

46 Phil. 809

[ G.R. No. 19417. March 27, 1923 ]

**FILOMENA CONCEPCION, AS ADMINISTRATRIX OF THE ESTATE OF ILDEFONSO TAN BUNTING Y COSIAM, DECEASED, PLAINTIFF AND APPELLEE, VS. CEFERINO JOSE ET AL., DEFENDANTS AND APPELLANTS.**

## **D E C I S I O N**

**ROMUALDEZ, J.:**

This is an appeal taken by the appellants from an order of the Court of First Instance of Manila entered in this case on June 3, 1922, which is as follows:

“Upon consideration of the petition filed by the attorneys of the administratrix in this testamentary proceeding, praying for the approval of the contract entered into by and between her and Mr. Tomas Zamora on the 27th of May of this year regarding the construction of a mausoleum on the tomb of the deceased Ildefonso Tan Bunting, a copy of which is attached to the record, no objection having been filed, and the grounds alleged by the administratrix being reasonable,

“The agreement made by and between the administratrix and Mr. Tomas Zamora, under date of May 27, 1922, is hereby approved, provided that the cost of the said mausoleum shall be deducted from the one-third of free disposal of the estate left by the deceased Ildefonso Tan Bunting. (Art. 840, Civ. Code.)”

It is contended that this order is erroneous insofar as it directs that the cost of the aforesaid mausoleum be deducted from the one-third of free disposal of the estate and not from the whole mass thereof.

The appellee objects to this appeal on the ground that the order appealed from is of an interlocutory nature. But its provision in question is of a final character insofar as the deduction of the expense in dispute is concerned, which affects the distribution of the inheritance and is therefore appealable. (Secs. 782 and 783, Code of Civil Procedure.)

This is a testate succession and the testator left legitimate, and legally acknowledged natural, children.

In making the order here in question, the lower court took into account the provisions of article 840 of the Civil Code, which are as follows:

“When the testator leaves legitimate children or descendants, and also natural children, legally acknowledged, each of the latter shall be entitled to one-half of the portion pertaining to each of the legitimate children who have not received any betterment, provided that a sufficient amount remains of the disposable portion, from which it must be taken, after the burial and funeral expenses have been paid.

“The legitimate children may pay the portion pertaining to the natural ones in cash, or in other property of the estate, at a fair valuation.”

According to the eminent commentator Manresa, and as to this there is no dispute between the parties, the burial and funeral expenses must, by the terms of this article of the Civil Code and in the case therein provided, be deducted from the one-third of free disposal.

However, those expenses must be deducted from the whole mass of the inheritance if the Code of Civil Procedure now in force is to be followed, which in its sections 735 and 753 provides:

“SEC. 735. If the assets which can be appropriated for the payment of debts are not sufficient for that purpose, the executor or administrator shall, after paying the necessary expenses of administration, pay the debts against the

estate in the following order:

- "1. The necessary funeral expenses;
- "2. The expenses of the last sickness;
- "3. Debts due to the United States;
- "4. Taxes and assessments due to Government, or any branch or subdivision thereof;
- "5. Debts due to the province;
- "6. Debts due to other creditors."

"SEC. 753. After payment of the debts, funeral charges, and expenses of administration, and the allowances, if any, made for the expense of maintenance of the family of the deceased, the court shall assign the residue of the estate to the persons entitled to the same, and in its order the court shall name the persons and proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession: *Provided, however,* That nothing in this Act contained shall be construed to alter the existing Spanish law as to the restriction of the right of a testator to disinherit his children or other relatives."

As may be seen, with regard to the deduction of the burial and funeral expenses, there is an irreconcilable conflict between the provisions of the Civil Code and those of the Code of Civil Procedure. Let it not be said that there is no such conflict because section 753 of the latter Code refers only to the case wherein the part of the estate set aside for the payment of the debts is insufficient, for section 753 of said Code provides, without making any distinction, that before the inheritance is distributed among the persons entitled thereto, the debts, burial charges, and expenses of administration and allowances made for the maintenance of the family of the deceased must be paid, and only the residue must be distributed, which is tantamount to saying that the funeral expenses shall be charged not against a determinate portion of the inheritance but against the whole of it.

Counsel for the administratrix argues that, as section 753 of the Code of Civil Procedure cannot be held to have repealed article 1430 of the Civil Code, so it cannot be held to have repealed article 840 of this same Code.

It cannot, however, be said that article 1430 of the Civil Code was not affected by the Code of Civil Procedure. While as to the maintenance of the widow, said article 1430 remains intact by express provision of section 684 of the Procedural Code, yet the case is different as to the support of the widower which is not considered nor administered now as a part of the estate, nor included in the inventory, according: to section 671 of the same Code. Said section 753 with respect to the funeral expenses is incompatible with article 840 of the Civil Code and therefore it repeals the latter. And with regard to the maintenance of the surviving spouse, it must, under the maxim *noscitur a sociis*, be interpreted in harmony with sections 671 and 684 of said Code of Procedure, and with that interpretation it cannot be held to have left article 1430 of the Civil Code unamended. Besides, as said section 753 regulates different expenses, it does not matter that as to some it amends some provisions of the Civil Code, while as to others it does not.

No question was raised by the parties as to whether the mausoleum in controversy is a part of the funeral expenses. The fact is that the cost of mausoleums not disproportionate to the amount of the inheritance is generally regarded as a part of the funeral expenses (11 R. C. L., 226), and in the instant case, the testator in the first paragraph of his will provides the following:

“I order that my body be buried in the Cemetery of the Tan Bunting Family of the City of Manila in accordance with the rites and ceremonies of the Roman Catholic and Apostolic religion and that my funerals be performed in a manner suitable to my standing and position.”

As a consequence of the foregoing, the cost of the mausoleum in question should not be deducted from the one-third of free disposal of the estate, but from the whole thereof in accordance with section 753 of the Code of Civil Procedure.

Wherefore, the order appealed from is reversed, and it is ordered that the cost of said mausoleum be deducted from the mass of the estate left by the deceased Ildefonso Tan Bunting y Cosiam. So ordered.

*Malcolm, Villamor,  
Ostrand, and Johns, JJ., concur.*

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*DISSENTING*

**STREET, J.,** with whom concurs **AVANCEÑA,  
J.:**

I dissent from the proposition that article 840 of the Civil Code has been abrogated by the provisions cited from the Code of Civil Procedure, insofar as it places the burden of burial and funeral expenses on the disposable portion. I also dissent from the dictum that article 1430 of the Civil Code has been similarly modified by the Code of Civil Procedure.

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