

**THE DIRECTOR OF LANDS, PETITIONER, VS. PEDRO AGUAS ET AL.,
OBJECTORS. LADISLAO DAYRIT, OBJECTOR AND APPELLEE.
GONZALO MANALASTAS AND BROTHERS, OBJECTORS AND
APPELLANTS.**

G. R. No. 16270. August 17, 1920

Ponente: CORONA, J.

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CORONA, J.:

The transcript of the stenographer's notes of the testimony taken in the court below has not been brought here with the bill of exceptions as required by law, and it is manifestly impossible for this court to review the evidence and the findings of fact of the trial judge unless this omission from the record is corrected.

The record discloses that after the record had been brought here on appeal, the appellant filed his brief in due course. In that brief he discussed the evidence submitted at the trial, without advising the court that the transcript of the testimony had not been brought here with the bill of exceptions, and without making any effort to have the omission supplied or corrected. Therefore, the appellee filed his printed brief, and in the course of that brief prays the court to disregard the contentions of the appellant based on alleged errors in the findings of fact, and to adjudicate the case upon the pleadings and the judgment.

The appellant now submits a motion praying the court to issue the necessary orders to bring up the evidence, so that the omission from the record having been corrected, the court may decide the case upon the merits, after a full review of all the proceedings had in the court below.

Section 501 of the Code of Civil Procedure contemplates just such a situation as that which now confronts us. It is as follows:

"If at any time when a case is called for trial, or during the trial, or afterwards, while the Supreme Court may have the same under consideration, it is discovered that the record is so incomplete that justice requires the case to be postponed until the record can be made complete, the court shall postpone the further consideration of the same and make such order as may be proper and necessary to complete the record, in the interests of justice. But the court may dismiss a bill of exceptions for failure of the excepting party within a reasonable time to comply with the orders made for the perfection of the bill of exceptions."

Act No. 2383 places the duty upon the official stenographer and the clerk of the trial court to extend and transmit a transcript of the testimony to this court in any case wherein an appeal is perfected. It follows, of course, that an interested party may call upon this court or the court below for such orders as may be necessary to correct any failure by these officers of the courts in the performance of their duty; and this court uniformly issues such orders unless it appears that the omission from the record was due to culpable negligence or fault on the part of the person interested in bringing the testimony up on appeal. In the latter event the orders of the court are so moulded as to protect the right of the opposing party, and to prevent, as far as may be, unreasonable delay of the proceedings of a miscarriage of justice arising out of the misconduct of a litigant.

The cases of *Mapa vs. Chaves* (20 Phil., 147) and *De Guzman and Mercado vs. Fernandez* (p. 7, ante) well illustrate the form in which orders of this kind may be moulded so as to meet the exigencies of the exceptional cases which sometimes arise.

It would be manifestly unjust to the appellee in the case at bar to issue an order to perfect the record at this time without protecting his rights in the premises. He has been put to the expense of filing his brief, without the evidence in the record upon which the findings of fact by the trial judge were based. If, and when, the evidence is brought here, his counsel will be entitled, and will doubtless find it necessary, to file a new brief for the proper protection of the interests of his client. All this additional expense and delay might have been avoided had counsel for the appellant promptly moved the court to issue the necessary orders to perfect the record before the briefs were filed. It was negligence on his part to fail to examine the record as soon as practicable after it had been brought here in order to satisfy himself that it was complete and to take prompt measures to correct any defects which adversely affected his interests.

His negligence in this regard was not of such inexcusable character as to give rise to an inference of wilful misconduct, such as would justify us in declining altogether to entertain his motion to correct the omission in the record. Doubtless he made use of his own notes of the testimony in the preparation of his brief, without examination of the record, and relied upon the presumption that the clerk of the lower court had complied with his duty to send the evidence here with the record on appeal. We cannot say that he was culpably responsible in any way for the original failure of the clerk to transmit the evidence; but it is very evident that the delay in correcting the omission since the record was received by this court, with all the incidental inconvenience and cost to the opposing party, may fairly be attributed to appellant's negligence in verifying the conditions of the record, and to his failure to move promptly to correct the omission which the most cursory examination of the record as brought here would have disclosed.

We conclude that we should grant appellant's prayer for the issuance of the appropriate orders directing the clerk of the court below to transmit the evidence taken at the trial to this court, to be united with the record on appeal. But we think that for the protection of the rights of the appellee, this order should be conditioned upon the deposit by the appellant, within five days from the receipt of notice of our action in this regard, of the sum of P24 (this amount being equal to the registration fee fixed by law in appealed cases) together with an amount equal to the costs of printing the appellee's brief heretofore filed with the record, the total amount being for the use of, and to be turned over forthwith to the appellee whose interests have suffered as a result of the appellant's negligence.

Upon the making of this deposit, the proper orders will issue for the perfection of the record; but, in the event that the deposit is not made as directed, the clerk will forthwith enter an order denying the motion to perfect the record, and the case will thereafter be adjudicated in due course upon the record as it stands. So ordered.

Mapa, C. J., Johnson, Araullo, Malcolm, Avanceña, Moir, and Villamor, JJ., concur.

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