3 Phil. 279

**[ G.R. Nos. 1561 and 1562. February 02, 1904 ]**

**RAFAEL ENRIQUEZ, PLAINTIFF AND APPELLEE, VS. A.S. WATSON & CO. ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**JOHNSON, J.:**

In each of the above-entitled causes the attorneys for the appellee moved that the bill of exceptions filed be dismissed for the following reasons:

1. That the said bill of exceptions had not been completed and certified in the form prescribed by the law; and
2. That said bill of exceptions had not been completed, certified, nor signed by the judge who tried the cause in the Court of First Instance of the city of Manila.

Inasmuch as the facts in each case upon which the motion to dismiss the said bill of exceptions were the same, the respective attorneys agreed that the motions should be heard together.

The facts upon which these motions were based were as follows:

One of the judges of the Court of First Instance of the city of Manila, on the 2d day of May, 1903, dictated a sentence in English in the said causes and immediately there-after left the jurisdiction of the said court and was gone for several months. In fact the said judge did not return until long after the time fixed by the law for perfecting the appeal in said cause and for the presentation and certification of the bill of exceptions.

On the 4th day of May, 1903, an exception to the sentence or judgment of said trial judge was duly taken by appellants and allowed by the Hon. John C. Sweeney, the only judge of the Court of First Instance of the city of Manila present at that time.

On the 5th day of May, 1903, a motion was made by said appellants before Judge Sweeney for a new trial of said cause upon the ground that the sentence was manifestly contrary to the weight of the evidence.

On the 20th day of May, 1903, the said motion for a new trial was denied by Judge Sweeney. The appellants then and there duly excepted to said order and then and there gave notice of their intention to present a bill of exceptions, and on the same last-mentioned day presented the bill of exceptions to Judge Crossfield, who was then acting as a judge of the Court of First Instance in said city of Manila, for certification.

On the 8th day of July, 1903, Judge Crossfield signed the following:

> "The preceding bill of exceptions, in the cause of Rafael Enriquez, administrator, *vs.*
> A. S. Watson & Co., Limited, Henry Humphreys, T. Gr. Joy, and Walter (William) Morley, having been presented to me because of the absence in the United States of the judge who heard said cause, and there being no prospect that he will return before the expiration of the time within which the said bill of exceptions must be approved, and the same after comparison with the stenographic notes of the testimony taken at the
> trial by the official stenographer having been found to be correct, I approve the said bill and order that it be attached to the record of the said cause."

In reply to the first objection above presented, that the said bill had not been completed and certified in the form prescribed by the law, the court finds that the form of the said bill of exceptions was in accordance with the rules of law.

The second objection above presented contains greater difficulties.

The question presented on the objection is, Who must sign and certify to a bill of exceptions?

Section 143 of the Code of Civil Procedure provides:

> "Sec. 143. *Perfecting bill of exceptions.*—Upon the rendition of final judgment disposing of the action, either party shall have the right to perfect a bill of exceptions for a review by the Supreme Court of all rulings, orders, and judgments made in the action, to which the party has duly excepted at the time of making such ruling, order, or judgment The party desiring to prosecute the 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, 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 among the other entries relating to the action. Within ten days after the entry of the memorandum aforesaid, the excepting party shall cause to be presented to the judge a brief statement of the facts of the case sufficient to show the bearing of the rulings, orders, or judgments excepted to, and a specific statement of each ruling, order, or judgment that has been excepted to, for allowance by the judge. The judge shall thereupon, after reasonable notice to both parties and within five days from the presentation of the bill of exceptions to him, restate the facts if need be, and the exceptions, so that the questions of law therein involved and their relevancy shall all be made clear, and when the bill of exceptions has been perfected and allowed by the judge he shall certify that it has been so allowed, and the bill of exceptions shall be filed with the other papers in the action, and the same shall thereupon be transferred to the Supreme Court for determination of the questions of law involved. A bill of exceptions may likewise be made to consist of the judge's findings of fact in his final judgment and a statement of all the exceptions reserved by the party desiring to prosecute the bill of exceptions, which shall be

> allowed and filed by the judge as above in this section provided.
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> "Immediately upon the allowance of a bill of exceptions by the judge it shall be the duty of the clerk to transmit to the clerk of the Supreme Court a certified copy of the bill of exceptions and of all documents which by the bill of exceptions are made a part of it. The cause shall be heard in the Supreme Court upon the certified copy of the bill of exceptions so transmitted."

This quoted section might be construed to justify the contention of the appellee that the trial judge was the only person who could certify to the correctness of a bill of exceptions—he being the only person, so authorized, having full knowledge of what transpired on the trial. This contention had great weight formerly, prior to days when stenographers were employed in the courts. To-day, where stenographers are employed in the courts in the trial of causes, there is a complete authentic record made of everything which transpires during the trial. From this record, everyone who runs may read as well as another the record and be informed fully of every act, objection, or exception taken or made during the trial. That being true, then any person may ascertain for himself the correctness of any allegation made concerning what transpired during the trial. In order, however, that appellate courts may have a bill of exception perfected and settled without confusion or disputation, the law has provided
that the same shall be signed by the judge of the court in which it arose. The ultimate object of a bill of exceptions is to bring before the appellate court in some authentic form the facts upon which the parties rely in said court. For this purpose it would be entirely within the province of the legislature to provide that such facts be certified to by one person as well as another, so long as the particular person so authorized had sufficient information of the facts.

Under the Code of Civil Procedure it is quite clear that it was not the purpose of the legislature to require one judge of the Courts of

First Instance to do all the acts connected with a particular action from its inception to its conclusion. Section 49 of Act No. 136 and sections 378, 379, and 380 of the code provide for the substitution of judges under the conditions therein enumerated.

The legislature foresaw what has actually happened here—the frequent changes in the personnel of the judges— and by law has relieved the parties litigant of the endless embarrassment which would necessarily follow such changes, if new judges or successors could not conclude litigation commenced and partially concluded.

The question, who may sign a bill of exceptions, has been before the courts of the United States many times, and the various decisions on the same are not always reconcilable.

Formerly it was the practice, when an exception was taken to any order or ruling of the court, to present the bill immediately to the judge for his signature while his recollection was fresh. Later it became the practice for the judge to note the exception and to rely upon his notes in the determination of the question whether the bill tendered was true or not, and the bill was then tendered during the term.

This rule was still later relaxed by statute, in many jurisdictions, by permitting the bill to be presented within a limited time after the term. In some jurisdictions the judge was even given the right to extend this statutory period within which the bill of exceptions might be tendered for allowance and settlement.

In one instance, where a judge refused to sign a bill after having been so ordered by the appellate tribunal, and resigned in order to escape this duty, the Supreme Court, being satisfied that the bill was true as presented, ordered it entered, as a part of the record, as though it had been signed. (People *vs.* Pearson, 4 Ill., 270, 285.)

Subsection 4 of section 499 of the Code of Civil Procedure justifies this same action on the part of this court, which clearly indicates that the legislature of these Islands did not intend to make it

absolutely necessary for a bill of exceptions to be signed by the trial court or otherwise to subject the parties to the annoyance of a new trial.

There are numerous precedents that if the bill can not be settled by the trial judge by reason of loss of papers, by reason of his having gone out of office, or sickness or absence or otherwise, a new trial will be granted. But parties litigant should not be put to the annoyance and expense of time and money of a new trial when it can be avoided without detriment to the rights of either.

A bill of exceptions is intended simply to present to the appellate court a brief statement of facts showing in what way error was committed by the trial court, and to which error the attention of the trial court was called at the time. In this present case a full report of all the evidence offered as" well as of all exceptions made in the trial was made at the time by a stenographer, and one judge as well as another may examine this record and be satisfied concerning what was done at the trial. If this
be true, we can not see how there can be much room for controversy in regard to what the evidence and the exceptions were. And that is the only question in settling a bill of exceptions.

The certificate of the judge approving the bill of exceptions in this cause discloses the fact that he had verified the facts contained therein by the stenographic notes of the trial of said cause.

Under the case as presented it would be manifestly unjust to both of the parties to reject the bill for lack of sufficient authentication, as such a course might result in a new trial, when the record, if examined, might not disclose reversible error. If such should not be the result, the plaintiffs in error would be deprived of the right of review secured under statutory provisions without any fault on their part.

In support of the general propositions that the trial judge is not the only judge who may certify a bill of exceptions, we cite the

decision of this court in the cause of Fortunato Ricamora *vs.* Judge Grant T. Trent.[1]

The motions in both causes are denied.

*Arellano, C. J., Torres, Cooper, Willard, Mapa,* and *McDonough, JJ.,* concur.

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[1] Page 137, supra.

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