

**EUFENIO JUSTO, ET AL., PLAINTIFFS AND APPELLANTS VS.
EUTROPIA C. HERNANDO, ET AL., DEFENDANTS AND APPELLEES.**

G. R. No. L-3415. June 11, 1951

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This case was appealed directly to this Court by the appellant for the reason that he is raising only a question of law. The appellee in his brief raises questions of fact, particularly disputing the finding of the trial court that the lands in question were already private lands, owned by the plaintiffs-appellants, at the time of the application for and the issuance of the Free Patent. The question to be determined is whether this appeal is to be decided in this Court, confining the issue between the parties only to the question of law raised by the appellant, or whether to consider the issue as extending to the questions of fact raised by the appellee, in which case, the appeal should be referred to the Court of Appeals.

One view of the case is that inasmuch as the appellee has not appealed from the decision to raise questions of fact, neither did he object to the appeal being taken directly to the Supreme Court where only questions of law are considered, he has waived his right in this regard. The other view which we favor as more practical and more in accord with justice and equity, is that an appellee who obtains a favorable judgment is not called upon to appeal and attack a decision that favors him; neither is he in a position to decide which Court he wants the appeal of the appellant to go to,—to the Court of Appeals or to the Supreme Court, until he (appellee) has read the brief of said appellant and apprised himself of the issues raised, the arguments adduced, and the chances of having the decision appealed from, reversed or modified on those issues and arguments alone. And if an appellee were to play safe in every case and insist that every appeal taken by an appellant on purely questions of law, be taken to the Court of Appeals, where the appellee could, if necessary later raise questions of fact, in order to sustain the judgment, that would imply undue delay, and also much work on the part of the stenographers in transcribing their notes, especially if the oral evidence is voluminous, only to discard and disregard all that evidence and work, should the appellee after reading the brief for appellant decide not to raise questions of fact, thereby resulting in the appeal being certified by the Court of Appeals to the Supreme Court.

In view of the foregoing, and because the present appeal involves questions both of law and fact, let the present case be sent to the Court of Appeals for consideration and decision.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo and Bautista Angelo, JJ., concur.

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