

GENARO HEREDIA, PLAINTIFF AND APPELLANT, VS. RAMON SALINAS, DEFENDANT AND APPELLEE.

G.R. No. 4014. February 18, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

From the allegations and proofs in this case, it appears:

- That this was an action between Justo Trinidad as plaintiff, on the one part, and Genaro Heredia on the other, as defendant; it was decided against the latter by a judgment dated the 19th of April, 1900.
- That on the 23d of April, letters of notification were addressed to the parties, and on the 28th of said month the defendant excepted thereto and moved for a new trial.
- That on the 5th of May following, the motion for a new trial was heard and denied, to which exception was at once taken.
- That on the 5th of June of the same year, the defendant gave notice of his intention to file a bill of exceptions, which was presented on the 18th of the same month.
- That the admission and approval of the bill of exceptions was objected to by the plaintiff, but the court overruled his objection and the bill was admitted and approved.
- That upon said bill having been submitted to this Supreme Court, and upon the question being again raised, the court held that the bill of exceptions should not have been admitted, and the appeal was thus abandoned.
- That by reason of such abandonment, the appellant in that case, believing himself prejudiced, filed the complaint which is now before us on appeal.
- That the object of the present complaint is to claim damages from Attorney Ramon Salinas, now the defendant, who advised him in the former case, on the ground "that the latter, as lawyer for the plaintiff in the above-mentioned case, did not perform his duties, as he should have done, with all due diligence, and that through his fault or negligence the said plaintiff was subjected to losses. Said losses are alleged to be as follow: (a) the sum of P611.39, which he paid to Justo Trinidad as principal, interest, and costs, under the judgment entered in the above-cited case; (b) the sum of P1,500, for which Genaro Heredia had contracted to sell the four parcels of land which reverted to Justo Trinidad; (c) the sum of P88 paid to the clerk of the Supreme Court and to the printing establishment 'La Enriqueta' by reason of the appeal to which the complaint refers" (VI, complaint).
- That in his answer the defendant positively denied this statement in the complaint, and alleged that he had presented the bill of exceptions within the ten days following the date when the court was notified of his intention to submit the said bill of exceptions.
- That in his turn, by way of counterclaim, he demands from the plaintiff the sum of P800, amount of professional

fees earned in defending him, of which P500 are for fees in connection with the so often mooted bill of exceptions in the previous suit between Justo Trinidad and Genaro Heredia, and the P300 remaining accruing in the suit brought between Heredia on the one part and Felisa Nepomuceno and Marciana Canon on the other.

- That at the trial the plaintiff, who had not previously answered the counterclaim, offered his own testimony in support of his complaint; and in his examination in reference to the counterclaim he said that he did not accept the amounts stated in the complaint, because he had a contract, to wit, P75 for the proceedings in the lower court; and in case of an appeal to the Supreme Court, although the defendant had asked him P100, he only offered to pay him a further sum of P75; to this, however, the defendant did not reply, and when questioned as to how he would construe such silence, he said that, as the difference was only about P25, he thought no more of the matter, since this was the amount agreed upon between them in another suit brought against the respondent by Felisa Nepomuceno and Marciana Canon. Upon cross-examination by the defendant; his testimony was as follows:

"Q. Is it not true that you called at my office and there intrusted to me the two cases pending against you here in the Court of First Instance?—A. Yes, sir.

"Q. Is it not true that I asked you P1.00 for each case, but that at your request I agreed to reduce it to P75 owing to the partnership which existed between us at that time, and that I sent you a bill for P3 50 which was paid by you?—A. Our agreement was for P75 for the Court of First Instance and P100 for the Supreme Court, but I asked you to reduce the amount to P75 in your bill for the Supreme Court. You sent me a bill for P150—that is, P75 for each case—and I paid it."

- That the court, in its decision of the 6th of March, 1907, "found that the plaintiff is not entitled to recover anything under his complaint, nor the defendant for his counterclaim, and that neither of the parties should recover costs."

- And that by a new amendatory judgment of the 21st of the same month and year, entered on motion of the defendant, the court modified its former decision in the sense that the defendant was declared to be entitled to the sum of P150, by reason of his counterclaim.

The plaintiff appealed from the first judgment, and the defendant from the second; the following bill of errors was presented by the former:

"The Court of First Instance erred, he states, (1) in considering that Attorney Ramon Salinas, now the defendant herein, had exercised due diligence and ordinary care in presenting the bill of exceptions; (2) in rendering judgment acquitting the defendant on the ground that both the defendant lawyer and his client were simply unfortunate, inasmuch as he considered that the bill of exceptions had been presented within the time specified by the law."

Under the conclusions of the judgment appealed from, if because the bill of exceptions was presented on the 13th of June, 1906, eight days after the date of the notice of its presentation which was given on the 5th of said month, the court considered that "it could hardly be said that the nonadmission of such bill of exceptions was a result that ought to have been foreseen by an attorney of reasonable knowledge and capabilities exercising ordinary care," such a conclusion is notoriously erroneous, inasmuch as the adverse judgment having been excepted to, and motion for a new trial having been made on the 28th of April, and denied on the 5th of May, according to the facts stated above, from the latter date to the 5th of June, a period of thirty days, no action was taken by the defendant, and there is no law authorizing that notice of the intention to present a bill of exceptions may be served thirty days after a motion for a new trial has been denied.

It is likewise erroneous to find a similarity between the case at issue and those of *Garcia vs. Hipolito* (2 Phil. Rep., 732), and *Paez vs. Berenguer* (0 Phil. Rep., 521), because in the first of these cases, upon the adverse judgment

having been notified on the 21st of May, on the 23d it had been excepted to and a new trial moved for, which, up to the 23d of July, had not been denied by the court, and the bill of exceptions was then presented on the 28th of said month of July, for which reason it was admitted, inasmuch as the lapse of time from the 23d of May to the 23d of July had transpired while the matter was in the hands of the court; it would have been very arbitrary and devoid of all reason and justice to attribute the delay to negligence of the lawyer, and to permit the action of the court to redound to the prejudice of the party when, under the law, it could not have been considered as a period of unjustifiable inaction on the part of the appellant, as in the present case, wherein thirty days transpired, from the 5th of May to the 5th of June, during which absolutely no action had been taken by appellant's attorney. And in the second case, wherein the same lapse of time occurred between the motion for new trial and the denial thereof, this court held it to be a sound application of the law, that such lapse could not result to the prejudice of the appellant with respect to the filing of his bill of exceptions inasmuch as the law prescribes that mention shall be made of the motion of its denial, and of the exception thereto, in order that this Supreme Court may consider itself invested with the power to review the evidence in case of a strict appeal, and not in the mere cassation or decision of errors of law.

Therefore, if the filing of a bill of exceptions eight days after notice of the intention to present was given is in accordance with the law, it is not permissible to give such notice thirty days after the motion for a new trial was denied, a procedure which is not authorized by law nor by any rule established in any case decided by this court.

Such behavior, however, can not be the subject of an action for indemnity for losses and damages under article 1101 of the Civil Code, cited by the appellant in the first alleged error of law stated in his brief of the judgment appealed from, which article has been incorrectly quoted by causing it to read, "those who in fulfilling their obligations are guilty of error, negligence, or delay, * * * shall be subject to indemnify for the losses and damages caused thereby * * *," when it should read, "those who * * * are guilty of fraud, negligence, or delay."

In a similar case, wherein by reason of a solicitor having interposed out of time an appeal in cassation to the audiencia of Madrid, it was held that his right had expired, a complaint was filed by the appellant against the said solicitor, setting forth the facts, and asking that he be sentenced to pay him an indemnity for losses and damages, amounting to the value of the property in litigation stated in said appeal, and a further indemnity for the costs which the plaintiff had been ordered to pay. The complaint was denied in its major part and the plaintiff appealed in cassation to the supreme court, alleging that articles 1101, 1718, and 1902 of the Civil Code had been violated by the Audiencia de Madrid, but the supreme court established the following doctrine:

"Articles 1101, 1718, and 1902 of the Civil Code which, in the two appeals interposed by the plaintiff, are cited as having been violated, refer, for the purpose of payment of an indemnity, to losses and damages caused to those who occasioned them through their own fault; from this fact the logical and necessary consequence is that their existence must be substantiated; and, inasmuch as in this suit the claim has not been proven, because the appellant bases his appeal on the unsubstantiated and arbitrary supposition of the injustice of the decision which became final through the fault and negligence of the solicitor, the sentencing court, which denied the indemnity for losses and damages, has not committed a violation of the said articles of the code, because established losses are not involved herein." (Decision of the 9th of January, 1897.)

We consider that the above doctrine is sufficient for the decision of this suit wherein established losses are not involved, and which has also been based on the unsubstantiated supposition of the injustice of the judgment in the former suit which became final owing to the expiration of the period allowed for appeal.

With regard to the lawyer's appeal, the lower court having decided the question of the cross complaint upon preponderance of evidence, and no assignment of errors having been filed against its findings as prescribed nor any allegation that a real mistake of law was committed, this court finds the judgment to be in accordance with the

law.

For the reasons above set forth the judgments appealed from, of the 6th and of the 21st of March, 1906, are hereby affirmed without special ruling as to costs. So ordered.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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