

MARIA CUYUGAN, PLAINTIFF, VS. EUSEBIO AGUAS, AND NOW HIS HEIRS, AND TELESFORO QUINTANA, DEFENDANTS – E. AGUAS, APPELLANT.*G.R. No. 906. July 29, 1911*

Ponente: TORRES, J.

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This is an appeal filed by the defendant Eusebio Aguas, and carried on by his heirs, in which the special administrator of the estate of the deceased plaintiff, Maria Cuyugan, joined (p. 219 of the record), from the judgment pronounced in this case on August 22, 1893. The other defendant, Telesforo Quintana, is in default.

In the proceedings instituted in the Court of First Instance of Pampanga by Mariano Aguas and others, against Maria Cuyugan, in the matter of the falsification of a will executed by Anastacio Aguas, an order was issued on August 5, 1887, for the sequestration or attachment of the estate left by Anastacio Aguas at his death which was in the possession of Maria Cuyugan, and it was turned over in trust to Eusebio Aguas and Telesforo Quintana who, on giving bond, took charge of the same for administration; but, an appeal having been taken by the said Cuyugan, the Sala de lo Civil of the Audiencia Territorial de Manila, in a decision rendered on April 9, 1888, declared the said order of attachment, and all the proceedings had in connection therewith, to be null and void, and directed that the property should be returned to the same state and condition in which it was prior to the issuance of the order on August 5 of the previous year. The trustees were, therefore, obliged to return the property to Maria Cuyugan and to render accounts of its administration.

After examining the accounts presented by the trustees, Maria Cuyugan filed a written complaint, on March 30, 1889, wherein she prayed that all the objections which she had made to the accounts presented by the said trustees be admitted as just and lawful and that the latter be directed to amend the said accounts, within six days, in conformity with the objections specified in her complaint, to pay to the plaintiff such balance as should be shown by the objections to be to her credit, and to indemnify her for the damage which the bad administration of the defendants had caused her, such indemnity to be effected by the delivery to her of 8,196 pilones of sugar and 2,138 cavanos of unhulled rice, or by paying her the value thereof, P18,530, in addition to legal interest on said amount from the date of her answer to the complaint. She further asked the court to direct the said trustees, while correcting their accounts, also to properly arrange in order and by number the documents referred to, so as not to again give rise to a troublesome and difficult task on account of the said documents being disarranged with respect to numbers and dates, many of them having no number at all. The plaintiff also asked that the costs and expenses of the trial be assessed against the defendants.

Counsel for the defendant trustees, in their written answer, and after the allegations therein set forth, concluded by asking that his clients be absolved from the preceding complaint, that the accounts presented be approved in all their parts, inasmuch as some of the objections raised by the plaintiff were inaccurate and others were groundless and devoid of proof, and that the plaintiff be sentenced to pay to the defendant trustees the balance existing

against her, to keep perpetual silence and to pay the costs. In the written petitions and replies both parties insisted on their respective allegations.

The court, after determining that the object of this suit was the approval or correction, of the accounts presented by the trustees, Eusebio Aguas and Telesforo Quintana, for the period of time during which they administered the property sequestered from Maria Cuyugan, and the payment of the damages occasioned to the latter by them by reason of the said administration, and after an examination of the testimony taken by both parties, decided the case upon the grounds contained in the judgment appealed from, dated August 22, 1893, whereby it was declared that the objections made by the plaintiff to the accounts presented by the said trustees, were admissible, and, therefore, sentenced the latter to correct, within six days, the said accounts in agreement and accordance with the aforementioned objections; and to pay to Maria Cuyugan the balance or difference found to exist to her credit. The court likewise found in favor of the indemnity for the damages claimed, and, as it was impossible to fix the value thereof in cash or to establish any exact basis according to which such conversion should be effected, sentenced the defendants, Telesforo Quintana and Eusebio. Aguas, to the payment of an indemnity for damages, reserving the fixing of its amount, and ordering its collection in the execution of the judgment. The defendants were also sentenced to pay the costs. From this judgment the sole defendant present appealed, in which appeal counsel for the plaintiff, who died shortly afterwards, joined, her rights being now represented by the special administrator of her estate.

As a result of the said appeal, the court, by means of a communication dated October 3; 1893, (p. 7 of the record) transmitted the present record of proceedings, composed of six sections, to the Audiencia Territorial de Manila, and, when received, a note was made on page 8 thereof, in the office of the clerk of the court, of the number of sheets it contained.

During the course of the proceedings in this case had in this second instance, counsel for the defendant and appellant Eusebio Aguas, by a written motion of May 25, 1894, (p. 196 of the record), asked that an order be served upon the judge of the Court of First Instancy of Pampanga directing him immediately to forward to the Audiencia the record of the proceedings in the matter of the sequestration and trusteeship of the property left by the deceased Anastacio Aguas at his death, the 52 notebooks of the tenants of the lands sequestered from Maria Cuyugan, a book of current accounts of 62 leaves, kept by the trustees in account with the said tenants, a notarial instrument relating to facts mentioned in the written answer, two reports, of four sheets, containing statements made by the tenants, the notarial instrument presented with the complaint and setting forth the results obtained from their books and current accounts and five judicial records composed of 902 sheets, among which there was one comprising the proceedings on the rendition and presentation of accounts, the subject matter of the present case. This petition was granted by the appellate court by a resolution of December 31, 1895, and in compliance therewith the judge of the court of Pampanga transmitted, by a communication of January 18, 1896, the record of the proceedings had in the matter of the sequestration and trusteeship, of the aforesaid property, consisting of two sections and 348 sheets, together with the records of four incidental matters, attached thereto. He likewise forwarded the 52 notebooks of the tenants of the said lands attached against Maria Cuyugan, consisting of 144 written leaves, but stated that it was impossible to transmit the record of the other proceedings, books and documents demanded, on account of their not having been found in the office of the clerk of the court, as developed from the steps taken to comply with the written order of the higher court.

Counsel for the heirs of the; deceased Eusebio Aguas, the defendant and appellant, by another; motion of February 20, 1896, asked that a new order be issued to the judge of the Court of First Instance of Pampanga directing him to proceed to search for the trial records and documents, that were not forwarded to the Audiencia, and that, in the event of their disappearance, he should bring a criminal action against whoever was responsible

therefor. The said motion also contained a prayer that the hearing in this second instance be suspended until the trial records and documents demanded should be received. As the plaintiff's counsel made no objection, and assented to the foregoing motion, it was granted, and meanwhile the proceedings were suspended, according to the resolution found on page 278 of the record.

Upon petition of the appellant, the Supreme Court, by resolution of April 8, 1902, directed that a written order be issued to the judge of the Court of First Instance of Pampanga to institute a search for the records and documents aforementioned and, in case they should not be found, to make a report of the action taken by him.

From the proceedings had in the Pampanga court, in search of the documents and records demanded through the means of the aforesaid orders, and reported to the clerk of this court, it appears that the said records and documents were not found, wherefore this court directed, by an order issued October 3, 1902, that the record of the proceedings just above mentioned be joined to that of this case and that the parties be notified in order that they might proceed as should best suit the protection of their rights. At this stage of the case, the counsel for the attorney Marcelino Aguas, in his own behalf and in representation of the other heirs of the deceased Eusebio Aguas, the defendant and appellant, and Mariano Cunanan, as the special administrator of the estate left by the plaintiff, Maria Cuyugan, at her death, the other defendant Telesforo Quintana remaining absent, appeared in this instance to obtain the continuation of this case and its decision.

After due consideration of the value and weight of the testimony produced by both parties, the court held that the plaintiff had proved the correctness of the objections made to the accounts presented by the defendants, notwithstanding that, owing to the destruction by white ants of some of the account sheets and vouchers pertaining thereto, it was impossible to examine and check the same, since some of the items did not appear to be duly proved, and it was conclusively shown that they included excessive and unnecessary expenses for the maintenance and the cultivation of the property administered; that the plaintiff had duly proved the facts on which she based her action, with respect to the objections made to the said accounts and the deduction that should be made in those which had been impugned, and also with regard to the indemnity for the losses and damages suffered by the plaintiff through the negligence of and abandonment by the defendants, who, on the other hand, did not prove their allegations; wherefore, after consideration of the evidence and data produced at the trial, the court regarded as demonstrated the bad administration of the trustees, who by their negligence and carelessness had given rise to the damage to the property attached, and they must therefore pay an indemnity for the products that the plaintiff failed to receive and for the deterioration and damage which have contributed to diminish the value of the property and the product of the sales, although, as there were not sufficient data to calculate exactly the amount of indemnity to be fixed, the judge merely sentenced the defendants to pay an indemnity, left undetermined, but to be assessed after appraisal and collected with the execution of the judgment. This case having been forwarded to the appellate court by virtue of an appeal taken by one of the defendants, in which the plaintiff joined, this court, in order that it may review the evidence weighed by the trial judge as the basis of the judgment appealed from, and render a decision in accordance with the law, must have before it, for examination and study, all the orders, documents and antecedents which were taken into account in first instance, together with the testimony given by both parties.

This case was conducted in conformity with the provisions of the Ley de Enjuiciamiento Civil, or law of civil procedure, and was pending appeal in this second instance when, with the change of sovereignty, the old Audiencia Territorial de Manila was abolished and the Supreme Court established by the present sovereignty, therefore, the procedure herein was continued in accordance with the provisions of the said Ley de Enjuiciamiento Civil, as prescribed in No. 2 of section 795 of the Code of Civil Procedure.

The documents, books, and the five sections of the record of proceedings on the rendition of accounts impugned

by the contrary party, not having been forwarded with the trial record, no legal means are available tot the final decision of the pending appeal, in which the plaintiff joined; inasmuch as this court, without having before it the record of the said proceedings on the rendition of accounts, and the documents and books that were not transmitted to the clerk of this court, can not review the judgment appealed from, together with the facts therein considered as proved, and the evidence adduced by both parties. In a case of incomplete record it is improper to render a conclusive and final decision that will end the contention between the parties; nor would it be possible to affirm or reverse the judgment appealed from, or to take any other legal action, on account of the lack of such evidence.

It is averred in the judgment appealed from that(the account-sheets, together with their vouchers, presented by the defendants, were destroyed by anay or white ants, but, aside from this, the absence of the book of current accounts and of the five sections of the record of proceedings on the rendition of accounts, besides the other documents demanded of the Court of First Instance, at the request of the counsel for the appellant Aguas, still prevents this court from deciding the pending appeal, according to law, inasmuch as; in order to do so, it must examine all the evidence weighed by the trial judge in pronouncing the judgment now on appeal, and review the same in connection with the grounds that support that judgment; this, in the present case, can not be done because of the lack of a large part of the said evidence which, as it is documentary, is, as generally occurs, of great importance and influence for the decision of the suit.

Not only in accordance with the provisions of the Ley de Enjuiciamiento Civil should the trial record be forwarded to the higher court, once the appeal has been admitted; together with all the antecedents in the case, the books and documents attached to the main record as exhibits, (article 662 of the Ley de Enjuiciamiento Civil,) but this is also required by the existing law of procedure, Act No. 190, section 143, and by Act No. 1123, section 2 of which, amending the said section 143 of Act No. 190, by striking out the second paragraph and inserting in lieu thereof 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."

The litigating parties themselves deemed it necessary, for the proper decision of the suit, that the said trial record and documents should be before this court, since, on the appellant's petitioning that a demand be made in writing upon the Pampanga court for the trial records, books and documents not received by the clerk of the old Audiencia Territorial de Manila, both parties agreed that this suit should remain suspended until the said desired documentary evidence was received by the court, and it was so ordered by the Sala de lo Civil in a decree issued on March 26, 1896.

It has always been considered indispensable, for the proper determination of a suit, to have in view all the data and evidence presented during the trial, as well with respect to the old laws of procedure still observed in these Islands, as with regard to the present legislation governing the conduct of suits at law, and for this reason the rules established by this court, both in decisions rendered in conformity with the old Ley de Enjuiciamiento Civil and in those based on the provisions of the existing Code of Civil Procedure, have been constant and uniform.

In the decision of Case No. 542, Gonzaga vs. Canete (1 Phil. Rep., 189), the rule was established that:

"When an action has been commenced under the former law of civil procedure and continued in accordance with the prevailing code it is impossible for the appellate court to determine the appeal upon a record which does not contain the proceedings at the trial, and in such case, to avoid the possibility of an injustice, the court will remand the case for a new trial."

In decision No. 1035, Del Carmen, widow of Bustillos, vs. Garbanzos (1 Phil. Rep., 532), the following rule was laid down:

"To enable the court to determine an appeal from a judgment rendered in an action tried under the former procedure it is necessary that the evidence be included in the record."

In decision No. 862, Vazquez vs. Sanchez (5 Phil. Rep., 56), it was stated as a rule that;

"A case tried in accordance with the former Law of Civil Procedure must, When brought to this court, contain all the evidence presented at such trial. If it does not, the judgment will, be reversed and a new trial ordered."

In the decision of Case No. 3847, Ferrer vs. Neri Abejuela (9 Phil. Rep., 324), the following doctrine was likewise established:

"If the appellant desires the Supreme Court to review the evidence introduced at the trial, he must see that all the evidence is brought to this court on 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."

In decision No. 5112, Breta vs. Smith, Bell & Co. (15 Phil. Rep., 446), the Supreme Court ruled:

"It is a doctrine established and adhered to by this court, in accordance with legal provisions in force in connection with civil procedure, and which constitutes a rule of law, that an appellant who desires to have the evidence offered at the trial reviewed in the second instance is under obligation to see that all such evidence is transmitted to the Supreme Court.

"It is not permissible to transmit only a part of the evidence adduced in the first instance and then to ask a reversal of the judgment appealed from on the ground that the evidence submitted at the trial does not sustain the decision appealed from; in such a case the appellate court must accept the facts as found by the judge, as well as the conclusions set forth in the judgment."

Although the procedure prescribed by the former law of civil procedure is different from that now followed, in the matter of appeals made from final judgments, yet it is unquestionable that if, in accordance with the former law of procedure, the complete trial record, accompanied by all the evidence and data which were considered by the court in rendering judgment, must be forwarded with the appeal, it is now no less indispensable that this should be done, in order that this court may examine and review the evidence taken at the trial, in connection with the judgment appealed from. The bill of exceptions must be submitted to us with all the evidence produced, at the petition of either party, during the hearing, for, if a part of it is missing, whether oral or documentary proof, and it is on such account deficient, the judgment appealed from can not be reviewed, and this court will be compelled to decide the case in accordance with the facts held to have been proven in the appealed judgment.

The loss or disappearance of the trial record, or of documents and evidence that are important for a proper decision of the suit, imposes the necessity of a new trial in order that the litigants may obtain full justice with respect to their controverted rights.

In volume 29, page 874, of the Cyclopedia of Law and Procedure, in treating of the grounds for the granting of a new trial, the following paragraph appears:

"New trials have been granted where a review of the case has been prevented by the loss of the files, or of instructions, or of the official stenographic notes of the proceedings."

This rule of procedure is supported by the principles laid down in the following decisions:

"Where the sentencing court has found it impossible to replace the lost record, made in a former trial, thus depriving the party who is defeated in the suit, but who is not responsible for the said loss, from maintaining

his rights through an appeal, a new trial should be granted." (Philadelphia Fire Association vs. McNerney, decision of the court of civil appeals of Texas, of January 12, 1900; 54 S. W., 1053).

"Where a party has, without fault or neglect on his part or his attorneys', failed to obtain a transcript for a review on error in this court, a new trial will be granted, if necessary to secure him this constitutional right." (Zweibel vs. Oaldwell, decision of the supreme court of Nebraska of May 18f 1904, 99 N. W., 843).

"If it is impossible to obtain a sufficient transcript to present the errors complained of to this court, it is not proper practice to file an imperfect transcript with a petition in error, with the purpose of afterwards procuring a complete transcript and amending the petition in error, where there is no reasonable certainty of being able to procure such amended transcript. To fail to do so is not negligence that will defeat an action in equity for a new trial." (Zweibel vs. Caldwell et al., decision of the supreme court of Nebraska of January 5, 1905, 72 Nebr., 47, 54, 102 N. W., 84.)

With the trial record in this action de mayor cuantia, no books or documents of importance were forwarded, especially the records on the rendition of accounts, the origin of the claim that is the subject of this suit, which records, documents and books, according to the investigation made by the Court of First Instance of Pampanga and the report of the clerk of that court, do not exist and could not be found in the said clerk's office, wherefore it is to be believed that they have disappeared; and as, without the missing documents, books and files, this court is unable to review all the evidence that the trial court had before him on rendering the judgment appealed from, the holding of a new trial is, of course, proper.

For the foregoing reasons the judgment appealed from is set aside and the right is reserved to the heirs or successors of the deceased plaintiff, Maria Cuyugan, to renew the claim which gave rise to these proceedings or to file a new amended complaint against the successors of the deceased trustees, Eusebio Aguas and Telesforo Quintana; and, for this purpose, the lower court shall proceed to hold a new trial in accordance with the provisions of the existing Code of Civil Procedure, and both parties may therein make use of the documents and files that are now in existence and of others which they may find of those that disappeared, as well as of the other evidence produced at the previous trial, or which may be retaken, conducive to the proper determination of this litigation. No special finding is made as to the costs. So ordered.

Mapa, Johnson, Carson, and Moreland, JJ., concur.

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