

1 Phil. 542

[G.R. No. 891. December 11, 1902]

JUANA DOMINGO, PLAINTIFF AND APPELLEE, VS. THE WARDEN OF BILIBID PRISON, DEFENDANT AND APPELLANT.

D E C I S I O N

COOPER, J.:

A writ of *habeas corpus* was granted petitioner, Juana Domingo, by the Court of First Instance of the city of Manila, and upon a hearing she was discharged from the custody of the respondent who held her under a conviction and sentence of the Municipal Court of Manila for the District of South Pasig. From the decision of the Court of First Instance the Government has appealed to this court.

We will not attempt to review the judgment of the Court of First Instance in making this order, in view of the conclusion which we reach, that this court has no jurisdiction over the appeal.

The Code of Civil Procedure, 1901, is divided into two. parts - Part I relating to civil actions and Part II to special proceedings. The difference between the procedure in civil actions and in special proceedings relates, principally, to the powers of the judge or court.

Under this classification various proceedings have been denominated as special proceedings, such as the appointment of guardians, trusts and trustees, wills and allowances thereof, the settlement of estates of deceased persons, etc., and among them proceedings in *habeas corpus*.

All civil actions are brought to this court by bill of exceptions, while special proceedings are brought here by the procedure denominated "appeals in special proceedings."

Chapter 42 of the Code of Civil Procedure regulates these appeals and specifically provides for the different classes of cases appealable.

Thus, section 773 provides for an appeal from an allowance or disallowance of a claim.

Section 778, for appeals from the settlement of account of administrators, executors, trustees, or guardians.

Sections 781, for appeals in case of allowance or disallowance of wills.

Sections 782, for appeals from decree of distribution, and finally,

Section 783 regulates appeals in other cases affecting settlement of estates.

We also find in section 772 an appeal allowed in cases of adoption and custody of minors.

It will be seen by an examination of these sections the right to appeal is given in every character of special proceedings except the special proceeding of *habeas corpus*. It has not been deemed proper that appeals should be taken in this character of proceeding, as is evident by the failure to make provision for such appeal.

For those wishing to avail themselves of the benefit of *habeas corpus* there would be no necessity of an appeal to the Supreme Court because they have the right to make application direct to the Supreme Court for the issuance of the writ.

It is true that the act of a judge of the Court of First Instance in discharging a defendant committed under sentence of another court, under a mistaken view of the law as to jurisdiction, might be quite serious, but the legislative power has not seen proper to provide the Government with the remedy of appeal in such cases and we can not furnish one.

The appeal in this case is therefore dismissed with costs *de officio*.

Arellano, C. J., Torres, Smith, Willard, Mapa, and Ladd, JJ., concur.