

3 Phil. 636

[ G.R. No. 1326. April 09, 1904 ]

**FELIX FANLO AZNAR, PETITIONER, VS. W.F. NORRIS, JUDGE OF THE COURT OF FIRST INSTANCE OF CAPIZ, RESPONDENT.**

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

**MAPA, J.:**

Under the circumstanced of the case we consider that the exception to the judgment rendered February 28, 1903, by the Court of First Instance at Capiz in the case brought by the petitioner against Rafael Rodriguez, and the bill of exceptions presented in consequence of this exception, were presented by the petitioner in due time and should therefore produce the legal effects. By virtue of this exception and the presentation of the bill of exceptions, the right of the petitioner to have the case brought before this court by bill of exceptions was perfected.

The fact that the petitioner did not take any exceptions in the course of the trial is no obstacle to this conclusion. Section 143 of the Code of Civil Procedure does not establish any such requirement, as erroneously contended by the respondent in his answer. An exception to the final decision, although it may be the only exception taken in the course of the trial, as in the present case, is sufficient to authorize the removal of the case by bill of exceptions to this court, provided that the exception is taken as in this case within the period and in the manner prescribed by the law. The contention of the respondent upon this point can not, therefore, be supported.

Nor can we assent to his contention with respect to the supposed lack of capacity on the part of the attorney, Don Alfredo Chicote, to

represent the petitioner at the trial. He was the petitioner's attorney from the beginning, as appears from the complaint signed by him, and it does not appear that the plaintiff has withdrawn from Señor Chicote his authority to continue to represent him in the case. The intervention in the case of the attorney, Don Jose Gay, does not in itself necessarily imply such a result, because there is nothing to indicate that he did not act with Mr. Chicote by delegation from him, as was stated at the hearing. At all events the utmost that could be said, even giving the utmost possible scope to the supposition of the respondent, would be that the plaintiff re-employed Señor Chicote after having employed Mr. Gay, and this the petitioner was certainly fully entitled to do under the law. Upon this supposition there would be no ground for questioning Mr. Chicote's authority.

Nor is there any merit in the contention of the respondent that Don Vicente Alonso did not except to the decision. An attempt was made to serve notice of the decision upon this person and he refused to accept the notice, stating that although he was an attorney in fact of Don Felix Fanlo, he believed he had no authority to represent him in the case, as Señor Fanlo's lawyers were those who represented him, and that any notice to be given should be given to them. From this answer it clearly appears that Don Vicente Alonso, although he had a power of attorney from the petitioner, had not appeared for him and did not desire to appear in the trial. This being so, it is obvious that he could not be obliged to receive a notification against his will, nor was he the person called upon to except to the judgment, notice of which it was improperly attempted to serve upon him.

It is not necessary to make a motion for a new trial in order to be entitled to present a bill of exceptions, as the respondent contends in his answer. The error of such a theory is self-evident. The motion for a new trial produces the effect of giving this court authority to review the evidence taken at the trial, but is not a requisite necessary to the allowance of the bill of exceptions presented in due time. In the latter case, that is to say, in case no such motion has

been made, the jurisdiction of the court is limited solely to determining the questions of law presented in the bill of exceptions, upon the basis of the facts found in the judgment of the trial court and those admitted in the pleadings. (Sec. 497, Code of Civil Procedure.)

In the present case the petitioner made no motion for a new trial, and consequently is not entitled to include in his bill of exceptions the evidence taken at the trial, either oral or documentary. The court could not review them, as has been stated, and therefore it would be entirely useless to bring them here.

Consequently the projected bill of exceptions presented by the petitioner is modified so as to include only the following papers: (1) The complaint filed by the plaintiff against Rafael Rodriguez, pages 1 to 4 of the bill of exceptions; (2) the answer of Rafael Rodriguez, pages 4 to 7 of the bill of exceptions; (3) the decision of the court, on pages 12 to 16 of the bill; and (4) the exception to the decision as expressed on page 16 of the bill, and the certificate of its allowance. No part of the evidence taken at the trial can be included in the bill of exceptions.

It is ordered that the bill of exceptions so modified be certified in due form by the respondent judge.

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