

## IN THE MATTER OF THE INTESTATE ESTATE OF THE LATE KAW SINGCO (ALIAS CO CHI SENG) SY OA, ADMINISTRATRIX AND APPELLEE, VS. CO HO, OPPOSITOR AND APPELLANT.

*G.R. No. 48444. June 29, 1943*

Ponente: MORAN, J.

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### MORAN, J.:

Oppositor-appellant Co Ho seeks the reconsideration of our resolution which reads as follows:

"The question involved in G. R. No. 48444, Sy Oa, administratrix-appellee, vs. Co Ho, opositor-appellant, not being one of jurisdiction over the subject-matter but rather of venue which in turn hinges on a question of fact i. e., whether the deceased, at the time of his death, was residing in Camarmes Sur or m the City of Manila, pursuant to the ruling laid down in Reyes vs. Diaz, G. R. No 48754, November 26, 1941, and Bernabe vs. Vergara, G. R. No. 48652, September 16, 1942, this case is hereby certified to the Court of Appeals for further proceedings."

It is maintained that our interpretation of Article VIII, section 2, No. 3, of the Constitution, and section 138, No. 3, of the Revised Administrative Code, as enunciated in Reyes vs. Diaz, G. R. No. 48754 and Bernabe et al. vs. Vergara, G. R. No. 48652, is erroneous. In Reyes vs. Diaz we said that the term "jurisdiction" as used in the Constitution and in the statutes, means jurisdiction over the subject-matter only, unless an exception is clearly intended by reason of its employment in a breader sense. We so ruled, because, independently of the American laws and facts involved in the American, decisions therein cited, such interpretation appears to be the clear intent or our substantive laws. A perusal of all the laws of jurisdiction in the Philippines—Act No. 136 and its amendments; Philippine Constitution, Article VIII, sections 2 and 3; and Commonwealth Acts Nos. 3 and 259—will readily show that the word "jurisdiction" as used in their different provisions is intended to have reference to the subject matter only. It may fairly be assumed, therefore, that when particularly the same word is used in clause 3 of section 2 of Article VIII of the Constitution and in clause 3 of section 138 of the Revised Administrative Code as amended by Commonwealth Acts Nos. 3 and 259, it is also intended to refer to the same kind of jurisdiction, since there is nothing therein to show that it is employed in a broader sense.

Our attention is also directed to a comparison between subsections 3 and 6 of section 138 of the Revised Administrative Code, as amended by Commonwealth Acts Nos. 3 and 259. Said section reads:

"SEC. 138 Jurisdiction of the Supreme Court—The Suprerne Court shall have such original jurisdiction as may be possessed and exercised by the Supreme Court of the Philippines at the time of the approval of this Act, including cases affecting ambassadors, other public ministers, and consuls.

"The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm, on appeal, certiorari or writ of error, as the law or rules of court may provide, final judgments and decrees of inferior courts as herein provided, in—

"(1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or

regulation is in question;

"(2) All cases involving the legality of any tax, impost, assessment or toll, or any penalty imposed in relation thereto;

"(3) All cases in which the jurisdiction of any inferior court is in issue;

"(4) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment, and those involving other offenses which although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices, or accessories, or whether they have been tried jointly or separately.

"(5) All civil cases in which the value in controversy exceeds fifty thousand pesos, exclusive of interests and costs, or in which the title or possession of real estate exceeding in value the sum of fifty thousand pesos to be ascertained by the oath of a party to the cause or by other competent evidence, is involved or brought in question. The Supreme Court shall likewise have exclusive jurisdiction over all is fifty thousand pesos or less, when the evidence involved in said cases is the same as the evidence submitted in an appealed civil case within the exclusive jurisdiction of the Supreme Court as provided herein.

"(6) All other cases in which only errors or questions of law are involved "

We said in our decision in *Reyes vs. Diaz*, supra, that the question of jurisdiction referred to in clause 3 of the above-quoted provision, is one which calls for interpretation and application of the law of jurisdiction which distributes the judicial power among the different courts in the Philippines. It is now maintained that if such issue of jurisdiction is merely question of law, then clause 3 would be a surplusage, for it would be covered by clause 6 of the same provision which confers upon the Supreme Court exclusive appellate jurisdiction over all cases in which only errors or questions of law are involved This is certainly a misapprehension. Under clause 6, the Supreme Court may entertain appellate jurisdiction when absolutely no questions of fact are involved in the appeal. But under clause 3, there may be issues of fact involved, but if aside from such issues the question of jurisdiction over the subject-matter is properly raised, the Supreme Court shall have appellate jurisdiction, in exactly the same manner as under clause No. 1 where the Supreme Court shall have the same appellate jurisdiction when the constitutionality or validity of a law is raised regardless of any question of fact that there might be upon other issues.

We are not unaware of existing decisions to the effect that in probate cases place of residence of the deceased is regarded as a question of jurisdiction over the subject-matter. But we decline to follow this view because of its mischievous consequences. For instance, a probate case has been submitted in good faith to a Court of First Instance of a province where the deceased had not resided. All the parties, however, including all the creditor, have submitted themselves to the jurisdiction of the court and the case is therein completely finished except for a claim of a creditor who also voluntarily filed it with said court but on appeal from an adverse decision raises for the first time in this Court the question of jurisdiction of the trial court for lack of residence of the deceased in the Province; If we consider such question of residence as one affecting the jurisdiction of the trial court over the subject-matter the effect shall be that the whole proceedings including all decisions on the different incidents which have arisen in court will have to be annulled and the same case will have to be commenced anew before another court of the same rank in another province. That this is of mischievous effect in the prompt administration of justice is too obvious to require comment. (Cf. *Tanunchuan vs. Dy Buncio @ Co.*, G.R. No. 48206, December 31, 1942.) Furthermore, section 600 of Act No. 190, providing that the estate of a deceased person shall be settled in the province where he had last resided, could not have been intended as defining the jurisdiction of the probate court over the subject-matter, because such legal provision is one thing and jurisdiction over the subject-matter is

another. (Attorney-General vs. Manila Railroad Company, 20 Phil., 523) The law of jurisdiction—Act No. 136, Section 56, No. 5—confers upon Court of First Instance jurisdiction over all probate cases independently of the place of residence of the deceased. Since, however, there are many courts of the First Instance of the Philippines, the Law of Procedure, Act No. 190, section 600, fixes the venue or the place where each case shall be brought. Thus, the place of residence of the deceased is not an element of jurisdiction over the subject-matter but merely of venue. And it is upon this ground that in the new Rule of Court the province where the estate of a deceased person shall be settled is properly called "venue." (Rule 75, section 1.) Motion for reconsideration is denied.

Yulo, C. J., Ozaeta, Paras and Bocobo, JJ., concur.

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