

BITA DAIS ET AL., PETITIONERS, VS. HONORABLE LEONARDO GARDUFTO, JUDGE OF THE SEVENTEENTH JUDICIAL DISTRICT, AND JOSE ALTAVAS, RESPONDENTS.

G. R. No. 25523. July 29, 1926

Ponente: OSTRAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-25523/>

OSTRAND, J.:

This is a petition for a writ of mandamus to compel the respondent judge to admit an appeal interposed in a probate case by the petitioners.

It appears from the record that the respondent Altavas under the date of January 14, 1924, filed a motion in the intestate proceedings of Serapion Dais, Civil Case No. 988 of the Court of First Instance of Capiz, asking that the administrator of the estate be ordered to pay him the sum of P5,000 in settlement of his fees for legal services rendered and to be rendered in the said intestate proceedings and in Civil Cases Nos. 1672, 1673 and 1674 of the same court. Upon hearing of the motion the court on January 26, 1924, Judge Salas presiding, issued an order in which the principal disposing clause reads as follows:

"Pot el presente el Juzgado aprueba la cantidad de P5,000 que la administration debe pagar al Sr. Jose Altavas por sus trabajos hechos hasta la fecha, y entendiendose que estos P5,000 cubren los honorarios del Sr. Altavas hasta la terminacion de las causas pendientes hoy ante este Juzgado Nos. 1672, 1673 y 1674."

Under the date of January 20, 1925, Judge Abeto, then presiding over the Capiz court, upon motion of the respondent Altavas for immediate payment of the fees, issued an order in which he, among other things, said:

"* * * los honorarios del abogado Sr. Altavas si bien es verdad que han sido fijados y aprobados ya por el Juez que presidia entonces este Juzgado Hon. Fernando Salas en P5,000, pero dicha cantidad representa los honorarios de dicho abogado por todos los servicios que el mismo ha prestado y ha de prestar en lo futuro, tanto en el abintestato hasta cerrarlo por completo, como en las tres causas civiles en que dicho abintestato esta interesado pendiente aun ante este Juzgado, y que todavia no han sido terminadas. Dichos honorarios, por tanto, aun cuando estan ya fijados, no, deben ser pagados en su totalidad por ahora por cuanto que el abintestato continua aun abierto y los asuntos que se mencionan en la orden dictada por el Hon. Fernando Salas obrante a folios 490-492 todavia estan pendientes. El abogado Sr. Altavas puede no obstante cobrar una porcion de los honorarios, por los servicios ya prestados a cuenta de dichos P5,000, y el Juzgado estima que por ahora debe abonarse, como por el presente asi se ordena al administrador, el pago de la cantidad de P1,500 a cuenta de dichos honorarios."

On November 28, 1925, the same judge, on motion of the respondent Altavas, issued another order, in which the dispositive clause reads as follows:

"Por el presente se autoriza al administrador para que pueda vender en publica subasta o en privado los bienes que se describen en el escrito presentado por el administrador obrante a folios 591-592 de este expediente, cuyos bienes constituyen las parcelas tercera, decima e undecima del inventario. La venta hecha por el

administrador no podra tener su efecto sin la aprobacion del Juzgado, debiendo por lo tanto el administrador someter a este, en cuanto encuentre un comprador, el report de sus gestiones y la escritura de venta para la debida aprobacion del Tribunal antes de que dicha venta surta, sus efectos."

To this order the herein petitioners excepted, alleging that it was contrary to law and issued without jurisdiction, and asked for a reconsideration and new hearing. On January 11, 1926, the respondent judge, who in the meantime had been appointed judge of the district, denied the motion for reconsideration and ordered that the administrator proceed immediately with the sale of the parcels mentioned in the order of November 28, 1925. On January 28, 1926, the herein petitioners filed an exception to the order of January 11th and gave notice of their intention to appeal from that order as well as from that of November 28th, requesting at the same time that the court fix the amount of the appeal bond. This motion was denied on February 6, 1926, the court refusing to fix the appeal bond and to admit the appeal interposed by the petitioners, on the ground that the orders of November 28, 1925, and of January 11, 1926, were merely interlocutory and not appealable.

The petition in the present case was filed on February 26, 1926. In the meantime, on February 15th the parcels designated in the orders from which the petitioners sought to appeal were, without further notice to said petitioners, sold by private sale for P4,000, and on the following day the proceeds of the sale were paid over to the respondent Altavas, who thereupon on May 17th moved the dismissal of the present proceedings on the ground that, in view of the sale of the property and the payment made to him, the matters at issue had become moot questions.

The granting of this motion is opposed by the petitioners on the ground that if it is decided that the payment to the respondent Altavas of the proceeds of the sale was improvidently made, the money may be ordered refunded. This point is well taken and the motion for a dismissal of the present proceedings must therefore be denied.

The principal question to be determined is, whether the appeal from the orders of November 28, 1925, and January 11, 1926, was premature. If, as held by the respondent judge, the orders are to be considered as merely interlocutory, the appeal must await the final determination of the question to which the orders relate; if they were not interlocutory, the appeal must be admitted.

An interlocutory order is one which does not of itself definitely settle or conclude any of the rights of the parties to the action. Applying this test it is clear that the orders here in question were not of that kind; if carried out they would operate to divest the estate of important property rights and amount to a final determination of these rights.

The court below may possibly have been misled by the provision in section 123 of the Code of Civil Procedure, that no ruling, order or judgment shall "be the subject of appeal to the Supreme Court until final judgment is rendered for one party or the other." This provision applies to ordinary civil action, but that it cannot be accepted literally in regard to probate proceedings, is best shown by the extensive provisions for special appeals contained in sections 773 to 783 of the same Code.

The failure to admit the appeal in the case in question may in the end lead to unfortunate results. In the order of January 26, 1924, the fees of the respondent Altavas were fixed at P5,000 with the understanding that this amount would be considered full compensation for his services until the termination of the cases mentioned in the order and still pending. The respondent maintains that the word "termination" as employed in the order meant the termination in the trial court only, and that the amount allowed did not cover fees for services on appeal. We do not think this contention can be sustained. The order does not in any manner limit or qualify the word and it can therefore only have one meaning, namely, the final determination of the litigation. The respondent Altavas took no exception to the order and accepted partial payments under it; he can therefore not now be heard to say that it did not express the true intent of the parties and of the court. No provision was made for prepayment of fees and it

can therefore not be argued that they were due until after the services were rendered. Notwithstanding the fact that so far there appears to have been no complete termination of the litigation in any of the cases referred to, the respondent has nevertheless been paid practically his entire fee, and in order to satisfy his claim the court has authorized the sale of real property pertaining to the estate. Whether such sale would have been necessary if the payment had been deferred until the fees were due, we do not know; if the cases pending are terminated favorably to the estate, the amounts recovered may perhaps be sufficient for the payment of the fees, or the greater part thereof, and the sale of land may prove to have been unnecessary.

For the reasons stated, the petition for a writ of mandamus is granted, and it is ordered that the respondent judge fix the amount of the bond for the petitioners' appeal in the intestate proceedings of the deceased Serapion Dais, Civil Case No. 988 of the Court of First Instance of Capiz, and that upon filing and approval of such bond, said appeal be admitted.

It is further ordered that the respondent Jose Altavas turn over to the clerk of the Court of First Instance of Capiz the sum of P4,000, the amount of the proceeds of the sale of the real property above mentioned and paid to him by the administrator on February 16, 1926, said sum to be held in deposit by said clerk until the termination of the litigation aforementioned.

It is further ordered that the administrator of the estate of the deceased Serapion Dais be not discharged before the termination of the pending litigation relating to the estate and the payment to the respondent Altavas of such fees as may then be due him.

The respondent Altavas shall pay the costs of these proceedings.

Avanceña, C. J., Street, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

RESOLUTION ON MOTION FOR RECONSIDERATION.

August 23, 1926

Considering the motion for reconsideration presented by the respondent Jose Altavas in case R. G. No. 25523, Rita Dais et al. vs. Honorable Leonardo Garduno, et al., and it appearing that the cases in which he is counsel representing the estate of the deceased Serapion Dais are now approaching their final determination, it is hereby ordered that part of the dispositive clause in our decision in the present case promulgated July 29, 1926, in which it is ordered that said respondent turn over to the clerk of the Court of First Instance of Capiz the sum of P4,000, be, and the same is hereby, modified to the extent of permitting said respondent, in lieu of immediate payment, to file a bond with sufficient surety with the clerk of the Court of First Instance of Capiz, conditioned upon payment to said estate of said sum of P4,000, or any part thereof whenever ordered to do so by the Court of First Instance in the probate proceedings of the estate.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.