

MARCELINA CASAS VIUDA DE RIOSA, PETITIONER, VS. JUAN G. LESACA, JUDGE OF FIRST INSTANCE OF ALBAY, AND ROSENDO RALLA, RESPONDENTS.*G.R. No. 44476. December 09, 1935*

Ponente: RECTO, J.

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This is a petition filed with this court by Marcelina Casas Vda. de Riosa for the issuance of a writ of mandamus against the Honorable Juan G. Lesaca, Judge of the Court of First Instance of Albay, under section 499 of the Code of Civil Procedure.

It appears that the petitioner Marcelina Casas Vda. de Riosa was one of the defendants in civil case No. 4681 of the Court of First Instance of Albay, entitled "Rosendo Ralla, plaintiff, versus Mercedes Bordonada et al., defendants"; that said petitioner was declared in default on January 5, 1934, for failure either to appear or to answer the complaint in the said civil case, which proceeded to trial in her absence; that on April 12, 1934, the Court of First Instance of Albay entered judgment in the aforesaid civil case absolving the defendants, including the petitioner; that on May 7, 1934, the plaintiff in said civil case filed therein a motion asking the court to modify the dispositive part of its judgment by ordering the petitioner to pay said plaintiff the sum of P2,400; that on August 4, 1934, the Court of First Instance of Albay granted the said motion and modified accordingly its judgment of April 12, 1934, by ordering the petitioner to pay the plaintiff in that case the said sum of P2,400; that on August 30, 1934, the herein petitioner asked the Court of First Instance of Albay to set aside the said judgment, as modified, and to reopen the case under the provisions of section 113 of the Code of Civil Procedure; that on December 29, 1934, the Court of First Instance of Albay issued an order denying said petition, of which order the attorneys for the petitioner were notified on January 9, 1935; that on January 17, 1935, the attorneys for the petitioner excepted to the said order and duly filed notice of appeal, and on the 28th following, a bill of exceptions; that the petitioner's notice of appeal and bill of exceptions were filed eight and twenty-one days, respectively, after her attorneys were notified of the order denying her petition to reopen under section 113; that the respondent judge herein, as judge of the Court of First Instance of Albay, has refused to approve and certify the bill of exceptions filed by the petitioner for the purposes of her appeal, alleging that the appeal was filed out of time; that Marcelina Casas has filed the petition at hand under section 499 of the Code of Civil Procedure, praying that this court issue a writ of mandamus, addressed to the respondent judge, requiring him to approve and certify the aforesaid bill of exceptions; and that the respondent judge has answered the petition stating his reasons for not approving and certifying petitioner's bill of exceptions.

The order denying a motion to reopen a case under section 113 of Act No. 190, is final and appealable (Philippine Manufacturing Co. and Government of the Philippine Islands vs. Cabangis, 49 Phil., 107; Philippine Manufacturing Co. vs. Imperial, 47 Phil., 810; Pecson vs. Coronel, 43 Phil., 358; Gustilo vs. Sian, 53 Phil., 155; Samia vs. Medina, 56 Phil., 613; Monteverde vs. Jaranilla, 60 Phil., 297) ; and the procedure provided for in section 143 of Act No. 190, to perfect an appeal in ordinary civil cases, is the same as well when the appeal is

taken from a judgment properly so-called, as when it is taken from a final and appealable order or decree.

Sections 143 and 145 of Act No. 190, before the latter was amended by Act No. 2347, wherein the words "judgment" and "decision" are interchangeably used, provided for only one maximum period within which to file a notice of appeal and a petition for new trial, respectively, in ordinary civil cases, which period in both cases extended "before the ending of the term of court at which final judgment is rendered" (section 143), or "during the term at which an action has been tried" (section 145), from which is deducible the legislator's intention to fix in either case the same period within which to perfect the appeal and to file a petition for new trial, to the end that the judgment should become final upon the expiration of said period.

By the amendment of section 145 of Act No. 190 by Act No. 2347, fixing the period of thirty days within which to file a motion for new trial in ordinary civil cases, the Legislature has intended to put an end to the vagueness, confusion, and uncertainty to which the phrase "during the term at which an action has been tried" used in said section, may give rise, as in fact it has given rise, because the "term system" of procedure and practice of the common law has neither been imported into this jurisdiction nor incorporated in the judicial and procedural system implanted in these Islands (*Arnedo vs. Llorente and Liongson*, 18 Phil., 257). But, while said amendment of section 145 of Act No. 190 was not expressly made to cover section 143 of the same Act, it is to be presumed, however, that the legislative intention thereby was to adopt a uniform criterion on the matter by fixing a single period to file the notice of appeal and bill of exceptions and to ask for a new trial in ordinary civil cases, for there is no reason to believe that the legislator has kept alive in the text of section 143 the uncertain and inconstant period "during the term at which an action has been tried", peculiar to the so-called "term system" of the common law, whereas it has substituted therefor the fixed period of thirty days in section 145, because if this be true, it would result in the anomalous existence, in ordinary civil cases, of two different periods the lapse of which operates to make a judgment final, one, within which to file a petition for new trial, and another, within which to appeal simply from a judgment without asking for a new trial.

The thirty-day period granted by law, after the entry of the judgment, within which to ask for a new trial in ordinary civil cases, operates to keep the judgment from becoming final until after the expiration of said period, enabling us thereby to lay down the rule, in the absence of any statutory provision, that when an appeal is taken from a final and appealable judgment or order, the bill of exceptions may be perfected before the expiration of the thirty-day period when no petition for new trial has been filed (*San Pablo vs. Enage and Abustar*, 53 Phil., 328; *Monteverde vs. Jaranilla*, supra), modifying to this extent the rule laid down in *Layda vs. Legazpi* (39 Phil., 83).

In view of the foregoing, it is our judgment that we must hold, as we do hereby, that the appeal of Marcelina Casas Vda. de Riosa in civil case No. 5681 of the Court of First Instance of Albay was interposed in due time, and that a writ of mandamus should issue, addressed to the respondent judge, requiring him to sign and certify the bill of exceptions, as attached to the petition, filed by the petitioner in the aforesaid civil case. The costs of this proceeding should be taxed against the respondent Rosendo Ralla.

Avanceña, C.J., Malcolm, Villa-Real, Abad Santos, Hull, Vickers, Imperial, Butte, Goddard, and Diaz, JJ., concur.

Writ granted.

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