

1 Phil. 515

[ G.R. No. 989. November 28, 1902 ]

**JOHN GRUINDROD, PLAINTIFF AND APPELLANT, VS. LIZARRAGA HERMANOS,  
DEFENDANT AND APPELLEE.**

**D E C I S I O N**

**WILLARD, J.:**

This is a motion to dismiss the bill of exceptions on the ground, among others, that the resolution excepted to is not a final judgment.

Article 123 of the Code of Civil Procedure is as follows:

“No interlocutory or incidental ruling, order, or judgment of the Court of First Instance shall stay the progress of an action or proceeding therein pending, but only such ruling, order, or judgment as finally determines the action or proceeding; nor shall any ruling, order, or judgment be the subject of appeal to the Supreme Court until final judgment is rendered for one party or the other.”

Article 143 says: “Upon the rendition of final judgment disposing of the action, either party shall have the right to perfect a bill of exceptions.”

The resolution excepted to orders: “That the judgment of the said Superior Provost Court in this case be set aside and that the action be placed on the calendar of the Court of First Instance of Iloilo for a new trial.” This determination, so far from finally disposing of the case, expressly held that there had been no final judgment therein, and retained it for a new trial. (Francisco M. Go-Quico vs. Municipal Board of Manila.)

The motion is granted and the bill of exceptions dismissed, with costs against the appellant. It is so ordered,

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

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