

DIONISIO SAN PABLO, PETITIONER, VS. FRANCISCO ENAGE, JUDGE OF FIRST INSTANCE OF TAYABAS, AND SIMEON ABUSTAR, RESPONDENTS.*G.R. No. 31680, August 14, 1929*

Ponente: VILLAMOR, J.

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These proceedings seek the issuance of a writ of mandamus against the Honorable Francisco Enage, Judge of the Court of First Instance of Tayabas, directing him to approve and certify a bill of exceptions filed by the petitioner in civil case No. 2432 of the Court of First Instance of Tayabas.

From the allegations of the complaint and the answer, it appears beyond question that on April 1, 1929, the petitioner was notified of the judgment rendered in said civil case No. 2432 of that court; that on the 30th of the same month the then defendant in said case and petitioner herein, took exception to the decision and announced his intention to present a bill of exceptions; that on the 7th of May, the petitioner presented his bill of exceptions; and that the court, by order of May 9, refused to approve said bill of exceptions, citing in support of said order the decision of this court in the case of *Layda vs. Legazpi* (39 Phil., 83).

The simple statement of the foregoing facts would seem sufficient to deny the mandamus sought. But the petitioner insists that, under the facts stated above, he still has a right to present his bill of exceptions, inasmuch as said bill was presented within ten days from the date of his exception and notice of appeal.

It would serve no useful purpose to again discuss the rules established in *Layda vs. Legazpi*, supra, anent the periods for filing the exception to the judgment, notice of appeal, motion for new trial, and presentation of the bill of exceptions, which matters of pleading and practice have been decided time and again by this court in judgments which have been published in the reports or may be found in the minute book.

The most recent decision (July 30, 1928) is that handed down in the case of *Behn, Meyer & Co., H. Mij. vs. Antholtz* (51 Phil., 796), which revised the rules established in said case of *Layda vs. Legazpi*, supra. Among the rules there laid down, there is one according to which the failure to comply with any of the requirements within the several periods therein mentioned would cause the judgment to become final and executory, and the bill of exceptions presented thereafter would not give the appellate court jurisdiction. But the stringency of this rule was tempered in the case of *Pampolina and Vistal vs. Suiza and Osuna* (42 Phil., 99), wherein it was declared: "If the party does not desire to have the evidence examined by the Supreme Court, then it is not necessary to present a motion for a new trial nor to make any exception to the ruling of the court thereon. In view of that fact, the courts, in many cases, have held that even though the defeated party presented a motion for a new trial, and even though he did not except to the order of the court, nor announced his intention to appeal, the Supreme Court would take jurisdiction over the appeal, providing the bill of exceptions was presented within ten days from the time of the notice of the order of the court denying the motion for a new trial, but that, in such a case, this court would not be justified in making an examination of the evidence."

This solves the difficulty raised by the petitioner in these terms: "To admit the ground alleged by the trial court would be to hold that its decision became final because no exception was taken thereto, and did not become final because within thirty days a motion for a new trial could still be filed."

There is no doubt that an appellant in an ordinary civil case may fail to take exception to the judgment or announce his intention to appeal, and yet pursue his appeal whensoever he files his bill of exceptions within thirty days from the notification of the decision, inasmuch as the mere filing of said bill of exceptions is equivalent to notice of intention to appeal (*Luengo & Martinez vs. Herrero*, 17 Phil., 29). Nor is there any doubt that even after the period of thirty days, the alleged appellant may validly file his bill of exceptions, if he filed a motion for a new trial within said thirty days, and if within five days thereafter he files his exception to the order denying said motion, and gives notice of his intention to file a bill of exceptions, filing it within ten days thereafter. This is what was held in the case cited of *Behn, Meyer & Co., H. Mij. vs. Antholtz*, supra.

But in the instant case, the petitioner not only failed to take exception to the judgment and to announce his intention to appeal within the periods indicated in the case of *Layda vs. Legazpi*, supra, but also failed to file a motion for a new trial, and hence, cannot invoke the doctrine recently enunciated in the case of *Behn, Meyer & Co., H. Mij.* Consequently, the trial court correctly refused to approve the bill of exceptions filed by the petitioner on May 7, 1929.

But there is another reason why mandamus cannot issue, namely, that contrary to section 499 of the Code of Civil Procedure, the petitioner failed to attach a copy of his bill of exceptions to his petition.

Wherefore, the petitioner's application for relief is hereby denied, with costs against the same. So ordered.

Johnson, Street, Johns, Romualdez, and Villa-Real, JJ., concur.

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