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[G.R. No. 1746. September 21, 1905]

**TOMAS OSMENA, PLAINTIFF AND APPELLEE, VS. JOSE GORORDO, DEFENDANT
AND APPELLANT.**

D E C I S I O N

MAPA, J.:

There are two questions raised by the appellant in this appeal. The first one relates to the setting aside of the judgment rendered on the 11th day of February, 1903, upon the first trial of this case, and the second to the operation of the statute of limitations as against the action of the plaintiff.

As to the first question, the appellant contends that the court below erred in setting aside said judgment of February 11, 1903, and in granting a new trial. This is the first error assigned, by him as the basis of his appeal. The case was first tried in the Court of First Instance of Cebu by the Hon. L. J. Carlock, who, on the said 11th day of February, 1903, entered judgment declaring that the action of the plaintiff was barred by the statute of limitations, and accordingly dismissed the case.

On the 13th of the same month the plaintiff and defendant agreed in a written stipulation that the party against whom a judgment should be rendered would not have to file his bill of exceptions during that term of court, but could file same at any time before the expiration of the first month of the following term of court. (Pp. 13 and 14, bill of exceptions.)

Thereafter, to wit, on the 20th day of April, 1903, Judge Carlock died, and on the 31st of July following the plaintiff asked that the

judgment rendered by the said judge be set aside and a new trial granted, which motion was allowed by the new judge on the ground that Judge Carlock had died without signing the bill of exceptions.

Under the doctrine laid down by this court in *Fortunato Ricamora vs. Grant T. Trent*^[1] (2 Off. Gaz., 94), it was the duty of the judge who succeeded Judge Carlock to approve and certify the bill of exceptions filed in that case provided the evidence and other proceedings in the case could be certified to in accordance with the law. The fact, therefore, that Judge Carlock died without signing the bill of exceptions was not, in itself, a valid reason to set aside the judgment rendered by him, and in this action we hold that his successor did commit an error in directing that the said judgment be set aside and a new trial had.

However, in the case at bar, such error on the part of the court did not prejudice any essential right of the appellant. According to the official records which we have before us for the determination of this case, the July term of 1903 of the Court of First Instance of Cebu, was the term which immediately followed the February term of court at which Judge Carlock entered the judgment thus set aside. That term of court commenced about the middle of July. The agreement of the parties, dated the 13th of February, gave the plaintiff the right to file his bill of exceptions-that is to say, to appeal from said judgment-up to the last day of the first month of the July term. Therefore, when the plaintiff asked the court to set aside the said judgment of the 31st of that month said judgment was not then final, as it could have been appealed from. A judgment does not become final as long as it can be appealed from. The appellant could not claim any vested right by virtue thereof.

On the other hand the question decided by said judgment is precisely the same as the one now raised in this case; it refers to the statute of limitations. According to the facts appearing from the bill of exceptions the appeal would have turned upon the same question if no new trial had been granted. The only difference is that the plaintiff and not the defendant would now have been the appellant. It may be said, therefore, that the setting aside of the judgment of Judge Carlock, and the granting of a new trial have not changed the question

at issue nor prejudiced in any way the rights of the appellant. There is no legal reason why that judgment should be reversed. Section 503 of the Code of Civil Procedure provides that “no judgment should be reversed on formal or technical grounds *or for such error as has not prejudiced the real rights of the excepting parties.*”

The appellant also contends that the judgment appealed from is erroneous because plaintiff’s action in this case was barred by the statute of limitations.

The amount claimed in the complaint represents the value of a certain quantity of sugar sold by the plaintiff to the defendant under a contract entered into between them on the 27th of August, 1894. It was stipulated in said contract, that the said amount should be paid in four installments, to wit, 6,000 pesos in the latter part of September, 6,000 pesos the latter part of October, 6,000 pesos the latter part of November, and the balance in the latter part of December, of the same year, 1894.

More than five years having elapsed since then, the complaint in this case being filed on the 26th of December, 1901, and the plaintiff having made no judicial or extrajudicial demand upon the defendant for the payment of the debt, it is now contended by the appellant that the appellee is barred by the statute of limitations, under article 1966 of the Civil Code, which he alleges was violated by the judgment of the court below.

According to the article above cited, the lapse of five years is a bar to an action for the enforcement of any of the following obligations: “(1) For the payment of pensions for support, (2) for the payment of rents whether derived from rural or town property; (3) that of any other *payment which should have been made annually or in shorter periods.*” The amount claimed in this case being payable in shorter periods than one year, as stipulated in the contract, the case, according to the appellant’s contention, is completely covered by the provisions of paragraph 3 of the above quoted article.

This is not, in our opinion, a proper construction of that paragraph; its provisions are not applicable to all classes of obligations, but to a certain class of obligations only, to wit, those which on account of their nature should be fulfilled within periods of one year or less. This fact gives them, in a certain sense, the same status as those relating to the payment of pensions for support or the payments of rent, expressly mentioned in the two preceding paragraphs. (Enriquez F. Somes vs. The Widow and Child of Ignacio Gorricho,^[1] decided September 1, 1905.)

The obligation sought to be enforced in this action not pertaining to the class in question, the provisions of law above quoted are not applicable thereto, and the court below could not have violated this provision.

The judgment of the court below is hereby affirmed, with costs against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith, and let the record be remanded to the Court of First Instance for its execution. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.
Willard, J., did not sit in this case.

^[1] 3 Phil. Rep., 137.

^[1] 4 Phil. Rep., 173.
