

[G.R. No. 1810. April 22, 1904]

**EULOGIO GARCIA, PETITIONER, VS. B. S. AMBLER AND JOHN C. SWEENEY,
RESPONDENTS.**

D E C I S I O N

TORRES, J.:

In the civil action brought by J. W. Marker against Eulogio Garcia for the recovery of damages, judgment was rendered on the 1st of May, 1903, by Judge B. S. Ambler, then presiding over Part III, condemning the defendant Garcia to pay to the plaintiff the sum of \$3,625.

On the 7th of the same month of May, the plaintiff presented an exception to the said judgment, asking that it be set aside and that a new trial be granted. This petition was denied by an order dated the 27th of June following. On the 3d of July of the same year, 1903, the defendant presented to the clerk of the court his bill of exceptions, and asked that there be made and attached to the bill of exceptions a copy of the documentary evidence presented at the trial by both parties.

Judge Ambler was absent from these Islands at the time and the defendant-petitioner was unable to obtain the approval of his bill of exceptions by the judge who temporarily took Judge Ambler's place. Upon the return of the latter to this city and his resumption of the duties of his office, the petitioner was still unable to obtain his approval of the bill of exceptions for the alleged reason that the matter was then pending in Part III and that Judge Ambler could not intervene in it without an order from Judge Sweeney directing that the case be transferred to Part I, over which Judge Ambler was then presiding.

Judge Sweeney, however, considered the order of transfer required by Judge

Ambler unnecessary and improper. He maintained that Judge Ambler was the only one competent to approve the bill of exceptions, the case having been tried before him, and that an order of transfer to Part I was, therefore, not required. Judge Ambler, however, continued to refuse to approve and certify the bill, as did Judge Sweeney, presiding as above stated over Part III, refuse to give an order for the transfer of the matter to Part I.

With these antecedents the counsel for the defendant petitioner, by a petition presented on the 19th of February last, asked this court for a writ of peremptory mandamus directing Judge Sweeney to issue an order for the transfer of the records of the said case to Part I, in case this court should consider such an order to be necessary, for the approval by Judge Ambler of the bill of exceptions. It was also asked that a writ of peremptory mandamus issue against Judge B. S. Ambler requiring .him, in accordance with the procedure laid down in section 499 of the Code of Civil Procedure, to sign and certify the bill of exceptions accompanying the petition in the form set forth therein, or with such modifications as this court might deem requisite; that the defendants be condemned to the payment of the costs and that such further relief be granted as might be proper and just.

A copy of this petition having been served on the respondents, the latter by separate answers filed on the 21st of March last, asked that the petitioner's prayer be dismissed, for the reasons expressed. Among other things it was alleged that neither the petitioner nor any other person on his behalf had exhibited to the judge of First Instance presiding over Part III or to any judge of any part prior to January 27, 1904, the bill of exceptions presented to the clerk of the Court of First Instance on the 3d of July, 1903, while the record was in the latter's custody. Judge Sweeney's order of the 25th of January was set forth in his answer. This order stated that the bill of exceptions should be presented to the judge, its delivery to the clerk of the court not being a sufficient compliance with the provisions of section 143. It was also stated that as two entire terms had passed without any appeal having been perfected, the defendant had lost his right thereto and that the plaintiff was entitled to ask for the execution of the judgment. It was furthermore stated that Judge Ambler's refusal to take cognizance of the petitioner's motion had been based upon the fact that the matter was then pending in Part III and not in Part I of the court.

The exception against the judgment rendered in the action was duly entered within the term in which the judgment was rendered. The bill of exceptions, also, was presented before the termination of the period fixed for its presentation by section 143 of the Code of Civil Procedure.

This bill of exceptions was delivered to the clerk by the petitioner and received by the former within the time prescribed by law. Furthermore, the efforts of the petitioner to have the bill of exceptions examined and certified by the judge were frequent and persistent. Consequently there is no legal ground for the contention that the appeal was not presented within the legal period and that the petitioner has lost his right to have the judgment reviewed. It is the duty of the clerk of the court to receive bills of exceptions and to note thereon the date of their presentation, the person presenting the same, and all papers and documents connected with the pending suit; then, that it may fully appear when such papers and documents were filed and who presented them, for all legal purposes such bills of exceptions, papers, and other documents received by the clerk may be considered presented to the court. It is the duty of the clerk to report to the judge having cognizance of a suit, or to the judge who may replace him and under whose orders the clerk discharges his functions, the receipt of all papers so filed, immediately upon their presentation or within a reasonable period. (Sec. 384, Code of Civil Procedure.)

The filing mark upon a pleading, document, or bill of exceptions produces by operation of law positive legal effect with respect to the rights of the parties, and the availability of the remedial process allowed by the law. A negligent clerk who, after receiving a bill of exceptions or pleadings which should be presented within a fixed period, fails to perform his duty is unquestionably liable for the damage which his conduct may cause a litigant.

Just as there is only one court in this city presided over by several judges, so there is only one clerk with one assistant and several deputies. (Sees. 49 and 60 of Act No. 136, and subsequent acts increasing the number of judges.)

Consequently, cases pending before the judges of the city of Manila are cases pending in the same court and in charge of the same clerk. The distribution of cases in the court among the various judges is a matter controlled solely by rule, and does not involve any question of jurisdiction. Any one of the judges

of the city .is competent to try a case assigned to another, whenever it may be convenient for him to do so. And the clerk, with his assistant and deputies, is subject to the orders and directions of each one of the judges in the discharge of his duties, and especially subject to their direction with respect to each case which may be allotted to any particular judge.

The primary rule established by the law of procedure is that the judge who has heard and decided a case is the one upon whom devolves the duty of allowing and signing the bill of exceptions. In case of the death or absence of this judge this court has already rendered a decision establishing rules under which a case can never arise in which there shall be no judge competent to sign the bill of exceptions, or bill of exceptions remain unsigned to the prejudice of the parties and to the detriment of the administration of justice. If a court is always provided with a judge, and a dead or absent judge is immediately substituted by another, appointed in his place so that the administration of justice be not delayed or suspended, it follows that there will always be a judge available to allow and sign a bill of exceptions by which the parties may avail themselves of the right to appeal against the judgment.

This being so, Judge Ambler should have directed the clerk to call his attention to the bill of exceptions filed with the latter, together with the record and other antecedents of the litigation, and no previous order from Judge Sweeney was necessary. The fact that the case of Marker m. Garcia was tried in Part III, in which the judge now sitting in Part I formerly presided, is no obstacle to the allowance of the bill of exceptions by Judge Ambler, inasmuch as Judge Sweeney makes no opposition to his doing so, and furthermore because, as the case is pending in the single court of Manila, the distribution of cases is not jurisdictional, and Judge Ambler, having tried and decided the case, it devolved upon him in the first place to certify the bill of exceptions.

The bill having been filed within the period prescribed by law, the provisions of section 143 of the Code of Civil Procedure must be complied with. It is not permissible to refuse to permit a party to avail himself of his remedy by bill of exceptions upon grounds not recognized in the law of procedure. The general tendency of courts in matters of procedure is ordinarily to allow all appeals from their judgments, for if the conviction exists that a decision is in harmony with the pleadings, the provisions of law, and the principles of

justice, it is a matter of indifference that such decisions be reviewed upon the questions at issue.

With respect to the application of the provisions of the Code of Civil Procedure to cases submitted to the courts for their decision, the provisions of section 2 should always be borne in mind, which in effect provides that in the interpretation of the code the controlling principle is to be the spirit and purpose of the law, as determined by reason and good sense, rather than the strict letter.

For the reasons stated, it is our opinion that a writ of mandamus must issue, in accordance with the provisions of section 499 and others of the Code of Civil Procedure, addressed to Judge Ambler, an-d directing him to allow and certify in due form the bill of exceptions presented by the petitioner with the costs de officio. The parties will be notified of this decision. So ordered.

Arellano, C. J., Mapa and McDonough, JJ., concur.

DISSENTING

JOHNSON, J.

Upon the facts alleged in the complaint and answer filed in this case, I dissent from the conclusions of the court expressed in this decision.