

THE INSULAR GOVERNMENT, PLAINTIFF AND APPELLANT, VS. THE ROMAN CATHOLIC BISHOP OF NUEVA SEGOVIA, DEFENDANT AND APPELLEE.

G.R. No. 6054. December 10, 1910

Ponente: CARSON, J.

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CARSON, J.:

This is a motion to dismiss an appeal taken from an order of the Court of Land Registration, vacating a part of a prior order wherein that court declared certain lands to be public lands by virtue of proceedings had under the provisions of Act No. 627 and its amendments.

The motion to vacate in the court below was made in the original proceedings wherein the vacated order was entered, and the vacating order merely vacated a part of the former order, without making any further disposition of the case. The precise question submitted to this court for decision is whether the vacating order thus entered was a final order subject to appeal, or whether it was a mere interlocutory order, and as such not subject to appeal. We are not called upon, at this time, to consider the legality or validity of that order, or to determine whether it was or was not properly entered under all the circumstances of the case.

In the case of *Go-Quico vs. The Municipal Board of Manila* (1 Phil. Rep., 502), one of the early cases decided by this court, we sustained a motion to dismiss the appeal on the ground that the order from which the appeal had been taken was not a final one, and after discussing the not altogether uniform rulings of the American cases, we said (p. 508):

"In considering the American authorities it must be borne in mind that probably no one of the statutes therein construed contained such strong provisions against appeals from interlocutory resolutions as are found in our article 123. The evils resulting from such appeals under the *Ley de Enjuiciamiento Civil* were well known. It was to cure such evils that this article was adopted. It expressly prohibits appeals not only from interlocutory orders, but also from interlocutory judgments. This prohibition is reiterated in article 143, which says: 'Upon the rendition of final judgment disposing of the action either party shall have the right to perfect a bill of exceptions.'"

Since that time this court has strictly and uniformly adhered to the doctrine enunciated in the case just cited, and indeed an examination of the decisions will disclose that we have steadfastly denied the right of appeal from rulings, orders, and judgments of the lower court until final judgment has been rendered for one party or the other, and have construed the term final judgment in this connection in its strictest sense, as a judgment completely disposing of, and finally determining the action or proceeding wherein it was entered.

It seems quite clear that the vacating order in the case at bar did not make a final disposition of the proceedings wherein it was entered. Those proceedings were originally had in accordance with the provisions of Act No. 627 and its amendments, for the purpose of securing a judicial declaration that certain lands are public lands, and when the original order, which if not appealed or vacated would have finally disposed of those proceedings, was

in part vacated in a motion made in those very proceedings, they were left, pro tanto, in precisely the condition in which they were before that part of the vacated order was entered. There was thereafter no final judgment, order, or decree of the court in existence which disposed of or terminated that part of the original proceedings affected by the vacated order, and accordingly it was the duty of the court, upon motion or otherwise, to go forward with the proceedings until it had entered a "proper judgment, order, or decree, making a final disposition thereof. It is not necessary for us to consider whether, under the circumstances, further proceedings in the nature of a new trial were necessary before a final judgment, order, or decree could or should have been entered; it is sufficient for our purposes to say that until the court below had made some final disposition of the matters left undecided as a result of the entry of the vacating order, the action of the court below could not be brought here for review upon appeal.

Black in his work on Judgments, volume 1, paragraph 34, points out that a distinction is to be made between an independent action brought (under particular statutes authorizing such actions) for the purpose of vacating a former judgment between the same parties and procuring a new trial of the action and a case wherein the application comes in the form of a motion made in the same cause. In the former class of cases it has frequently been held that a judgment granting the relief asked for is final and appealable, because "the issues in the independent suit having been determined and the relief accorded, the decision puts an end to that controversy." (McCall vs. Hitchcock, 7 Bush, 615; Belt vs. Davis, 1 Cal., 134; State vs. Allen, 92 Mo., 20, 4 S. W. Rep., 414) ; and similar reasoning seems to have led to a like conclusion where the method of seeking relief was by the ancient writ of audita querela, which was a regular suit with its usual incidents, pleadings, issues of law and fact, trial, judgment, and error. (Fitch vs. Scovel, 1 Root, 56; White vs. Clapp, 8 Allen, 283; Gordonier vs. Billings, 77 Pa. St., 498.)

But in those cases where the application comes in the form of a motion made in the same cause, an order vacating the judgment is not a final appealable judgment, since, as we have seen, the effect is to leave the cause open for further proceedings before the final judgment or decree can be entered. (McCulloch vs. Dodge, 8 Kan., 476; Higgins vs. Brown, 5 Colo., 345; Brown vs. Edgerton, 14 Neb., 453, 16 N. W. Rep., 474.)

Counsel for appellant cites in support of his contention the cases cited in Freeman on Judgments, volume 1, paragraph 18; but these cases as well as the text in support of which they are cited will be found to deal with vacating judgments rendered in separate actions brought to vacate a judgment in a former action or proceeding; and Freeman in paragraph 32 (c) of the same work cites many cases in support of his text which there sustain the general doctrine as laid down herein.

After ten days let judgment be entered dismissing this appeal with costs against the appellant, and twenty days thereafter let the record be returned to the court below. It is so ordered.

Arellano, C. J., Torres, Mapa, Johnson, Moreland, and Trent, JJ., concur.

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