

LEONARDO LUCIDO AND ROMAN LUCIDO, PLAINTIFFS AND APPELLEES, VS. ROMUALDO VITA, DEFENDANT AND APPELLANT.

G.R. No. 7258. November 07, 1911

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PER CURIAM:

On the 12th of August, 1911, the said appellees presented the following motion, asking for the dismissal of the appeal in the present case.

"Now come the appellees and respectfully represent to the honorable Supreme Court that the above-entitled cause is of the original jurisdiction of the justice of the peace court of Nagcarlang, La Laguna, in which court the action was first brought; that subsequently, through appeal, it was forwarded to the Court of First Instance of La Laguna, where the same was tried and decided by virtue of that court's appellate jurisdiction; that in view of the nature of this cause, the judgment of the Court of First Instance is final and conclusive and, consequently, nonappealable. Therefore the appellees respectfully pray this honorable court to declare the appeal improperly admitted and to assess the costs against the appellant."

Said motion was duly set down for hearing, and on the 26th of August, 1911, it was denied in the following terms:

"The court, upon deciding the motion presented by Sr. Diokno in Case No. 7258, Leonardo Lucido et al. vs. Romualdo Vita, for the recovery of a sum of money, wherein he asked that the appeal be declared to have been improperly admitted for the reason that the judgment of the Court of First Instance was final and conclusive, said: 'The petition is denied, and the proceedings in the case shall be continued for the determination by judgment of the main issues therein.' "

On the 17th of October, 1911, the defendant and appellant presented his printed bill of exceptions, a copy of which was sent to the plaintiffs and appellees on the same day.

On the 23d of October, 1911, the plaintiffs and appellees presented another motion, asking for the dismissal of the appeal, which was as follows:

"Now come the appellees in the above-entitled case and respectfully represent to the honorable Supreme Court: That the exception entered by the defendant against the judgment of the Court of First Instance, was made out of season, and the petitioners therefore pray that the appellant's bill of exceptions be declared to have been improperly admitted."

By an examination of the second motion, it will be noted that the grounds upon which it is based necessarily existed at the time of the presentation of the first motion to dismiss said appeal. It seems to be a rule well established by courts generally, that a second motion to dismiss an appeal, based on the same grounds as the former motion, or on grounds existing at the time of such former motion, will, as a general rule, be denied. (Nashua & L. R. Corp. vs. Boston & L. R. Corp., 51 Fed. Rep., 929; Hellings vs. Duvall, 131 Cal., 618; Dorn vs. Baker, 92 Cal., 194; Tyrrell vs. Baldwin, 78 Cal., 470; Bingham vs. Brumback, 24 111. App., 332; Ferguson vs. Bruckman, 164 N. Y., 481; Pettit vs. Hamlyn, 42 Wis., 434.)

A second motion to dismiss an appeal upon grounds existing at the time the first motion was presented, should

never be granted, unless at the time of the denying of the first motion, permission was obtained to present a second. Appellants should not be annoyed nor delayed by subsequent motions based upon grounds existing at the time of a previous motion, made for the same purpose. (King vs. Pony Gold Mining Co., 24 Mont., 470.)

Moreover it will be noted that the second motion presented was a motion to dismiss the appeal for the reason that the exception to the judgment in the court below had not been made within the time prescribed by law. The appellant presented his bill of exceptions in the court below, after much delay, upon the 23d of June, 1911, for approval and certification. The plaintiffs and appellees were duly notified that said bill of exceptions had been presented to the court below for approval. They made no objection whatever to its approval and certification. On the 7th of July, 1911, the judge of the lower court duly approved and certified said bill of exceptions, without any exception whatever from the appellees. Where the parties in the lower court have received a copy of a bill of exceptions, with due notice of its presentation for approval to the lower court, and fail to present to the lower court objections against the approval of the same, the Supreme Court will be slow to dismiss the appeal upon grounds which existed at the time the bill of exceptions was presented in the lower court for approval, especially when the parties have waited until after the appellants have incurred the expense of printing their bill of exceptions in the Supreme Court.

For the foregoing reasons, the said motion of October 23, 1911, is hereby denied.

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

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