

5 Phil. 232

[ G.R. No. 1528. November 10, 1905 ]

**JOSE ENRIQUEZ, PLAINTIFF AND APPELLANT, VS. AURORA BARRIO, GUARDIAN OF HER MINOR CHILDREN, DEFENDANT AND APPELLEE.**

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

**ARELLANO, C.J.:**

The testamentary succession of the spouses Domingo Penabella and Josefa de los Reyes being opened, the parties interested signed on the 30th of April, 1903, the division of the estate left at the death of both, which was approved by the court on the 1st of the following month of May. Three portions were made of the inheritance—one for each of the children of the couple, Lucia, Jose, and Enrique, the latter represented by his children, all of minor age, by the names of Enrique, Emilia, Antonio, and Dominga.

Jose Enriquez, husband of Lucia, acted as executor. It does not appear from the antecedents of the present case what was the portion adjudicated to Lucia. The portions adjudicated to the other two branches consisted only in twenty shares of stock in the limited stock company known as "*Compania Maritima*," issued at the value of 500 pesos, "*the current market value whereof is today (April 30, 1903) 600 pesos per share, therefore representing the total sum of 12,000 pesos*" (bill of exceptions, page 3), though it appears from evidence adduced by the parties to this action that in April such shares were sold at 400 and 450, the latter price being the more fixed on the 8th of said month.

The division being completed and effective, the executor, Enriquez, filed a motion to add to the division made. The reason given was that subsequent to the division the executor received from the "*Compania Maritima*"

ten additional shares, newly issued by said company, one for each two of the original shares. In the motion he stated his intention to divide these ten new shares into three portions, and not merely into two, for the two children to whom the twenty original shares had been adjudicated.

Aurora Barrio, as guardian of her minor children had with Enrique Penabella, objected to the division of the ten new shares into three portions and claimed five of them for the portion of her children. She further petitioned that the executor indorse the ten original shares, adjudicated in the division, to her, in order that her children could be recognized as the owners thereof.

The court decided that the executor Jose Enriquez *“deliver the ten shares of stock to the heirs Jose and Aurora Barrio for her children, five to each of these two parties, and that all the shares adjudicated be indorsed in due form, in order that there be no obstacles to the recognition of the right of the heirs”* (p. 10 of the bill of exceptions).

The executor appeals from this judgment, alleging an error on the part of the judge in his decision *“that the ten shares given subsequently by the ‘Compania Maritima’ do not increase the capital of the estate and do not modify it, but are merely a nominal value.”*

There is no error in the finding of the judge.

*“The cause for which this company distributed one share of stock for each two held by its shareholders was the increased value of its fleet, according to new valuation, and also the importance of its insurance and reserve funds, which had increased the capital of the company to three million pesos, more or less. The distribution was therefore made in the sense of giving the shareholders fifty per centum of the capital which they had invested in the company, by handing them one share for each two held by them,”* (Pp. 8 and 9 of the bill of exceptions.)

This being the basis for the increase of the shares of stock, the judge was right in finding that the increase of the capital was merely nominal; such an increase of shares of stock, instead of being an increase of capital, would be rather a decrease thereof, if it could affect it.

We therefore affirm the judgment appealed from in all its parts, with the costs of this instance against appellant, judgment in this sense to be pronounced after a lapse of ten days, and the cause to be returned to the court below for execution thereof. So ordered.

*Torres, Mapa, Johnson, and Carson, JJ., concur.*

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