

FELIPE BUENCAMINO, JR., PLAINTIFF AND APPELLEE, VS. ANTONIO SORIANO, DEFENDANT AND APPELLANT.

G.R. No. L-9624. January 18, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Nueva Ecija in favor of the plaintiff and against the defendant for the sum of P2,500 and costs.

The action was begun for the recovery of money due for professional services rendered by the plaintiff as attorney for the defendant. The defense is an agreement on the part of the plaintiff to perform the services gratis.

While there was a motion for a new trial on grounds which would permit a revision of the evidence by this court on this appeal, there was no exception to the order of the trial court denying the motion for a new trial. This being the case, this court is not permitted to review the evidence. Section 497 of the Code of Civil Procedure provides in part as follows:

"In hearings upon bills of exception in civil actions and special proceedings, the Supreme Court shall not review the evidence taken in the court below, not retry the questions of fact, except as in this section hereinafter provided; but shall determine only questions of law raised by the bill of exceptions. But the Supreme Court may review the evidence taken in the court below ? * * in the following cases: * * *

"(2) If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the evidence was insufficient to justify the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence, and render such final judgment, as justice and equity may require. *

* *"

As will be seen, the section quoted places a limitation on the appellate power of the Supreme Court, providing that it shall not review the evidence except when certain facts concur. As a necessary result, when they do not concur the Supreme Court is without power to review the evidence and redetermine the questions of fact. One of the conditions precedent to the right of this court to review the evidence is that the appellant shall take an exception to the denial of the motion for a new trial, as required in the paragraph (2) quoted. Nowhere in the record in this case does it appear that there was an exception taken to the order denying the motion for a new trial and, therefore, there is lacking one of the conditions necessary for the exercise by the Supreme Court of appellate power to review the evidence.

We are, therefore, limited, in the resolution of this appeal, to the pleadings and the facts stated in the decision of the trial court.

This is not new doctrine; and the charge that the decision rests on technical grounds is supported neither by reason nor authority. It cannot be said that the requisites on which the jurisdiction of a court depends are technicalities.

When an appellant has refused to perform those acts which give the appellate court jurisdiction of the appeal, is it technical to refuse to hear his appeal? If a court is unable to exercise its jurisdiction, can it be considered technical if it refuses to do so? Is it technical to dismiss an appeal when an appellant has not performed a single act necessary to give the appellate court jurisdiction? A court has no authority to act until its jurisdiction has been invoked in the manner provided by law. This court has distinctly held in several cases that an exception to the order overruling the motion for a new trial is jurisdictional and that the failure to except to the order denying the motion for a new trial prevents this court from exercising appellate jurisdiction so far as to review the facts. In the case of *Singayan vs. Maborang* (10 Phil. Rep., 601), this court said:

As may be seen, said writing contains no exception whatever to the order overruling the motion for a new trial, and no such note of exception exists in the bill of exceptions either before or after the presentation of said writing. Neither does an examination of the original record show that said exception had ever been taken therein.

"This case is identical with that of *Rubert & Guam vs. Luergo & Martinez et al.* (8 Phil. Rep., 554). * * * We then decided that the evidence could not be reviewed on account of the absence of said exception, and the same doctrine is herein applied. This is a fundamental question in an action, inasmuch as it directly affects the jurisdiction of this court in reviewing the questions of fact. Without the taking of an exception, our jurisdiction in this matter is limited simply to the questions of law which may arise from the conclusions contained in the judgment appealed from."

This case lays down the correct rule on the subject and one which has been consistently followed by this court. Without the exception the court has no power to act, and if it has no power to act, its refusal to act cannot be said to be based on technical grounds.

In the case of *Cacnio vs. Baens* (5 Phil. Rep., 742), the court said:

"First of all and for the purpose of this decision, we should state that to the order of the court of the 30th of October, 1903, denying the motion for a new trial, no exception was taken by counsel for plaintiffs as required in paragraph 3, section 497 of the Code of Civil Procedure. We cannot, therefore, review the evidence, nor can we draw from the facts proved the necessary conclusions to render a final judgment; as justice and equity require, to quote the law itself.

"Consequently, this court, following the general provision contained in the first paragraph of above-cited section 497, will only pass upon the question of law decided by the court below,"

The same doctrine was laid down by the court in the case of *International Banking Corporation vs. Martinez* (8 Phil. Rep., 427), where the court said:

"Although the defendant moved for a new trial, he failed to except to the order denying his motion, and for this reason we are not at liberty to review the proofs, but may only examine the judgment to determine whether, in the light of the pleadings, the facts found by the trial judge sustain his conclusions of law."

We reiterated the doctrine in the case of *Salvacion vs. Salvacion* (13 Phil. Rep., 366), where Justice Torres, writing for a unanimous court, said:

"It is an established rule of this court, in consonance with the provisions of section 497, paragraph 3, of the Code of Civil Procedure, as amended by Act No. 1596, that, where a motion for a new trial is overruled by a lower court, and no exception is taken to the overruling, the Supreme Court has no authority to review the evidence, and, admitting the facts held to be proven, it shall limit its jurisdiction to the questions of law. * * *

"It appears from the bill of exceptions submitted by the appellant that he did not except to the order of the court below of the 30th of March, 1907, by which his motion for the reopening of the case and the holding of a new trial was denied; for said reason, in accordance with the law and the established rules, we are not permitted to

review the evidence in the present case, and this court of appeal, after admitting the facts established by the court below in its judgment and the conclusions therein contained, will limit its jurisdiction to reviewing and deciding such questions of law as may have arisen between the contending parties."

These decisions were followed in the more recent case of *Arroyo vs. Yulo* (18 Phil. Rep., 236). In that case the Chief Justice, writing for a unanimous court, said:

"Pursuant to section 497, paragraph 3, of the Code of Civil Procedure now in force, if the excepting party files a motion in the Court of First Instance for a new trial upon the ground that the findings of fact are plainly and manifestly against the weight of evidence, and the judge overrules the motion, and due exception is taken, the Supreme Court may review the evidence, make such findings upon the facts and render such final judgment as justice and equity may require. The appellant not having taken exception to the denial of his motion for a new trial, this court ought not to review the evidence adduced in first instance * * *."

The following paragraph appears in the headnotes of that case:

"The appellant not having taken exception to the order overruling the motion for a new trial, the Supreme Court should not review the evidence adduced in first instance."

See *Serrano vs. Reyes* (17 Phil. Rep., 159).

There are other cases following the doctrine enunciated, all based on the theory that, in the absence of an exception to the order denying the motion for a new trial, the court is without jurisdiction to review the evidence.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

TRENT, J., concurring:

I concur in affirming the judgment upon the actual merits of the case and not upon the technicality that no exception was presented against the order of the court a quo denying the motion for a new trial.

Carson, J., dissents.

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