

JUAN CUENTO, PETITIONER, VS. THE HON. ISIDRO PAREDES, JUDGE OF THE COURT OF FIRST INSTANCE OF LAGUNA, TWELFTH JUDICIAL DISTRICT, EULALIO VITA AND NAZARIO VITA, RESPONDENTS.

G.R. No. 15783. October 29, 1919

Ponente: AVANCEÑA, J.

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AVANCEÑA, J.:

In the cause No. 2638 of the Court of First Instance of Laguna between Eulalio Vita and Nazario Vita, as plaintiffs, and Juan Cuento, as defendant, judgment was rendered for the former, and excepted to by the latter who filed his bill of exceptions. The court refused to entertain said bill of exceptions and ordered its exclusion from the record. Juan Cuento now brings this action against the Hon. Isidro Paredes, Eulalio Vita and Nazario Vita, asking for a writ of mandamus to be directed to the first, as judge of the Court of First Instance of Laguna, to require him to entertain and to certify the bill of exceptions filed by the petitioner.

The judgment of the court, was rendered on January 22, 1919, and on January 28, 1919, the petitioner gave notice of his exception and filed his motion for a new trial. It is said that when this motion was filed there was no proof presented that a notice thereof had been given the adverse party, at least three days in advance, that same would be submitted on the next motion day or on a date specially designated by the court, and for this reason said motion did not have the effect of suspending the period within which bill of exceptions should be filed. But it appears that the judgment rendered by the court on January 22, 1919, was amended on February 1, 1919, on motion of the respondents, and that this last date should be considered as the date of the decision and as the basis for the computation of all the periods the petitioner should have for the perfection of his appeal.

February 9, 1919, the petitioner again gave written notice of his exception and filed his motion for a new trial, and again no proof was presented that he had notified the adverse party at least three days in advance of the day on which this motion would be submitted. But on February 24, 1919, he notified the plaintiffs that his motion would be heard on March 1, 1919. So that, even supposing that the petitioner's motion on January 28, 1919, had no effect at all, it was not so with regard to his motion on February 24, 1919, when the period of 30 days to be reckoned from February 1, 1919, required for the filing of such motions had not yet elapsed.

On March 1, 1919, the petitioner's second motion for a new trial was denied by the court and on March 6, 1919, he gave notice in writing of his exception to the ruling and of his intention to file his bill of exceptions. On March 14, 1919, his bill of exceptions was filed. Following the decision of this Court in the case of *Lay da vs. Legazpi* (39 Phil. Rep., 83) the petitioner's exception to the order denying his motion for a new trial as well as his bill of exceptions were filed on time.

It is alleged by the respondents that when the petitioner's bill of exceptions was filed on March 14, 1919, there was no proof presented that the adverse party was notified, at least three days in advance, of the day same would be heard for approval, until the court on account of this defect and on motion of the other respondents, declared

the exclusion of said bill of exceptions from the record. In so deciding, the respondent judge took into consideration the provisions of Rules 9 and 10 of the Court of First Instance which require this notice. Moreover, these rules are not applicable to the filing of bill of exceptions. They are only applicable, as is expressly stated under Rule 9, when no other provision is made by law. But, with regard to the bill of exceptions, the law provides for a special procedure and, consequently, it should not be governed by the Rules of Court. Section 143 of the Code of Civil Procedure provides that, when the bill of exceptions is presented, the judge shall, after reasonable notice to both parties, consider its allowance or correction. According to this, it should be the judge, and not the appellant, who has to notify the parties of the day on which said bill of exceptions will be heard for allowance or amendment.

For the foregoing reasons, the remedy prayed for is granted and a writ of mandamus is hereby issued and directed to the Honorable Judge of the Court of First Instance of Laguna requiring him to proceed to the reconsideration of the bill of exceptions filed by the petitioner. No special finding as to costs. So ordered.

Arellano, C.J., Torres, Johnson, Araullo, and Malcolm, JJ., concur.

Writ granted.

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