

EL HOGAR FILIPINO, PLAINTIFF AND APPELLEE, VS. ISIDORO DE SANTOS AND THE BANK OF THE PHILIPPINE ISLANDS, DEFENDANTS AND APPELLANTS.

G. R. No. 45746. November 20, 1937

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

On the 5th of this month, the appellee El Hogar Filipino presented in these two cases a motion to dismiss the appeal taken by John Gordon on the ground that when the latter, who is also a receiver, asked the court of origin for the first time on July 26, 1937, that the exception, notice of appeal and bill of exceptions filed by the Bank of the Philippine Islands be considered his, more than 30 days had already elapsed from June 16, 1937 the date on which John Gordon was notified of the appealed order of May 27th of said year.

The appellant John Gordon opposed said motion, alleging¹ that prior to July 24, 1937, he had no attorney, the court having denied him permission to obtain the services of one; that on July 24, 1937, El Hogar Filipino, through its attorneys, agreed that the exception and notice of appeal presented by the Bank of the Philippine Islands on the 17th of said month be considered as John Gordon's exception and notice of appeal, and that the bill of exceptions submitted by the Bank of the Philippine Islands together with its motion for the approval thereof, be also considered as his, on the ground that the questions raised by the appeal of the Bank of the Philippine Islands affect the interests of said John Gordon in the same manner as they affect the interests of the Bank of the Philippine Islands, for which reason Gordon desired to join the appeal.

Notwithstanding the alleged stipulation in question, El Hogar Filipino, on July 30th, opposed the approval of the joint bill of exceptions of the Bank of the Philippine Islands and John Gordon, as far as John Gordon was concerned. The court having approved said bill of exceptions by its order of August 10, 1937, amended by another one dated the 12th of said month, El Hogar Filipino duly excepted to said orders.

No reconsideration of the appealed order of May 27, 1937, was sought, and no motion for a new trial was filed. John Gordon having been notified thereof on June 16, 1937, the period of 30 days granted by law for the appeal ran uninterruptedly and expired on July 17, 1937. Therefore, when John Gordon, on the 26th of said month, asked the court that the exception and notice of appeal filed by the Bank of the Philippine Islands be considered as his, he had already lost his right of appeal, and the bill of exceptions filed by the Bank of the Philippine Islands, as far as he was concerned, was consequently filed outside the statutory period of 30 days. Inasmuch as the appealed order was already final and executory as to John Gordon, the court had no jurisdiction to approve the bill of exceptions in question with respect to him.

"This court has uniformly and steadfastly maintained that the right of appeal from final judgment, orders, or decrees, entered in ordinary actions, is lost and absolutely cut off, unless the aggrieved party gives notice of his intention to appeal, as required by the statute, as soon as practicable after the receipt of notice of the rendition of such judgment, order, or decree." (Gascon Enriquez vs. Gibbs, 27 Phil., 110.)

"The appellant must file his bill of exceptions within ten days from the time of giving notice of his intention to do so, or within such additional time as the trial court may, by express order, have allowed in response to a petition for enlargement filed before the expiration of the statutory period of ten days.

"Unless the appellant files his bill of exceptions within the time prescribed by the statute, the judgment becomes final * * *." (Lim vs. Singian and Soler, 37 Phil., 817.)

The bill of exceptions must be filed within the period of 30 days from the date on which a copy of the decision is received (sec. 26, Act No. 2347; Roman Catholic Bishop of Tuguegarao vs. Director of Lands, 34 Phil., 623).

If the bill of exceptions is filed after the expiration of the 30 days computed in the manner above-stated, it is already too late and the appeal, upon motion, should be dismissed (Estate of Cordoba and Zarate vs. Alabado, 34 Phil., 920; Bermudez vs. Director of Lands, 36 Phil., 774; Layda vs. Legazpi, 39 Phil., 83; and Director of Lands vs. Municipality of Dingras, 40 Phil., 242).

The agreement entered into between John Gordon and the attorneys for El Hograr Filipino can have no more scope nor other meaning than mere conformity to Gordon's filing with the court of a petition that the notice of appeal and the bill of exceptions filed by the Bank of the Philippine Islands be considered as his, and El Hogar Filipino could not stipulate that said notice of appeal and bill of exceptions be considered as having been filed by John Gordon within the statutory period, because the parties absolutely cannot stipulate anything over and against the statutory provisions governing judicial proceedings in the courts; so much so that, if the appeal was interposed outside the period of time granted by the Code of Civil Procedure, as it happened in the present case, no stipulation between the parties would be valid, for the purpose of considering the appeal as having been taken in due time (Warner, Barnes & Co. vs. Jaucian, 13 Phil., 4; Yangco vs. Cruz Herrera and Wy Piaco, 11 Phil., 402; and Banco Espanol Filipino vs. Donaldson Sim & Co., 5 Phil., 418).

The motion is granted; whereupon the appeal taken by John Gordon is dismissed, with costs to said John Gordon. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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