

**MARIA ELOISA ROCHA, PETITIONER AND APPELLEE, VS.
EMILIATUASON Y PATIÑO, WIDOW OF JOSE GREGORIO ROCHA,
OBJECTOR AND APPELLANT.**

G.R. No. 11441. March 19, 1917

Ponente: MORELAND, J.

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MORELAND, J.:

From the printed record in this case it appears that the appellee, on the 1st day of September, 1914, moved the Court of First Instance of the city of Manila for the appointment of an administrator for the estate of Jose Gregorio Rocha, deceased. A citation was issued by the court in pursuance of the motion directing the persons interested in the estate of the said decedent to show cause in that court on the 19th day of September, 1914, why an administrator for the estate of the said decedent should not be appointed. The hearing on the motion seems not to have been held on the return day and the proceedings were held in abeyance until the court should fix another day for the hearing. On the 3d day of October, 1914, the appellant filed a paper, called in the proceedings a motion, objecting to the continuance of the proceedings for the appointment of an administrator. This objection was amplified by two or three writings filed later, called by the objector motions. Later upon motion of the appellee the hearing on the application for the appointment of an administrator was set for the 1st day of November, 1915, at 3 p. m., by an order dated the 26th of October 1915. This order of the 26th of October is as follows:

"The motion of Gutierrez Repide and Sodas as attorneys for Maria Eloisa Rocha y Casal praying that this proceeding for the appointment of an administrator of the deceased Jose Gregorio Rocha be brought on for a hearing and that the matter proceed to a final liquidation and distribution of the estate of the deceased, having been presented to the court together with the countermotion of Sr. Varela, attorney for Emilia Tuason y Patino, in which he prays that the proceeding be dismissed; and it appearing that commissioners to hear claims against the estate had not been appointed and that for that reason this proceeding cannot be terminated without the consent of all the parties interested, and in view of the fact that the executors named in the will, Doña Emilia Tuason y Patino and D. Ramon Despujol y Sabater are absent from the Philippine Islands, and that the third executor D. Lorenzo Rocha de Icaza died;

"The countermotion of Sr. Varela is denied.

"The 1st day of November, 1915, at 3 p. m., is hereby set for the hearing of this proceeding to the end that the interested parties may indicate to the court whom they desire shall be appointed administrator of the estate of the said decedent and also the persons who should act as commissioners.

"Let this order setting the day for a hearing be notified to Gutierrez Repide and Jose Varela Calderon, attorneys for the interested parties."

From this order the appeal before us was taken.

The contention of the appellee is that the order appealed from is not appealable and that the appeal should be

dismissed.

We are satisfied that the appellee is right in her contention. An order of a court setting a day for a hearing is not an appealable order. Such an order decides no controversy, affects no rights, and determines nothing. It simply gives the parties an opportunity to be heard and the court an occasion for action.

Nor is that portion of the order which says "The counter-motion of Sr. Varela is denied" appealable. The objection of the appellant to the continuance of the proceedings for the appointment of an administrator was not in real sense a motion; and the expression of the court is not to be taken literally when it denied "the countermotion" of the appellant. The objection interposed by the appellant to the continuance of the proceeding to appoint an administrator, as stated in the objection papers, was valueless for any purpose. The proper procedure for appellant was to appear on the day set for the hearing and present her objections to the proceeding and support them by such evidence or argument as she may have had. Then if the court had appointed an administrator over her objections she would have had some definite ruling of the court, obtained in a legal manner, that would have been subject to exception. But the mere objection that a motion or proceeding be heard at all is neither a countermotion nor a motion, nor does it have any effect whatever in law. As a result a mere objection in a proceeding to appoint an administrator to the effect that the court should not hear the proceeding has no value and produces no effect in law. An interested person has a right to make a motion for the appointment of an administrator of a deceased person, and it is not only the right but the duty of a court to hear that motion. An objection that it be not heard is improper and without force or effect.

These remarks are not intended to refer to their full extent to a case where there is a failure to serve process on the respondent and where, accordingly, no jurisdiction has been obtained over his person. In such case an objection, properly made, on the day set for the hearing, that the hearing do not proceed is proper and well founded.

That portion of appellant's objections which asks that the proceeding be dismissed before the hearing raises no question that the court could decide prior to the hearing of the proceeding to appoint the administrator. If it was worth anything at all, legally speaking, it was simply a defense to the proceeding which should have been presented as such and determined on the hearing of the proceeding to appoint.

The appeal is hereby dismissed, with costs against the appellant. So ordered.

Torres, Trent, and Araullo, JJ., concur.

CARSON, J., dissenting:

I dissent.

I think that the real question raised and determined in the court below was whether or not an administrator should be appointed for the estate of the deceased; and an order adjudicating such a question is an order which constitutes a final determination of the rights of the parties thereunder, within the meaning of section 783 of the Code of Civil Procedure, and as such, appealable. (Cf. *Sy Hong Eng vs. Sy Lioc Suy*, 8 Phil. Rep., 594.)

The mere fact that the order, in addition to the determination of the question as to whether an administrator should or should not be appointed, contains a further provision fixing a day for a hearing as to the person who should be appointed administrator, does not deprive an interested party of his right to appeal from so much of the order as finally adjudicates the vital question whether the estate should or should not be placed in the hands of an administrator. The reasoning of the above cited case of *Sy Hong Eng vs. Sy Lioc Suy* seems to me to be conclusive in this regard.

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