

VICTOBINO RON ET AL., PLAINTIFFS AND APPELLEES, VS. FELIX MOJICA, DEFENDANT AND APPELLANT.*G. R. No. 3842. August 07, 1907*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-3842/>**TORRES, J.:**

A suit having been brought between the parties in the Court of First Instance of Cavite, the judge in his final judgment of October 31, 1906, decided that the plaintiffs had a right to ask for the partition of the property described in the complaint, and ordered the partition of the property and of the income therefrom since 1900 up to the execution of the judgment, in two equal parts, designating the persons who had a right to participate therein. From this order the defendant excepted and presented to the clerk of this court a bill of exceptions.

The bill having been printed, and a copy thereof, as well as of the answer of the defendant, having been delivered to the plaintiff, the latter filed a written motion asking for the dismissal of the bill of exceptions on the ground that the judgment appealed from is only of an interlocutory and not of a final character, alleging that the case would not be ended by it, and that it would be necessary to institute partition proceedings with commissioners appointed for the purpose, according to whose opinion the judgment would be rendered, as prescribed by sections 184, 188, and 189 of the Code of Civil Procedure. In support of this contention he also cited sections 123 and 143 of the same code, which sections refer to orders and incidental and interlocutory judgment, and to the perfection of the bill of exceptions.

If the right of any co-owner, joint holder, or coheir to require the partition of the property or inheritance, in the form authorized by the law, is undeniable, it is none the less true, that the declaration defining the rights of each of the interested parties appertains to the judge of First Instance of the province in which the property to be partitioned, or some portion thereof, is located. (Sees. 181, 182, 184, 196, Code of Civil Procedure.)

If the parties having a right in the property pro indiviso do not come to an amicable partition between themselves, by means of transfer deeds, with the approval of the judge, which shall be registered in the office of the register of deeds, then three commissioners will be appointed, who, by virtue of an order or judicial decree, and after being duly sworn, will proceed to the partition of the property in the form prescribed by law. (Sees. 184-187, 189-191, Code of Civil Procedure.)

In accordance with the report of the commissioners relating to the partition, adjudication, or sale of the property and division of the proceeds, the judge will render a final judgment on the matter in conformity with the provisions of sections 189 and 194 of the code, which final judgment must be registered in the office of the register of deeds and is appealable to the Supreme Court by a bill of exceptions and in the form prescribed for the ordinary trials. (Sec. 194, Code of Civil Procedure.)

Therefore, in actions of this class, an exception can be taken against any resolution, decree, or order of the court; and although the exception must be noted and must appear in the record, it can neither delay nor suspend the course of the trial until a final judgment is rendered in view of and in accordance with the report of the

commissioners.

Section 123 of the Code of Civil Procedure provides:

"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 party excepting from this final judgment and expressing a desire that the court should admit a bill of exceptions shall present the bill within the period of ten days, including therein a short statement of the facts of the case with the rulings, orders, and judgments excepted to and a specification of each of the exceptions presented during the course of the trial. (Sees. 141-143, Code of Civil Procedure.)

These are the provisions of the law of procedure now in force which are substantially the same as those observed in the Federal courts of the United States and confirmed by the decided cases. For example, the Supreme Court of the United States in the case of *Green vs. Fisk* (103 U. S., 518), in an opinion written by Chief Justice Waite, says:

"In partition causes, courts of equity first ascertain the rights of the several persons interested, and then make a division of the property. After the division has been made, and confirmed by the court, the partition, if in kind, is completed by mutual conveyances of the allotments to the several parties. * * *

"A decree can not be said to be final until the court has completed its adjudication of the cause. Here the several interests of the parties in the land have been ascertained and determined, but this is merely preparatory to the final relief which is sought; that is to say, a setting off to the complainant in severalty her share of the property in money or in kind. This can only be done by a further decree of the court. Ordinarily, in chancery, commissioners are appointed to make the necessary examination and inquiries and report a partition. Upon the coming in of the report the court acts again. If the commissioners make a division the court must decide whether it shall be confirmed before the partition, which is the primary object of the suit, is complete. If they report that a division can not be made and recommend a sale, the court must pass on this view of the case before the adjudication between the parties can be said to be ended.

"In this case a partition by sale was asked for, because the property was not susceptible of division in kind. That the court has not ordered, and the reference to the master was undoubtedly to ascertain, among other things, whether such a proceeding was in fact necessary in order to divide the property. The master was in everything to proceed under the direction of the court. He had no fixed duty to perform. He was the mere assistant of the court, not in executing its process, but in completing its adjudication of the partition which was asked. There are still questions, in which the parties have each a direct interest, and they must be determined judicially before the relief has been granted which the suit calls for. Appeal dismissed."

In accordance with the above cited practice, this court has decided a similar motion in the case of *Margarita Toribio et al. vs. Modesta Toribio et al.*[1] (5 Off. Gaz., 211) regarding the inventory, liquidation of accounts, and partition of estates, which decision has been cited by the appellee in this suit in his motion.

For the reasons already enumerated, it is evident that the judicial order appealed has not the character of a final judgment terminating the action, inasmuch as, according to existing law, some formalities and proceedings are still necessary before the partition of the property can actually be made and the suit ended. Therefore the provisions of section 123 of the Code of Civil Procedure must be applied to this suit, since the judge should not have admitted the appeal with the bill of exceptions.

This conclusion, however, does not affect the right of the appellant to include, if he desires, the exception duly taken from the judgment appealed, in a bill to be presented in due course, for such consideration and decision as

justice may require.

The bill of exceptions presented by the defendant, Felix Mojica, is dismissed, with the costs.

Arellano, C. J., Johnson, Willard, and Tracey, JJ., concur.

[1] 7 Phil. rep.,

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.