

THE DIRECTOR OF LANDS, PETITIONER, VS. LEOCADIA MAURERA, PETITIONER AND APPELLANT, AND VICENTE TIONGSON, OBJECTOR AND APPELLEE.*G.R. No. 13398. January 14, 1918*

Ponente: JOHNSON, J.

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This is a motion to dismiss the bill of exceptions for the reason that it had not been presented in time. The only question presented by said motion is whether or not the judge of the Court of First Instance, in a land registration case, has authority to extend the period of 30 days, for the presentation of the bill of exceptions, by an order before said period has expired, under the provisions of section 26 of Act No. 2347.

The pertinent facts for a consideration of that question involved in the present case are: (1) That the decision was rendered on the 28th day of February, 1917; (2) that the appellant received a copy of said decision on the 2d day of July, 1917; (3) that on the 8th day of July the appellant presented a motion for a new trial; (4) that on the 7th day of August the motion for a new trial was denied[^] (5) that, while the record does not show on what day the appellant received notice of the denial of his motion for a new trial, it does show that he must have received notice on or before the 9th day of August, for the reason that on said date he presented an exception to the order denying his motion; (6.) that on the 9th day of August, 1917, and at the time of presenting his exception to the order of the court denying his motion for a new trial, he also presented a motion praying that he be given 30 days within which to present his bill of exceptions; (7) that on the 15th day of August, the Honorable Vicente Nepomuceno, judge, granted to the appellant 30 days within which to present his bill of exceptions; and (8) that the bill of exceptions was actually presented and filed with the clerk on the 12th day of September, 1917.

It will be seen from these facts that the bill of exceptions was actually presented within the 30 days mentioned in the order of the judge of the 15th day of August. If, therefore, the judge has authority to extend the period for the presentation of a bill of exceptions in a land registration case under the provisions of section 26 of Act No. 2347, before said period has elapsed then it is clear that the bill of exceptions in question was presented in time.

With reference to the time within which a bill of exceptions must be presented in a land registration case, certain rules have heretofore been established:

(1) That the bill of exceptions must be presented within a period of 30 days from the day on which a copy of the decision is received. (Section 26 of Act No. 2347; *Lavitoria vs. Judge of First Instance of Tayabas and Director of Lands*, 32 Phil. Rep., 204; *Roman Catholic Bishop of Tuguegarao vs. Director of Lands*, 34 Phil. Rep., 623; *Estate of Cordoba, and Zarate vs. Alabado*, 34 Phil. Rep., 920; *Bermudez vs. Director of Lands*, 36 Phil. Rep., 774.) (2) That the 30 days begin to run immediately upon the receipt of the decision, but stop running upon the presentation of a motion for a rehearing until said motion is decided and notice thereof is given to the appellant. (*Garcia vs. Ambler and Sweeney*, 4 Phil. Rep., 81; *De la Cruz vs. Garcia*, 4 Phil. Rep., 680; *Santos vs. Villafuerte*, 5 Phil. Rep., 739; *Paez vs. Berenguer*, 6 Phil. Rep., 521; *Lavitoria vs. Judge of First Instance of Tayabas* and

Director of Lands, 32 Phil. Rep., 204; Roman Catholic Bishop of Tuguegarao vs. Director of Lands, 34 Phil. Rep., 623; Estate of Cordoba, and Zarate vs. Alabado, 34 Phil. Rep., 920; Bermudez vs. Director of Lands, 36 Phil. Rep., 774.) (3) The time (30 days) again begins to run on the day on which notice of the order denying the motion for a rehearing is received. (4) That the presentation of the bill of exceptions after the expiration of the 30 days, computed in the manner above indicated, is too late and the same will be dismissed upon motion. (Estate of Cordoba, and Zarate vs. Alabado, 34 Phil. Rep., 920; Bermudez vs. Director of Lands, 36 Phil. Rep., 774.) (5) That the Court of Land Registration is without authority, under section 26 of Act No. 2347, to grant a motion for an extension of the said 30 days, which is presented after the expiration of said period. (Bermudez vs. Director of Lands, 36 Phil. Rep., 774.)

In the case of Bermudez vs. Director of Lands, *supra*, while this court decided that the period of thirty days within which a bill of exceptions must be presented in an appeal from a decision of the Court of Land Registration could not be extended upon a motion presented after the expiration of said period, we expressly left undecided the question whether or not the court has authority to extend said period of thirty days upon a motion made for that purpose within said period.

In the present case a copy of the decision was received by the appellant on the 2d day of July. His motion for a new trial was presented upon the 6th day of July; but four days, therefore, of the thirty days had expired. Said motion was not passed upon by the court until the 7th day of August. The time between the 6th day of July and the 7th day of August could not be counted as a part of the thirty days. Neither did the thirty days begin to run after the decisions of said motion (7th day of August) until the party had received notice of the order. While the date upon which the notice of said decision was received does not appear of record, the appellant must have had notice on or before the 9th day of August, the day on which he presented his exception. The thirty days then began to run, at least, on the 9th day of August. On the same day (9th day of August) the appellant presented a motion praying that he be given thirty days from that date within which to present his bill of exceptions. Said motion was granted upon the 15th day of August. Assuming that the appellant received notice of the order of the court denying his motion for a new trial on the 9th day of August, the time for the presentation of the bill of exceptions again began to run on that day. Said motion was granted on the 15th day of August. At the time of the granting of the motion for an extension of the time but ten days of the thirty had run— four days between the time of the receipt of the decision and the presentation of the motion for a new trial, and six days between the time of the receipt of the order of the court denying the motion for a new trial and the order granting thirty days within which to present the bill of exceptions.

In the case of Bermudez vs. Director of Lands, *supra*, we held that the thirty days for the presentation of a bill of exceptions mentioned in section 26 of Act No. 2347 could not be extended after the expiration of said time. That decision was based upon the provisions of Act No. 1484, as amended by section 26 of Act No. 2347, and upon the theory that when the time for perfecting a bill of exceptions has expired, it cannot be arrested or called back by a simple order of the court. (*Credit Co. vs. Arkansas Cent. R. Co.*, 128 U. S., 258.) That doctrine is not necessarily controlling when the motion for the extension of the time for the presentation of the bill of exceptions is made before the expiration of the time. In the first case there is no time to be extended—the time has already expired; in the second case the time is still running—there is time which may be extended. In such a case, we are of the opinion and so decide that it is within the sound discretion of the court to extend the period of thirty days for the presentation of a bill of exceptions in a land registration case. If said motion is presented before the expiration of the time mentioned in section 26 of Act No. 2347, computed as above indicated, the court may then extend the time for the presentation of the bill of exceptions. In the present case the motion having been presented before the expiration of the thirty days the court had authority, within a sound discretion, to grant the same.

Therefore, the motion to dismiss the bill of exceptions, for the reasons above given, is hereby denied. So ordered.

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

Malcolm, J., with whom concurs Fisher, J., dissenting:

DISSENTING OPINION

MALCOLM, J., dissenting:

As stated in the majority decision, the only question presented by the motion to dismiss the bill of exceptions is whether or not a judge of first instance in a land registration case has authority to extend the period of thirty days for the presentation of the bill of exceptions, by an order, before said period has expired, under the provision of section 26 of Act No. 2347.

Act No. 2347 is a carefully prepared revision of Act No. 496, the Land Registration Act. Section 26 of Act No. 2347 expressly amends section 14 of Act No. 496 by adding the following proviso: "That the period within which the litigating parties must file their appeals and bills of exceptions against the final judgment in land registration cases shall be thirty days, counting from the date on which the party received a copy of the decision." No words could be plainer. Application is wisdom, Interpretation is dangerous. Judicial amendment is fatal. Only note that, to emphasize intention, the Legislature uses such emphatic words as "must" and "shall." Of course, the law was drafted and passed for a purpose. The laudible intention of the Legislature was to expedite the court proceedings. A court should not make this law a dead letter. Our only duty is to give effect to legislative intention.

In other jurisdictions, particularly California, from which so much of the legislation of the Philippines regarding pleading and practice has been taken, the codes, after definitely fixing certain time limits, contain provisions permitting a judge upon good cause shown to extend the time allowed by the code. The Philippine law, on the contrary, grants no such authority. As an example, the Code of Civil Procedure of California allows ten days for preparing a bill of exceptions. Section 1054 of the Code then provides as follows:

"When an act to be done, as provided in this code, relates to * * * the preparation of statements or of bills of exceptions, or of amendments thereto, or to the service of notices other than of appeal, the time allowed by this code may be extended, upon good cause shown by the judge of the superior court in and for the county in which the action is pending, or by the judge who presided at the trial of said action; but such extension shall not exceed thirty days without the consent of the adverse party."

The Supreme Court of California, in construing this section, has uniformly held that an order granting thirty days in addition to the ten days allowed for preparing the bill of exceptions to be used on appeal from the judgment, exhausts the power of the court to extend the time for that purpose. (Bryan vs. Maume [1865], 28 Cal., 238; Bunnell vs. Stockton [1890], 83 Cal., 319; Cameron vs. Arcata etc. R. R. Co. [1900], 129 Cal., 279.) The same rule applies as to the time allowed for appeal. The California Code provides for one year for this purpose. This period the Supreme Court of California has held is an express and peremptory limitation of time within which the appeal must be taken and is not a flexible rule to be varied by extrinsic circumstances. A court has no power to extend this time. (Many decisions of the Supreme Court of California.) Until the present decision, the Supreme Court of these Islands had also uniformly held that the bill of exceptions in the land registration cases must be presented within a period of thirty days from the day on which a copy of the decision is received (Lavitoria vs. Judge of First Instance of Tayabas and Director of Lands [1915], 32 Phil. Rep., 204; Roman Catholic Bishop of Tuguegarao vs. Director of Lands [1916], 34 Phil. Rep., 623; Estate of Cordoba, and Zarate vs. Alabado [1916],

34 Phil. Rep., 920; Bermudez vs. Director of Lands [1917], 36 Phil. Rep., 774.)

In view, therefore, of the easily understandable provisions of the law which give no discretion to the courts, I must by this dissent protest against our usurpation of legislative power tending to the prolongation of judicial proceedings.

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