

[ G.R. No. 2413. March 13, 1905 ]

**EUSTAQUIA SALCEDO ET AL., PLAINTIFFS AND APPELLANTS, VS. AMANDA DE MARCAIDA DE FARIAS, DEFENDANT AND APPELLEE.**

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

**TORRES, J.:**

This is a motion filed by the attorneys, Del Pan, Ortigas & Fisher, representing Amanda de Marcaida de Farias, asking that the bill of exceptions presented by Alberto Barretto, attorney for Eustaquia Salcedo et al., to the judgment rendered October 13, 1904, in a case brought by the appellants to recover damages, be stricken out and to declare said judgment final because said bill of exceptions was not presented within the prescribed time.

Notice of the said judgment of the court below was served upon the attorney for the plaintiffs on October 18, 1904. It does not appear that he or his client gave any notice of their intention to appeal or except thereto or that they were going to file a bill of exceptions immediately after being notified or as soon thereafter as possible. On December 19, following—that is to say, two months after the judgment was rendered—the plaintiffs asked that the same be set aside and a new trial granted. This motion was denied by an order dated December 24. It was at that time that they manifested their intention to take exception to the judgment and order denying a new trial. On the same day the bill of exceptions was filed and a motion was made for the approval of the same. Therefore the motion to set aside the judgment and for a new trial was presented two months after the plaintiffs had notice of the judgment rendered in the case; that is, sixty-seven days after they were notified of the judgment they took exception and appealed to this

court and filed their bill of exceptions.

Section 143 of the Code of Civil Procedure, among other things, states that for a review by the Supreme Court of all rulings and judgments made in the action to which a 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. If the attorney for the plaintiffs was not present at the time the judgment was rendered he, at the time he was notified, October 18, or as soon thereafter as possible, should have made known his intention to present a bill of exceptions, or he should have given notice of appeal, without prejudice to his right to ask that the judgment be set aside and a new trial granted, in accordance with section 497, subdivision. 3, of the Code of Civil Procedure.

The plaintiffs made use of the right which sections 145 and 497 of the Code of Civil Procedure give them. Two months after the judgment was rendered and during this period of time they made no statement as to their intention to appeal or present a bill of exceptions. At the time they filed their motion to set aside the judgment they did not state any reasonable or justifiable excuse for their delay in so doing. The plaintiffs, contrary to the express provisions of section 143 of the Code of Civil Procedure, made the right to appeal from the judgment or to present the bill of exceptions dependent upon the ruling upon the petition for a new trial. Section 145 of said code states how and in what way appeals shall be taken or bills of exceptions made.

For the reasons above stated, the attorney for the plaintiffs has lost his right to take advantage of his extemporaneous recourse or to have his bill of exceptions approved in due time. (Sec. 500 of the Code of Civil Procedure.)

By virtue, then, of the reasons above stated, we grant the motion presented by the appellee. The proceedings are ordinary proceedings and the bill of exceptions was not presented within the required time, and

therefore the judgment rendered October 13, 1904, has become final, with the costs against the appellants.

Let notice of this decision be given to the court below so that its legal effects may have full force. So ordered.

*Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.*

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Date created: April 24, 2014