

JUAN LAYDA ET AL., PLAINTIFFS AND APPELLANTS, VS. HIGINO LEGAZPI ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 12133. November 12, 1918*

Ponente: JOHNSON, J.

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This action was commenced in the Court of First Instance of the Province of Pangasinan, on the 21st day of January, 1915, and, after numerous delays, was finally submitted to the Supreme Court for final decision on the 9th day of July, 1918. The purpose of the action was to recover, as owners, a piece or parcel of land 47 meters long and 46 meters wide, together with P15 as damages.

Upon an examination of the record, it was discovered that the decision of the lower court had become final before the appeal had been perfected. That being true, this court acquired no jurisdiction by virtue of the appeal; and not having jurisdiction to consider the case upon its merits, it must be dismissed.

Appellate courts have a right to examine the record for the purpose of determining whether they have jurisdiction or not, even though that question has not been raised. Jurisdiction of appellate courts is not conferred by consent of the parties. The right to appeal is statutory.

Judgments in ordinary civil actions become final and may be executed the moment the time for perfecting an appeal has elapsed. If the appellant allows that time to elapse, his right to an appeal is lost. A failure to perfect the appeal within the time prescribed is jurisdiction[^] and the certification of a bill of exceptions thereafter cannot restore the jurisdiction which is lost.

Since the decision in the case of Gomez Garcia vs. Hipolito (2 Phil. Rep., 732), hundreds of motions have been made for the purpose of dismissing bills of exceptions. The court has been annoyed by such motions, due to the fact that the time for the presentation of bills of exceptions has not been definitely fixed.

Since the pronouncement of numerous decisions upon the question when bills of exceptions should be presented, the Legislature adopted Act No. 2347 (sections 26 and 27), which has made more certain that period. By virtue of section 26 of said Act, the losing party in a land registration case must present his bill of exceptions within thirty days, counting from the date on which he received a copy of the decision, unless that period is extended by order of the court before its expiration. (Roman Catholic Bishop of Tuguegarao vs. Director of Lands, 34 Phil. Rep., 623; Bermudez vs. Director of Lands, 36 Phil. Rep., 774; Estate of Cordoba and Zarate vs. Alabado, 34 Phil. Rep., 920.)

From said thirty days there may be deducted the time which the court occupied in considering a motion for a new trial and until notice of the decision on said motion is received.

Since the announcement of the rule in the two above-cited cases, scarcely a motion has been presented for the dismissal of a bill of exceptions in a land registration case. The question whether or not the bill of exceptions is presented within time in a land registration case, now, is simply a matter of counting the days. Uncertainty leads

to confusion, annoyance and delay.

A more difficult question is presented when we consider the exact period within which a bill of exceptions must be presented in ordinary actions. That period is not definitely fixed, in the terms of days, by any statute. In fact, that period is about as uncertain and indefinite as it could possibly be made. Section 143 of Act No. 190 provides that the bill of exceptions must be presented within ten days after "notice of an intention to present a bill of exceptions is given." (Lim vs. Singian and Soler, 37 Phil. Rep., 817.) But when or within what period must the "notice of an intention to present a bill of exceptions" be given? Said section provides that such notice may be given (a) at the time of rendition of the judgment; or (b) as soon thereafter as may be practicable; and (c) at least before the end of the term of the court at which final judgment is rendered. Thus it is seen that under that section it is impossible to have any uniform rule for the presentation of the bill of exceptions, for the reason that the time when "notice of an intention to present a bill of exceptions" must be given, is uncertain. Certainly, the aggrieved party could not be expected to "give notice of his intention to present a bill of exceptions at the time of the rendition of the judgment," if he had no notice at that time of the decision; and the time "as soon thereafter as may be practicable" is as indefinite and uncertain as the number of cases which will arise; and "the end of the term of the court" is equally as uncertain. It is a fact that the terms of courts are closed when the business of the particular province¹ is finished; that is especially so when the judge is sitting in two provinces. The law fixes the time when the terms of court begin but does not fix the time when the terms close, while in the city of Manila there are no terms; the law requires that the judges shall hold court on all working days during the year while there are cases ready for trial. (Sec. 5, Act No. 2347.) The law fixes the exact time (ten days), (sec. 143) within which the bill of exceptions must be presented after "notice of an intention to present a bill of exceptions" is given. (Lim vs. Singian and Soler, *supra*.) The period above indicated, within which "notice of an intention to present a bill of exceptions" must be presented, is rendered more uncertain by the fact that, after notice of the decision, a motion for a new trial may be presented. And it has been held, in decisions without number, that the time, from the presentation of said motion, until notice of the decision thereon is given, must not be counted as a part of the time within which "notice of an intention to present a bill of exceptions" must be given.

In the case of Lim vs. Singian and Soler (*supra*), we held that the appellant must file his bill of exceptions within ten days from the "time of giving notice of his intention to do so" (Article 143, Act No. 190), or within such additional time as the trial court may, by express order, have allowed, upon petition for enlargement filed before the expiration of said statutory period of ten days; and that unless the appellant files his bill of exceptions within such time, the judgment becomes final and the successful litigant is entitled to a writ of execution. That case settled the question definitely and finally with reference to the time within which a bill of exceptions must be presented in an ordinary action after the losing party "gives notice of his intention to appeal." That decision left open the question: Within what period must "notice of an intention to present a bill of exceptions" be given?

Section 27 of Act No. 2347 provides, in ordinary actions, that a new trial may be granted within thirty days after rendition of judgment and notice thereof. A decision cannot become final, therefore, until after the expiration of thirty days; unless a motion for a rehearing is presented earlier; that is to say, if a motion for a new trial is presented upon the very day upon which notice of the decision is given, or any day thereafter within the thirty days, and the judge should decide the same immediately, the aggrieved party cannot claim the balance of the thirty days against the period fixed for the presentation of his bill of exceptions. In other words, if the aggrieved party should present his motion for a rehearing on the very day on which he received notice of the decision, and the judge should, on the same day, decide the motion and give notice thereof, the time for the presentation of his bill of exceptions would begin to run immediately upon receipt of said notice, and that must be the rule whether the motion was presented upon the first of the thirty days or upon the last. While the motion for a rehearing must be presented within thirty days, the time for "giving notice of an intention to present a bill of exceptions" will not

begin to run until after said motion is decided and notice thereof is given.

Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by the law. The very object for which courts were instituted was to put an end to controversies. (*Dy Cay vs. Crossfield & O'Brien*, 38 Phil. Rep., 251.)

In view of that doctrine, we believe that we are giving a sane interpretation of the general provisions of the law when we decide that the "notice of an intention to present a bill of exceptions" must be given within a period of five days from the receipt of the notice of the decision, if no motion for a new trial is made, and, within a period of five days after notice of the decision on a motion for a new trial.

From all of the foregoing, and taking into consideration the amendments to Act No. 190 upon the question which we are discussing, we are confident that we are within the spirit, if not the letter, of the law in announcing the following periods within which bills of exceptions must be presented:

(1) That in land registration cases, the bill of exceptions must be presented within thirty days from the date of the receipt of the decision of the court; that that period may be extended by an order of the court before its expiration ; that whatever time is occupied by the court in considering a motion for a new trial, from the time of its presentation up to the time of notice of the decision thereon, shall not be counted; (*Roman Catholic Bishop of Tuguegarao vs. Director of Lands*, 34 Phil. Rep., 623; *Bermudez vs. Director of Lands*, 36 Phil. Rep., 774; *Estate of Cordoba and Zarate vs. Alabado*, 34 Phil. Rep., 920.)

(2) That in ordinary actions, the aggrieved party has (a) thirty days within which to present a motion for a new trial; (b) that after notice of the ruling upon his motion, he has five days within which to present "notice of his intention to present a bill of exceptions;" (c) that after the presentation of "notice of his intention to present a bill of exceptions" he has ten days within which to present his bill of exceptions (*Lim vs. Singian and Soler*, supra); (d) that failure to comply with any of the foregoing requirements, within the various periods mentioned, will cause the judgment to become final, upon which a writ of execution may issue, and the presentation of a bill of exceptions thereafter will not give the appellate court jurisdiction; and (e) that each and all of said periods may be extended, by order of the court upon application made prior to the expiration of the original period.

In the present case, the following facts appear: (a) The decision was rendered on the 20th day of September, 1915 (the record does not show when the aggrieved party received notice of said decision); (b) on the 11th day of October, 1915, the aggrieved party presented a motion for a new trial; (c) the motion for a new trial was denied on the 15th day of October, 1915 (the record does not show when the aggrieved party received notice of the denial of said motion) ; (d) an exception to the order denying the motion for a new trial was presented on the 25th day of October, 1915; (e) the aggrieved party gave "notice of his intention to present a bill of exceptions" on the 22nd day of October, 1915; (f) nothing further was done until the 20th day of November, 1915, when the aggrieved party presented a motion for an extension of time within which to present his bill of exceptions, which motion was granted; (g) the bill of exceptions was presented on the 2d day of December, 1915, and certified by the judge on the 11th day of December, 1915, and the same was received in the Supreme Court on the 6th day of April, 1916.

It will be seen from the above facts that at least 29 days expired from the date of the "notice of an intention to present a bill of exceptions" before the motion was made for an extension of time within which to present the bill of exceptions. Said motion was therefore made after the expiration of the period for the presentation of the bill of exceptions and could not be extended. (*Bermudez vs. Director of Lands*, 36 Phil. Rep., 774; *Credit Company vs. Arkansas, etc., Company*, 128 U. S., 258.)

In addition to the foregoing reasons-for dismissing the bill of exceptions, the record contains the following additional reasons for declaring the appeal abandoned; (1) The bill of exceptions was not forwarded to the clerk of

the Supreme Court within the time prescribed, by law and the Rules of the Court; (section 143 of Act No. 190; Rule 14 of the Supreme Court; *Government of the Philippine Islands vs. Abrion*, 38 Phil. Rep., 679; *De Leon vs. Rodriguez and Cruz*, R. G. No. 14569[1]gt;); (2) for the reason that neither the registration fees nor the amount necessary for the printing of the bill of exceptions were deposited within the time prescribed by the rules (rule 15 of the Supreme Court; *Duay and Luanzon vs. Puyaoan*, R. G. No. 14457[2]; *Reyes and Caluag vs. Reyes*, R. G. No. 14472[3]; *De Leon vs. Celestra*, R. G. No. 14456[4]; *Ortega vs. Ferrer*, R. G. No. 14443[5]; *Rodriguez vs. Garcia*, R. G. No. 14337[6]; *Enriquez vs. Mercado and Liwanag*, R. G. No. 14403[7]); (3) for the reason that the brief of the appellant was not presented within the time prescribed. (Rule 21 of the Supreme Court; *Cadapan vs. Balquiebra*, R. G. No. 13686[8]; *Zelser vs. Bernardo*, R. G. No. 13535[9]; *Javier and Acuña vs. Ponce*, R. G. No. 13879[10]; *Municipality of Paoay vs. Diaz*, R. G. No. 14222[11].)

In holding, as we do, that "notice of intention to present a bill of exceptions" in an ordinary action must be given within five days from the date of notice of the decision, or of the order denying the motion for a new trial, we are aware that we are expressly overruling the cases of *Santillan vs. Almonte* (24 Phil. Rep., 277) and *Gascon Enriquez vs. Gibbs* (27 Phil. Rep., 110) in which it was held that twenty days would be allowed for that purpose. Since these cases were decided the Legislature has passed Act No. 2347, by which section-145 of the Code of Civil Procedure was so amended as to allow a dissatisfied litigant thirty days from the date of the notice of the decision in which to move for a new trial. Having this considerable period of time in which to reflect upon the advisability of taking an appeal, the reasons, which we gave in the cases cited for allowing twenty days in which to give of intention to take a bill of exceptions, no longer exist.

For the reason that the bill of exceptions was not presented in time, the judgment of the lower court became final and the right to appeal was lost. This court, therefore, has no jurisdiction to consider the appeal. For that reason, the same is dismissed without any finding as to costs. So ordered.

Arellano, C. J., Torres, Street, Avanceña, Malcolm, and Fisher, JJ., concur.

[1] Resolution of October 21, 1918.

[2] Resolution of October 21, 1918.

[3] Resolution of September 23, 1918.

[4] Resolution of September 16, 1918.

[5] Resolution of September 16, 1918.

[6] Resolution of September 16, 1918.

[7] Resolution of September 2, 1918.

[8] Resolution of July 8, 1918.

[9] Resolution of July 15, 1918.

[10] Resolution of July 16, 1918.

[11] Resolution of October 7, 1918.

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