

E.W. WHITE, PLAINTIFF AND APPELLEE, VS. RAFAEL ENRIQUEZ ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 5253. January 27, 1910*

Ponente: MORELAND, J.

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This is an action brought by the plaintiff to recover the sum of P5,960 for services rendered to the defendants.

It appears that some years ago Don Antonio Enriquez y Sequera and Doña Ciriaca Villanueva y Solis, his wife, died, leaving as their only heirs at law and next of kin their children Francisco, Rafael, Doña Rosario, Doña Carmen, Cayetano, Jorge, Antonio, Doña Gertrudis, Doña Trinidad, and Dona Concepcion; that the said parents left an estate, consisting of real and personal property; that after their death Jorge sold his interest in the estate to Doña Carmen de la Cavada, wife of Francisco; that after the death of said parents said Doña Concepcion died, leaving surviving her her husband Don Antonio Gascon y Gonzalez de Bernerdo, and leaving as her only heir at law her son Don Jose Antonio Gascon y Enriquez; that an administrator of the estates of the said deceased parents was duly appointed; that during the course of the administration of said estates said heirs at law deemed it advisable for the court to appoint a special commissioner for the purpose of examining the accounts of said administrator and of assisting him to a certain extent in the administration of the estates; that all of the heirs joined in the request to the court to appoint said special commissioner or consented to said appointment at the time it was made; that the plaintiff herein was appointed said special commissioner; that he spent considerable time and performed much labor in the performance of the duty to which he had been assigned; that he presented to the court and to said heirs a bill of P5,960 for his services; that by consent of all of the said heirs the court allowed the said bill as presented; that thereafter the heirs saw the advisability, as they thought, of making a division among themselves of the property of their parents extrajudicially; that this they did by an instrument in writing; that said instrument contains among others the following clause: "The undersigned (the appellants in this case) acquit the said Don Francisco Enriquez and his wife Carmen de la Cavada from all obligations arising from any hereditary or testamentary debt, it being understood that the former assume all debts and obligations of both estates with the exception of, etc.," and that with the exception of P600 nothing has been paid to the plaintiff on account of his services.

This action was brought against the defendants by the plaintiff for the purpose of recovering the balance of his claim, basing said action upon the clause in said agreement of division above quoted. The court below gave judgment for the plaintiff in the full amount, with interest, basing his decision and judgment upon the clause above quoted, holding that in and by said clause the defendants specifically agreed to pay the claim of the plaintiff.

We do not believe that the contract in question can bear this interpretation. We are of the opinion that a debt created during the course of administration of an estate is not a debt of the estate in the sense in which that term is used in said contract. Such a debt is rather a part of the expenses of administration, and while it must be paid out of the funds of the estate it is not, strictly speaking, a debt of the estate. In other words, it is not an "hereditary or

testamentary" debt. We are of the opinion, however, that under the facts and circumstances of this case, as disclosed by the record, the heirs at law above named are jointly responsible to the plaintiff for the amount of his claim, they having secured his appointment and having received the benefit of his services and having accepted and consented to the bill for such services which he presented to them and to the court. Don Francisco, one of the heirs, and Doña Carmen de la Cavada, representing Jorge, another heir, not having been made parties to this action, no judgment can be rendered against them. Under the provisions of the Civil Code (art. 1137) judgment may be rendered against the defendants for only their proportionate share of said debt. The facts of this case clearly support a judgment against the defendants for their proportionate share.

It is, therefore, adjudged and decreed that the plaintiff have judgment against the defendants for the sum of P4,288, with interest at 6 per cent from the 18th day of April, 1908, the date on which this action was commenced, and the judgment of the court below is modified accordingly, without special finding as to costs. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Elliott, JJ., concur.

Carson, J., concurs in the result.

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