

[G.R. No. 2963. April 16, 1906]

LA COMPAÑIA GENERAL DE TABACOS, PLAINTIFF AND APPELLEE, VS. THE CITY OF MANILA, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

This is a motion to dismiss a bill of exceptions. Judgment was entered in the court below on the 11th of September, 1905, in favor of the plaintiff and against the defendant. On the same day the defendant excepted to the judgment and announced its intention of presenting a bill of exceptions. On the 13th day of September, 1905, the defendant presented a motion for a new trial. The substantial ground of the motion was that the judgment was contrary to law. On the 19th of September the court made an order denying the motion, to which the defendant excepted on the same day. On the 30th of September defendant served upon the adverse party and filed in court its proposed bill of exceptions. A hearing was had thereon, and on the 9th day of October the court made an order directing that the bill of exceptions be amended in certain specified particulars, and gave the defendant five days within which to present such amended bill of exceptions. Within the five days and on the 14th day of October the defendant served upon the plaintiff and filed in court his amended bill of exceptions. This was approved and signed by the judge on the 19th day of October. On the 20th of October the parties were notified of such approval, and on the 21st of October plaintiff filed in court a writing stating that it objected to the signing of the bill of exceptions because it had not been presented within the time allowed by law.

The plaintiff and appellee claims that the motion for a new trial can not operate as an exception, because it was not made upon the ground that the evidence did not justify the findings of fact, and not having been made upon that ground it was not subject to exception. This contention has been disposed of adversely to the appellee by the case of *Antonia de la Cruz vs. Santiago Garcia*,^[1] No. 2485, August 17, 1905, in which it was said:

“It is then a ruling laid down by the decisions of this court that a motion for a new trial, presented immediately after the notification of the judgment or within a reasonable time, according to the circumstances of the case, and provided it is based *on errors of law committed by the judge* or on the insufficiency of the proofs, amounts to an exception to the judgment.”

It is also claimed by the plaintiff and appellee that even if the motion for a new trial is considered as an exception, the bill of exceptions was not presented within ten days after the motion for a new trial was denied. This objection has been decided adversely to the appellee in the case of *Vicente Gomez Garcia vs. Jacinta Hipolito*^[1] (2 Off. Gaz., 33). In that case the court said:

“The judge, by signing the bill of exceptions on August 5, consented that the time should be extended. It was moreover stated in the written document presented by the appellant at the hearing, and not denied by the appellee, that the proposed bill of exceptions was served upon the appellee on July 28, and that he made no objection to its being allowed. This was a waiver by him of the objection that it had been presented too late.”

The case at bar is stronger upon the facts than the case cited, for in this case it appears that on the 30th day of September the appellee was served with a copy of the bill of exceptions and notified that it would be presented to the court for allowance on the 4th of October. On the 4th of October the appellee appeared, took part in the argument, and made no objection to the allowance of the bill of exceptions on the ground that it was presented too late. Moreover, in the order made by the judge on the 9th of October, the term of five days was expressly given to the appellant to present the amended bill of exceptions, and the bill of exceptions was presented within the five days. The objection made by the appellee on the 21st of October, after he had been notified of the presentation, and had failed to object, and after the bill of exceptions had been signed and filed, came too late.

The motion is denied.

Arellano, C. J., Mapa, and Tracey, JJ., concur.

Torres, Johnson, and Carson, JJ., concur in the result.

^[1] 4 Phil. Rep., 680.

^[2] 2 Phil. Rep., 732.

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