4 Phil. 680

[G.R. No. 2485. August 17, 1905]

ANTONIA DE LA CRUZ, PLAINTIFF AND APPELLEE, VS. SANTIAGO GARCIA, DEFENDANT AND APPELLANT.

D E C I S I O N

MAPA, J.:

On the 21st day of July, 1903, judgment was entered in this case in favor of the plaintiff and against the defendant Notice of this judgment was sent to the defendant on the 31st day of the same month, and upon this date the defendant asked for a new trial upon the ground that the decision of the court was openly and manifestly against the weight of the evidence. This motion was overruled on the 26th of October, 1903 and to the order overruling the said motion the defendant excepted. He also excepted to the final judgment on the 29th of the same month.

On the 16th of November following, the defendant presented a bill of exceptions which, notwithstanding the objection of the plaintiff, was duly allowed on the 6th of February, 1905.

The plaintiff asks in her motion that said bill of exceptions be dismissed on the ground that the defendant did not except to the judgment at the time of its rendition or at the time he received notice thereof, nor as soon as possible thereafter, but three months from the date of the decision, after the court had overruled his motion for a new trial.

This court has laid down the rule applicable in similar cases.

In the case of Sparrevohn *vs.* Fisher[1] (2 Off.

Gaz., 2) the Court of First Instance entered judgment against the defendant on the 15th of July, 1902; on the 23d of the same month the defendant moved for a new trial and after his motion had been overruled he presented a bill of exceptions on the 28th of the same month. The plaintiff objected to the allowance of the bill of exceptions on the ground that the exception to the judgment had not been presented in due time, and this court upon deciding the question thus raised, held:

> "Inasmuch as the defendant moved for a new trial ten days after the rendition of judgment, and this motion being overruled, three days thereafter he filed his bill of exceptions, we hold that the exceptions were taken in due time."

The same decision was made in the case of Vicente Gomez *vs.* Jacinta Hipolito et al.[1] (2 Off. Gaz., 33.) In that case judgment was entered upon the 1st day of May, 1903, and notice thereof was given to the plaintiff on the 21st of the same month. The plaintiff excepted thereto on the 23d of May and moved for a new trial, which motion was denied on the 23d day of July, and only on the 28th day of that month did he file his bill of exceptions; the majority of this court, however, held that the bill had been properly allowed and certified to by the court below, over the objection of the defendants who contended that the said bill of exceptions had been presented after the time provided by law had expired and that it should therefore be dismissed.

The case of Eulogio Garcia *vs.* Ambler and Sweeney[2] may also be cited. That was a petition for mandamus to compel the judge to certify a bill of exceptions presented by Garcia in a certain action between him and J. W. Marker for damages. The judgment in that case was entered on the 1st day of May, 1903, against the said Garcia. He excepted thereto on the 7th of May and at the same time moved for a new trial, which motion was denied on the 27th of June. He then presented his bill of exceptions on the 3d day of July following. This court held that the exception to the judgment and the bill of exceptions were presented in due time and that it was the duty of the court below to

allow and certify the said bill of exceptions. (2 Off. Gaz., 547.)

It will be noticed from the decisions above cited that this court has given legal efficacy to the motion for a new trial, holding that the same is equivalent to an exception when the defeated party makes such a motion immediately after being notified of the judgment of the court, or within a reasonable time thereafter, taking into consideration all the circumstances of the case; so that in the first case above cited, all that the defeated party did was to move for a new trial and present his bill of exceptions three days after he had made such motion. There was no actual exception. The appellant did not use this technical expression. He did not fail to state, however, in a certain and unequivocal manner that he was not satisfied with the judgment of the court when he moved for a new trial. His motion was in its very nature a formal protest against the justice and legality of the judgment, and an exception which is an objection to the judgment excepted to is in reality nothing more than a mere protest.

In these two cases cited, the bills of exception were presented almost two months after the exception to the judgment had been filed, but only a few days after the appellant was notified of the denial of his motion. If no motion for a new trial had been made, the bills of exception would have probably been presented out of time, but a lapse of two months after the exception had been taken, speaking generally, and without taking into consideration the special circumstances of each particular case, would exceed the time prescribed by law for the presentation of such bills of exception. It is well known that bills of exception should be presented within ten days after the defeated party has notified the court of his intention to present his bill of exceptions and that such notice must be given at the time of the rendition of the final judgment or as soon thereafter as possible, in accordance with the provisions of section 143 of the Code of Civil Procedure.

It has been laid down as a rule by this court that a motion for a new trial presented immediately after the receipt of notice of judgment or within a reasonable time, according to the circumstances of each

particular case, and provided the same is based upon errors of law alleged to have been committed by the trial court or on the insufficiency of the evidence, is equivalent to an exception to the judgment and has the effect of suspending the time prescribed by law within which notice should be given to the court by the appellant of his intention to present a bill of exceptions, until such motion for a new trial has been passed upon by the court.

It follows, therefore, from this ruling of the court, that when a motion for a new trial is overruled, if the defeated party should, as soon as possible after receiving notice of the order overruling the same, notify the court of his intention of presenting a bill of exceptions, he shall have the right to present such bill of exceptions within ten days thereafter. This court has also held that this period of ten days may be extended by an order of the court or by stipulation of the parties. (Vicente Gomez *vs*. Jacinta Hipolito, above cited.)

It is essential that the motion for a new trial be presented immediately after notice of the judgment, or within a reasonable time thereafter, in order that it produce the legal effects above referred to. We take it to be equivalent to an exception, provided it be presented exactly within that time. If presented after that time it has not and can not have the effect of perfecting the appeal to this court, in the same manner that an exception presented out of time would not have such effect. In such a case it can not be considered otherwise except as a remedy which has for its object to have the Court of First Instance set aside its judgment and give the parties a new trial in accordance with the provisions of section 145 of the Code of Civil Procedure. In this connection we held in the case of Eustaquia Salcedo *vs.* Amanda de Marcaida,[1]
decided the 13th of March, 1905, that a motion for a new trial is entirely different from and independent of an exception, for the reason that the motion in that case was presented two months after notice of the judgment, within which time the defeated party failed to except to the judgment or to perform any other act indicating its intention to bring the case to the Supreme Court.

In the case at bar the defeated party was in no way negligent in the preparation and perfection of its appeal, for on the same day in which he was notified of the judgment of the court he moved for a new trial and three days after his motion had been overruled he excepted to the order of the court overruling such motion and also excepted to the final judgment in the case, presenting there-after his bill of exceptions without any objection on the part of the appellee.

The motion to dismiss is therefore denied with costs. So ordered.

Arellano, C. J., Carson, and *Willard, JJ.* concur.

---

[1] 2 Phil. Rep., 676.

[1] 2 Phil. Rep., 732.

[2] Page 81, *supra.*

[1] Page 267, *supra.*

DISSENTING

JOHNSON, J.:

The right of appeal is purely a statutory right. The decision of the *nisi prius* court is final, unless the right of appeal is given by statute. The legislature may provide that the judgments of the *nisi prius* courts shall be final. The method of perfecting an appeal is also statutory. Such statutes are strictly construed. The Philippine Commission has, by section 143 of the Code of Procedure in Civil Actions, provided a method of perfecting an appeal by a bill of exceptions. This method is plain and simple. The Supreme Court has no authority to amend this provision of the law. If the method provided works a hardship at times it is the duty of the legislature to make provision for its remedy. I contend that this court has already,

improperly, amended said section 143 (Gomez *vs.* Hipolito, 2 Off. Gaz., 33), which has caused and is causing much confusion in the method of perfecting appeals in the Philippine Islands. I can not give my consent to interpretations of the law which amount to amendments of the same. The amendments of the law must be left to the legislative branch of the Government. The appellant here has not complied with the provisions of said section 143.

DISSENTING

TORRES, J.:

Assuming that the facts set out in the first three paragraphs of the majority opinion in regard to the motion presented by Antonia de la Cruz *vs.* Santiago Garcia are correct, the undersigned is of the opinion that the provisions of sections 142 and 143 of the Code of Civil Procedure should be maintained in their integrity, thus avoiding, in their application to practical cases, an interpretation which would create greater confusion, to the prejudice of litigants.

Section 143 of the Code of Civil Procedure provides that upon the rendition of a final judgment disposing of an action, the party desiring to prosecute a bill of exceptions shall so inform the court at the time of the rendition of such final judgment, or as soon thereafter as may be practicable, and before the end of the term of court at which final judgment was rendered, and the judge shall enter a memorandum to that effect upon his minutes and order a like memorandum to be made by the clerk upon the docket of the court.

There is nothing in the provisions of this section which indicates that a motion to set aside a judgment, and that a new trial be had, can have the effect of an exception to the judgment or of a notice that the party intends to prosecute a bill of exceptions.

The remedy provided for in section 145 of the Code of Civil Procedure is essentially different from that provided in section 143,

which is by bill of exceptions.

A careful examination of these two sections will show that a motion to set aside a judgment of the court, and that a new trial be granted, can not be construed as an appeal by means of a bill of exceptions, as provided for in section 143 of said code.

The undersigned has no recollection of any decision of this court in which it was expressly held that a motion for a new trial under section 145 should be construed as an exception under section 143.

This section 143 expressly provides that the exception shall be taken and the notice of intention to prosecute a bill of exceptions shall be given at the time of the rendition of final judgment, or as soon thereafter as may be practicable, and before the end of the term of court, without any exception, except that provided for in Act No. 575-that is to say, when the judge rendered his decision in another district outside of the province, in which case Act No. 575 gives to the parties twenty days within which to present an exception or to appeal from the judgment. In my humble opinion an exception or notice to prosecute a bill of exceptions which is not presented or given immediately after the rendition of the judgment or as soon thereafter as possible, is null and void, and the defeated party is not entitled, in such cases, to an appeal from the final judgment rendered in the case.

The only decision from among those cited or referred to in the majority opinion as authorizing such a holding is the one in the case of Sparrevohn *vs.* Fisher, although to my mind it is rather more of an inference than anything else, because from the language of that decision it can not be stated that this court has therein expressly held that a motion for a new trial is equivalent to an exception to the judgment or to a notice of appellant's intention to prosecute a bill of exceptions.

Although in that case the party did not except to the judgment immediately upon the rendition thereof, but simply moved for a new

trial, and after his motion was overruled he presented a bill of exceptions and this, court held that the said bill of exceptions was presented in due time, it is not to be inferred, however, from said decision, that it was the intention of this court to hold that a motion for a new trial should also amount to an exception to the judgment. This court held that the bill of exceptions was presented in due time, notwithstanding the lapse of twelve days, for the reason that this number of days was reasonably included within the time prescribed by law, or within the meaning of the words "as soon thereafter as possible," Act No. 575 providing that—this should be done within twenty days.

It is true that the defendant, Fisher, did not take an exception before the filing of his motion for a new trial, but it nevertheless a fact that his motion having been overruled, he immediately presented his bill of exceptions; and there is no law which prohibits a party from presenting his bill of exceptions immediately or as soon thereafter as may be possible, instead of confining himself to excepting to the judgment or giving notice of his intention to prosecute a bill of exceptions.

In the two cases above cited, Vicente Gomez *vs.* Jacinta Hipolito and Eulogio Garcia *vs.* Ambler and Sweeney, the appellants excepted to the judgments rendered in each case, and at the same time moved for a new trial—a fact of considerable importance.

It thus appears that the parties, in order to protect their rights, sought at the same time the two remedies provided for in sections 143 and 145 of the Code of Civil Procedure; these cases, therefore, are not in point and have no analogy with the case at bar, nor with the case of Sparrevohn *vs.* Fisher, in which the court held that the bill of exceptions had been presented in due time. To my mind it is immaterial whether the exception or the notice to prosecute a bill of exceptions is presented before or after the motion for a new trial, provided that the said motion or notice be given immediately after the rendition of the final judgment, or as soon thereafter as may be practicable, in accordance with section 143.

The only method of appeal from a judgment rendered in a particular case is by noting an exception thereto, and including the same in the bill of exceptions presented to the judge for his signature and certification to this court, as provided in section 143 of the Code of Civil Procedure. (See decision in case of Gustilo *vs.* Yusay.[1])

I do not think that in any one of the three cases referred to in the majority opinion, this court has given any legal efficacy to the motion for a new trial, considering the same equivalent to an exception, for the reason that there is no express declaration to this effect contained therein.

It should be borne in mind that the motion for a new trial may be made at any time within the term of court at which the final judgment is rendered, and section 145 does not require that such motion be made forthwith or as soon as practicable.

It should also be borne in mind that the presentation of the bill of exceptions is an entirely different thing and that the law allows a period of ten days for that purpose, which period may be extended, as has been expressly held bythis court.

As to the decision of this court in the case of Eustaquia Salcedo *vs.* Amanda de Marcaida, I have nothing to say, because in my opinion it is in conformity with the law.

Referring to the decision in the case at bar it appears that the defendant made a motion for a new trial immediately after the rendition of the final judgment, and the record shows that the exception to the final judgment was taken two months and twenty-nine days thereafter. This exception can not be considered as having been taken immediately or as soon as practicable, and I am therefore of the opinion that the motion to dismiss should be granted.

---

[1] 1 Phil. Rep., 449.

Date created: April 25, 2014