

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIONER AND APPELLEE, VS. JOAQUIN ABRION ET AL., OBJECTORS. FRANCISCO G. PAR, APPELLANT.

G.R. Nos. 13841, 14133. September 25, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented by the motion is whether or not the Supreme Court may declare a bill of exceptions abandoned and dismiss the appeal, on motion of the appellee, because the appellant had not caused the proper certified copies of the bill of exceptions to be filed in the clerk's office within the time mentioned in rule 14 of the Supreme Court.

The facts important for a consideration of that question are as follows:

(1) That the Director of Lands on the 26th day of September, 1914, presented a petition in the Court of First Instance of the Province of Pangasinan for the registration of 675 parcels or lots of land situated in the municipality of Urdaneta of the Province of Pangasinan, praying that said parcels of land be registered under the Cadastral Survey Act [No. 2259]; (2) that various oppositions were presented. Francisco G. Par, the appellant, claimed that he was the owner of lots No. 2687, 3193 and 3199 and asked that they be registered in his name. The court denied his petition with reference to Lots No. 2687 and 3193; (3) that the decision denying the registration of said parcels of land was rendered on the 29th day of June, 1916, notification of which decision was not given until the 2d day of March, 1917, and, on the same day, the appellant presented a motion for a rehearing, which motion was denied on the 17th day of March, 1917, to which order the appellant duly excepted on the 20th day of March, 1917; (4) that a bill of exceptions was duly presented and filed in the office of the clerk on the 4th day of April, 1917, and the judge approved and certified the said bill of exceptions on the 14th day of April, 1917; (5) that so far as the record shows, nothing occurred in the prosecution or perfection of the appeal from the 14th day of April, 1917, until the 18th day of March, 1918, when the attorney for the appellee presented a motion, in the Supreme Court, which motion was accompanied by a certified copy of the bill of exceptions, praying that the appeal be dismissed for the reason that the appellant had not presented, nor caused to be presented, the bill of exceptions to the Supreme Court in accordance with the provisions of Rule No. 14; (6) that notice of the motion mentioned in the preceding paragraph was served upon the attorney for the appellant, and was set down for hearing on the 25th day of March, 1918, which motion was denied, for the reason that the appellee had not given timely notice of the same; (7) That said motion to dismiss was renewed and set down for hearing on the 8th day of July, 1918, and notice was served upon the attorney for the appellant on the 3rd day of May, 1918, which motion was duly considered and granted, and the appeal was dismissed on the 9th day of July, 1918; (8) that the original bill of exceptions was not filed with the clerk of the Supreme Court until the 10th day of May, 1918; (9) that on the 4th day of September, 1918, the appellant, Francisco G. Par, appeared by a new attorney, v Demetrio B. Encarnacion, and on the 5th day of September, 1918, presented a motion for a reconsideration of the order of this court dismissing the appeal.

Section 143 of Act No. 190, among other things, provides that "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, etc." Said section (143) was amended by section 2 of Act No. 1123. Said amendment, however, in no way affects the question before us.

Soon after said section 143 was adopted (in 1901), the Supreme Court promulgated what is known as rule 14 of the Rules of the Supreme Court. Said rule 14, among other things, provides that "within sixty days after a bill of exceptions is filed in the court below * * *, the appellant shall cause the proper certified copy to be filed in the clerk's office of this, court (Supreme Court.) If they are not so filed this court will, on application by the appellee and notice to the appellant, declare the bill of exceptions abandoned or the appeal dismissed, unless for cause then shown it extends the time for filing such copy." That rule has been in force for more than seventeen years and many bills of exceptions have been dismissed for noncompliance with its terms. While section 143 of Act No. 190, with its amendment (section 2 of Act No. 1123), provides that "it shall be the duty of the clerk to transmit to the Clerk of the Supreme Court the original bill of exceptions, etc." the duty is placed upon the appellant by rule 14, to cause the proper certified copy of the bill of exceptions to be filed in the clerk's office within a period of sixty days, after it has been approved and certified by the lower court.

In the present case, so far as the record shows, the appellant did absolutely nothing to cause a certified copy of the bill of exceptions to be presented in the Supreme Court from the 14th day of April, 1917, until the 10th day of May, 1918, and not then until after he had been notified twice (the first on or about the 16th day of March, 1918, and the second on the 3d day of May, 1918) of the intention of the appellee to ask the Supreme Court to dismiss the appeal, for the very reason that the bill of exceptions had not been presented by the appellant within the time prescribed by the statute and the rule.

While, in the first instance, it is the duty, under the law, of the clerk of the Court of First Instance to immediately transmit to the clerk of the Supreme Court a certified copy of the bill of exceptions, it is also the duty, under rule 14, of the appellant to cause to be presented to the clerk of the Supreme Court, a certified copy of the bill of exceptions within a period of sixty days.

While section 143 of Act No. 190, as amended by section 2 of Act No. 1123, requires the clerk of the lower court to immediately transmit to the clerk of the Supreme Court the bill of exceptions, after approval, the said rule 14 imposes upon the appellant the obligation to cause the said bill of exceptions, with a certified copy of the same, to be filed with the clerk of the Supreme Court within a period of sixty days. If the clerk fails to perform his legal duty, the appellant has his remedy. But the failure of the clerk to perform his legal duty is no justification for the appellant's failure to perform his. The appellant cannot justify his failure to comply with the rules of this court, and thus delay the final conclusion and decision of an appeal, by saying that the fault was that of the clerk of the lower court.

Considering that the appellant neither complied, nor attempted to comply, with the rules of this court, the motion for a reconsideration is denied.

Torres, Street, Malcolm, Avanceña, and Fisher, JJ., concur.

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