

**SY HONG ENG, PLAINTIFF AND APPELLEE, VS. SY LIOC SUY,
DEFENDANT AND APPELLANT.***G.R. No. 4138. February 25, 1908*

Ponente: WILLARD, J.

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The Court of First Instance of the city of Manila, in exercise of its probate jurisdiction, appointed, on the 4th day of May, 1907, James J. Peterson as administrator of the intestate estates of Sy Lay, Sy Chun Tek, and Sy Bang Co as a joint estate. From that order Sy Lioc Suy has appealed.

The first petition which, gave rise to the special proceeding in which the order above referred to was made was presented to the court on the 28th day of December, 1906. It alleged that Sy Sek died possessed of a large amount of property in the Philippine Islands. The date of his death is not alleged in the petition, but it appears that it occurred on the 7th day of August, 1864. The petition also alleged that the three sons of Sy Sek died, one, Sy Kay, in 1870, Sy Chun Tek in 1879, and Sy Lay in 1890, leaving certain persons as their heirs, among whom were the petitioners. The prayer of the petition was that the court appoint an administrator who should take possession of all the property left by Sy Sek and that it should determine who the present owners of that property were and divide it among them.

The appellant appeared and opposed this petition, alleging that Sy Sek died testate and that all of the property left by him had been duly partitioned among his heirs. On the 11th day of January the petitioners filed an amended petition and on the 7th of February a second amended petition. In the last petition, which is the one upon which the order appealed from is based, it is asked that the court appoint an administrator of the estates of Sy Kay, Sy Chun Tek, and Sy Bang Co, as a joint estate. The appellant, Sy Lioc Suy, opposed the granting of the prayer of this last petition on the ground, among others, that the subject-matter thereof constituted a new and distinct proceeding. The first petition apparently sought a judicial settlement of the estate of Sy Sek, deceased; the last petition sought the judicial settlement of the estates of three other deceased persons. It is apparent that the first proceeding was abandoned.

The jurisdiction which the court obtained by virtue of the order of notice given on the 4th of January, 1907, in the matter of the estate of Sy Sek did not give it any jurisdiction to settle the estates of Sy Lay, Sy Chun Tek, and Sy Bang Co. If notice of the application for the appointment of an administrator of the estate of a deceased person is necessary, it is apparent that the order appealed from was void as to all persons who did not receive such notice. There is no evidence that any notice was given to anyone except to the appellant. It may be, however, that he, having had actual notice and having appeared, would not be in a position to say that the proceeding is void because other persons had not been duly notified.

As has been said, Sy Kay died in 1870, Sy Chun Tek in 1879, and Sy Lay in 1890. It does not appear when Sy Bang Co died. The court below considered that one proceeding could be had for the settlement of the estates of these three last-named persons who died at different dates and that one administrator could be appointed for their

estates as a joint estate. We know of no law or practice which authorizes such a proceeding and the order was clearly wrong for this reason alone.

There is no evidence in the case to show who Sy Bang Co was, and whether he is alive or not. There is no proof that he is dead. The order appealed from was clearly wrong for this reason also. The court had no right to appoint an administrator of a person without receiving some proof that such person was dead.

The informality with which this proceeding was carried on in the court below is illustrated by an incident which occurred at the trial. A witness for the petitioners, who was testifying as to the children of Sy Chun Tek, volunteered the information that, in addition to those he had named, there were two women, Sy Ping Sim and Sy-Choa Ha. He testified that he did not know whether they were living or dead and that he did not know anything about these two women except that they had lived in China. The petitioners thereupon moved to amend their petition by inserting the names of these two women as petitioners, which motion was granted against the objection and exception of the appellant, and these two women now appear as appellees, in this court. It would seem from the record that the attorneys for the petitioners never heard of these persons until the witness named them at the trial, that they had no authority to appear for them, and that they were improperly made parties to this proceeding.

Evidence was offered by the appellant to show that partnership was formed after the death of Sy Sek for the purpose of carrying on the business left by him to his three Chinese sons; and that of the shares into which this business was divided, each one of the three families had two. It was proven that twice a year money was sent, at first by Sy Lay and after his death by the appellant, his successor in the management of the business, to members of the families in China as their share of the profits thereof. This was continued until 1903 or 1904, when the appellant stopped the remittances. Thereupon these proceedings were commenced. That there was such a partnership formed seems to be admitted by the appellees in their brief, but they say that this was the act alone of Sy Lay during his lifetime and later of the appellant, and that the appellees had nothing to do with the matter and never consented thereto. Without considering the fact that these remittances had been continued for more than thirty years, it appears that four of the petitioners live in the Philippine Islands and that the petitioner Sy Hong Eng was the manager of a branch of this business located at Dagupan.

We are satisfied from all the evidence in the ease that the parties have so treated the property which was left by Sy Sek that it can not now be considered a subject of administration by the Court of First Instance in the exercise of its probate jurisdiction. (Sec Mendiola vs. Mendiola, 7 Phil. Rep., 71; and Nepomuceno vs. Carlos,[1] 5 Off. Gaz., 1020.)

If the petitioners are the owners of a part of the property in the possession of the appellant, they should seek relief against him in an ordinary action at law.

The order of the court below is reversed and the case remanded, with directions to that court to dismiss the proceeding. No costs will be allowed to either party in this court. So ordered.

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

[1] 9 Phil. Rep., 194.

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