34 Phil. 80

[G.R. No. 7676. March 08, 1916]

JOSE LINO LUNA, PLAINTIFF AND APPELLEE, VS. ESTEBAN ARCENAS, DEFENDANT AND APPELLANT.

D E C I S I O N

CARSON, J.:

The amended complaint filed in this action is as follows:

> "Now comes the plaintiff, through his attorneys Buencamino, Diokno, Buencamino jr., & Lontok, and, amending his complaint, respectfully submits to the court the following causes of action against the defendant:
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> > "1. That plaintiff is a resident of Manila and defendant is a resident of Capiz, capital of Capiz Province.
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> > "2. That defendant, on January 3, 1903, subscribed in behalf of plaintiff the two obligations which, literally copied, are attached to this complaint as integral parts thereof and are marked as Exhibits A and B.
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> > "3. That the mortgage bond referred to in said Exhibits A and B was totally cancelled on January 27, 1906. Therefore from the date on which said bond was approved by the court to the date of its cancellation, three years, three months and twenty-six days had elapsed and the sum of ₱12,300 is due as interest on said bond, according to the stipulations contained in Exhibits A and B aforementioned.
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> > "4. That subsequent to the cancellation of the bond above referred to,

and while plaintiff was endeavoring in a friendly way to collect the said sum of ₱12,300, plaintiff learned that the defendant Esteban Arcenas did not have and never had had any power of attorney or authorization from his brothers and other coheirs to execute in their name said instruments Exhibits A and B. The said brothers and other coheirs of the defendant Esteban Arcenas, in the proceedings for the settlement of the intestate estate of the deceased Dona Matea Alvarez y Rubio, denied having conferred upon said defendant such power or authorization, and when said defendant was required by plaintiff to exhibit some document evidencing that such power or authorization had been granted by any of them, defendant said that he had none; and therefore the brothers and other coheirs of said defendant are not defendants in this action.

"5. That said obligations (Exhibits A and B) were contracted by defendant in his own name and under his own liability and were, besides, fictitiously executed by him in representation of his brothers and other coheirs.

"6. That the ₱12,300 which defendant owes plaintiff, being a liquidated amount and due from January 27, 1906, plaintiff demanded payment thereof from defendant on the said date, January 27, 1906; but defendant has not paid the whole or any part of the said debt notwithstanding plaintiff's repeated demands and also the repeated promises of defendant.

"7. That, by defendant's delay in paying the ₱12,300, plaintiff has suffered damages in the amount of ₱2.000.

"Therefore plaintiff prays the court to render judgment by ordering defendant:

"First. To pay to plaintiff the sum of ₱12,300, with interest thereon at six per cent per annum from the date of the filing of this action until payment in full;

"Second. To pay to plaintiff the sum of ₱2,000, as damages; and

"Third. To pay the costs of the suit.

"Plaintiff also prays that he be granted any such further remedy as the court may deem equitable."

Exhibits A and B thus made a part of the complaint are as follows:

"EXHIBIT A.

"I, Don Esteban Arcenas y Rubio, in my own name and as attorney in fact of my brothers and other coheirs in the proceedings for the settlement of the intestate estate of the deceased Dona Matea Alvarez y Rubio, do solemnly declare that I have asked Don Jose Lino Luna, a property owner and a resident of Manila, to guarantee the proper administration of the said intestate estate by Don Pastor Alcazar, the administrator proposed by us, by furnishing a mortgage bond, as required by the judge before whom this case is being tried, to wit, by a bond of the value of ₱60,000 in Philippine currency, to guarantee the liability of the said Alcazar in the administration of the said property, as set forth in the corresponding judicial bond executed by the said Luna on March 30, 1901, before the notary public Don Genaro Heredia; on the condition of paying to Senor Luna in Manila 6 per cent per annum on the said sum of ₱60,000 which is the amount of the bond executed by him on the 1st of October, 1902, the date of the acceptance and approval of said bond by the competent court, until the total cancellation of the mortgage.

"And to respond for the payment of said interest on his mortgage bond, I, Don Esteban Arcenas y Rubio, for myself and my coheirs and constituents in the intestate estate above mentioned, specifically pledge the property of said intestate estate, in case we win the suit, and my own property, present and future, and that of the persons I represent.

"And in witness of all of the foregoing, I sign this instrument before the witnesses Don Ricardo A. Reyes, physician, and Don Macario Rufino, merchant, who also subscribe it, in Manila, this 3d day of January, 1903.

(Sgd.) “ESTEBAN ARCENAS.

(Sgd.) “RICARDO A. REYES.
(Sgd.) “MACARIO RUFINO.”

“EXHIBIT B.

“I, Don Esteban Arcenas y Rubio, in my own name and as the attorney in fact of my brothers and other coheirs in the proceedings for the settlement of the intestate estate of Dona Matea Alvarez y Rubio, solemnly declare that I have asked Don Jose L. Luna, property owner, to guarantee the proper administration of the said intestate estate by Don Pastor Alcazar by furnishing a mortgage bond of ₱60,000 Philippine currency, as required by the judge before whom the proceedings are being conducted relative to the said intestate estate, conditioned on paying to the said Luna 6 per cent annual interest counting from the 1st of October, 1902, the date of the approval of the said bond by the court, until the total cancellation of the mortgage.

“I likewise declare that I promised the said Luna that the bond he furnished at my request would be cancelled by me within three or four months after the aforementioned estate had been turned over to Senor Alcazar for administration and that I bind all my property, present and future, as well as that of my brothers and other coheirs, to respond for the said administration.

“In witness whereof, I sign the present document before the witnesses Ricardo A. Reyes, physician, and Don Macario Rufino, merchant, who also subscribe hereto, in Manila, January 3, 1903.

(Sgd.) “ESTEBAN ARCENAS.

(Sgd.) “RICARDO A. REYES.
(Sgd.) “MACARIO RUFINO.”

A demurrer to this complaint having been overruled, defendant filed the following answer:

“Now comes defendant, through his attorney, and, in answer to the amended

complaint tiled in the above entitled case, sets forth to the court:

> "1. That he denies generally and specifically each one and all of the facts alleged in the amended complaint, with the exception of paragraphs 1 and 2 thereof and such others as are expressly admitted in the following special defense.
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> "2. That, as a special defense, he alleges: That defendant, in executing the documents marked as plaintiff's Exhibits A and B, acted for himself and as attorney in fact for his brothers and other coheirs in the proceedings for the settlement of the intestate estate of the deceased Da. Matea Alvarez y Rubio, by virtue of general powers of attorney executed by them, and he therefore believes and at the same time alleges that his said brothers and coheirs should also have been included as defendants in these proceedings.
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> "3. That in or about the year 1901 plaintiff, D. Jose Lino Luna, agreed with the herein defendant that the latter should seek to obtain, through Attorney D. Felipe Calderon, now deceased, from the Court of First Instance of the city of Manila, the declaration of heir of said plaintiff and his brothers with respect to their predecessors in interest, D. Benedicto Luna and Da. Bernabela Rufino, promising the defendant Arcenas to pay the expenses and fees of said attorney for said declaration of heirs, and as soon as such declaration should be obtained plaintiff in turn was bound to come forward as bondsman to guarantee the obligation contracted by Pastor Alcazar, who was appointed by the Court of First Instance of the city of Manila as administrator of the intestate estate of the said deceased Da. Matea Alvarez y Rubio.
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> "4. That the expenses and fees of the attorney in the Proceedings for the declaration of heirs of the plaintiff, M. Luna, and his brothers, paid by the defendant Arcenas, amount to the sum of ₱645.70, Philippine currency.
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> "5. That, before the defendant subscribed the documents parked as plaintiff's Exhibits A and B, and in consideration of the expenses and

> fees of the attorney in connection with the said declaration of heirs, the said attorney verbally agreed with defendant that only the 6 per cent interest, mentioned in said documents, would be required of said defendant's brothers and coheirs in the said proceedings to settle the estate of the deceased Da. Matea Alvarez y Rubio, and that defendant was released from the payment of his proportionate share of said interest, provided however that no detriment should be caused to the bond given by the said Luna, through the fault or negligence of the administrator, Alcazar.
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> "6. That, from the time of the approval of the bond by the court to that of its final cancellation, the administrator Alcazar duly performed the duties of his office and that therefore no detriment whatever was caused the bond given by plaintiff.

"Therefore he prays the court to dismiss plaintiff's complaint, with the costs against him."

The decision filed by the trial judge is as follows:

> "This is an action upon two instruments (Exhibits A and B) executed in favor of the plaintiff by the defendant 'in my own name and as attorney in fact of my brothers and other coheirs in the proceedings for the settlement of the intestate estate of the late Dona Matea Alvarez y Rubio.' The instruments appear to have been executed in consideration of the guaranty by plaintiff, with a mortgage, of a bond for ₱60,000 given by the administrator in said intestate proceedings, and the instruments provide for the payment to plaintiff of 6 per cent annual interest on said sum until the cancellation of the mortgage.
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> "No sworn answer is presented and the genuineness and due execution of Exhibits A and B are therefore admitted (Code Civ. Proc, sec. 103), and must be 'considered as containing all terms of the agreement between the parties' (Code Civ. Proc., sec. 285). This would seem to require the exclusion of all testimony regarding an alleged agreement by which the defendant was to be relieved of the obligations imposed by the instrument. No actual testimony was, however,

> offered by the defendant, though it was admitted that if he were present (no reason being shown for his absence) he would testify to certain statements which were nevertheless objected to as inadmissible; we are of the opinion that this would not constitute a defense to this action even if offered in evidence.
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> "The objection that defendant's coheirs, in whose name as well as in his own he purports to sign, should have been made parties is no longer tenable, as stated in order of September 23, 1911, in view of the express provisions of article 1144 of the Civil Code. Whether defendant had any authority to bind his coheirs appears to us immaterial, since, if he had, he may, nevertheless, be sued alone, and if he did not he is the only one liable.
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> "On the whole we must find that no defense has been established to the cause of action set forth in the amended complaint, and that plaintiff is entitled to recover thereon. The testimony is undisputed that nothing has been paid on this claim, and that the mortgage in question was cancelled on January 27, 1906, at which time, according to the terms of Exhibit A, interest had been accruing from October 1, 1902, or for a period of three years, three months and twenty-six days, which according to our computation would make ₱11,960.
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> "It is therefore considered and adjudged that plaintiff have and recover from the defendant the sum of ₱11,960, with interest thereon at 6 per cent per annum from September 20, 1911, together with his costs."

From this judgment the defendant appealed, and the case is now before us on his duly perfected bill of exceptions.

The evidence of record satisfactorily establishes the execution by the defendant of the written instruments marked Exhibits A, and B, and the nonpayment of the indebtedness evidenced thereby. But an examination of the opinion of the trial judge discloses that judgment was rendered in favor of the plaintiff for the full amount of the indebtedness evidenced by those instruments, upon the erroneous theory that "in view of the express provisions of article 1144 of the Civil Code," it was immaterial whether defendant had or had not authority to bind his coheirs in the execution of those obligations. Article 1144 of the Code is applicable only to the enforcement of "joint and several" obligations (*solidarias*) and has no application to obligations which are merely joint (*mancomunadas*) and not "joint and several;" and we are of opinion that a mere reading of Exhibits A and B leaves no room

for doubt that, if defendant was duly authorized to bind his coheirs, and to execute those instruments on their behalf, the obligation evidenced thereby was merely a joint obligation and not "joint and several."

As will be seen from the provisions of Chapter 4 of Title I, of Book 4 of the Civil Code, the rules touching the enforcement of these two classes of obligations and the liability of the obligors thereunder are wholly different. It will be sufficient for the purposes of this decision to cite from the chapter articles 1137, 1138, 1139, and 1144, which are set out here in full because the English translation of the Civil Code published at the Government Printing Office in Washington for the Bureau of Insular Affairs in 1899 fails to distinguish accurately the different classes of obligations referred to in these articles. They are as follows:

> "1137. The concurrence of two or more creditors or of two or more debtors, in a single obligation, does not imply that each one of the former has a right to ask, nor each one of the latter is bound to comply in full with the things which are the objects of such obligation. This shall only take place when the obligation determines it expressly, and is constituted as a joint and several obligation.
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> "1138. If from the context of the obligation, referred to in the preceding article, any other thing does not appear, the credit or the debt shall be presumed as divided in as many equal parts as there are creditors or debtors, and shall be considered as credits or debts, each one different from the others.
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> "1139. When the division is impossible, the right of the creditors shall only be impaired by the collective acts of the same, and the debts shall only be recoverable by proceedings against all of the debtors. If any one of them is found to be insolvent, the others shall not be obliged to pay his share.
>
> "1144. A creditor may sue any of the joint and several (*solidarios*) debtors or all of them simultaneously. The claims instituted against one shall not be an obstacle for those that may be later presented against the others, as long as it does not appear that the debt has been collected in full."

Since it does not expressly appear that either of the instruments, marked Exhibits A and 8, evidences a "joint and several" obligation, it is manifest that, in the enforcement of the

obligation, the question of the authority of defendant to act for and on behalf of his coheirs in the execution of those instruments becomes of the utmost importance for the proper adjudication of the issues involved in this litigation.

If it be held that defendant had authority to bind his coheirs, it follows that plaintiff cannot recover from him more than his proportionate share, that is to say, one-third of the amount due under these instruments, which the trial judge found to be ₱11,960 with interest.

If it be held that defendant had no authority to bind his coheirs, then he is liable for the whole Amount of the indebtedness, not on the theory erroneously relied upon by the trial judge, but because in that event he alone is bound under the terms of those instruments, which for lack of authority to bind his coheirs, cannot be treated as either "joint" (*mancomunadas*) or "joint and several" (*solidarias*) obligations.

There is nothing in the record upon which to base a finding as to whether the defendant was or was not duly Authorized to bind his coheirs in the execution of the documents in question other than an agreement of counsel entered into under the following circumstances.

Plaintiff having rested his case without offering any evidence in support of his contentions in this regard, counsel for the defense announced that he did hot desire to call any Witnesses except the defendant himself, who was not at that foment in the court room. Counsel asked that the hearing be suspended long enough to secure his presence. In support of his motion for a continuance, counsel said, among other things, that if called to the witness stand, defendant would testify "that in documents Exhibits A and B he acted for himself and as attorney in fact for his coheirs, and that he would besides offer documents to prove his allegation." Opposing the motion for a continuance, counsel for plaintiff appears to have admitted, with certain reservations, that if present, the defendant would testify in the manner indicated in the statement of his counsel. The account of the incident as set forth in the record is as follows:

> "Mr. ESCUETA. Defendant's attorney moves the continuance of this case in order to bring the defendant himself, who, if he were present, would according to his attorney's statements testify as follows:
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> "That, in the documents Exhibits A and B, he acted in his own behalf and as attorney in fact for his coheirs and that, moreover, he would offer a document to prove this allegation; that defendant would also testify that in certain

> proceedings on declaration of heirs of the deceased Don Benedicto Luna and Bernabela Rufino, he has made efforts to clear up this question of the heirs and has incurred expenses in registering in their name in the property registry the property which was mortgaged by Mr. Luna and afterwards gave the said bond before this court; and that on account of these steps and expenses he agreed with plaintiff that the 6 per cent interest stipulated in the documents Exhibits A and B should be collected by plaintiff pro rata from the heirs, relieving defendant from the payment of his share of said interest by reason of the expenses he had incurred in the matter of the heirs, on condition that plaintiff should have nothing to pay on account of any bad conduct by the administrator, Pastor Alcazar.
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> "Mr. BUENCAMINO. Plaintiff, through his attorney, admits that if defendant were present the latter would testify in the manner aforementioned; but objects to said statements as to the part thereof which refers to the steps taken to obtain the registration of a certain property in the property registry, whereby defendant incurred expenses, and for the reason that such statements are immaterial and irrelevant to the issues in this case.
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> "The COURT. The court reserves its ruling on the objection to the proposed evidence, but in view of the admission on plaintiff's part, and moreover, because of the fact that it has not been shown that defendant is entitled to a continuance his motion is overruled."

This agreement of counsel as to what the defendant would testify if called to the witness stand, though manifestly not the best evidence as to the fact at issue, would undoubtedly be sufficient, in the absence of any other evidence in that regard, to sustain a finding that defendant was duly authorized to bind his coheirs, provided there was no objection to the ruling of the court below in admitting it, and no misunderstanding as to the fact of its admission as evidence in support of defendant's allegations.

A painstaking and careful examination of the whole record, however, leaves us in doubt as to what actually occurred in the court below. It is not quite clear whether the trial judge admitted the statement into the record as evidence in support of defendant's allegations, or whether he merely took it into consideration for the purpose of ruling upon the defendant's motion for an adjournment. It appears from the face of the record, though not satisfactorily, that he admitted the statement for both purposes. As we have seen, he was erroneously of

opinion that the question as to the authority of defendant to act for his coheirs had no vital bearing upon the issues involved; and the vagueness and uncertainty of the record as to what actually occurred is, doubtless, to be attributed to that fact. The statement of counsel for the defendant as to what his client would testify if called to the witness stand could not properly be read into the record as evidence in the absence of an express stipulation, or agreement between counsel. We are inclined to think that counsel for plaintiff, when he admitted that the defendant if called to the witness stand would testify along the lines indicated in the statement of Counsel for the defense, did not intend to admit that statement without objection as evidence in support of defendant's allegations as to his authority to bind his coheirs. The admission was made in the course of argument upon the motion of counsel for defendant for a suspension of the hearing for the purpose of calling his client to testify upon the question of his authority to bind his coheirs, and we are disposed to believe that it was made merely for the purpose of the argument upon that motion. Counsel for plaintiff contended that there was no necessity for an adjournment to secure the presence of the defendant because, as he insisted, admitting that defendant would testify as indicated, judgment should nevertheless be rendered against him for the full amount of the obligation. In this erroneous contention the trial judge agreed with him, being of opinion that defendant was bound for the full amount of the obligation, whether or not he was authorized to bind his coheirs. There was no other evidence in the record on this, the vital point at issue in the case; although throughout the whole proceedings, from the filing of the complaint to the final argument, counsel's contentions were based on his allegations as to defendant's lack of authority to bind his coheirs. It is inconceivable that without objection and just before submitting the case for judgment, counsel for the plaintiff could have intended to admit the statement of opposing counsel as competent evidence as to the only real issue in the case, knowing as he must have known that there was no other evidence in that regard; unless he had been misled as to the effect of this evidence by the erroneous ruling of the trial judge upon demurrer, referred to in his opinion as the "order of September 23, 1911," wherein the trial judge held that, in view of the express provisions of article 1144 of the Civil Code, defendant would be liable for the full amount of the bond whether he had or had not authority to bind his coheirs.

We are convinced that some confusion arose in the court below in connection with the incident above set forth, and we are strongly inclined to think that there was no real meeting of the mind of the court and counsel as to the nature and object of the agreement. In any event, however, we are of opinion that in the interests of justice the judgment entered in the court below must be set aside, and the case remanded for a new trial.

1. Assuming that the statement of counsel was admitted as evidence by the trial judge, it is clear from what has been said, that the authority of the defendant to bind his coheirs being thus established the judgment of the lower court in favor of the plaintiff for the whole amount of the obligation must be set aside, defendant being liable in that event for only one-third of the amount of the obligation, as a joint and not a joint and several obligor.

In the uncertainty, however, as to whether counsel for plaintiff actually agreed that the statement of counsel for defendant, as to what defendant would testify if called to the witness stand, might be read into the record as evidence; and it appearing that, if in fact he did agree to the admission of that statement as evidence, he was misled as to its force and effect by the erroneous rulings of the trial judge, who had already indicated his opinion that such evidence was immaterial and irrelevant, we are of opinion that a new trial should be granted, in order to give the plaintiff an opportunity to subject the defendant's evidence as to his authority to bind his coheirs to the usual tests of cross-examination and objection as to its competency.

It has been suggested that we ourselves should enter judgment for one-third of the amount of the obligation, but this would have the effect of denying his right to recover the remaining two-thirds, if it be a fact that defendant had no authority to bind his coheirs. We do not think that he should be surprised by a judgment entered in this court, not only reversing the judgment in his favor but finally adjudicating his rights adversely to his contentions, in reliance upon a doubtful and unsatisfactory finding of fact, based upon a statement of counsel for defendant as to what defendant would say if called to the witness stand, which, if in fact it was admitted in evidence without objection, was so admitted as a result of the erroneous rulings of the trial judge.

2. On the other hand, assuming that the trial judge erred in admitting the statement into the record as evidence there being no clear understanding by counsel that it was so admitted, or that he did not in fact admit it, we are of opinion that a new trial should be granted to conserve the rights of the defendant appellant.

If this statement was not properly read into the record, there is no evidence in the record in support of defendant's claim of authority to bind his coheirs, which as we have seen, was the vital issue of the case. But we think that a holding that the statement of counsel for the defendant as to what his client would testify if called to the witness stand was not properly admitted in evidence necessarily carries with it a further holding that the refusal of the trial

judge to grant a continuance, in order to give counsel an opportunity to place the defendant in the witness stand, was error to the manifest prejudice of the substantive rights of the defendant, necessitating a reversal of the judgment and the grant of a new trial.

It is true that under the provisions of section 141 of the Code of Civil Procedure "rulings of the court upon minor matters, such as adjournments, postponements of trials, the extention of time for filing pleadings or motions, and other matters addressed to the discretion of the court in the performance of its duty, shall not be subject to exception. But exception may be taken to any other ruling, order, or judgment of the court made during the pendency of the action in the Court of First Instance." But it will not be contended that a trial judge will be permitted, arbitrarily and without redress on appeal, to prejudice a substantial right of a litigant, either by the abuse of the discretion conferred upon him in this regard, or by its improper exercise under a misapprehension of the law applicable to the facts upon which the ruling is based. It is only when such rulings are in truth rulings upon "minor matters" that the provisions of section 141 of the Code should be held to be a mandatory prohibition of their review upon appeal. Whether a case will be heard today, or tomorrow, or next week; whether the taking of testimony in a particular case will be suspended at two, or three, or five o'clock in the afternoon ; whether for the mere convenience of a patty an extension of time will be allowed for the filing of a pleading or motion, or other similar questions which have to do with the ordinary dispatch of the business of a trial court, should, in the very nature of things, be left absolutely in the discretion of the trial judge, in all cases where his rulings on such matters are in truth rulings on "minor matters," not affecting the substantial rights of the litigants. But in any case wherein it appears that a ruling of the trial judge in the exercise of his administrative control of the proceedings has had the effect of depriving a litigant of a substantial right, such ruling cannot properly be said to be ruling on a "minor matter."

In such cases the question of the right of the aggrieved party to a review of the action of the trial judge, on appeal or otherwise, must be determined upon those general principles of right, and justice, and sound procedure which appellate courts have always recognized as determinative of their powers in the review of the exercise of discretionary power by inferior tribunals.

> "A judicial act is said to lie in discretion when there are no sound legal principles by which its correctness may be determined." (Encyc. of PI. & Pr., vol 2, p. 409.)

Discretionary power is generally exercised by trial judges in furtherance of the convenience of the courts and the litigants, the expedition of business, and in the decision of interlocutory matters on conflicting facts where one tribunal could not easily prescribe to another the appropriate rule of procedure.

The *general* rule, therefore, and indeed one of the fundamental principles of appellate procedure is that decisions of a trial court which "lie in discretion" will not be renewed on appeal, whether the case be civil or criminal, at law or in equity.

We have seen that where such rulings have to do with minor matters, not affecting the substantial rights of the parties, the prohibition of review in appellate proceedings is made absolute by the express terms of the statute; but it would be a monstrous travesty on justice to declare that where the exercise of discretionary power by an inferior court affects adversely the substantial legal rights of a litigant, it is not subject to review on appeal in any case wherein a clear and affirmative showing is made of an abuse of discretion, or of a total lack of its exercise, or of conduct amounting to an abuse of discretion, such as its improper exercise under a misapprehension of the law applicable to the facts upon which the ruling is based.

In its very nature, the discretionary control conferred upon the trial judge over the proceedings had before him implies the absence of any hard-and-fast rule by which it is to be exercised, and in accordance with which it may be reviewed. But the discretion conferred upon the courts is not a willful, arbitrary, capricious and uncontrolled discretion. It is a sound, judicial discretion which should always be exercised with due regard to the rights of the parties and the demands of equity and justice. As was said in the case of The Styria *vs.* Morgan (186 U. S., 1, 9): "The establishment of a clearly defined rule of action would be the end of discretion, and yet discretion should not be a word for arbitrary will or inconsiderate action." So in the case of Goodwin *vs.* Prime (92 Me., 355), it was said that "discretion implies that in the absence of positive law or fixed rule the judge is to decide by his view of expediency or by the demands of equity and justice."

There being no "positive law or fixed rule" to guide the judge in the court below in such cases, there is no "positive law or fixed rule" to guide a court of appeal in reviewing his action in the premises, and such courts will not therefore attempt to control the exercise of discretion by the court below unless it plainly appears that there was "inconsiderate action" or the exercise of mere "arbitrary will," or in other words that his action in the' premises amounted to "an abuse of discretion." But the right of an appellate court to review judicial

acts which lie in the discretion of inferior courts may properly be invoked upon a showing of a strong and clear case of abuse of power to the prejudice of the appellant, or that the ruling objected to rested on an erroneous principle "of law not vested in discretion.

The doctrine, supported by numerous citations of authority, is thus stated in the Encyclopedia of Pleading and Practice (vol. 2, pp. 416, 418):

> "*Abuse of discretion*.—Accordingly, where the power is so exercised as to deprive a party of a legal right, or unduly benefit one party at the expense of the other, or where, generally, the injustice or inexpediency of the act is so clear as to show beyond a reasonable doubt the violation of equitable considerations, the act of decision is always reviewable in some form on appeal, as an abuse of power.
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> "*Presumption*.—The presumption on appeal that the exercise of discretionary powers was sound is very strong. The appellant must rebut it by showing a strong and clear case of abuse of power to his prejudice, or that the decision below rested on an erroneous principle of law not vested in discretion. A mere mistake of judgment, or a difference in opinion between the appellate and the trial court, is not sufficient."

We are well satisfied that the refusal of the trial judge to grant the defendant's motion for a continuance was based on his erroneous ruling as to the legal effect of the evidence which the defendant sought an opportunity to submit. In his ruling on the demurrer to the complaint and in the opinion on which he rested his judgment he held erroneously that, under the provisions of article 1144 of the Civil Code, it was "immaterial" whether or not defendant "had any authority to bind his coheirs." But as we have already indicated this was the vital and indeed the only issue in the case. The defendant practically admitted that he was liable for his share (one-third) of the indebtedness; and his whole contention was that since the obligations were "joint," and not "joint and several," judgment should not be entered against him for the whole amount. In this contention we agreed with him, provided he had authority to bind his coheirs in the execution of the instruments evidencing those obligations. In other words whether the judgment should be for the whole amount of the indebtedness evidenced by the obligations as claimed by the plaintiff, or for one-third of that amount as contended for by the defendant, necessarily turns on the ruling of the court as to whether or not the defendant had authority to bind his coheirs in the execution of these instruments.

The ruling of the trial judge declining to grant a continuance of a few hours to give counsel an opportunity to secure the presence of the defendant and to place him on the witness stand was manifestly based on his erroneous construction and application of article 1144. No other reasonable explanation appears from the record for the denial of a reasonable request for a continuance. The defendant does not appear to have indulged in dilatory tactics for the purpose of delaying the course of justice, and the pleadings and the trial had proceeded with reasonable dispatch up to the time when the motion for a continuance was requested. There was no inexcusable negligence in the failure of counsel to have his client there present at the moment when the plaintiff rested his case. Busy men often leave the conduct of the trials of cases in which they are interested to their counsel; and while it is the duty of counsel to have their witnesses present and ready to testify when called to the witness stand, courts are loathe to permit a manifest miscarriage of justice because of the accidental or excusable absence of a material witness, whose presence can readily be secured by the grant of a reasonable continuance. Of course the slightest indication of a purpose to delay the proceedings, or reprehensible negligence on the part of counsel and his client in securing the presence of their witnesses at the appointed hour may, and often does, justify a trial court in declining to permit the proceedings to be dragged out interminably by the grant of needless continuances. But speaking broadly, a sound discretion in this regard should be exercised by the trial judge, and the highly commendable desire for the dispatch of business should not be permitted to turn the scales of justice rather than accede to a reasonable request for a continuance.

In the case at bar there was no need for the presence of the defendant until the plaintiff rested his case. The exact time when he would be called to the witness stand could not therefore be definitely fixed in advance. Doubtless he might have avoided all need for a continuance by staying in attendance on court throughout the day set for the trial and until his case was called and until the plaintiff rested. But under all the circumstances, his absence at that moment could hardly be termed inexcusable negligence, and his attorney undertook to secure his presence if granted a short continuance for that purpose. The trial judge was evidently of opinion that the continuance might well be granted if his counsel could satisfy the court that his testimony would prove to be material to the issues involved in the case. But being erroneously of opinion, as a matter of law, as to the materiality of the matters to which it was expected the witness would testify, the trial judge erroneously declined to grant the continuance, resting the exercise of his discretion on erroneous principles of law not vested in discretion.

We conclude that the judgment entered in the court below should be reversed, without costs

in this instance, and the record returned to the court below for a new trial, in the course of which it will not be necessary to retake the evidence already of record. So ordered.

Arellano, C. J., Torres, Trent, and *Araullo, JJ.,* concur.
Johnson and *Moreland, JJ.,* did not take part.

Date created: May 29, 2014