

1 Phil. 629

[G.R. No. 1118. January 10, 1903]

**VICENTE GONZALEZ, PLAINTIFF AND APPELLEE, VS. TELESFORO CRISANTO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

This is a motion to dismiss a bill of exceptions

The appellee's claim is that the bill of exceptions was signed by the judge and filed in the court below on the 1st day of October; that the certified copy was not filed here until December 3, more than sixty days thereafter, and consequently that it should be dismissed under rule 14.

1. This rule does not make the term of sixty days an improrogable one. On the contrary it says that the court may, for cause shown, extend the time.

The appellant's claim is that he was not notified of the filing of this bill until October 25, and that, therefore, the time should run from that date.

He also claims that article 143 of the Code of Civil Procedure makes it the duty of the clerk to transmit the copies, and he had a right to rely upon this being done by that official.

We think that the appellant is wrong in both of these claims. He is not entitled to any notice of the filing of the signed bill of exceptions. It is his duty to follow the proceedings in the case and to find out for himself when the bill of exceptions is signed and filed.

It is true that article 143 makes it the duty of the clerk to transmit to this court the certified copy of the bill of exceptions, but he is entitled to receive payment of his fees for making the copies before such transmission is made. By refusing to make such payment an appellant might delay a case indefinitely. To prevent this, rule 14 was . adapted.

But notwithstanding the fact that these were mistakes of law on the part of the appellant, we think that under the circumstances they furnish sufficient cause for us to refuse to dismiss the bill. It is a rule of court that we are considering and not a statute. Such a one as this is generally considered as giving the court wide discretionary powers in its application to particular cases.

2. Article 500 of said Code says that a bill of exceptions may be dismissed "for unreasonable failure to prosecute or perfect the bill of exceptions." But such dismissal shall not "be made as a penalty upon lawyer or client for non-compliance with any rule or rules of the court where there has been a substantial compliance with the law prescribing the method of bringing actions into the Supreme Court"

In this case the sixty days mentioned in the rule expired on November 30. The copies were not filed until December 3. This delay of three days does not constitute an "unreasonable failure to prosecute the bill of exceptions."

There was, moreover, the substantial compliance with the rule of which article 500 speaks. The delay in question did not prejudice the appellee. To grant his motion would be to impose a penalty upon the appellant for his misconstruction of the rule and certain sections of the Code, a thing which article 500 prohibits us from doing. The motion is denied.

Arellano, C. J., Torres, Goaper, Mapa, and Ladd, JJ., concur.