

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MIGUEL J. OSSORIO, DEFENDANT AND APPELLANT.

G.R. No. 22390. October 11, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The defendant questions the judgment of the Court of First Instance of Manila in which he was ordered to pay the Government of the Philippine Islands the sum of P11,644.75, with legal interest from July 22, 1921, in accordance with section 650 of the Administrative Code, plus the costs, in payment of the repairs made by the Bureau of Commerce and Industry to the steamer Alfonso, the property of said defendant.

The defendant alleges that the court committed an error in (a) Considering Alberto Muscat as referee without the proper appointment; (b) in not giving the defendant an opportunity to object to the report of said referee; (c) in admitting said report; (d) in ordering the defendant to pay the plaintiff the sums mentioned; and (e) in denying the motion for a new trial.

In regard to the first assignment of error, it is noted that Alberto Muscat was appointed referee in an order issued by the court and of which he was notified by the clerk. He then took oath of office and proceeded to discharge it.

It is true that the clerk did not issue the commission as provided for in section 136 of the Code of Civil Procedure and, consequently, due to this omission by the clerk, the proper oath taken by the referee is not certified in said commission. This certification is provided for in section 137 of said Code.

These defects constitute irregularities in the appointment of the referee which should not have been committed, but they do not constitute an error prejudicial to the appellant, which question, after all, was not raised in the first instance.

The second assignment of error alleges that the defendant was not given an opportunity to object to the referee's report. It is a fact that the defendant was not notified of the filing of the said report, and in the case of *Kriedt vs. E. C. McCullough & Co.* (37 Phil., 474), this court held that notification of the filing of the report must be sent to the parties for the purpose of giving them an opportunity to present their objections; this same doctrine was affirmed in the decision rendered by this court in the case of *Santos vs. De Guzman and Martinez* (45 Phil., 646), promulgated January 23, 1924.

The failure to grant the parties in due form this opportunity to object to the report may, in some instances, constitute a serious error in violation of the substantial rights of the parties.

In the instant case, however, we are of the opinion that while the court committed an error in not granting the parties, by means of notification to that effect, an opportunity to object to said report, such error was not prejudicial to the substantial rights of the defendant, inasmuch as said report was attached to the record of the cause for more than four months before the court took any action on it, and the trial court studied it in connection with the evidence attached thereto and found it correct; and after having considered it together with the evidence

presented before the referee, we find said report to be correct and we see no valid and sufficient objection thereto to warrant a reversal of the judgment appealed from.

Touching the third assignment of error, we find the evidence presented sufficiently supports the conclusions of the trial court and that no error was committed in ordering the defendant to pay the sums mentioned in the judgment appealed from.

The last assignment of error is a consequence of the preceding ones.

The judgment appealed from is affirmed, without any special pronouncement as to costs in this instance. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, and Ostrand, JJ., concur.

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