

CIRILO B. SANTOS, PLAINTIFF AND APPELLANT, VS. CECILIO RIVERA, DEFENDANT AND APPELLEE.

G.R. No. 10050. November 28, 1914

Ponente: TRENT, J.

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TRENT, J.:

This is a motion to dismiss an appeal on the ground that the appellant has not complied with the rules of this court in the preparation of his brief. Rules 19 and 20 read as follows:

"19. Prefixed to the brief of the appellant, but stated separately, shall be an assignment of errors intended to be urged. Each specification of error shall be separately, distinctly, and concisely stated without repetition, and they shall be numbered consecutively. All briefs shall be printed and shall exhibit an extract of the argument on the points of law or fact to be discussed, with reference to the pages of the record and the authorities relied upon in support of each point. The brief of the appellant shall also contain a concise statement of the facts in the case.

"20. No error not affecting the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and relied upon in the brief."

The appeal is from a judgment dismissing the complaint with costs after sustaining a demurrer to the complaint on the ground that it does not state a cause of action. Under the usual heading, the brief starts off with the following paragraphs:

"This is an appeal in the above-entitled cause against an order handed down on January 24, 1914, dismissing the complaint, and excepted to by the appellant.

"In the opinion of the appellant, the complaint sets forth facts of sufficient weight to constitute a cause of action, and the demurrer interposed against the same ought to be overruled, notwithstanding the opinion of the Honorable (judge) Crossfield, who holding the personal action of the appellant to be a real action, arrived at the conclusion that article 335 of the Code of Civil Procedure must be applied in this case. This, in our opinion, is an error which greatly prejudices the interest of the plaintiff, * * *."

The brief then continues to discuss the facts alleged in the complaint and their sufficiency in law to constitute a right of action. It is urged that this is not a compliance with the above-quoted rules nor with our decision in *Paterno vs. City of Manila* (17 Phil. Rep., 26), to which we also add *Santiago vs. Felix* (24 Phil. Rep., 378).

In the first case, "counsel for appellant in his printed brief makes no specific assignment of errors, but argues in a general way two questions." In the second case, the single error assigned was, "The Court of First Instance of this city incurred error in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence."

It is apparent that the case at bar is to be distinguished from the first case, because there is in the opening statement of the appellant a reasonable specific assignment of error, to wit, that the court erred in holding that the

complaint did not state facts sufficient to constitute a cause of action. While not being set off by itself and labeled as an assignment of error, this statement makes the point as effectually if not as artistically. Such a statement requires an inspection of the complaint and of the complaint alone for its determination. To set off the error assigned with an appropriate title would tend to clearness of style and hence be more acceptable to the court, but it would not avoid the necessity of examining the contents of the complaint.

The present case may also be readily distinguished from the second case cited. There are so many ways in which a judgment may be contrary to law and the weight of the evidence that such a general statement leaves the court absolutely in the dark as to what to look for. An alleged error should have definite bounds and be limited as far as possible to a single point. Nothing could be more irreducible than the statement that the complaint does not state facts sufficient to constitute a cause of action, without limiting the extent of the inquiry. For such a statement requires an inspection of the complaint as a whole, and nothing less will suffice to dispose of it. It requires an examination of only one particular portion of the record, to wit, the initial pleading—the complaint.

On the other hand, in the two cases cited, the cases had gone to judgment on the merits and a mere general discussion of what had transpired or the statement that the judgment was contrary to law left the court to struggle through the briefs and records in an effort to pick out something wrong.

Although the brief of the appellant is not a literal compliance with the rules of the court, nor is it a work of art from a professional point of view, still, we do not believe the departure from the prescribed practice has been so radical as to call for a dismissal of the case. We do not desire, however, to be understood as holding that it is not absolutely necessary to comply substantially with the above-quoted rules.

The motion is therefore denied.

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

CONCURRING

MORELAND, J.

I agree to the decision. There are some expressions used therein, however, which may be misleading in view of other decisions of this court, and it is to that situation that I desire to call attention.

The court, in comparing an assignment of error providing that "the Court of First Instance of this city erred in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence" with a demurrer to a complaint upon the ground "that the complaint does not state facts sufficient to constitute a cause of action," makes the observation that "nothing could be more irreducible than a statement that the complaint does not state facts sufficient to constitute a cause of action, without limiting the extent of, the inquiry." The purpose of the court in making this comparison is to demonstrate that the allegation that a judgment is contrary to law and the weight of the evidence is a reducible statement, that is, a statement so general that it means nothing and points put no error of which the appellate court can take notice; whereas the statement that a complaint does not state facts sufficient to constitute a cause of action is a statement so specific and direct and points out so clearly the error in the complaint as to be entirely irreducible; that is, by no language could, the error in the complaint be more specifically pointed out or attention more directly and definitely called thereto.

I take exception to the statement with regard to the irreducibility of the allegation that a complaint does not state facts sufficient to constitute a cause of action and support my contention in the decision of this court in the case of *Lizarraga Hermanos vs. Yap Tico* (24 Phil. Rep., 504).

In that case one of the questions presented to and resolved by the court arose upon the sufficiency of a demurrer which simply alleged that the complaint did not state facts sufficient to constitute a cause of action; and, far from holding that said statement was an irreducible statement and was so definite and certain, and so direct in calling the attention of the court to the error charged, that it could not be improved on in that regard, this court held precisely the contrary, namely, that a demurrer containing such a statement was so general and indefinite and failed so completely to comply with the express provisions of section 91 of the Code of Civil Procedure, that it was a defective demurrer for that reason and, if objected to upon that ground, could not be held to have raised any question as to the sufficiency of the complaint. The court laid down the doctrine in that case that, when a defendant demurred to a complaint upon the ground that it did not state facts sufficient to constitute a cause of action, he must point out the precise objection to which he alluded and state specifically wherein the complaint failed to state a cause of action.

In discussing that question we said: "A demurrer * * * should not leave the court and the party against whose pleading it is aimed as ignorant of the defect in the offending pleading as before the demurrer is filed. Many times the objection that the complaint does not state facts sufficient to constitute a cause of action means very little. There are occasions, of course, when it is sufficient. But it is certain that no injury can ever result from naming the precise reason why the complaint does not state facts sufficient to constitute a cause of action; and, in the great majority of cases, great good will come of it."

And further on in the decision the court also said:

"When a demurrer is made to a complaint, whether upon one ground or another, it should set out distinctly the grounds upon which the objection is based. It cannot be couched simply in the language of the code. It must set-forth distinctly the grounds upon which that language is founded. The reason for this is plain. It is not fair to the plaintiff to interpose to a complaint the simple objection that it does not state facts sufficient to constitute a cause of action. Neither is it fair to the court. Neither the plaintiff nor the court should be left to make, possibly, a long and tiresome examination and investigation and then, perhaps, finally be compelled to guess. The grounds of the objection should be pointed out so that all may see. A demurrer was not invented to make useless work for a court, or to deceive or delude a plaintiff. Its purpose was to clarify all ambiguities; to make certain all indefinite assertions; to bring the plaintiff to a clear and clean expression of the precise grievance which he has against the defendant; to aid in arriving at a real issue between the parties; to promote understanding and prevent surprise. To that end, a demurrer should specify, for the benefit of the plaintiff and the court as well, the very weakness which the demurrant believes he sees in the complaint. It should be so presented and handled as to bring to a quick determination the question whether the plaintiff has, at bottom, a legal claim against the defendant. To attain this object, the demurrer should be clear, specific, definite, and certain as to the precise weakness of the complaint. Being an instrument to cure imperfections, it should not itself be imperfect.

"To the complaint before us a demurrer was interposed, stating merely that the complaint did not allege facts sufficient to constitute a cause of action. No particular ground was specified. No specific failure was asserted or named. No precise weakness was pointed out. The order overruling the demurrer does not indicate that the court was informed as to the specific grounds upon which it was based. Certainly, so far as the record goes, the plaintiffs never knew until after the demurrer was decided precisely what the defendant was driving at when he presented it."

The court says that the statement that a complaint does not state facts sufficient to constitute a cause of action is so definite, direct and clear that it cannot be made more so "without limiting the extent of 'the inquiry.'" The "extent of the inquiry" in such a case is to determine whether the complaint states a cause of action or not; and it in no wise limits the extent of the inquiry for the demurrant to point out where and in what particular the complaint fails to state a cause of action. Precisely the same inquiry exists in one case as in the other. The inquiry

always is: Does the complaint state facts sufficient to constitute a cause of action ? And that inquiry is not limited by requiring the demurrant to point out the particular ground upon which he makes the allegation.

The statement quoted is not necessary to a decision of the case at bar, and I would not refer to it except that it might cause confusion in the mind of the bench or the bar in such a way as to weaken the doctrine laid down in the case above cited. With modification in this respect, I would not hesitate to concur fully in the decision as written.

DISSENTING

JOHNSON, J.

From an examination of the record, I fail to find any sound reason for not requiring the appellant to comply, with Rules 19 and 20 of this court, as we have done in other cases. (Paterno vs. City of Manila, 17 Phil. Rep., 26; Santiago vs. Felix, 24 Phil. Rep., 378.)

In the case of Paterno vs. City of Manila (supra), this court said: "The rules of this court are few and simple. They have been promulgated for several years, and every practicing attorney should be familiar with them. They are the laws of the court and must be obeyed until repealed, unless it can be shown that they are in conflict with the laws of the United States or the Philippine Islands."

In the case of Santiago vs. Felix (supra), this court said:

"It is an established rule of this court, uniformly applied in many cases, that if the appellant fails to make an assignment of errors and merely confines himself to a discussion of facts in general, this court can not disturb the adverse finding of the trial court alleged to be contrary to law and the weight of the evidence; it is necessary that the appellant point out specifically the alleged error or errors in the judgment appealed from."

As was said in the case of Paterno vs. City of Manila:

"The rules of this court are few and simple. They have been promulgated for several years and every practicing attorney should be familiar with them." Said Rule 19 requires an assignment of errors by the appellant; it requires that there shall be prefixed to the brief of the appellant an assignment of errors intended to be urged; that each assignment of error shall be separately, distinctly and concisely stated, without repetition. Said rule or requirement follows practically the rule of the Supreme Court of the United States. The purpose of the rule, as has been repeatedly stated by the Supreme Court of the United States, is to enable a busy court and the opposing counsel to see on what points opposing counsel intend to ask a reversal of the judgment, and for the further, and perhaps just as important a reason, to limit the discussion of the parties on the appeal to particular points, either of fact or of law. (Philipps vs. Seymour, 91 U. S., 646.) See also the following cases in which the Supreme Court of the United States dismissed the appeals for the reason that the appellants failed to make an assignment of error, in accordance with the rules; Treat vs. Jemison (20 Wall., 652); Maxwell vs. Stewart (21 Wall., 71); Gumbel vs. Pitkin (113 U. S., 545); Dugger vs. Tayloe (121 U. S., 286); Benites vs. Hampton (123 IL S., 519); Rowe vs. Phelps (152 U. S., 87).

I suppose that in each argument by each appellant there might be found, upon reading it, the particular error of which he complains. Courts, however, should not be required to read the arguments of appellants for the purpose of sifting out the particular error upon which they rely, especially when there have been established a "few and simple" rules for the purpose of facilitating the work of the courts, as well as of counsel.

I see no reason why the motion of the appellee in the present case should not have been granted, at least to the

extent of requiring the appellant to make a special assignment or assignments of error upon which he expected to ask the court to reverse the judgment appealed from.

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