

[G.R. No. 541. December 02, 1901]

**RAMON OROZCO, PLAINTIFF AND APPELLANT, VS. HEIRS OF PEDRO HERNAEZ,
DEFENDANTS AND APPELLEES.**

D E C I S I O N

WILLARD, J.:

In the action of greater import to annul the will of Doña Juana Espinosa, the appellant represented the plaintiff. That the plaintiff was Don Eulalio Hernaez and none other appears from the power of attorney for the purposes of litigation which accompanies the complaint as well as from the text of the complaint itself; that said action was not commenced in his name by virtue of an agreement with the remaining heirs appears in the complaint. In that complaint the plaintiff prays the court that the remaining heirs be required to declare whether or not they conform to the complaint. Four of the heirs having been cited for the purpose proposed by the plaintiff, they declared that they were not in conformity with the complaint, manifesting in a conclusive manner that they did not make themselves responsible for the expenses which the said action might occasion. The facts related disclose that there was no contract, express or implied, between the appellant and any of the heirs with the exception of Don Eulalio which could make the said heirs individually responsible for the payment of the fees earned by the appellant.

The appellant contends, nevertheless, that the estate is responsible for the payment of said fees. We can not admit this contention. The action in question was commenced by Don Eulalio personally. The duties of the executor did not require that he avail himself of the services of an attorney such as the present appellant, and it would be difficult to explain how an executor could legally employ an attorney to litigate concerning the validity of the very will of which he is the executor. The heirs have the right to litigate if they deem it expedient to do so, but this would be in their personal capacity, and for the payment of the costs which arise therefrom the estate can not enter into contracts either express or implied. The fact, if such it may be considered, that the prior administrator or executor had

paid a part of the fees is of no importance, and said act being illegal of itself it does not authorize the succeeding administrator to continue making such payments.

The true grounds upon which, in our opinion, the appellant stands are that his services have resulted beneficially to the heirs and that therefore they should compensate him for his labor. There has not been cited to us, neither do we know of, a provision of the law in support of this contention. If we were to admit this contention the theory of the law would be completely changed. There would be no further need of contracts. It would result that anyone might impose obligations upon another without his knowledge or consent, and even against his protest as happened in the present case.

The order appealed from is affirmed with costs taxed against the appellant. It is so ordered.

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

Ladd, J., did not sit in this case.
