

**EL BANCO ESPANOL-FILIPINO, PLAINTIFF, VS. ALEJANDRO AMECHAZURRA, DEFENDANT.***G.R. No. 4572. August 27, 1908*

Ponente: WILLARD, J.

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The plaintiff brought this action in the Court of First Instance of the Province of Occidental Negros to foreclose a mortgage upon real estate. The proceedings in the action were evidently had in accordance with the provisions of sections 254 and following of the Code of Civil Procedure. Final judgment was entered therein on the 19th day of September, 1907, for the sum of P52,628.02, and interest thereon from the 12th day of August, 1907, and for P2,000, costs and expenses of the suit, and the judgment ordered that if this amount was not paid on or before the first day of the next term of court, the property be sold in accordance with law. No appeal was taken by the defendant from this judgment, and on the 27th day of December, 1907, a part of the property in question was sold to Felipe Benedicto for P53,000.

On the 9th of January, the plaintiff made a motion to have the sale set aside and a new sale ordered on the ground that the purchaser had refused to pay the purchase money for the reason that, by a mistake of the acting clerk of the court, part of the property mortgaged had been omitted from the sale. The defendant did not appear at the hearing of the motion and the same was granted and a resale ordered. Later in the same day the defendant appeared and moved that the order vacating the sale be set aside. This motion was denied and to that ruling the defendant excepted. He afterwards presented a bill of exceptions, whereupon the judge made the following order:

"For the reasons already set forth, this court upholds the order for the resale of all the mortgaged property and denies the appeal filed by the defendant; the court, however, has no objection to an appeal upon the filing by the defendant of a bond for the amount claimed and adjudged in these proceedings."

The defendant did not furnish the security mentioned within the time fixed therefor, and has now made an application to this court under article 499 of the Code of Civil Procedure for an order compelling the judge to sign the bill of exceptions. The judge has stated his reasons for not signing the bill, and the case is now before us for determination of the question thus presented.

1. Section 141 of the Code of Civil Procedure provides that certain rulings upon minor matters shall not be subject to exception, and says, "but exception may be taken to any other ruling, order, or judgment of the court made during the pendency of the action in the Court of First Instance;" while section 143 provides that "upon the rendition of final judgment disposing of the action, either party shall have the right to perfect a bill of exceptions for a review by the Supreme Court of all rulings, orders, and judgments made in the action, to which the party has duly excepted at the time of making such ruling, order, or judgment."

We do not think that this was intended to limit the time when an exception might be taken to the period before final judgment. No such limitation is found in express terms in section 141. In proceedings for the enforcement or collection of a judgment, questions may arise which will call for rulings by the court upon important matters. It

can not have been the intention of the code to have prohibited entirely a review of these questions in the Supreme Court and to make the decisions of the Court of First Instance final upon all points that might arise in the via de apremio. We accordingly hold that the defendant had a right to except to the order of the court directing a resale.

2. The next question to be considered is, When should that exception be brought to this court for review?

Section 123 of the code provides as follows:

"\* \* \* 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."

Final judgment upon the merits of this case had already been entered when this exception was taken. After the final judgment there still remains its execution. In the proceedings therefor there are various steps. In an action to foreclose a mortgage the last step is the order confirming the sale. Section 257 says:

"\* \* \* The sale when confirmed by decree of the court, shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser. Should the court decline to confirm the sale, for good cause shown, and should set it aside, it shall order a resale in accordance with law."

Until a sale has been finally confirmed, we do not think that the proceedings for the execution of<sup>1</sup> the judgment can be said to have terminated, and, applying by analogy the rule of section 123, we hold that exceptions taken by the plaintiff or the defendant in the original action, after the judgment and before the decree of confirmation, can not be brought here for review until such decree has been entered. Whether the same rule would apply to an exception taken by the purchaser at the sale in case it were set aside against his protest, we need not now determine.

Nor do we determine what would be the rule in a case other than one for the foreclosure of a mortgage. It follows from what has been said that the court below is not now required to sign the bill of exceptions presented, but after a resale has been had and that has been confirmed, the defendant will then be entitled to present and have allowed his bill, containing all the exceptions taken by him after the final judgment. The defendant is not entitled to the relief asked in this proceeding. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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