1 Phil. 217

[G.R. No. 597. April 15, 1902]

JUANA MORENO FRANCISCO, PLAINTIFF AND APPELLEE, VS. JOSE MANUEL GRUET, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

This is a motion to dismiss an appeal from an order removing a guardian. The Code of Civil Procedure now in force points out two methods, radically different, for bringing cases to this court. One is by bill of exceptions and the other is by appeal. The first refers to ordinary suits, the second to special proceedings. Any ordinary action can be brought to the Supreme Court by a bill of exceptions. (Art. 143.) There does not, however, exist any general provision which authorizes an appeal in all kinds of special proceedings. Article 772 is limited to proceedings in the cases of adoption; articles 778, 779, and 780 to orders concerning the allowance of accounts of executors, administrators, and guardians; article 781 to orders declaring the validity or nullity of wills; article 782 to orders directing the partition of property; and article 783 to final orders in testate or intestate estates and the administration of guardians and trustees.

This case falls within the provisions of article 783. It was not in any sense an ordinary suit. Article 574, in connection with article 581, gives to the Court of First Instance the power to remove guardians. It is evident that the order in this case was entered by the court by virtue of its jurisdiction in special proceedings concerning the administration of guardians. Being an order entered in special proceedings, it ought to have been brought here by an appeal and not by a bill of exceptions. In order to perfect an appeal in accordance with article 783 only two things are required of the appellant—he must present a written notice of appeal and he must give a bond. In respect to the first requirement, it was stated at the argument of this case, and not denied by the opposing party, that the appellant presented to the court a notice of appeal and that he was told by the judge that in that case an appeal was not

proper, and ten days were given him for the presentation of a bill of exceptions. In this bill of exceptions prepared by the appellant and signed by the judge it is said that the appellant, upon being notified of the order, appealed; and there also appears in the record an order admitting the appeal. We are satisfied that what the appellant did in this case amounted to a notice of appeal within the meaning of said article 781.

With regard to the second requisite—that is, the bond—it appears that the appellant in fact gave a bond in the sum of $3,000, which was approved by the judge. It also appears, however, that by an order of the court said bond was conditioned for the performance of the judgment by the appellant in case it was affirmed. The condition should have been that he would prosecute his appeal and pay the damages and costs occasioned by reason thereof. (Art. 780.) The question is, Ought we to dismiss the appeal by reason of this defect in the bond?

Article 500 says no bill of exceptions shall be dismissed for defects of form which do not affect the rights of the parties, nor for any defect which can be cured. It is true that this article only treats of bills of exceptions and not of appeals, but it is evident that it was the intention that it was to be applied to both. They are no more than different methods of accomplishing the same ends—that is, the removal of a suit from a lower to a higher court. If a bill of exceptions ought not to be dismissed for defects of form, an appeal ought not to be. We think that this article is applicable to both cases, and that the defect which appears in the bond is one which can be corrected.

When an appeal is perfected in special proceedings, in accordance with article 783, it is the duty of the clerk to send to this court a certified copy of the evidence introduced. At the hearing in this court it was stated that this had not been done. In such a case article 501 requires us to suspend the hearing until the record is complete. We are not allowed to dismiss an appeal for such reasons.

The attorney for the appellee stated at the hearing that the appellant had never served upon him his assignment of errors and brief, as required by the rules of this court. The attorney for the appellant answered that they were included in the bill of exceptions which had been served upon the appellee. This, of course, is not a proper place for them. The bill of exceptions should contain facts only. It is a statement of what occurred at the trial in the court below. Argument has no place in it. This should be made in the brief. This mistake of the appellant has not in any way, however, prejudiced the appellee, upon whom the brief and assignment of errors was served, although not in proper form. The appeal ought not to

be dismissed by reason of this mistake.

For the reasons above mentioned, the motion to dismiss the appeal is denied, but it is ordered that the appellant be required, within twenty days from this date, to file in the court below a bond approved by that court in such sum as that court may order, conditioned as provided in article 780. If he should fail to do so the appeal will be dismissed. It is further ordered that the clerk of said court send forthwith to this court, at the expense of the appellant, certified copies of all the evidence presented at the trial there held, with the exception of those parts of the same which have already been remitted; that upon the receipt of the same the clerk of this court order them to be printed at the expense of the appellant and distributed to the parties; that the brief and assignment of errors in the so-called bill of exceptions be considered as the brief and assignment of errors of the appellant, and that the appellee be given twenty days from the receipt of the said printed additions to the record for the service of his brief upon the opposite party and the filing in this court.

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

DISSENTING

COOPER, J.:

As stated in the opinion of the majority of the court, the Code of Civil Procedure (1901) provides two radically different methods for removing a case to this court. One is by means of a bill of exceptions; the other is by means of an appeal. The former relates to ordinary actions, the latter relates to special proceedings. As further stated by the court the order appealed from was made in a special proceeding and should have been brought here by appeal and not by a bill of exceptions. For this reason a motion has been made by appellee to dismiss the case, which has been overruled by the court. From this decision I dissent.

The provisions relating to the bringing of cases here by bill of exceptions have been. strictly followed. There can be no doubt in this respect as to the intention of the appellant. No attempt whatever has been made to follow the provisions for appeal in special proceedings nor has there been any substantial compliance with them. This decision will in future be a precedent for the rule that, notwithstanding the radical differences in the mode of bringing cases to this court, as provided by statute, an ordinary bill of exceptions will be sufficient for

that purpose in all cases of both special proceedings and ordinary suits. Whether the different modes provided by the Code are likely to cause confusion and whether there are sufficient reasons for making such difference are questions purely for the legislative discretion. The law should not be changed by judicial legislation or construed away by decision.

The methods of bringing an appeal in a special proceeding are (1) by filing with the Court of First Instance an application for an appeal within twenty days after the entry of the judgment (Art. 781), and (2) by giving a satisfactory bond to the court conditioned that the appellant will prosecute the appeal to effect and pay the intervening damages and costs occasioned by such appeal (Art. 780). That the bond was given in the case was not intended as an appeal bond appears on the face of the same. It is stated by the clerk in his certificate that the bond was given in the sum of $3,000 in accordance with article 144 of the Code. Article 144, referred to, is the provision of the statute for a supersedeas bond where a case has been brought to this court by a bill of exceptions. The condition of this bond is not, in substance, the same as that provided for in appeal bond. It is perfectly clear that the parties did not contemplate the execution of an appeal bond.

As to the other requisite, the filing with the Court of First Instance of an application for an appeal within twenty days after the judgment, there has been no attempt to comply with the statute. The statement that the appelant presented to the court below an application for an appeal and was told by the court that it was not a case in which an appeal would lie, but that remedy was by bill of exceptions, not only shows that there was no attempt to comply with the provision requiring the filing of the application but shows clearly a change of purpose and an abandonment by the appellant of that mode to appeal the case.

The statement contained in the bill of exceptions prepared by the appellant and signed by the court, that the appellant appeals the case, clearly conveys the idea that the method of appeal was by a bill of exceptions. It was not a statement tending in the least to show that the appellant had or was attempting to bring the case up by the method of appeal for special proceedings. The supposed order contained in the bill of exceptions allowing the appeal is nothing more than a receipt of the bill of exceptions by the Court of First Instance, stating that by such bill of exceptions the appeal to the Supreme Court was admitted, and required a bond in accordance with section 144, which, as stated above, is a supersedeas bond, given only in cases of bills of exceptions, clearly showing that the appeal intended was by means of a bill of exceptions.

But no order is required to perfect the appeal in special proceedings, nor would any such order, if shown, have the effect of supplying the requisite prescribed by statute.

These provisions of law are simple and easily complied with.

The Civil Code of Procedure is new to the native lawyer and doubtless presents many perplexing questions. Its meaning may often be misconstrued, but in the desire to relieve them, if to these difficulties are superadded unnatural and forced constructions of its provisions, the difficulties are multiplied and the confusion will become hopeless.

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