

RUBERT & GUAMIS, PLAINTIFFS AND APPELLEES, VS. LUENGO & MARTINEZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3067. October 07, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

This is a motion for a rehearing. We sustain the claim of the appellees to the effect that it does not sufficiently appear from the bill of exceptions that any order denying a motion for a new trial was made by the court below. In this aspect of the case, the appellants ask leave to amend the bill of exceptions by adding thereto a copy of such an order and their exception thereto, and they cite in support of their petition section 501 of the Code of Civil Procedure.

The brief of the appellees was served upon the appellants on the 25th day of April, 1906. In that brief the point was distinctly made that the evidence could not be reviewed because no exception had been taken to any order denying a motion for a new trial, and the counsel for the appellees stated that for that reason he should not discuss the evidence. The case was not argued until the 17th day of July, 1907, nearly one year and three months after the appellants were notified that this question was raised by the appellees. The case was decided on the 17th day of September, two months afterwards. During all this period of one year and five months the appellants made no attempt to correct the record but allowed the matter to stand as it was until a decision adverse to them had been rendered.

Upon being notified by the brief of the appellees of this defect in the bill of exceptions, it was their duty to have taken some action to have that defect corrected. It is now, in our judgment, too late to do so. The motion is denied.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

[1] Original case reported on page 554, *supra*.

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