

**BROADWELL HAGANS, PETITIONER, VS. ADOLPH WISLIZENUS,
JUDGE OF FIRST INSTANCE OF CEBU, ET AL., RESPONDENTS.***G. R. No. 16680. September 13, 1920*

Ponente: JOHNSON, J.

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This is an original petition, presented in the Supreme Court, for the writ of certiorari. The facts alleged in the petition are admitted by a demurrer. The only question presented is, whether or not a judge of the Court of First Instance, in "special proceedings," is authorized under the law to appoint assessors for the purpose of fixing the amount due to an administrator or executor for his services and expenses in the care, management, and settlement of the estate of a deceased person.

The respondent judge, in support of his demurrer, argues that the provisions of Act No. 190 permit him to appoint assessors in "special proceedings." The petitioner contends that no authority in law exists for the appointment of assessors in such proceedings.

The only provisions of law which authorize the appointment of assessors are the following: (a) Sections 57-62 of Act No. 190; (b) sections 153-161 of Act No. 190; (c) section 44 (a) of Act No. 267; (d) section 2477 of Act No. 2711; and (e) section 2 of Act No. 2369.

Said section 44 (a) of Act No. 267 and section 2477 of Act No. 2711 apply to the city of Manila only. Act No. 2369 provides for the appointment of assessors in criminal cases only. Sections 57-62 of Act No. 190 provide for the appointment of assessors in the court of the justice of the peace. Therefore, the only provisions of law which could, by any possibility, permit the appointment of assessors in "special proceedings" are sections 153-161 of Act No. 190.

Section 154 provides that "either party to an action may apply in writing to the judge for assessors to sit in the trial. Upon the filing of such application, the judge shall direct that assessors be provided, * * *."

Is a "special proceeding," like the present, an "action"? If it is, then, the court is expressly authorized by said section 154 to appoint assessors. But we find, upon an examination of section 1 of Act No. 190, which gives us an interpretation of the words used in said Act, that a distinction is made between an "action" and a "special proceeding." Said section 1 provides that an "action" means an ordinary suit in a court of justice, while "every other remedy furnished by law is a 'special proceeding.'"

In view of the interpretation given to the words "action" and "special proceeding" by the Legislature itself, we are driven to the conclusion that there is a distinction between an "action" and a "special proceeding," and that when the Legislature used the word "action" it did not mean "special proceeding."

There is a marked distinction between an "action" and a "special proceeding." An action is a formal demand of one's legal rights in a court of justice in the manner prescribed by the court or by the law. It is the method of applying legal remedies according to definite established rules. (People vs. County Judge, 13 How. Pr. [N. Y.],

398.) The term "special proceeding" may be defined as an application or proceeding to establish the status or right of a party, or a particular fact. (Porter vs. Purdy, 29 N. Y., 106, 110; Chapin vs. Thompson, 20 Cal., 681.) Usually, in special proceedings, no formal pleadings are required, unless the statute expressly so provides. The remedy in special proceedings is generally granted upon an application or motion. Illustrations of special proceedings, in contradistinction to actions, may be given: Proceedings for the appointment of an administrator, guardians, tutors; contest of wills; to perpetuate testimony; to change the name of persons; application for admission to the bar, etc., etc. (Bliss on Code Pleading, 3d ed., sec. 1.)

From all of the foregoing we are driven to the conclusion that in proceedings like the present the judge of the Court of First Instance is without authority to appoint assessors. Therefore, the demurrer is hereby overruled and the prayer of the petition is hereby granted, and it is hereby ordered and decreed that the order of the respondent judge appointing the assessors described in the petition be and the same is hereby annulled and set aside; and, without any finding as to costs, it is so ordered.

Araullo, Malcolm, Avanceña, Moir and Villamor, JJ., concur.

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