

**JOSE CARLOS CHUNG MUY CO&#8217;S ADMINISTRATOR,  
PETITIONER AND APPELLEE, VS. LIM QUIOC ET AL., RESPONDENTS  
AND APPELLANTS.**

*G.R. No. 5675. November 26, 1912*

Ponente: TRENT, J.

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**TRENT, J.:**

This is an appeal from an order of the Court of First Instance of the of Manila, dated May 7,1909, approving with certain modifications the account of the administrator.

Counsel for the appellants insists that the court erred in allowing the administrator the sum of P4,396.22 for his services.

The bill is made up of the following items:

For the first eleven months excluding Sundays and holidays .....

**P1,144.00**

For the next twenty-five months, excluding Sundays and holidays.....

1,300.00

For the prosecution of a suit for the recovery of money belonging to the estate.....

1,000.00

For extraordinary services performed in connection with the interest of the estate in an oil store.....

500.00

For unusual services performed in connection with the settlement of two claims of the estate.....

250.00

For commissions on the amounts disbursed.....

202.22

Total.....

4,396.22

The court found as a fact that the administrator actually and necessarily employed during the first eleven months two hundred and eighty-six days his time, and in the twenty-five months following, three hundred and twenty-five days. In view of the fact that the testimony taken on the hearing this report has not been brought to this court, these findings of cannot be disturbed. There is no objection to the item of P202.22 commission on the amount disbursed.

With reference to the other items, the court said:

"There was allowed the administrator in connection with the prosecution action by him for the recovery of money supposed to be due the estate the sum of one thousand pesos.

"I am aware that extraordinary services were performed by the administrator in connection with an interest which the estate had in an oil store, and the daily compensation allowed by law is not a reasonable compensation for the services performed, and I allow for such services the sum of five hundred pesos.

"I am also aware that unusual services were performed in connection with settlement of two claims of the estate which were after much labor adjusted by the administrator, and I am of opinion that an extra allowance should be made for these services, which I fix at P250."

Section 680 of the Code of Civil Procedure reads:

"Sec. 680. How allowed for services. - The executor or administrator be allowed necessary expenses in the care, management, and settlement of the estate, and for his services, two dollars per day for the time act and necessarily employed, and a commission of three per cent upon all sums disbursed in the payment, of debts, expenses, and distributive share the amount of such disbursements does not exceed one thousand dollars. the amount exceeds one thousand dollars and does not exceed five thousand dollars, then three per cent upon the first one thousand dollar one and one-half per cent upon the excess, if the whole amount does not exceed five thousand dollars. If the total disbursements exceed five thousand dollars, then the percentage as above provided, and one per cent on the excess above five thousand dollars. But in any special case, w the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of executor or administrator, a greater sum may be allowed. But if object to the fees allowed be taken, the allowance may be reexamined' by the Supreme Court on appeal.

"When the administrator or executor is a lawyer, he shall not be allowed charge against the estate any professional fees, as Such, for services rendered by himself. When the deceased by will makes some other provision for compensation to his executor, that provision shall be a full satisfaction his services, unless by a written instrument filed in the court he renounces claim to the compensation provided by the will."

It will be noted that this section accurately fixes the compensation of executor or administrator, except in special cases where (1) the estate large, (2) where the settlement has been attended with great difficulty and (3) where a high degree of capacity has been required.

The law scrutinizes with a jealous eye the acts of executors and administrators to see that the accumulations of a life-time are properly distributed. To accomplish these objects, it recognizes the necessity o securing persons of high character and standing in the community. I recognizes the fact that only by fair compensation for the services required can such men be expected to divert their time and attention and labor fr their own affairs to the management of estates, the resources of which they must ascertain and administer, possibly with more or less hindrance unmerited distrust on the part of interested parties. Again, in order reduce the rate of compensation of executors and administrators as nearly as possible to a fixed standard, and thereby prevent unnecessary lawsuit on questions which have for their only basis a difference of opinion, thus accelerate the settlement of such estates, it has been found adv to specify beforehand what that compensation shall be, except in special cases, which, in the complexity of human affairs, are bound to arise. The rate of compensation thus determined with a fair degree of

accuracy, a person appointed to the office may determine whether or not he can afford to undertake to discharge its duties. If he does not con the remuneration sufficient, he is not compelled to accept the trust. Nor is the fact that the incumbent of the office is a lawyer or other person especially qualified to deal with intricate and difficult matters of law business of itself a reason for increasing the compensation. An execute administrator is expected to employ in the discharge of his duties ordinary business ability and careful, economical management. His appointment i is based upon such considerations. The supreme court of Michigan thus states the rule:

"The administrator is required to exercise the ordinary prudence, care judgment of men doing the kind of business the deceased was engaged in at the time of his death. It is not the highest degree of skill or care, nor the best management and judgment, that the law requires. This would b requiring too much, as will be readily seen, for that would require cap and ability which would insure success, and is not possessed by more than one-tenth of the persons who engage in business generally. It is the prudence, and judgment which the man of fair average capacity and ability brings to bear in the transaction of his own business that furnishes standard by which the administrator in the performance of his trust duties must be governed." (Loomis, vs. Armstrong, 63 Mich., 355, 362; 29 N. 870; quoted with approval in Dundas vs. Chrisman, 25 Neb., 495.)

The compensation allowed in ordinary cases is not for the mere execution documents and the keeping of accounts in order that the records may be kept straight. It also includes those services which require discretion ordinary degree of business ability in their execution. Those services arise in the course of administration and which require the aid of special skill are good examples of extraordinary services.

And where compensation for extraordinary services is claimed (although statute does not expressly provide for it), the better practice certain to itemize the account and explain fully in what particular the service extraordinary or unusual, keeping in mind that the mere designation of the service performed is not sufficient, as its performance may have been rendered easy or difficult by the circumstances of the particular case. With such detailed information the court may know precisely for what services the extra compensation is asked and the heir, creditor, or other person interested in the estate may be informed so as to know what items, if any, they may desire to contest. (Steel vs. Holladay, 20 Ore., Sloan vs. Duffy, 117 Wis., 480.)

In order to justify the allowance of extra compensation in accordance the provisions of section 680, supra, the estate must have been large, the settlement attended with great difficulty, and a high degree of capacity required on the part of the administrator. All three of these requirements must have been present. If the administrator is required to use only ordinary business ability, the case does not fall within the rule. It of executors and administrators to use their best efforts to discover collect outstanding claims and unless some peculiar circumstances or co render their discovery and collection unusually difficult and require a degree of capacity, the compensation provided of P4 per day for the time employed and the commissions on the amounts disbursed, together with actual expenses, must be considered sufficient remuneration.

One thousand pesos was allowed the administrator for the prosecution of an action for the recovery of money supposed to be due the estate. With reference to this item the administrator says that that suit "was brought and prosecuted to a conclusion in the Supreme Court of the Philippine Islands, but was unsuccessful. The total expense of maintaining said suit amounted to the sum of P1,172.30." The court said that the P1,000 was allowed the administrator for the prosecution of that suit, while the administrator says that that amount was a part of the expense. If this P1,000 was actually paid out of the funds of the estate by the administrator as a part of the expenses of that suit, the administrator would no doubt have been authorized to charge that amount in his final account, as the court authorized the bringing of the suit. On examine the administrator's accounts we find that there was paid the clerk of court and the sheriff P22.36; costs paid the clerk of the Supreme Court P58; the translator P50; another item of costs paid the clerk of the co P41.94; making a total of P172.30. According: to the account, no other expenses were paid on account of this suit, and in view of the fact that the court says the P1,006

was allowed the administrator, we must conclude that this amount was allowed him for the work performed by him in connection with this suit. There is nothing in the record to show services were rendered by the administrator for which he was allowed the P1,000, except, it is stated, that he was allowed this amount in connect with the prosecution of that suit. If this amount were allowed for the actually employed by him in the prosecution of that suit, that time has already been paid for by the per diem allowance. If it were allowed a an attorney's fee (and the administrator in this case is an attorney a law) this was in conflict with the express provision of section 680, which prohibits such an allowance. When the services of a lawyer are necessary in the settlement of an estate, it is to the interest of the that the administrator secure the best talent possible on the most favorable terms. If he be an attorney and allowed to undertake such services, it his own interest to perform the services himself and to secure an allow for his fees. This, in effect, allows the administrator to make contract himself, and violates the familiar principle that one acting in a fiduciary capacity must not place himself in such a position that his own interest become antagonistic with those of his principal. If the only service performed by the administrator was the employment of counsel for the purposes of the suit, such a service cannot be considered as above the ability of an ordinary business man. This item, in either case, mus disallowed.

As to the sale of the oil store, the administrator states;

"A great deal of trouble was taken and time consumed by your administrator in investigating this matter."

Again he says: -

"That in addition to the services above mentioned your administrator performed special and difficult services in realizing u interest which the deceased had in an oil store conducted by one Uy Tong Qua on Calle Jaboneros. That there was nothing in the inventory made by previous administrators regarding this oil store and no information regarding it was furnished your administrator by any parties interested."

It is difficult to determine, in fact it is impossible to point out, two claims the court had in mind when it allowed the administrator P250 for their settlement. Neither does the administrator nor the court state just what two claims were under consideration. The only information before upon this point is the statement of the court that it was aware that unusual services had been performed in connection with the settlement of two claims of the estate. The court does not specifically state that the P500 allowed the administrator for his work in connection with the oil store and the allowed for his services in connection with the settlement of the two claims were additional compensation over and above the per diem allowance. But taking into consideration the fact that the administrator was allowed the first eleven months P4 for every day during that time (exclusive o Sundays and holidays) and for the next twenty-five months was allowed P4 per day for one-half of that time (exclusive of Sundays and holidays), logical conclusion is that the items of P500 and P250 were additional allowances; or, in other words, the administrator was allowed P4 per for every day he was engaged in investigating the interest that the estate had in the oil store and in the settlement of the two claims, and the extra amounts of P500 and P250. There is nothing in the record to show that a high degree of capacity was required in the settlement of the two matters. On the contrary, it appears from an examination of the affairs of the whole estate as shown in the administrator's report, that estate was one of the ordinary kind. The administrator carried on no business for the estate which required skill or capacity to meet competition. In fact he carried on no business at all except to dispose the property belonging to the estate. We think it is clear that the court erred in allowing these two items.

For the foregoing reasons, the order appealed from is modified by disallowing the administrator the P1,000 for his services in connection prosecution of the civil suit; the additional amounts of P500, allowed for services in connection with the oil store; and of P250, allowed in connect with the settlement of the two claims. In all other respects, the order affirmed without costs.

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

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