

**FRANCISCA BRETA, PLAINTIFF AND APPELLANT, VS. SMITH, BELL & CO., DEFENDANTS AND APPELLEES.***G.R. No. 5112. March 15, 1910*

Ponente: TORRES, J.

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On the 18th of February, 1908, Francisca Breta filed a written complaint with the Court of First Instance of Albay against the firm of Smith, Bell & Co. which has a branch office established in the port of Legaspi in said province, alleging that she is the owner, with full control and right of possession, of a building lot situated in the barrio of Santa Cruz, municipality of Ligao, in said province, with an approximate area of 25 topones, according to local measurement, the boundaries of which are: on the north, the land of Leon Pincaro; on the south, the land of Juan Roco that is crossed by a footpath leading to Ralla's barn; on the east, the lot of Saturnina Breta, formerly belonging to Juliana Breta and now the property of Smith, Bell & Co., the defendants herein; and on the west, the public road between Pandan and Cabasi; that she is also the owner of a camarin built of wood and light materials, erected on the said lot, with a frontage of about 12 and a depth of 8 varas, which is occupied by the Chinaman Lim Tongco; that on or about the 23d of March, 1907, the defendant company seized the above-described property, retaining it, utilizing it, and depriving her of the possession and enjoyment of the same up to the present date, under pretense of having real rights adverse to those of the plaintiff; that the latter has suffered losses and damages to the amount of P50, for the wear and use of the camarin, the sum of P20 monthly, from the 23d of March, 1907, until the day the same is restored to her, and the sum of P100, representing the profits that she should have obtained had she not been dispossessed of said property; she therefore prayed that judgment be entered in her favor and against the defendants for the restitution of the possession and of the full control of the above-described property, for the total amount of the losses and damages suffered, and for the costs of the proceedings.

The defendants, having been duly summoned, answered the foregoing complaint in writing on the 18th of March, 1908, denying each and all of the allegations of the complaint not expressly admitted and in harmony with the defense set up in the answer, admitting paragraphs 1 and 2 of the said complaint, and as a special defense alleged that prior to the 23d of March, 1907, Saturnina Breta, now deceased, owned and possessed a building lot in the town of Ligao, a barrio of Santa Cruz, Province of Albay, on the left-hand side of the street leading thereto, opposite the junction of the road to Tomulin, having an area of 1,740 square meters and bounded on the north by lots belonging to Leon and Maria Pincaro and Maria Peligera; on the east by rice fields belonging to the heirs of Anacleto Tuason; on the south by a crossroad leading to the fields; and on the west by the road already mentioned; that on said property and close to the said street is a camarin built of wood and nipa of 14 by 9.80 meters, and further toward the interior, at about 24 meters from the road, there is a nipa house 12.50 by 7.30 meters; that prior to the aforesaid date Saturnina Breta mortgaged the said property to the defendant company; that, in consequence of the foreclosure of the mortgage, the sheriff sold the property by public auction on said date, and the same was adjudicated to the defendants as the highest bidder; that after the death of the debtor Saturnina Breta, and after an administrator of her estate had been appointed, the plaintiff, Francisca Breta,

presented a claim to the duly appointed commissioners demanding P30 for the lien on the said property, which claim was admitted in the sense that the said sum should be adjudicated to the petitioner, from which resolution Francisca Breta has never appealed, notwithstanding the fact that the administration of the intestate estate of said deceased was closed; that the defendant company, upon being informed of said claim and of the decision rendered therein, took part, being the bidder at the sale of said property, and defended its right of possession, a proceeding which required an expenditure of P300, and that the plaintiff, being aware of the question in the matter of the possession of the said property, did not intervene or take any part therein; the defendants therefore prayed that they be absolved of the complaint, and that the plaintiff be estopped from claiming the said property, and that she be perpetually enjoined from further action, and sentenced to pay the costs of the proceedings.

The case came up for trial, evidence being adduced by both parties to the suit, and their exhibits and the arguments of their respective lawyers were made of record; on the 24th of April, 1908, the trial court rendered judgment against the plaintiff, and dismissed the complaint with costs.

The plaintiff, upon being informed of the foregoing decision, excepted thereto and on the 25th of April moved for a new trial, requesting the court below to amend the said judgment, clearly and specifically stating the conclusions of fact that resulted from the evidence, and which served as the basis of the decision; and that a correction be made in the fourth paragraph of her complaint, causing it to appear that the plaintiff constructed a new camarin on the same spot where the camarin destroyed by the cyclone of 1904 formerly stood, in which new building some of the timbers of the old one were used.

On the same date, April 25th, the plaintiff presented a motion requesting a reopening and a new trial on the ground that the above judgment was not supported by and was openly and manifestly contrary to the weight of the evidence, to law and to equity, and because the testimony of the witnesses was not properly taken down by the stenographer, as required for a review of the said judgment.

On the 27th of April, the court below, on the ground that the facts stated in the judgment were sufficiently described therein, and in view of the fact that Attorney Imperial stated in the presence of the adverse party that it was unnecessary for the stenographer to take down the testimony of the witnesses who were examined at the trial, for which reason the plaintiff was not entitled to a new trial, over-ruled the two motions filed by the latter, who excepted to the order and to the final judgment and gave notice of intention to appeal.

The bill of exceptions was prepared, to the approval of which the appellee objected because it contained testimony of witnesses not included in the record of the case; the court below ruled that the bill be amended and the said testimony eliminated, but the appellant excepted thereto and again insisted that the amended bill of exceptions, with the testimony of the witnesses according to the minutes, should be approved.

The court below held that if the parties would agree in writing as to the testimony of the witnesses included in the bill of exceptions, the clerk of the court must submit the same to this court; that, in case of disagreement, then both parties should present their respective bills for the approval of the court below, which could not be done because the judge found that the notes were so brief that they did not comprise all of the said testimony; therefore, as the bills presented by the parties could not be corrected nor harmonized with certainty, it was ordered that all the documents be submitted to this court.

Section 1 of Act No. 1596, enacted February 25, 1907, amending section 497 of Act No. 190, the Code of Procedure in Civil Actions, prescribes in paragraph 2, among other things, the following:

"If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the evidence was insufficient to justify the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the

facts by a preponderance of the evidence, and render such final judgment as justice and equity may require."

Act No. 1123, enacted April 27, 1904, amending, among others, section 143 of said Act No. 190, provides in substitution of the penultimate paragraph the following:

"Immediately upon the allowance of a bill of exceptions by the judge, it shall be the duty of the clerk to transmit to the clerk of the Supreme Court the original bill of exceptions and all documents which by the bill of exceptions are made a part of it. The cause shall be heard in the Supreme Court upon the bill of exceptions so transmitted, all duly certified by the clerk of the Court of First Instance."

It is fixed doctrine which constitutes a rule established by this court, in accordance with the provisions of law above quoted, that if the appellant desires that the Supreme Court shall review the evidence offered at the trial, he must see that all the evidence is submitted to this court upon appeal.

He can not bring in a part of the evidence only and then claim a reversal on the ground that the evidence presented to this court does not support the judgment. (Ferrer vs. Abejuela, 9 Phil. Rep., 324; Valle vs. Galera, 10 Phil. Rep., 619.) The oral evidence taken in the present case has not been submitted to this court for the reason that, as stated in the order of the trial court of the 27th of April, 1908, Attorney Imperial for the plaintiff, as well as the attorney for the defendant, stated in open court that they did not desire the court stenographer to take down the testimony of the witnesses who had been examined; hence the judge believed that the representative of the plaintiff was not entitled to move for a new trial. It has not been possible for the appellant to have the clerk of the lower court transmit the oral evidence together with the documentary evidence, because it was not taken down at the trial, and for this reason the conclusions of fact in the judgment can not be reviewed, since to that end it would be necessary to examine all the evidence presented at the trial, and certainly this court has not before it the oral evidence.

The attorney who appeared for Francisca Breta, under agreement with the defendant's lawyer, expressly renounced the right to have the testimony of the witnesses taken down by the stenographer, for, even though no stenographer had been available, the testimony might have been taken in longhand or typewritten by a copyist, to which means the representative of the plaintiff did not have recourse, when, in the event of an unfavorable decision, it was his duty to assemble all the evidence and see that the same was all transmitted to this court, if he desired a review of the judgment, which could not be accomplished on account of the express waiver of the appellant, that is to say, through his fault.

Therefore we are forced to accept the reasoning and conclusions of the judge in the judgment appealed from.

In view of the foregoing, it is our opinion that the said judgment should be and is hereby affirmed, with costs against the appellant. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, and Moreland, JJ., concur.

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