1 Phil. 508

[G.R. No. 1084. November 26, 1902]

JOHN FISCHER, PETITIONER, VS. BYRON S. AMBLER, JUDGE OF COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

D E C I S I O N

LADD, J.:

This is a petition under section 499 of the Code of Procedure to compel the respondent, a judge of the Court of First Instance of the city of Manila, to sign and certify a bill of exceptions. The petitioner was the defendant in the action of Sparravohn vs. Fischer, in which judgment was rendered in favor of Sparravohn on the 15th of July, 1902. It is alleged in the petition, and admitted by the answer, that an exception was taken to the judgment by the petitioner on the 28th of July, and that subsequently during the same term a bill of exceptions was presented to the judge. The judge refused to sign this bill of exceptions, and in his answer to the petition he alleges as his reason therefor "that there were no exceptions whatever taken by the defendant, John Fischer, in the said case of Fred Sparravohn vs. John Fischer at any time during said trial," and that the exception taken to the judgment "was not taken forthwith, as provided by law, and not until thirteen days after the rendition of the judgment, and then not as provided by law, as said defendant filed a paper in court stating that he excepted, and excepted in no other manner whatever."

Under the Code of Procedure the only mode in which a party to an action can invoke the appellate jurisdiction of this court for the purpose of obtaining a review of an adverse ruling, order, or judgment, is by perfecting a bill of exceptions. (Sec. 143.) A refusal by the judge to sign the bill on the ground that the exceptions were not taken in due time or in due form is in effect a dismissal of the appeal. Whether a party has lost his right of appeal by his failure to comply with the requirements of the Code in these respects is a question of law, the final determination of which could logically rest with this court as a consequence of its possession of appellate jurisdiction, for if it were otherwise the trial court would have the

power, by an erroneous determination of the question, to render the right of appeal in any given case altogether illusory. We think this is what is intended by the Code. Its provisions are not explicit to that effect, but we are of opinion that section 500, which regulates the whole subject of the dismissal of bills of exceptions, clearly contemplates that all questions as to whether there has been a "compliance with the law prescribing the method of bringing actions into the Supreme Court," shall be determined here, and not in the trial court.

A convenient course, in cases where exceptions have in fact been taken, will be for the trial court to settle and certify a bill of exceptions, embodying all the exceptions taken, and stating such facts as may be necessary in order to enable this court to pass upon the question whether they were taken in compliance with the provisions of the Code. Section 142 of the Code provides that "the party excepting to the ruling, order, or judgment shall forthwith inform the court that he excepts to the ruling, order, or judgment." The word "forthwith," as here used, means within a reasonable time, which may be a longer or shorter period, according to the circumstances of each particular case. (13 Am. and Eng. Enc. of Law, 1157-1158.) Whether under the circumstances of this case a delay of thirteen days was unreasonable will be determined, if necessary, upon a motion to dismiss.

We do not understand that the bill of exceptions presented by the petitioner contained any other exception than that taken to the judgment. As the answer of the respondent admits that such an exception was taken, and as the truth of the bill of exceptions tendered does not appear to be denied in the answer, except as respects the question whether the exception was duly taken, an absolute mandamus should issue directing the respondent to sign and certify the bill of exceptions presented by the petitioner, adding thereto such facts as he may deem necessary in order to properly present the question whether the exception was duly taken. (Gonzaga vs. Norris, decided August 26, 1902.) If, however, such bill of exceptions is incorrect in any particular the respondent may, within ten days from notice of this order, make further answer to the petition, and the case is retained for the determination of any questions which may arise on such answer.

Arellano, C. J., Torres, Smith, Willard, and *Mapa, JJ.,* concur.

CONCURRING

COOPER, J.:

The appellate court has exclusive power to construe the extent of its own jurisdiction. The inferior court has, accordingly, no power to decide whether an appeal lies in a particular case or whether the requirements of appellate procedure have been properly complied with. (2 EnCL. P1. and Pr., 24)

Does section 142 of the Civil Code of Procedure apply to an exception taken after the trial to a final judgment?

The section reads as follows:

"The party excepting to the ruling, order, or judgment shall forthwith inform the court that he excepts to the ruling, order, or judgment, and the judge shall thereupon minute the fact that the party has so excepted, but the trial shall not be delayed thereby. The exception shall also be recorded by the stenographer, if one is officially connected with the court." This section evidently was intended to apply to rulings made by the court in the progress of the trial, as is shown by the wording of the statute. The reason why the exception should be taken "forthwith" is because such objections are orally made, and the grounds of the objection, the circumstances under which the ruling was made, and the ruling itself, rest only within the memory of the judge, and the exception should be made at the very time of the ruling in order that some memorandum or minute may be made to preserve it. It is notice to the court that the party taking it reserves for the consideration of the appellate court the ruling which he deems erroneous. This reason will not apply to a case where the exception is made in writing to the judgment.

It is my opinion that section 142 does not apply to this case.

If this section is not applicable there has been no particular time prescribed by a statute for the taking of the exception to the judgment, and in the absence of a fixed time the exception should be made within a reasonable time, which, in this character of case, would probably be held to mean at some time after the judgment and before the preparation and presentation of the bill of exceptions to the judge for his approval and signature.

I do not concur in the definition given to the word "forthwith" used in section 142 as meaning "within a reasonable time."

In legal nomenclature the word "forthwith" and the phrase "within a reasonable time" convey quite different and distinct ideas. The word "forthwith" conveys the idea that the thing to be performed must be done with the greatest diligence possible, the only lapse of

time being such as may occur by the nature of the act to be performed and the amount of necessary preparation,

On the contrary, acts performed months after an event are in some cases regarded as done within a reasonable time, which would be utterly inconsistent with the idea conveyed by the word “forthwith.”

The idea of a reasonable time is directly opposed to the idea of great diligence or promptitude. (Nicols vs. Blackmoore, 27 Tex., 589.)

What effect will be given on appeal to an exception so general in its terms as is made in this case will be determined when the case reaches this court. It has been generally held that an objection or exception must be specific, and point out the very ground upon which the exception is based.

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