

APPEAL BY THE CLERK OF THE COURT OF FIRST INSTANCE OF ALBAY FROM AN ORDER OF THE JUDGE OF THE COURT DIRECTING HIM TO FILE THE APPEAL OF THE CREDITOR LIM QUITUAN IN THE MATTER OF...

G.R. No. 5879. February 18, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented by the record in this case is whether or not the creditor in an appeal from the decision of the commissioners appointed to allow claims against an estate, shall pay the filing fee of P16, in his action in the Court of First Instance upon said claim, in accordance with the provisions of section 788 of the Code of Procedure in Civil Actions.

Section 773 of said code provides for an appeal to the Court of First Instance by either the executor or administrator or creditor against the allowance or disallowance of any claim presented against an estate of a deceased person.

Section 775 provides for the method of perfecting such appeals.

Section 776 provides for the proceedings in the Court of First Instance on such appeals. It is as follows:

"Upon the lodging of such appeal with the clerk, the disputed claim shall stand for trial in the same manner as any other action in the Court of First Instance, the creditor to be deemed to be the plaintiff and the estate the defendant, and pleadings as in other actions shall be filed."

This court has decided in the cases of *Serrano vs. Chanco* (5 Phil. Rep., 431), *Zaragoza vs. Viademonte* (10 Phil. Rep., 23), and *Escuin vs. Escuin* (11 Phil. Rep., 332), that under this section (776) the creditor must file an original complaint, in such appeals, as in other actions; that under said section the appeal from the allowance or disallowance of a claim against an estate was prosecuted in the Court of First Instance as an original action. All original actions are commenced in the Court of First Instance by filing a complaint therein.

We think, therefore, it must follow, the creditor being required to file a complaint as in all other civil actions, that the clerk has a perfect right to require the payment of the fee of P16 provided for in section 788. The judgment of the lower court is, therefore, hereby reversed and it is hereby ordered that a decree be entered declaring that under section 788, in relation with section 776 of the Code of Procedure in Civil Actions, clerks of the Courts of First Instance have a right and it is their duty to collect the sum of P16 upon the filing of all complaints in appeals from the decisions of commissioners appointed to allow claims against the estates of deceased persons, allowing or disallowing claims against such estates. Without any finding as to costs, it is so ordered.

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

Carson and Moreland, JJ., dissent.

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