

**CRESCENCIANO INGSON, PLAINTIFF AND APPELLEE, VS. JUAN OLAYBAR, DEFENDANT AND APPELLANT.***G.R. No. 28734. December 04, 1928*

Ponente: MALCOLM, J.

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There is now before the court for resolution a motion presented by the attorney for the defendant and appellant in this case, in which the court is asked, in the interest of justice, to adjudge that the bill of exceptions was offered and perfected within the reglementary period, and that the defendant be permitted to litigate as a pauper. The facts on which the motion is predicated are the following:

After the bill of exceptions was received in the office of the clerk of the Supreme Court, the clerk was informed by the clerk of the Court of First Instance of Occidental Negros that the attorney for the defendant in the case was notified on August 19, 1927, of the order denying his motion for a new trial. As a consequence, on November 22, 1927, a resolution of this court was approved in which, after making mention of various facts including the placing of emphasis on the point "that on August 19, 1927, notice of the order overruling the motion for new trial was given to the attorney for the appellant," it was held that the bill of exceptions was presented out of time, and that, therefore, the appeal interposed must be dismissed, with costs against the appellant. Parenthetically, it may be remarked that the action of the court thus taken was in conformity with legal practice, and was hardly debatable, on the assumption that the date mentioned was the right one, and as to this, it is, of course, the presumption that official duty has been regularly performed. On receipt of the resolution of the court, the attorney for the appellant filed a motion of reconsideration in which it was alleged that he had received notification of the denial of the motion for a new trial on September 24, 1927. Although this motion was verified, it was not supported by any affidavit. Accordingly, since it was for counsel to make out his case, there was no other recourse for the court than to deny his motion, which was done on December 2, 1927. Thereupon, permission to present a second motion of reconsideration was asked. Accompanying this motion and apparently induced by the suggestion of the clerk of the Supreme Court as to the proper procedure to be followed, there were the statement of the deputy and acting clerk of court to the effect that the attorney for the defendant was notified on September 24, 1927, of the order denying his motion for a new trial and not on August 19, 1927, as previously stated, and also an indorsement from the clerk of court stating that he was willing to subscribe an affidavit showing that a mistake was made in informing the Supreme Court of the correct date. This motion was denied by this court on January 10, 1928, although on further reflection by the members of the court, it seems fairly evident that the court would have been justified in accepting the statements of the officials of the Court of First Instance of Occidental Negros. In that state, the matter rested until the attorney for the appellant on September 28, 1928, in a printed pamphlet headed "Ejerciendo Mi Civismo de Ciudadano Libre" and addressed to the Chief Justice of the Supreme Court, set forth therein a detailed history of the proceedings and certain observations. The Chief Justice replied to the attorney on October 5, 1928, saying "that if you even now desire to present a motion of reconsideration, substantiated by the necessary affidavits and accompanied by a copy of the bill of exceptions, serving a copy of your motion on your adversary, I will lay your motion and attached papers before the members of the Supreme

Court for action. It is needless for me to add that it is our desire to correct errors if the same be made, in the interest of the right administration of justice." The present motion is responsive to the communication of the Chief Justice, and must now be decided.

Out of the foregoing descriptive narration of the history of the case, there arise certain definite points. The first point is that the clerk of the Court of First Instance of Occidental Negros made a mistake in informing the clerk of this court that the attorney for the defendant was notified on August 19, 1927, of the order denying his motion for a new trial, when the true date was September 24, 1927. The second point is that while this court accepted in good faith the original statement of the clerk of the Court of First Instance of Occidental Negros, in the motion presented by the attorney for the appellant in which he attempted to set right the court, he did no more than make an assertion and ask the court to revise the record to substantiate the truth of this assertion, without corroborating his allegation by the necessary affidavits. The question now is what to be done at this late date. An error was made but the case is an old one and some violence will have to be done to regular procedure if it be reinstated.

There is in the civil law what is known as errors in fact. There is in the common law what is known as a mistake of fact. In applying the principles relating to errors in fact and a mistake of fact, the courts are guided by the maxim *Error placitandi aequitatem non tollit* ("A clerical error does not take away equity"), and the maxim *Error scribentis nocere non debet* ("An error made by a clerk ought not to injure; a clerical error may be corrected").

Comparatively speaking, this is a trivial case. Yet trivial or not, the litigant has a right to review. He would have had that right had not a clerk made a mistake. That mistake should now be set right. Dislike of taking time to investigate to the last detail a small matter, hesitancy in acknowledging error, and pride in maintaining one's position at any cost, must all give away to the doing of exact justice. The prayer is addressed to the conscience of the court. It should there receive equitable and just consideration.

Deciding the motion before us, we rule that the bill of exceptions was perfected within the legal period, and that the appellant, on the showing made, is entitled to litigate as a pauper. An order will issue directing the clerk of the Court of First Instance of Occidental Negros to elevate to this court the record in the case.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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