

46 Phil. 726

[ G.R. No. 18754. September 26, 1922 ]

**GUILLERMA CAPISTRANO ET AL., PETITIONERS AND APPELLEES, VS. LEON NADURATA ET AL., OPPONENTS AND APPELLANTS.**

**ROMUALDEZ, J.:**

This is a proceeding commenced by the appellees for the appointment of Justo Buera as administrator of the estate of Petra de los Santos, deceased. The application filed by the appellees was opposed by the appellants Pedro and Juan de los Santos who prayed that the first of them be appointed administrator. Then Leon Nadurata intervened, asserting himself to be the surviving spouse of the intestate Petra de los Santos, and praying that the letters of administration be issued to him.

A lengthy discussion was made in the lower court of the question whether or not Leon Nadurata is the husband of the said deceased, and whether the applicants, or the opponents Santos, are her nearest relatives.

The lower court had appointed Justo Buera special administrator; and after a hearing, it decided the controversy, declaring Leon Nadurata not to be the surviving spouse of Petra de los Santos and that the latter's nearest relatives are not the opponents Pedro de los Santos and Juan de los Santos who allege themselves to be, but are not, brothers of the deceased, but the applicants Capistrano, who are her true brothers by the same mother. Upon these findings, the lower court confirmed the appointment of Justo Buera as administrator of the estate. From this judgment Leon Nadurata, Pedro de los Santos, and Juan de los Santos appealed, assigning as errors: (a) The overruling of their opposition to the confirmation of the appointment of Justo Buera as administrator; (b) the declaration that the applicants are the sole heirs of the deceased to the exclusion of said opponents; and (c) the ordering of the prosecution of certain persons enumerated and referred to in said decision for the crime of falsification of public document and for perjury.

The first error was not committed. The selection of an administrator of the estate of a deceased lies within the discretion of the court (sec. 642, subsec. 1, Code of Civil

Procedure). And the record does not contain anything tending to show an abuse of discretion on the part of the lower court. On the contrary, the act of the lower court in overruling the objection of the opponents and confirming the appointment as administrator of the person proposed by the applicants is not only indicative of sound discretion, but is right and just; for the evidence shows that Leon Nadurata is not surviving spouse of Petra de los Santos, who died widow and not twice widow, and that the opponents Pedro de los Santos and Juan de los Santos are not, as they pretend to be, brothers of the aforesaid deceased.

However, the declaration of heirs made by the lower court is premature, although the evidence sufficiently shows who are entitled to succeed the deceased. The estate had hardly been judicially opened, and the proceeding has not as yet reached the stage of distribution of the estate which must come after the inheritance is liquidated (sec. 753, Code of Civil Procedure).

The order contained in the judgment, directing the prosecuting officer to prosecute the persons therein mentioned, finds sufficient support in the evidence. Although we are convinced by the evidence that Exhibits 1 and 2 are not authentic by any means, yet we prefer to leave it, with the court to take cognizance of the criminal action, to declare whether they were criminally falsified or not. But, as stated, we are persuaded by the evidence of record that the trial court committed no error in directing the prosecuting officer to take such action as may be deemed proper for the punishment of those criminally responsible, as revealed by the evidence and found in the course of this proceeding.

Except as regards the declaration of heirs, which, while it is supported by the evidence, is premature, the ruling appealed from is affirmed in all other respects, with costs against the appellants. So ordered.

*Araullo, C. J., Street, Malcolm, Avancena, Villamor, Ostrand, and Johns, JJ., concur.*

*Order modified.*

