

[G. R. No. 3841. August 03, 1907]

CHUNG KIAT (ALIAS SUNG KIAT), PETITIONER AND APPELLEE, VS. LIM KIO ET AL., RESPONDENTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

This is an appeal from an order of the court below declaring that Chung Kiat was the legitimate son and one of the heirs of Jose Carlos Chung Mui Co. The case pending in the court below was a special proceeding for the settlement of the intestate estate of the said Jose Carlos Chung Mui Co.

1. On the 1st day of March, 1907, the appellants made a motion for a new trial on the ground of newly discovered evidence. This motion was based upon paragraph 2 of section 407 of the Code of Civil Procedure, which now appears in Act No. 1596, section 1. In the new act no change was made in the reading of the section as it stood in the former act. It provides in part as follows:

“If before the final determination of an action pending in the Supreme Court on bill of exceptions, new and material evidence be discovered by either party,” etc.

It will thus be seen that the right to present a motion for a new trial in this court on the ground of newly discovered evidence is limited to cases pending here on bill of exceptions. This case does not come within the class mentioned in that section and the motion, for that reason, must be denied. The difference in procedure between cases brought here by bill of exceptions and those brought here by appeal is clearly pointed out in the

Code of Civil Procedure. This difference is also referred to in the case of Thunga Chui vs. Que Bentec (1 Phil. Rep., 356). With one exception, a decision of the court below made in a special proceeding can be brought here only by appeal. The law provides for a bill of exceptions in special proceedings in the single case where the Court of First Instance allows or rejects a claim made by a creditor against the estate. In this instance the case comes here by bill of exceptions. (Sec. 777, Code of Civil Procedure.)

We are not justified in extending the provisions of said section 497 by inserting the words "or pending in this court on appeal." The motion is therefore denied.

Attention is called to the fact that some of the affidavits presented in support of the motion for a new trial are in English and are not accompanied by any translation in Spanish.

2. In this special proceeding for the settlement of the said intestate estate the court below, on August 11, 1906, made an order that the administrator appointed therein pay Chung Kiat an allowance of 10 pesos a week for his support during the pendency of the proceeding. No appeal was ever taken by any of the parties from that order. The persons who have appealed from the order of the court declaring Chung Kiat the legitimate son of the deceased, filed on June 27, 1907, in that appeal in this court a motion asking that the administrator be ordered to suspend the payment of this allowance' to Chung Kiat, while their appeal from the order declaring him a legitimate son was pending.

The motion thus made has nothing to do with the appeal pending in this court. It seems to be an attempt to procure a partial reversal of the order of the court below' making this allowance without taking any appeal there from. Without deciding whether such order was appealable or not, we hold that it can not be modified by a motion thus made in another appeal taken in the same case. Section 143 of the Code of Civil Procedure, which provides that upon the rendition of final judgment disposing of the action either party shall have the right to perfect a bill of exceptions for a review by the Supreme Court of all rulings, orders, and judgments made in the action to which the party has duly excepted at the time of making such rulings, orders, or judgments, has no-application to appeals in special proceedings.

The motion for a new trial on the ground of newly discovered evidence, and the motion to suspend the payment of the allowance to Chung Kiat, are both denied.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

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