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[G.R. No. 1802. August 12, 1905]

JUAN POIZAT ET AL., PETITIONERS, VS. JOHN C. SWEENEY, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

D E C I S I O N

JOHNSON, J.:

This was a petition by the plaintiff for a writ of mandamus against the defendant to compel the latter to sign a bill of exceptions. The said bill of exceptions was presented to the Hon. John O. Sweeney, to be certified to by him on the 12th day of January, 1904. Judge Sweeney refused to sign the same for the reasons set out in his decision, as follows:

“In this case came the parties, by their attorneys, whereupon the defendant’s counsel moved the court for a new trial, and it appearing to the court that this case was tried by the Hon. A. \$. Crossfield, sitting in this part, who rendered a judgment in favor of the plaintiff and against the defendants on the 3d day of October, 1903, being the July term of this court, and that notice of the rendition of said judgment was served by the clerk of this court on the defendants on the 20th day of October, 1903, since which time the matter has been lying dormant, one entire term of court having intervened between the rendition of the judgment and the calling up of this motion, and it further appearing that there is no motion of record filed in this case, and that there is no evidence transcribed as part of the record in this case, and this court not having tried the case, therefore this court can know nothing of the evidence, or form any sort of an opinion as to the correctness of the judgment, and on account of

the lapse of time, want of knowledge on the part of the court as hereinbefore stated, and because of the apparent laches, the court overrules the motion,”

The bill of exceptions presented to be certified by the court below, shows the following facts :

1. That the decision was rendered upon the 3d day of October, 1903;
2. That notice of said decision was given to the plaintiff on the 20th day of October, 1903;
3. That on the 27th day of October, 1903, the plaintiff excepted to the said decisions, and on the same day presented a motion for new trial.

This exception and the motion for a new trial were placed in the hands of the clerk of the Court of First Instance of the city of Manila on the 27th day of October, 1903, and copies of the same were served upon the attorneys for the plaintiff in that cause.

This exception and motion for a new trial remained in the hands of the clerk without having been called to the attention of the court until the 12th day of January, 1904, This court has decided, in a divided opinion, that the parties litigant may present their exceptions to a judgment and motion for a new trial to the clerk of the Court of First Instance, and that the presentation to the clerk is equivalent to presenting the same to the judge, and that it is the duty of the clerk to call the attention of the court to the fact that such steps have been taken by the parties litigant. (Garcia vs. Ambler and Sweeney,^[1] 2 Off. Gaz., 545.)

The decision in the original cause was rendered by the Hon. A. S, Crossfield, judge of the Court of First Instance of the city of Manila. The bill of exceptions was presented to the Hon. John C. Sweeney, judge of the same court. Judge Crossfield was still a judge of said court at the time the bill of exceptions was presented to Judge Sweeney. This court has decided that parties appellant may present bills of exceptions and have them certified by judges other than the judge who tried the cause originally. (Enriquez vs. Watson,^[1] 2 Off. Gaz., 213; Ricamora vs. Trent,^[2] Off. Gaz., 94.) These decisions, however, were based upon the fact that the judge who tried the cause originally and rendered the decision

therein was either dead or absent from the district, and therefore it was impossible for the parties appellant to present the bill of exceptions ,to the trial judge for certification.

Bills of exceptions must be presented to the judge who tried the cause originally for certification, if he is still acting as judge, and is within the district where the cause was tried. The rule laid down in the Trent and Watson cases above mentioned, is only applicable when it is impossible to present the bill of exceptions to the trial judge, for the reasons stated in those cases.

For the reason that the parties did not present their bill of exceptions in this case for certification to the judge who tried the case, he being present in the district and still as judge of said court, the petition for mandamus herein is denied with costs. So ordered.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.
Willard, J., did not sit in this case.

^[1] Page 81, *supra*.

^[1] 3 Phil. Rep., 279.

^[2]
3 Phil. Rep., 137.