

1 Phil. 322

[G.R. No. 553. August 09, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MARTIN PEREZ,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The judgment in this case condemning the defendant to six months of *arresto mayor* and a fine of 6,250 pesetas was rendered on the 20th of November, 1901. The time to appeal from it expired on the 5th day of December. The appeal was not taken until the 9th of December. It must, therefore, be dismissed.

The case can not be affected by the facts connected with the defendant's attempt to have the case reopened. He first moved for this relief on the 21st of November. This motion was denied on the 26th of November without prejudice to the right of the defendant to renew it. It was renewed on December 2 and was undecided on the 5th day of December, when the time to appeal expired. The motion was determined on the 9th, and on the same day the appeal was taken from the judgment. The case of *United States vs. Flemister*, just decided, lays down the rules which govern proceedings under article 42 of General Orders, No. 58. It is there held that such a motion must be heard and decided before the time to appeal from the judgment expires, and that the pendency of such a motion does not extend the time to appeal from the judgment.

There can be no doubt but that the judgment in this case was the resolution of the court entered on November 20, and not the order of December 9, denying the motion to reopen the case. General Orders, No. 58, was ingrafted unto the then existing Spanish proceedings as is expressly stated in the preamble. Under that procedure it was well understood that the judgment was that document which, after reciting the facts proved, the claims of the attorneys, and the conclusions of law, pronounced the punishment which the defendant must suffer. The words "final judgment" in General Orders, No. 58, refer to this

determination. This is made clear by the provisions of articles 44 and 47, which provide for an appeal from a final judgment or from an order made after judgment. Both distinguish between a final judgment and an order, such as the one of December 9, made after final judgment. In this case the appeal is plainly stated to be from the judgment, and it was too late. Even if it had been from the order, it would not avail the defendant; that order, having been made after the judgment below became *firme*, was void. (*United States vs. Flemister, supra.*) To have it so declared would not help the defendant.

The appeal is dismissed with costs of this instance *de officio*.

Arellano, C. J., Torres, Cooper, and Ladd, JJ., concur.

Mapa, J., did not sit in this case.
