

[ G.R. No. 3547. October 26, 1906 ]

**LORENZA PAEZ, PETITIONER AND APPELLEE, VS. JOSE BERENGUER,  
RESPONDENT AND APPELLANT.**

**D E C I S I O N**

**WILLARD, J.:**

This is a motion to dismiss a bill of exceptions in a case coming from the Court of Land Registration. Final judgment was entered therein on the 3d day of July, 1906. A copy of this judgment was received by counsel for the appellant on the 7th of July. On the 19th of July he presented a motion for a new trial on the ground that the facts found by the court below were not justified by the evidence. On the 30th of July an order was made by the court denying this motion for a new trial. The appellant was notified of this order on the 31st. On the 1st day of August he duly excepted to this order, giving notice of his intention to present a bill of exceptions and thereafter presented the same within the time required by law.

If this case were to be governed by the law relating to cases brought here from the Courts of First Instance, there would be no trouble in disposing of it. In the case of *Antonia de la Cruz vs. Santiago Garcia*,<sup>[1]</sup> No. 2485, decided August 17, 1905, this court said:

“It has been laid down as a rule by this court that a motion for a new trial presented immediately after the receipt of notice of judgment or within a reasonable time, according to the circumstances of each particular case, and provided the same is based upon errors of law alleged to have been committed by the trial court or on the insufficiency of the evidence, is equivalent to an exception to the judgment and has the effect of suspending the time prescribed by law within which notice should be given to the court by the appellant of his intention to present a bill of exceptions, until such motion for a new trial has been passed upon by the court.

“It follows, therefore, from this ruling of the court, that when a motion for a new trial is overruled, if the defeated party should, as soon as possible after receiving notice of the order overruling the same, notify the court of his intention of presenting a bill of exceptions, he shall have the right to present such bill of exceptions within ten days thereafter. This court has also held that this period of ten days may be extended by an order of the court or by stipulation of the parties. (Vicente Gomez vs. Jacinta Hipolito.<sup>[2]</sup>)”

This rule, that the presentation of a motion for a new trial on the ground that the findings of fact are not justified by the evidence operates to suspend the time for the presentation of the bill of exceptions, has been constantly adhered to by this court and is a settled doctrine thereof. Therefore in a case coming from the Court of First Instance, the time elapsing between the 19th of July when a motion for new trial was presented and at least the 30th of July when the motion was decided, would not be counted against the appellant.

The case, however, is complicated by the provisions of Act No. 1484, enacted May 9, 1906. That act amended the existing law in regard to cases coming from the Court of Land Registration by adding the following provision:

“And provided further, That the period within which the litigating parties must file their appeals and bills of exceptions against the final judgment of the Court of Land Registration ‘shall be thirty days, counting from the date on which the party received a copy of the decision, which period may, in the discretion of the court, in writing be extended to sixty days if the hearing of the cases was had in the provinces, or if they relate to lands situated outside of the city of Manila.”

The thirty days mentioned in that act expired at least on the 7th day of August. The bill of exceptions was not presented until the 11th day of August. If the time elapsing between the 19th of July and the 30th of July, during which time the court had under advisement the motion for a new trial, is to be counted against the appellant, the bill of exceptions was presented too late. If, however, the rule laid down in the case of De la Cruz vs. Garcia is to be applied to a case now coming from the Court of Land Registration it was presented in time.

The principal reason for establishing that rule in cases coming from Courts of First Instance

was the following:

The appellant has a right to have the evidence taken in the court below reviewed in this court, if he pursues the practice pointed out in the Code of Civil Procedure. In order to obtain such a review he must make a motion for a new trial in the court below, on the ground that the evidence does not justify the findings of fact. When that motion is denied he must take an exception thereto. That exception he must include in his bill of exceptions. It is very apparent, therefore, that no bill of exceptions can be prepared until an order has been made denying the motion for a new trial which the appellant has presented, for his exception to that order must necessarily be included in the bill of exceptions if he is to have the evidence reviewed by this court. The same reasoning applies to cases coming from the Court of Land Registration. The plaintiff is entitled to have the evidence taken in a case pending in that court reviewed in this court if he moves for a new trial, takes exception to the order denying that motion, and incorporates this exception in his bill of exceptions. If we say that the bill of exceptions must be presented within thirty days from the date of receipt of the copy of the judgment, it will follow in many cases that the appellant, without any fault on his part but by reason of delay on the part of the judge or some officer of the court, would be deprived either of his appeal entirely or of his right to have the evidence reviewed in this court.

We hold that the rule laid down in the case of *De la Cruz vs. Garcia* is applicable to cases now coming from the Court of Land Registration and that the time between the presentation of a motion for a new trial on the ground mentioned and at least its decision by the court below should not be counted as a part of the thirty days mentioned in Act No. 1484. That time in this case was at least eleven days and the entire time during which the appellant might present his bill of exceptions was forty-one days from the 7th day of July. He presented his bill within that time.

The motion for a dismissal of the bill of exceptions is denied. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.*

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*DISSENTING*

**JOHNSON, J.:**

I can not give my consent to the amendment of the laws of the Commission made by the opinion in this case. If I were a member of the legislative body of the Philippine Islands with authority to make laws instead of a humble member of a judicial tribunal with authority simply to interpret laws, I might agree with the opinion of the court in this case.

In this case there was a motion to dismiss the bill of exceptions upon the ground that the same had not been presented within the time prescribed by the law. The decision became final on the 7th day of July, The appellant received notice of the judgment of the lower court upon the 7th day of July. He presented his bill of exceptions on the 11th day of August. Act No. 1484 of the Philippine Commission provides when bills of exceptions must be presented in cases like the one before us. The provision is:

“The period within which litigating parties must file their appeals and bills of exceptions against the final judgment of the Court of Land Registration shall be thirty days counting from the date on which the party received a copy of the decision.”

This law by its terms is mandatory. The bill of exceptions was not presented within thirty days. The law makes no provision for delays nor extension of time on the part of the appellant. The law says that the appellant must, etc. I am at a loss to know upon what theory this court can justify its decision which amounts to an amendment of the law. If a party may omit one step or delay one step until after the expiration of the time prescribed by law, he may omit or delay another and another and thereby defeat the very administration of justice itself. *To establish a rule which would tolerate stick a practice would destroy all certainty and build up a deformed and distorted system of mere arbitrary instances.* Under such a system the lawyers would not be able to know the provisions of “a single law until after they had incurred the expense for their client and brought the case here. I ask, What interpretation of the law above quoted is necessary on the part of this court in order that the members of the Philippine bar and parties litigant may understand its meaning? Is it not plain? Are its terms ambiguous? Would any lawyer advise his client to incur the expense of preparing a bill of exceptions and present the same after the expiration of thirty days under a law such as we have quoted above except for the fact that this court has heretofore established the precedent that when the law of procedure does not suit it, that such law will be amended?

One of the first cases that came before the present court affecting the question as to when

bills of exceptions must be presented under the law was that of *Garcia vs. Hipolito* (2 Phil. Rep., 732). In that case this court added an amendment to the then existing law. The amendment made by the court in that case to the law was so clear, concise, and liberal in its terms that this court has been called upon in more than two hundred and twenty cases since to decide the same question. Any careful and studious member of the Philippine bar who has followed the decisions of this court upon the question which we are here discussing must certainly be convinced that the only true course for the court to follow is to interpret the laws and not to amend them. The time spent by the court in considering the two hundred and twenty and more motions that have been presented to this court for the purpose of dismissing the bills of exceptions which had not been presented within the time prescribed by law has been sufficient, had the time been devoted to the dispatch of cases upon their merits, to have decided every case presented to this court up to the present date, and instead of being six months behind with the decisions of the court, the court would now be deciding cases which are presented from day to day. Had the court decided in the case of *Garcia vs. Hipolito* that the time fixed in section 143 of the Code of Procedure in Civil Actions, within which bills of exceptions must be presented, was mandatory, we are of the opinion that the two hundred and twenty motions and more which have been presented since that decision would not have been presented. We feel justified in the statement that this court, with reference to the allowance of bills of exceptions presented within periods not allowed by the express letter of the law, has built up a deformed and distorted system of *mere arbitrary instances*.

The time allowed within which appeals should be perfected under the Spanish law in force in these Islands prior to American occupation was absolute and nonextendible. If the parties did not bring their appeals within the time prescribed by law, they lost their right to appeal. The rule under the Spanish law upon this question is in exact harmony with that adopted not only by the Supreme Court of the United States but every State in the Union.

If time permitted I might demonstrate that, in the cases in which two hundred and twenty motions and more have been made to dismiss the bill of exceptions, in 90 per cent of these appeals the judgments of the lower court have been affirmed. This fact demonstrates the wisdom of this court in extending its arms of mercy around litigants for the purpose of holding them in court when there was no other basis for the appeal than that of delaying and defeating the judgment of the lower court.

The Filipino people are living today under a government of pre-scribed laws. They are entitled to have the laws which govern them written in advance of their effect and operation

upon them, their rights, and their property. Court made laws are never pre-scribed They are never written in advance of the case to which they are made to apply. I am in favor of a government by pre-scribed laws.

The motion should be. granted and the bill of exceptions dismissed for the reason that it was not presented within the time prescribed by the law.

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<sup>[1]</sup> 4 Phil. Rep., 680.

<sup>[2]</sup> 2 Phil. Rep., 732.

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