

CHAN-SUANGCO, PETITIONER, VS. CHARLES S. LOBINGIER, JUDGE, ET AL., RESPONDENTS.

G.R. No. 7953. August 28, 1912

Ponente: TRENT, J.

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TRENT, J.:

This is an original application in this court praying that a writ of mandamus be issued directed to the respondent, the Honorable Charles S. Lobingier, one of the judges of the Court of First Instance of Manila, ordering him to approve a certain proposed bill of exceptions presented for the plaintiff in, the case of Chan-Suangco vs. R. A. Moss and H. M. Ray.

It is alleged in the petition that after making the material amendments suggested by the defendants, the bill of exceptions was presented to the respondent for approval and that the latter stated that he would not approve the proposed bill unless the same was accompanied with the proofs presented during the trial, especially the transcript of the stenographer's notes.

In his answer to the order to show cause, the respondent states that he declined to approve the proposed bill presented by the plaintiff because (1) the said bill contained "a garbled and incorrect copy of the judgment;" and (2) that similar errors and omissions appeared in the pretended copy of the order overruling the motion for a new trial. Respondent further states that the fact that the proposed bill did not contain a correct copy of the judgment was expressly called to the attention of counsel for the plaintiff when said bill was presented and that counsel had inserted in ink in the second paragraph of the judgment after the word "called," the words "for hearing on the date of its assignment the plaintiff failed" and nothing more, leaving the first paragraph subject to the same defects and omissions as had been pointed out at the hearing. This court thereupon directed that a certified copy of the original judgment be united to the record in this case, and that the parties be given ten days within which to take such other steps as they might desire.

The order disapproving the proposed bill of exceptions reads as follows:

"An alleged bill of exceptions is presented in this case which contains no correct copy of the judgment or findings of fact, and we are accordingly unable to approve the same.

"In addition to this, although the case presents a question of fact, no transcript of the testimony is presented in connection with the alleged bill of exceptions.

"We are asked to sign a certificate that this bill contains all that is necessary for a correct understanding of the errors assigned, and this we cannot do under the foregoing circumstances."

A comparison of the copy of the judgment appearing in the proposed bill of exceptions with the certified copy of the same as submitted to this court, shows in one instance a very material omission of words. In the first paragraph of the judgment the following -

"* *. *. all causes at issue are to be assigned. The same order provides that no notice of assignment shall be sent to counsel * * *"

reads in the copy incorporated into the proposed bill of exceptions as follows:

"* * * all causes at issue are to be assignment shall be sent to counsel * * *"

Counsel for petitioner insists that if the proposed bill did not contain an exact copy of the judgment it was the duty of the respondent, under section 143 of Act No. 190 to make the necessary corrections and approve the bill as corrected.

The pertinent portion of section 143 reads:

"The judge shall thereupon, after reasonable notice to both parties and within five days from the presentation of the bill of exceptions to him, restate the facts if need be, and the exceptions, so that the questions of law therein involved, and their relevancy shall all, be made clear, and when the bill of exceptions has been perfected and allowed by the judge, he shall certify that it has been so allowed and the bill of exceptions shall be filed with the other papers in the action, and the same shall thereupon be transferred to the Supreme Court for determination of the questions of law involved."

It will be noted that the section provides that the judge shall restate the facts if need be and the exceptions. Can this mean that the judge must, if necessary, perform the actual mechanical work of copying the pleadings, orders, and judgments in a proposed bill of exceptions? If he can be compelled to actually correct the copy of the judgment in such a bill, there is no reason why he cannot be compelled to make a correct copy of any or all the documents. If this can be done, the result would be that the judges of trial courts could be compelled to practically prepare the bills of exceptions presented by making correct copies of all the pleadings, orders, and judgments. The legislature never intended that the judges should be required to do the actual mechanical work of copying or making corrected copies of such documents. This is the duty of the party presenting the bill of exceptions. The statute says :

"The excepting party shall cause to be presented to the judge a specific statement of each ruling, order, or judgment that has been excepted to."

A garbled or incorrect copy is not a specific statement of a judgment. "Specific" is defined -

"Precisely formulated or restricted; specifying; definite, or making definite; explicit; of an exact or particular nature; as, a specific statement." (Webster's, title "specific")

So it is clear that the words "shall thereupon restate the facts and exceptions if need be" do not include the making of correct copies, but only mean that the judge shall restate the facts and exceptions in those cases where the parties differ as to such facts, and as to whether or not the exceptions inserted were properly taken at the time of the trial. In other words, the judge is required to restate the facts and exceptions where there is an actual controversy between the parties and when he is required to decide what actually took place during the trial.

It is said that the judge declined to approve the proposed bill of exceptions in this case on the ground that the transcript of the stenographer's notes was not united with the said bill. On examination of the order above copied it will be noted that the bill was disapproved on the ground that it did not contain a correct copy of the judgment or findings of fact. This is specifically stated in the first paragraph of the order. It is true that it is stated in the second paragraph that no transcript of the testimony accompanied the alleged bill of exceptions, and of course this would not be a sufficient reason to justify the respondent in failing to approve the proposed bill. But the respondent in his answer states that he has at all times been ready and willing to certify the bill of exceptions

whenever it contained a correct copy of the judgment and orders. Counsel for the petitioner states that it was impossible for him to present a correct copy of the judgment for the reason that it had not been translated into the Spanish language, but he does not state that he requested the court to direct its officials to furnish him a translation of this judgment. Had he done so, no doubt the respondent would have immediately directed a translation made. When the bill of exceptions is presented to the respondent in due form, it will no doubt be signed ; but the respondent was perfectly justified in refusing to approve the proposed bill of exceptions presented," on the ground that it did not contain a correct copy of the judgement.

For the foregoing reasons, judgment is rendered in favor of the respondent, dismissing the petition, with costs against the petitioner. So ordered.

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

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