

[No. 32636. March 17, 1930]

In the matter of the Estate of Edward Randolph Hix, deceased. A. W. FLUEMER, petitioner and appellant, vs. ANNIE COUSINS HIX, oppositor and appellee.

1. WILLS; EXECUTORS AND ADMINISTRATORS; CODE OF CIVIL PROCEDURE, SECTION 781, AS AMENDED, APPLIED; RIGHT OF SPECIAL ADMINISTRATOR TO APPEAL FROM DISALLOWANCE OF A WILL.—The special administrator of an estate is a "person interested in the allowance or disallowance of a will by a Court of First Instance," within the meaning of section 781, as amended, of the Code of Civil Procedure, and so may be permitted to appeal to the Supreme Court from the disallowance of a will.
2. ID.; ID.; CONFLICT OF LAWS; CODE OF CIVIL PROCEDURE, SECTIONS 300 AND 301, APPLIED.—The laws of a foreign jurisdiction do not prove themselves in our courts. The courts of the Philippine Islands are not authorized to take judicial notice of the laws of the various States of the American Union. Such laws must be proved as facts. The requirements of sections 300 and 301 of the Code of Civil Procedure must be met.
3. ID.; ID.; CODE OF CIVIL PROCEDURE, SECTION 633, APPLIED.—The due execution of a will alleged to have been executed in another jurisdiction must be established. Where the witnesses to the will reside without the Philippine Islands, it is the duty of the petitioner to prove execution by some other means.
4. ID.; ID.; ID.; DOMICILE.—Where it is desired to establish the execution of a will in another jurisdiction, it is necessary to prove that the testator had his domicile in that jurisdiction and not in the Philippine Islands.
5. ID.; ID.; ID.; CODE OF CIVIL PROCEDURE, SECTIONS 637, 638, AND 639, APPLIED.—Where it is desired to prove the probate of a will in another jurisdiction and the appointment in that jurisdiction of an administrator for the estate of the deceased, the moving party must comply with the provisions of sections 637, 638, and 639 of the Code of Civil Procedure by requesting a hearing on the question of the allowance of a will said to have been proved and allowed in another jurisdiction.

APPEAL from a judgment of the Court of First Instance of Manila. Tuason, J.

The facts are stated in the opinion of the court.

C. A. Sobral for appellant.

Harvey & O'Brien and Gibbs & McDonough for appellee.

MALCOLM, J.:

The special administrator of the estate of Edward Randolph Hix appeals from a decision of Judge of First Instance Tuason denying the probate of the document alleged to be the last will and testament of the deceased. Appellee contends that the appellant as a mere special administrator is not authorized to carry on this appeal. We think, however, that the appellant, who appears to have been the moving party in these proceedings, was a "person interested in the allowance or disallowance of a will by a Court of First Instance," and so should be permitted to appeal to the Supreme Court from the disallowance of the will (Code of Civil Procedure, sec. 781, as amended; Villanueva vs. De Leon [1925], 47 Phil., 780).

It is the theory of the petitioner that the alleged will was executed in Elkins, West Virginia, on November 3, 1925, by Hix who had his residence in that jurisdiction, and that the laws of West Virginia govern. To this end, there was submitted a copy of section 3868 of Acts 1882, c. 84 as found in West Virginia Code, Annotated, by Hogg, Charles E., vol. 2, 1914, p. 1690, and as certified to by the Director of the National Library. But this was far from a compliance with the law. The laws of a foreign jurisdiction do not prove themselves in our courts. The courts of the Philippine Islands are not authorized to take judicial notice of the laws of the various States of the American Union. Such laws must be proved as facts. (*In re Estate of Johnson* [1918], 39 Phil., 156.) Here the requirements of the law were not met. There was no showing that the book from which an extract was taken was printed or published under the authority of the State of West Virginia, as provided in section 300 of the Code of Civil Procedure. Nor was the extract from the law attested by the certificate of the officer having charge of the original, under the seal of the State of West Virginia, as provided in section 301 of the Code of Civil Procedure. No evidence was introduced to show that the extract from



the laws of West Virginia was in force at the time the alleged will was executed.

In addition, the due execution of the will was not established. The only evidence on this point is to be found in the testimony of the petitioner. Aside from this, there was nothing to indicate that the will was acknowledged by the testator in the presence of two competent witnesses, or that these witnesses subscribed the will in the presence of the testator and of each other as the law of West Virginia seems to require. On the supposition that the witnesses to the will reside without the Philippine Islands, it would then be the duty of the petitioner to prove execution by some other means (Code of Civil Procedure, sec. 633).

It was also necessary for the petitioner to prove that the testator had his domicile in West Virginia and not in the Philippine Islands. The only evidence introduced to establish this fact consisted of the recitals in the alleged will and the testimony of the petitioner. Also in beginning administration proceedings originally in the Philippine Islands, the petitioner violated his own theory by attempting to have the principal administration in the Philippine Islands.

While the appeal was pending submission in this court, the attorney for the appellant presented an unverified petition asking the court to accept as part of the evidence the documents attached to the petition. One of these documents discloses that a paper writing purporting to be the last will and testament of Edward Randolph Hix, deceased, was presented for probate on June 8, 1929, to the clerk of Randolph County, State of West Virginia, in vacation, and was duly proven by the oaths of Dana Wamsley and Joseph L. Madden, the subscribing witnesses thereto, and ordered to be recorded and filed. It was shown by another document that, in vacation, on June 8, 1929, the clerk of court of Randolph County, West Virginia, appointed Claude W. Maxwell as administrator, *cum testamento anexo*, of the estate of Edward Randolph Hix, deceased. In this connection, it

is to be noted that the application for the probate of the will in the Philippines was filed on February 20, 1929, while the proceedings in West Virginia appear to have been initiated on June 8, 1929. These facts are strongly indicative of an intention to make the Philippines the principal administration and West Virginia the ancillary administration. However this may be, no attempt has been made to comply with the provisions of sections 637, 638, and 639 of the Code of Civil Procedure, for no hearing on the question of the allowance of a will said to have been proved and allowed in West Virginia has been requested. There is no showing that the deceased left any property at any place other than the Philippine Islands and no contention that he left any in West Virginia.

Reference has been made by the parties to a divorce purported to have been awarded Edward Randolph Hix from Annie Cousins Hix on October 8, 1925, in the State of West Virginia. The present proceedings do not call for any specific pronouncements on the validity or invalidity of this alleged divorce.

For all of the foregoing, the judgment appealed from will be affirmed, with the costs of this instance against the appellant.

*Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.*

*Judgment affirmed.*

[No. 32502. March 18, 1930]

DUHART FRERES Y CIE., plaintiff and appellee, *vs.* ERNESTO MACIAS Y CONTADOR and E. MACIAS COMMISSION IMPEX Co., LTD., defendants and appellants.

1. PLEADING AND PRACTICE; PARTIES PLAINTIFF; SUBSTITUTION; PRELIMINARY ATTACHMENT.—The change of plaintiffs made in the amended complaint by giving the names of the two sole collective partners of the plaintiff partnership, does not affect the legal force and validity of the attachment of the defendants' property, issued in favor of said plaintiff partnership upon a