELISA AND PRESENTACION PEREZ Y MELLIZA, PLAINTIFFS AND APPELLEES, VS. CORNELIO MELLIZA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 5063. February 21, 1911*

Ponente: CARSON, J.

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While it is true that it appears from the allegations of the complaint that the indebtedness for the recovery of which this action was instituted had its origin in a claim of the plaintiffs to an interest in certain estates of deceased persons of which defendant-appellant was either executor or administrator, nevertheless it is quite clear that the action was not instituted for the recovery of this interest as such. The prayer of the complaint is for the recovery of the amount which plaintiffs allege this defendant admitted himself to be indebted to them, as a result of an extrajudicial partition agreement touching these estates, or perhaps more accurately speaking of a settlement of account between the plaintiffs and this defendant. This action is not, therefore, of the nature of "actions against executors, administrators and guardians, touching the performance of their official duties" or of "actions for account and settlement by them" or of "actions for the distribution of the estates of deceased persons among heirs and distributees" or of "actions for the payment of legacies" which, under the provisions of section 377 of the Code of Civil Procedure must be brought in the province in which the will was admitted to probate, or letters of administration were granted or the guardian appointed. Appellant's first assignment of error, based on the lack of jurisdiction of the trial court, can not, therefore, be sustained.

We have so frequently construed the provisions of section 141 of the Code of Civil Procedure, which declare that "Rulings of the court upon minor matters, such as adjournments, postponements of trials, and other matters addressed to the discretion of the court in the performance of its duty, shall not be subject to exception," that it is not necessary to go into appellants' assignments of alleged error in certain rulings of this class made by the trial court at the hearing below. Nothing which even suggests the abuse of the discretion thus confirmed to the trial court is shown to have taken place in this case, and in the absence of proof of a clear abuse of discretion, this court has no authority to correct alleged errors in its exercise. (Veloso vs. Ang Seng Teng, 2 Phil. Rep., 624; Quiros vs. Tan Guinlay, 5 Phil. Rep., 675; Camacho vs. Liquete, 6 Phil. Rep., 50; Lichauco vs. Lim, 6 Phil. Rep., 271; Cortes vs. Manila Jockey Club, 6 Phil. Rep., 501; Banco Espanol-Filipino vs. Amechazurra, 11 Phil. Rep., 166.)

The evidence of record sustains the findings of fact of the trial court, and upon these findings there can be no question of the right of the plaintiffs to recover the amount allowed in the judgment, which should, therefore, be affirmed with the costs of this instance against the appellant.

Arellano, C. J., Mapa, Moreland, and Trent, JJ., concur.

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