

**B. E. JOHANNES, HUSBAND OF CARMEN THEODORA JOHANNES,  
DECEASED, AS ADMINISTRATOR; CARLOS D'ALMEIDA AND  
IDA JOHANNES, WITH HER HUSBAND, J. E. JOHANNES, RELATORS,  
VS. HONORABLE GEO...**

*G. R. No. 18600. March 09, 1922*

Ponente: MALCOLM, J.

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**MALCOLM, J.:**

The relevant facts disclosed by this petition for certiorari and the return thereto may be stated as follows:

Mrs. Carmen Theodora Johannes nee Carmen D'Almeida, died intestate in Singapore, Straits Settlements, on August 31, 1921. Of her immediate family there remained the husband, B. E. Johannes, the brothers, Frederick Charles D'Almeida and Alfred D'Almeida, and the sister, Ida D'Almeida Johannes. Of these, the husband, the brother Frederick, and the sister Ida, were residents of Singapore, while the brother Alfred was in Manila. The Singapore heirs apparently joined in asking that letters of administration be granted by the Supreme Court of the Straits Settlements to B. E. Johannes, the lawful husband of the deceased. At least, on September 19, 1921, the husband was named the administrator of the property of the deceased wife, which was locally situate within the jurisdiction of the Supreme Court of the Straits Settlements. (Under the British law [22 & 23 Charles II c 10, 29 Charles II c 3, and James II c 17], it would seem that the husband is entitled to the whole of the estate of his wife if she die intestate, to the exclusion of any other next of kin.) On October 1, 1921, the brother Alfred D'Almeida was, on his petition, appointed administrator of the Manila estate of the deceased consisting of P109,732.55. This sum, it appears, was on deposit in the Manila banks under and by virtue of guardianship proceedings for the late Carmen Theodora Johannes, which were finally terminated by the discharge of the guardian, the Philippine Trust Company, on January 16, 1922.

The burden of the relators' contention is that the Honorable George R. Harvey, as judge of First Instance of the City of Manila, has acted in excess of his jurisdiction in appointing Alfred D'Almeida administrator of the funds of the estate on deposit in the Philippines, and that an administration in this jurisdiction is unnecessary. Accordingly, relators pray the court to annul the appointment of Alfred D'Almeida and to issue an order directing the Judge of First Instance to have placed to the credit of B. E. Johannes as administrator of the estate of Carmen Theodora Johannes all of the funds of the late Carmen D'Almeida Johannes, now on deposit and subject to the order of the court, with P5,000 as damages. The respondents, Judge Harvey, and the administrator Alfred D'Almeida, in compliance with the order to show cause why the writ should not issue, contend that the respondent judge has not in any manner acted in excess of the jurisdiction duly conferred upon and exercised by him in the manner provided by law, and that an order appointing an administrator is a final and appealable order.

Certain general observations may possibly serve to clarify the situation.

It is often necessary to have more than one administration of an estate. When a person dies intestate owning property in the country of his domicile as well as in a foreign country, administration is had in both countries.

That which is granted in the jurisdiction of decedent's last domicile is termed the principal administration, while any other administration is termed the ancillary administration. The reason for the latter is because a grant of administration does not ex proprio vigore have any effect beyond the limits of the country in which it is granted. Hence, an administrator appointed in a foreign state has no authority in the United States. The ancillary administration is proper, whenever a person dies, leaving in a country other than that of his last domicile, property to be administered in the nature of assets of the decedent, liable for his individual debts or to be distributed among his heirs. (23 C. J., 1010, et seq.; 24 C. J., 1109, et seq.; Wilkins vs. Ellett [1882], 108 U. S., 256; Perez vs. Aguerria [1901], 1 Porto Rico Fed., 443; Vaughn vs. Barret [1833], 5 Vt., 333.)

The principal administration in this instance is that at the domicile of the late Carmen Theodora Johannes in Singapore, Straits Settlements. What is sought in the Philippine Islands is an ancillary administration subsidiary to the domiciliary administration, conformable to the provisions of sections 601, 602, and 603 of the Code of Civil Procedure. The proper course of procedure would be for the ancillary administrator to pay the claims of creditors, if there be any, settle the accounts, and remit the surplus to the domiciliary jurisdiction, for distribution among the next of kin. Such administration appears to be required in this jurisdiction since the provisions of section 596 of the Code of Civil Procedure, which permit of the settlement of certain estates without legal proceedings, have not been met. The decision of this court in Baldemor vs. Malangyaon ([1916], 34 Phil., 368), on which relators rely, is then not in point because predicated directly on the provisions of the section last cited.

It is almost a universal rule to give the surviving spouse a preference when an administrator is to be appointed, unless for strong reasons it is deemed advisable to name someone else. This preference has particular force under Spanish law precedents. (4 Escriche, Diccionario de Legislation y Jurisprudencia, 1085.) However, the Code of Civil Procedure, in section 642, while naming the surviving husband or wife, as the case may be, as one to whom administration can be granted, leaves this to the discretion of the court to determine, for it may be found that the surviving spouse is unsuitable for the responsibility. Moreover, non-residence is a factor to be considered in determining the propriety of the appointment, and in this connection, it is to be noted that the husband of the deceased, the administrator of the principal administration, resides in Singapore. Undoubtedly, if the husband should come into this jurisdiction, the court would give consideration to his petition that he be named the ancillary administrator for local purposes. Ancillary letters should ordinarily be granted to the domiciliary representative, if he applies therefor, or to his nominee, or attorney; but in the absence of express statutory requirement the court may in its discretion appoint some other person. (24 C. J., 1114.)

There is still another aspect to the case. This is that pursuant to section 783 of the Code of Civil Procedure, an order of a Court of First Instance appointing an administrator of the estate of a deceased person constitutes a final determination of the rights of the parties thereunder, within the meaning of the statute, and is appealable. (Sy Hong Eng vs. Sy Lioc Suy [1907], 8 Phil., 594.)

As we reach the conclusion that the Court of First Instance has not acted in excess of its jurisdiction, and as there is an appeal, certiorari will not lie. Accordingly, the writ prayed for cannot be granted. Costs against the relators. So ordered.

Araullo, C. J., Street, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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