1 Phil. 454

[G.R. No. 959. November 03, 1902]

JUAN ISMAEL, PLAINTIFF AND APPELLEE, VS. MANUEL GANZON, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The appellant based his motion to amend the bill of exceptions on two grounds. The first one was that he had made a motion for a new trial in the court below; that this court under article 497, 3, had therefore a right to review the evidence, and that for such a review it was necessary to amend the bill of exceptions by adding thereto the evidence omitted. After the judgment was entered in the court below the defendant presented a bill of exceptions which contained the pleadings, decision, and judgment and certain allegations of fact and law. It concluded as follows: "Therefore the defendants pray the court that its judgment be amended, and that the defendants go hence without day, or else that this bill of exceptions be sent to the Supreme Court for its decision thereon." The judge, adding some statements of his own to it, signed this bill of exceptions and a copy thereof has been sent here. The claim of the appellant is that the aforesaid prayer found in the bill of exceptions was in effect a motion for a new trial. We can not agree to this contention. It is evident that the parties below did not so treat it. The judge made no order granting or denying it. It was simply a part, improperly so, of the bill of exceptions and we can not consider it as a motion for a new trial under article 145. The appellant is therefore not entitled to have the evidence brought here for the purpose of enabling us to review it.

The second ground on which the appellant bases his motion is that the bill of exceptions should be amended in the respect that the judge should certify as a part thereof that the cane in question belonged to Jose de Luna before it belonged to the plaintiff. At the trial the defendant offered certain evidence tending as he claimed to show that certain cane once belonging to Jose de Luna had been burned. The court rejected this evidence, to which the

defendant excepted. This exception properly appears in the bill of exceptions. But the appellant says that this exception will be valueless to him unless the bill of exceptions shows, and he claims this to be a fact, that this cane so burned passed to the plaintiff from Jose de Luna, and having been burned could not have been converted by the defendants.

A decision of this motion does not involve a consideration of article 499. That article has been construed in the case of Gonzaga vs. Norris, August 26, 1902, with which decision we are content The question here is: Can the appellant have the bill of exceptions amended in the particular named under the last clause of article 500? That clause reads as follows: "* * * nor shall such dismissal be granted whereby an amendment to the bill of exceptions, which is hereby declared to be lawful and allowable, and imperfections or omissions of necessary and proper allegations, could be corrected from the record in the case." The bill of exceptions should contain not only the exceptions taken, but enough of the evidence "to show the bearing of the rulings * * * excepted to." (Art. 143.) The judge should "restate the facts if need be, and the exceptions so that * * * their relevancy shall be made clear." (Art. 143.) The bill of exceptions in this case does not do that. It does not show that the fact that Jose de Luna at one time owned this cane is at all relevant to the case. The defendant claims that its relevancy does appear in the record of the case and that this imperfection in the bill of exceptions can be corrected by reference to that record. We can not give to the word "record" as it is used in the last part of said article 500 its ordinary signification. If it means there only the complaint, answer, bill of exceptions, decision, and judgment, that provision of the article would be useless. Imperfections in the bill of exceptions could rarely be corrected by reference to those documents. Resort would have to be made to what took place at the trial or in other proceedings in the court below. We therefore hold that the word "record" as there used includes everything that was done in that court.

The defendant subjects to the allowance of the amendment on the ground, among others, that the defendant prepared the bill of exceptions; that this statement should have been placed in it, and that the defendant has been negligent in prosecuting his appeal and asking for this relief. It appears that the case was tried below by Senor Avancena; that before the decision he moved to Manila to take office in the Fiscalia; that Senor Yusay, who had not participated in the trial, prepared the bill of exceptions; that they were prepared and presented in haste, as the term was about to close. The certified copy of the bill of exceptions was received in this court on May 31, and Senor Yusay then notified thereof. The printed copies were delivered to the parties on September 1. It is plain that there has been delay and negligence on the part of the defendant, but there is no, claim that it has prejudiced the plaintiff except that if the amendment is allowed the case may have to go

over to the November, 1903, term of the court at Iloilo. The plaintiff is protected by a bond which was required by the court below as a condition precedent to a stay of execution. It is also said that the bill of exceptions was presented one day after the term closed at which the case was tried. But it appears that the judge acted upon the bill so presented; that notice of this action was waived by the plaintiff, and that the plaintiff has made no motion to dismiss the bill on that ground. The plaintiff also claims that the amendment should not be allowed because in no event can the defendant prevail on his appeal, his exceptions being all without merit. But on this application we can not go into the merits of the appeal. There has been no argument upon that subject. It is the purpose of article 500 to enable the appellant in this way to get his bill of exceptions in such shape that he can present and argue the questions of law which are raised thereby.

We have had considerable doubt not over the power of the court to grant this motion but over the propriety of so doing. We have, however, finally decided to do so on terms which we think will protect the plaintiff.

Within ten days after the arrival in Iloilo of the judge of that province, the defendant on five days' notice to the plaintiff may move said judge that he add to the bill of exceptions a statement in substance as follows: "The cane mentioned in the complaint belonged to Jose de Luna before it belonged to the plaintiff." The order of the judge granting or denying the motion shall be certified to this court. The defendant shall serve his brief on the plaintiff within thirty days after the date of the oxder of said judge. The plaintiff shall have thirty days in which to reply, and the cause shall, at the option of the plaintiff, be heard in Manila at any time when the court is in session on ten days' previous notice to the defendant. This order is conditional on the defendant within five days after notice thereof paying to the clerk for the benefit of plaintiff the sum of ten dollars, United States currency. If this sum is not paid the motion will be dismissed.

Torres, Smith, Mapa and *Ladd, JJ.,* concur.

DISSENTING

COOPER, J.:

This is an application made by the appellant, the defendant in the court below, to amend a

bill of exceptions. It is stated that the defendant on the trial of the case offered in evidence certain documents which were, on the objection by the plaintiff, excluded by the court, and to which ruling the defendant excepted. That in order that the relevancy of the document may appear the bill of exceptions should show "that the cane mentioned in the complaint belonged to Jose de Luna before it belonged to the plaintiff." The appellant requests that the judge of the Court of First Instance be required to certify this in the bill of exceptions. The motion has been granted. The decision of the court is based upon the construction given article 500 of the Code of Civil Procedure, 1901.

So far as it is material to the consideration of the question that article reads as follows:

"Nor shall such dismissal be granted whereby an amendment to the bill of exceptions which is hereby declared to be lawful and allowable and imperfections or omissions of necessary and proper allegations could be corrected from the record in the case."
It is not contended that the proposed amendment can be effected by reference to anything that is contained in the record of this court or anything so far as that is concerned contained in the lower court, unless the word "record" as used in the last part of article 500 be given .a different meaning from that which it possesses according to the ordinary signification of the term.

The question to be determined is, whether under the provisions above cited an amendment of the bill of exceptions can be made in this court so as to incorporate in it oral testimony taken in the court below upon the trial of the case.

The decision of the court is to the effect that this may be done, and that the word "record" as used in the last part of article 500 should not receive its ordinary signification; that the word should be considered in its meaning so as to include everything that was done in the Court of First Instance, and that the oral testimony, though not reduced to writing, is a part of the record within the meaning of the word as.so construed.
It is unnecessary to cite definitions of the word "record," for it is admitted that the word in receiving the construction given has been wrested from its ordinary signification.
Is the language of the statute so doubtful or does the context show an intention at variance to such an extent with the word "record" as used in its ordinary signification that the first and primary rule of interpretation should be disregarded?

It is said in the opinion that to give the word "record" as used in section 500 its ordinary signification, and if it means only the complaint, answer, bill of exceptions, decision, and

judgment, that the provision of the article would be useless, as bills of exceptions could rarely be corrected by reference to those documents. It is immaterial, in my opinion, whether the word used in its ordinary signification would tend to give the section in question a limited operation or not, or even whether it would have any operation whatever. This would not justify judicial revision, correction, or amendment of the law.

The rule which governs in such cases is well stated in the case of McClusky vs. Cromwell (11 N. Y., 593), in the following language: "It is beyond question the duty of courts in construing statutes to give effect to the intent of the lawmaking power, and to seek for that intent in every legitimate way, but in the construction both of statutes and contracts the intent of the framers and parties is to be sought first of all in the words employed, and if the words are free from ambiguity and doubt and express plainly, clearly, and distinctly the sense of the framer of the instrument there is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation, and when the words have a definite and precise meaning to go elsewhere in search of conjecture in order to restrict or extend the meaning. Statutes and contracts should be read and understood according to the natural and most obvious import of the language without resorting to subtle and forced constructions for the purpose of either limiting or extending their application. Courts can not correct supposed errors, omissions, or defects in legislation or vary by construction the contracts of parties. The object of interpretation is *to bring sense out of words used and not to bring sense into them.*"

Some ambiguity might arise from the phrase "record in the case," whether this means the record as contained in the transcript or the original record as it exists in the lower court.

This question has been decided by the Supreme Court of Georgia in a decision rendered prior to the enactment of our statute, in which the words "record in the case" have been held to mean "the record as contained in the transcript sent up and duly certified by the clerk." (79 Ga., 210.)

This decision has peculiar weight in determining the question. It was made on the construction of article 5570 of the Code of Georgia, 1895, from which our statute was taken and of which it is a literal copy. The ordinary rule announced in such cases is that if the legislature of a State in enacting a statute literally or substantially copies the language of the statute previously existing in another State or borrows from Auch statute the provision, clause, or phrase, the same having received a judicial interpretation in the State of its origin, it is presumed that the enactment was made with a knowledge of such interpretation,

and that it was the design of the legislature that the act should be understood and applied according to that interpretation. (Black on Interpretation of Laws, p. 159, citing Metropolitan R. R. Co. *vs.* Moore, 121 U. S., 555; Stutsman Co. *vs.* Wallace, 142 U. S., 293, and various decisions of States not accessibble to the court.)

This decision from the court of Georgia affords not only a reasonable construction of the phrase, but is in harmony with the principles applying to the amendment of records under the practice prevailing in the United States. Where the defect is in the trial court record or where the rulings of that court have not been duly entered, the application to correct or amend the record must be made to that court. (Elliott, Appellate Procedure, 206, 2 Enc. P1. and Prac., 301.) This rule is strictly applicable to the amendment of bills of exception. The court to which the appeal is taken has no power to amend. It is amendable only in the trial court (3 Enc. P1. and Prac, 502.) It is also a rule that after the expiration of the trial term even the trial court can not make an amendment without some minute or memorandum as evidence on which to base the amendment. (3 Enc. P1. and Prac, 505.)

It may be urged that as the court has not undertaken to amend the bill of exceptions, but has simply given the appellant leave to apply to the lower court for an amendment, that the question of the right of this court to amend the bill of exceptions does not arise in the case, and that the discussion of the question is premature.

But it will be noticed that while the order passed in the case, contemplates that the amendment should be made by the trial judge the discussion of the question has proceeded upon the right of this court to amend the bill of exceptions under the provisions of section 500. Besides, it is immaterial whether section 500 is invoked as authority for the amendment in this court or in the court below. This section of the law can not be construed as giving the right to amend the bill of exceptions in either case in the manner attempted.

If the same rules of practice under our Code are to prevail here as in America, the provisions of which have been largely taken from the Codes of the several States, an amendment of the character permitted can neither be made in tin’s court nor in the court below.

The parties, however, are not entirely without remedy, for, under the practice prevailing in the United States, a motion, timely made, to the lower court for an amendment of the bill of exceptions will be granted. If made within the time for the filing of the bill of exceptions or within the trial term, the judge may permit any character of amendment to be made so as to

make? the bill of exceptions conform to the facts. After the expiration of the term the power of the trial judge over the bill of exceptions is more restricted and only such matters as are made to appear by some minute or memorandum in the record can be incorporated in the bill of exceptions. It is also possible that section 113 of the Code of Civil Procedure, 1901, will apply to cases which do not come within these rules.

It reads as follows:

> "Upon such terms as may be just the court may relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect, provided that application therefor be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken."

The writer is inclined to think that the provisions of this section are sufficiently broad to cover amendments of bills of exceptions of the character applied for in this case. But the application can not be granted under this provision, for the reason that it was not applied for within six months from the date of the bill of exceptions, and further, because the allegations of the application are wholly insufficient.

There is no allegation whatever of mistake, inadvertence, surprise, or excusable negligence.

The court recognizes in its decision the insufficiency of the application in this respect when it says that it is plain that there has been delay and negligence upon the part of the defendant. By reference to the bill of exceptions it will be seen that the provisionis of the Code and the rules of this court have been ignored by the appellant. The final judgment was rendered in the case on the 11th day of February, 1902.

Section 143 of the Code requires that a party desiring to prosecute a bill of exceptions shall so inform the court at the time of the rendition of final judgment or as soon thereafter as may be practicable and before the ending of the term of court at which final judgment is rendered. This provision was not complied with.

Within ten days afterwards the excepting party is required to present to the judge a brief statement of the facts in the case sufficient to show the bearing of the rulings excepted to, for allowance by the judge. This was not done until the 21st day of February, one day after the adjournment of the court.

The statute also requires that within five days from such presentation to the judge the bill of exceptions shall be allowed and filed. It was not allowed and filed until the 14th day of March.

Section 14 of the rules of this court require that the appelant shall within sixty days after tlie bill of exceptions is filed cause the proper certified copies to be filed in the clerk's office of this court, and if they are not so filed the court will, on application by the appellee, declare the bill of exceptions abandoned, unless for cause then shown it extends the time for the filing of such copies. The bill of exceptions was filed in the case on the 14th day of March. The certified copy of the bill was not filed in this court until the 31st day of May.

Section 15 of the rules provides that upon the receipt of the certified copy of the bill of exceptions the clerk shall make an estimate of the expense of printing the same, and notify the appellant thereof, and if after such notice the appellant fails to furnish the money necessary for tlie printing of the transcript the court may, on motion of the appellee, declare the bill of exceptions abandoned. The appellant was duly notified by the clerk on the 31 st day of May, 1902, and on the 29th day of August the rule had not been complied with, on which date, on account of this failure the appellee moved to dismiss the bill of exceptions. Neither have the rules of this court with reference to filing assignments of errors and the printing of brief been complied with; in fact, there seems to have boon no effort whatever made by the appellant to comply with the rules or the statute, nor any excuse given for his failure to do so. He simply states in his application that the amendment is necessary in order that tin; relevancy of the ruling of the court may appear. Not even the poor excuse that his attorney was changed after the trial, referred to in the opinion of the court, is given in the application, for this was stated only in the oral argument on the application to amend. It in also to be further noticed that the bill of exceptions was prepared by appellant's own attorney. It is difficult to imagine a case in which a more flagrant violation of the statutes and rules of the court could occur.

To grant such an application tends strongly toward the exercise of arbitrary discretion. The indulgence shown in thp case has been done with a view to prevent the possible miscarriage of justice.

But the exercise of such power subverts the law and finally defeats its own object. The danger is strongly portrayed in the following celebrated words of Lord Camden: "The discretion of the judge is the law of tyrants; it is always unknown; it is different in different men; it is casual and depends upon constitution, temper, and passion ; in the best it is

oftentimes caprice, in the worst it is every vice, folly, and passion to which human nature is liable.”

By the establishment of such precedents the domain of doubt is extended so as to embrace not only the lawyer who neglects to read or fails to comprehend the statute and rules of the court but also embraces the diligent and intelligent attorney who reads and comprehends the statutes and rules but remains in doubt as to what construction and application shall be made of them by the courts of the country.

For the reasons above stated, I dissent from the decision.

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