

JOSE VELASCO ET AL., PLAINTIFFS AND APPELLANTS, VS. HARRY ROSENBERG ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 10118. January 07, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is a motion made by an intervener for the dismissal of the appeal taken by the plaintiffs against a judgment of the Court of First Instance in favor of said intervener.

The motion is founded on the fact that there have been two decisions of the Court of First Instance of the city of Manila touching the subject matter involved in this appeal. both judgments finding in favor of the intervener, but one of them appealed from and the other unappealed from and not only final but fully executed.

The motion is to dismiss on the ground that one of the judgments having been fully executed, the appeal from the other can have no force or effect whichever way the appeal may be decided by this court. The argument, therefore, is that where an appeal can have no result which is effective with regard to the subject matter involved, it is idle and useless and should be dismissed.

We are not inclined to take this view of the matter. The grounds on which an appeal may be dismissed are well settled. They do not include matters which go to the merits of the cause or to the right of the plaintiff or defendant to recover. Nor do they involve the sufficiency of pleadings or defenses, or the kind or sufficiency of pleas made in the court below. Motions to dismiss appeals are based on lack of jurisdiction of the appellate tribunal or failure to observe the law or rules relating to appeals or for causes arising subsequent to the judgment from which the appeal is taken. If, when the case arrives in this court, there is no actual controversy, the appeal will be dismissed on motion. It is not within the province of the appellate court, for example, to decide abstract or hypothetical questions distinct from the granting of actual relief or from the determination of which no practical result can follow. Nor will an appellate court consider a fictitious case submitted merely for the purpose of testing the right to do a particular thing. Therefore, if, pending an appeal, an event occurs which renders it impossible for the appellate court to grant any relief, the appeal will be dismissed no matter whether such condition arise from the act of the appellant or from the act of the appellee; and the result will be the same if the same condition arise from an act of the court a quo, as where, pending appeal, some order or judgment issued in the case renders the determination of the questions presented by the appeal unnecessary. Such a condition may arise also by act of the law or by mere lapse of time, as where, pending an appeal from an order of the court in a case involving an infringement of a patent, the acts or tenure of a public or election officer, or other matter, the patent expires, the official term comes to an end, the election is held, or an order of the court is executed. Similarly where a litigation has ceased to be between parties having an adverse interest, the appeal will be dismissed; and where all substantial interest in the controversy has been parted with or extinguished, the court will not hear the appeal simply to determine the right to costs.

It should be noted, however, that the case before us is not of this character. Here two judgments involving the

same subject matter were obtained before different judges in the Court of First Instance of Manila. The first was secured in an action of replevin to recover possession of certain personal property or its value among which were six horses which an intervener in the action, one S. M. Berger, alleged belonged to him and not to either of the parties to the action. In that action Jose Velasco and others were plaintiffs and Harry Rosenberg and Rosenberg's Inc. were defendants. The second judgment was rendered by another judge in an action by the sheriff against S. M. Berger, Jose Velasco, and Rosenberg's Inc. to determine, among other things, the rights of the defendants to the proceeds arising from the sale of the six horses already referred to which had been seized and sold by him as the property of the defendant, Rosenberg's Inc., and which had been claimed by the intervener in the first action, Berger, as his property by virtue of a chattel mortgage which he held on the said horses.

The parties had ample opportunity in the second litigation to interpose the plea of res judicata but they neglected to do so. Such a plea is one requiring procedure necessary to develop the issue presented by the plea and the answer thereto, the production of evidence relative to such issue and the resolution of the question upon the facts as well as the law.

We do not regard the facts stated as a sufficient basis for a motion to dismiss the appeal. They leave us in doubt with respect to many of the substantial inquiries which ought to be made and settled before the appeal should be dismissed.

The motion is denied.

Arellano, C. J., Torres and Araullo, JJ., concur.

Johnson, J., concurs in the result.

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