

THE SAN MIGUEL BREWERY, PLAINTIFF AND RESPONDENT, VS. DOMINGO LEGARDA, DEFENDANT AND PETITIONER.*G.R. No. 25072. December 18, 1925*

Ponente: STREET, J.

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This is an application for a writ of mandamus to compel Judge Anacleto Diaz, of the Court of First Instance of Manila, to sign a bill of exceptions in the case of San Miguel Brewery vs. Domingo Legarda, lately tried in the sala over which said judge presides. The cause is here heard upon the answer of Judge Diaz, admitting for the most part the allegations of fact contained in the petition but asserting that the bill of exceptions was not submitted in accordance with the law and rules of the court and that consequently the petitioner is not entitled to have the bill of exceptions signed by the respondent judge and that the latter is not amenable to the writ of mandamus to require him to sign the same.

It appears that on February 2, 1925, the San Miguel Brewery, as plaintiff, instituted a civil action in the Court of First Instance of Manila against Domingo Legarda, civil case No. 27580, for the purpose of collecting the value of twenty tubes of ammonia. Upon the trial of the cause, the court entered judgment in favor of the plaintiff to recover of the defendant the sum of P1,650, with interest, which decision was notified to the defendant on August 12, 1925. On August 29, 1925, the defendant claims to have accidentally discovered two receipts from which it appears that the defendant had in fact delivered to the Fabrica de Hielo de Manila, the predecessor in interest of the plaintiff, twenty empty ammonia tubes, being the same tubes which, with contents, had been the subject of the action. The defendant accordingly on August 29, 1925, presented a motion for a new trial in the lower court based upon this newly discovered evidence and alleging that he had not previously been able to find the receipts and that he had only found them by accident upon the date above stated, notwithstanding the fact that he had employed all care and diligence in his effort to do so. For the reasons stated the defendant asked that the judgment be set aside and a new trial granted in order that the defendant might submit such recently discovered proof. On September 30, 1925, his Honor denied said application. To this order the attorney for the defendant excepted on October 6, 1925, and on the same date he presented the usual formal motion for a new trial, based upon the grounds that the judgment was contrary to the law and not supported by the proof. On October 10, 1925, the court denied this motion also, and to this action the attorney for the defendant excepted and announced an intention to appeal to the Supreme Court. Pursuant to this announcement a bill of exceptions was presented on October 22, 1925, but the court refused to approve the same on the ground that the losing party in a civil action is not entitled to present more than one motion for a new trial, and such is the idea underlying the defense interposed in this court.

We are of the opinion that the petitioner is entitled to have his bill of exceptions signed, and the writ of mandamus must be issued as prayed.

In considering such a question as is now before us it is necessary to bear in mind the distinction between the motion for a new trial upon formal grounds which is a necessary antecedent to a review of the evidence in the Supreme Court, as contemplated in subsection 2 of section 497 of the Code of Civil Procedure and the motion for

a new trial on the ground of newly discovered evidence, which is conceded to the losing party under subsection 2 of section 145 of the Code of Civil Procedure. The first motion interposed on August 29 by the defendant in the court below was without doubt an application of the kind last mentioned. The law expressly secures the right to interpose such a motion; and although, under the second paragraph of section 146 of the Code of Civil Procedure the overruling of such a motion for a new trial is not a ground for exception, nevertheless the pendency of said motion before the court had the effect of suspending the running of time; so that the period that elapsed between August 29 and October 3, the date of notification to the defendant of the order overruling the first motion, must be deducted in counting the period of thirty days within which the defendant was at liberty to present his formal motion for a new trial required as a preliminary to review of the proof in this court. When consideration is had to this circumstance it will be seen that the second motion was in time.

Furthermore, the respondent judge was in error in supposing that a litigant is absolutely limited to one motion for a new trial. It was not necessary, nor indeed desirable; that the defendant in this case should have, combined the two motions in one, and as they are based upon different grounds, it was legitimate practice to postpone the inter-position of the formal motion for a new trial until the court has disposed of the motion for a new trial based upon newly discovered evidence.

For the reasons stated the petition will be granted, and the respondent judge will be required to sign the bill of exceptions. It is so ordered, without costs.

Avanceña, C. J., Johnson, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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