

SUPREME COURT OF LOUISIANA

No. 97-CC-1718

IN RE: HOWARD MARSHALL
CHARITABLE REMAINDER ANNUITY TRUST

LEMMON, J., Concurring

The lower courts erroneously treated the jurisdiction issue in this case as one of subject matter jurisdiction. There is no doubt that the district court in Calcasieu Parish had original jurisdiction over the subject matter of a succession proceeding. La. Const. art. V, §16(A). The proper objection should have been lack of jurisdiction over property under La. Code Civ. Proc. art. 8, since a succession proceeding is essentially a proceeding in rem as to the property of the decedent located within the state.¹ See 1 Robert A. Casad, Jurisdiction in Civil Actions §3.06 (1991). Inasmuch as the basis for filing the succession of a Texas domiciliary in Louisiana was the assertion that

¹The jurisdiction articles in the Code of Civil Procedure do not expressly cover succession proceedings. La. Code Civ. Proc. art. 2811 is a venue article, specified by Article 2811 as a provision for venue which is not waivable, and does not provide the basis for jurisdiction.

succession property was located in this state, then the proper jurisdictional inquiry apparently would be under La. Code Civ. Proc. art. 8. Because the property which was the basis for asserting jurisdiction had its situs in Texas, the Louisiana action was properly dismissed.