

H. E. HEACOCK COMPANY, PLAINTIFF, VS. AMERICAN TRADING COMPANY, DEFENDANT.

G.R. No. 31851. September 06, 1929

Ponente: JOHNS, J.

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JOHNS, J.:

There is no objection to the bills of exceptions tendered either as to form or substance, and after an exhausted hearing, the lower court refused to certify them on the sole ground that no final judgment had been rendered in either case. As a result of which, these petitions were filed in each case in which it is prayed that a writ of mandamus issue, directed to the Judge of the lower court, commanding him to sign and certify the bills of exceptions which are incorporated in, and made a part of, the respective petitions.

Both parties filed exhaustive brief in the lower court and in this court and, as stated, the only question presented involves the construction of section 123 of the Code of Civil Procedure, which 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."

The court rendered the following judgment:

"Wherefore, judgment is rendered in favor of H. E. Heacock Co., and Wm. A. Rogers, Ltd., and the American Trading Co. are ordered:

"(a) To render an accounting, within thirty days, of the profits or gains which they have obtained from the importation and sale in the Philippine Islands of the silverware and flatware bearing the trade-mark 'Rogers' and other symbols or marks, from the time they engaged in said business up to this date;

"(b) To pay to the aforesaid plaintiff a sum of money equal to the gains or profits that they had obtained from said business; and

"(c) To forever abstain from importing and selling within the Philippine Islands silverware and other articles similar to those which the plaintiff is importing and selling and which bear as a trade-mark or trade name the word 'Rogers'.

"The complaint filed by Wm. A. Rogers, Ltd., and American Trading Co. in civil case No. 32956, as well as their counterclaim interposed in the other case, is dismissed, and the writ of preliminary injunction issued at the instance of said parties, is declared without force and effect. Wm. A. Rogers, Ltd., and the American Trading Co. furthermore, are to pay the costs of both actions. So ordered."

Construing the pleadings of the respective parties, it must be conceded that the primary purpose of both actions was to judicially ascertain and determine who was the true owner of the trade-mark in question, and which party had the exclusive right to the use of the trade-mark in the Philippine Islands. That is to say, if H. E. Heacock

Company was the true owner and had the exclusive right to use the word "Rogers" in the Philippine Islands, and that the American Trading Company was infringing upon its trade-mark, then it would follow that H. E. Heacock Company would be entitled to a judgment that it was the owner of the trade-mark and the right to its exclusive use, and to an injunction against the American Trading Company from interfering with its business. On the other hand, if the word "Rogers" is a family name, and that all silverware and flatware imported by the defendant American Trading Company was manufactured by Wm. A. Rogers, Ltd., in the United States, and that the trade-mark appearing thereon had been duly registered in the Patent Office of that country in accordance with the Acts of Congress as alleged, and the American Trading Company is the local agent of the manufacturer Wm. A. Rogers, Ltd., then it would follow that they would have grounds for complaint against the use of their trade-mark by H. E. Heacock Company, and to have such use prohibited. That is to say, the real and important question involved under the pleadings is as to who is the owner and entitled to the use of the trade-mark in the Philippine Islands. In legal effect, the lower court held that it was the H. E. Heacock Company, and enjoined the American Trading Company to forever abstain from importing and selling any silverware within the Philippine Islands which bears the trade-mark or trade name of the word "Rogers." That was the primary and fundamental purpose of the suit, and based upon, and as incidental to, that judgment, the lower court ordered that an accounting should be rendered of the profits or gains from the use of the word "Rogers" by the American Trading Company. Hence, the real question presented is whether or not the judgment, as rendered by the lower court, is now final within the meaning of section 123 of the Code of Civil Procedure. It must be conceded that under the early decisions of this court such a judgment is not a final judgment within the meaning of that section. It must also be conceded that its recent decisions on that question are more or less in conflict.

Upon that legal question, Ruling Case Law, vol. 2, p. 41, section 23, says:

"There is an irreconcilable conflict of authority on the question whether a decree, adjudicating all the equities, but reserving for future determination a settlement of accounts between the parties on the coming in of a master's report, is final or interlocutory. The rule which obtains in apparently a majority of the jurisdictions is, that when a decree is rendered settling all the equities, such a decree is final for the purposes of appeal, though a settlement of accounts between the parties is reserved for future determination on the report of the master. In a number of jurisdictions, however, the doctrine is laid down that a decree which reserves for future determination a settlement of accounts between the parties, though adjudicating the equities involved, is an interlocutory decree from which an appeal cannot be taken until the final decree is rendered."

That section is apparently copied from the notes to the decision in *Gray vs. Ames* (220 111., 251) ; *American and English Annotated Cases*, vol 5, p. 174, in which the same language is used, and it is said:

"This rule finds support and illustration in the following cases."

Citing numerous decisions from the Supreme Courts of Alabama and Michigan, and decisions from Arkansas, California, Illinois, Iowa, Maryland, Minnesota, Missouri, Montana, Nebraska, Oregon, and Texas, in which it is said:

"It now appears to be the settled law in Michigan that a decree adjudicating the equities, though reserving for future determination a settlement of the accounts between the parties on report of the master, is final decree for the purpose of appeal."

And among other things, the Supreme Court of Alabama said:

"If the opinion of the chancellor is erroneous, the delay, expense, and trouble attending the ascertainment of the facts preparatory to an account, are unnecessary and profitless."

In this note, it is said that the States of Florida, Kentucky, Mississippi, New York, Ohio, South Carolina,

Tennessee, and Virginia, hold that such a judgment is not final until after the accounting has been made. The note also says the case of *McGourkey vs. Toledo, etc. R. Co.* (146 U. S., 536), in which that court, after reviewing the authorities, laid down this distinguishing rule:

"It may be said in general that if the court make a decree fixing the rights and liabilities of the parties, and thereupon refer the case to a master for a ministerial purpose only, and no further proceedings in court are contemplated, the decree is final; but if it refer the case to him as a subordinate court and for a judicial purpose, as to state an account between the parties, upon which a further decree is to be entered, the decree is not final, * * * But even if an account be ordered taken, if such accounting be not asked for in the bill, and be ordered simply in execution of the decree, and such decree be final as to all matters within the pleadings, it will still be regarded as final."

In the instant case the lower court found, in legal effect, in both cases, that H. E. Heacock Company was the owner and entitled to the exclusive use of the trade-mark or trade name "Rogers" in the Philippine Islands, and that in the selling of these wares the American Trading Company infringed upon its use of that trade-mark, and enjoined it from importing and selling within the Philippine Islands silverware articles similar to those which the plaintiff is importing and selling, and which have as the trade-mark the word "Rogers." In legal effect, that was a judgment on the merits as to the ownership and the right to the use of the trade-mark.

In this kind of a case, in particular, and in accord with the weight of authority, we hold that, under the issues made by the pleadings, the primary purpose in both cases was to ascertain and determine who was the true owner and entitled to the exclusive use of the disputed trade-mark, and that the judgment which was rendered by the lower court was a judgment on the merits as to those questions, and that the order of the court for an accounting was based upon, and is incidental to, the judgment on the merits. That is to say, that the judgment which the lower court rendered was a final judgment within the meaning of section 123 of the Code of Civil Procedure; that in this kind of a case an accounting is a mere incident to the judgment; that an appeal lies from the rendition of the judgment as rendered; and that for such reasons it was the legal duty of the lower court to sign and certify the bills of exceptions as tendered. From our point of view, this is more in harmony with the administration of justice and the spirit and intent of the code. If on appeal the judgment of the lower court is affirmed, it would not in the least work an injustice to any of the legal rights of H. E. Heacock Company. On the other hand, if for any reason this court should reverse the judgment of the lower court, the accounting would be a waste of time and money, and might work a material injury to the petitioner. This decision is in accord with the trend of the opinion of this court in *Africa vs. Africa* (42 Phil., 934). Anything now said must not be construed in the least as an opinion of this court on the merits.

It follows that, in both cases, the writ of mandamus should issue to the lower court to sign and certify the tendered bills of exceptions as prayed for in the petition. Neither party to recover costs. So ordered.

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

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