# SIMON ESCOLIN, PETITIONER, VS. LEONARDO GARDUÑO, JUDGE OF THE SEVENTEENTH JUDICIAL DISTRICT, ESTEBAN ALVAREZ AND AGUSTINA ALBA, RESPONDENTS.

*G.R. No. 37214. February 28, 1933*

Ponente: ABAD SANTOS, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-37214/

**ABAD SANTOS, J.:**

This is a petition for a writ of mandamus to compel the respondent judge to sign and certify the bill of exceptions filed by the petitioner in civil case No. 883 of the Court of First Instance of Capiz, entitled Esteban Alvarez and Agustina Alba, plaintiffs, vs. Simon Escolin, defendant.

Confining ourselves to the pertinent facts involved in this case, it appears that on February 17, 1923, the petitioner filed a motion in said civil case No. 883, which was amended on September 8, 1924, praying that the respondents Esteban Alvarez and Agustina Alba be ordered to deliver to the petitioner 1,700 cavans of palay, or their equivalent in money; 120 cavans of corn, or their equivalent also in money, by way of material damages; to pay to him the sum of P8,000, by way of damages for moral sufferings; and to return to him the 50 cavans of palay which were seized by virtue of an attachment issued in said case. On September 20, 1924, this motion was heard and on October 3, 1924, the respondent judge denied the motion on the ground that the petitioner had no remedy in said civil case No. 883. On appeal to this court, the order denying the motion was reversed and the cause remanded to the court of origin for further proceedings.[1]

After hearing the motion on its merit, the Court of First Instance of Capiz, on September 25, 1928, issued an order dismissing the said motion. The petitioner was notified of this order of dismissal on October 11, 1928, and on October 24th of the same year, he filed a motion for a new trial, which was denied. The petitioner duly excepted to the order denying the motion for a new trial, and announced his intention to appeal the case to this court by bill of exceptions. On February 12, 1929, the petitioner filed his1 bill of exceptions now marked as Exhibit A. On July 17, 1929, the respondents Esteban Alvarez and Agustina Alba filed their opposition (Exhibit B) to said bill of exceptions, and on July 22, 1929, the respondent judge issued an order (Exhibit C) requiring the petitioner to amend his bill of exceptions to meet the objections interposed by the respondents Esteban Alvarez and Agustina Alba.

On September 14, 1929, the petitioner filed a motion for reconsideration (Exhibit D) of the order of July 22, 1929, and on October 24, 1929, the respondent judge issued another order (Exhibit F) requiring the petitioner to amend his bill of exceptions in the manner indicated therein. On November 18, 1929, the petitioner filed an amendment to his bill of exceptions, consisting of two pages and now marked as Exhibit G. On December 4, 1929, the respondents Esteban Alvarez and Agustina Alba filed a motion for reconsideration (Exhibit H) of the order of the court of October 24, 1929 (Exhibit F), based on alleged clerical error committed in said order, and on December 14, 1929, the respondent judge issued an order (Exhibit I) requiring the petitioner to amend his bill of exceptions so as to meet the objections contained in the opposition (Exhibit E) filed by the respondents Esteban Alvarez and

Agustina Alba to the motion for reconsideration filed by the petitioner on September 14, 1929 (Exhibit D).

On January 15, 1930, the petitioner filed a motion for reconsideration (Exhibit J) of the order of the court of December 14, 1929, which was denied on February 11, 1930 (Exhibit K). On July 2, 1930, the petitioner filed what he called additional bill of exceptions (Exhibit L). It appears that an objection was made in open court to the approval of this so-called additional bill of exceptions, and on July 5, 1930, the respondent judge issued an order (Exhibit M) requiring the petitioner to consolidate Exhibits A, G, and L into a single bill of exceptions, within twenty days from the receipt of the list of objections of the attorneys1 for the respondents Esteban Alvarez and Agustina Alba. On July 8, 1930, the attorneys for the respondents Esteban Alvarez and Agustina Alba, filed with the court the document Exhibit N, which is in the form of a notice to the attorney for the petitioner, containing suggestions as to what should appear and be inserted in the bill of exceptions. On July 17, 1930, the petitioner filed a petition (Exhibit O) asking that said document, Exhibit N, filed by the attorneys for the respondents Esteban Alvarez and Agustina Alba, be included in the calendar of motions of the court, in order that, according to the petition, "the same may be discussed and duly decided by the court"; and praying, at the same time, that the running of the period of twenty days for the filing of the amended bill of exceptions, be suspended until the suggestions contained in Exhibit N were resolved.

Nothing appears to have been done in connection with this petition until after the lapse of over one year when, on October 30, 1931, the court issued an order (Exhibit P) denying said motion on the ground that the period of twenty days granted to the petitioner for the purpose of amending his bill of exceptions, had long expired. On December 8, 1931, the petitioner filed a motion for reconsideration (Exhibit Q) of the order of the court of October 30, 1931 (Exhibit P), which motion for reconsideration was denied on January 18, 1932 (Exhibit R). It seems that the petitioner was not notified of the order of the court denying his last motion for reconsideration until March 4, 1932, and on March 7th he filed an exception thereto as well as to the previous order of the court of October 30, 1931 (Exhibit P). On March 23, 1932, he instituted the present proceeding in this court. Due to the court vacation, this petition was not set for hearing until July 11, 1932. When the case was called for hearing, there were no appearances. Upon motions filed by them, the attorneys for both parties were allowed to file memoranda.

Counsel for the petitioner has advanced the following propositions in support of the petition, namely: (1) The filing of the motion Exhibit O suspended the period fixed by the trial court in its order Exhibit M; (2) the objections to the approval and certification of the bill of exceptions as embodied in Exhibits B, H and N are not tenable, but merely systematic oppositions to frustrate the appeal, and (3) the bill of exceptions Exhibit A contains sufficient narration of facts and the necessary pleadings and orders for the purposes of the appeal interposed by the petitioner in civil case No. 883.

The controlling question presented in this case is whether the filing of the petitioner's motion set forth in Exhibit O had the effect of suspending the running of the period fixed by the respondent judge in the order shown in Exhibit M. To all intents and purposes, this order operated to enlarge the time fixed by statute in which a party may tender a bill of exceptions and have it made a part of the record. In Lim vs. Singian and Soler (37 Phil., 817), this court hag held that "The appellant must file his bill of exceptions within ten days from the time of giving notice of his intention to do so, or within such additional time as the trial court may, by express order, have allowed in response to a petition for enlargement filed before the expiration of the statutory period of ten days." The view that the statutory period for the filing of the bill of exceptions may be tacitly extended by the trial court, has been expressly repudiated in that case.

The case of Robit vs. Provincial Warden of Capiz, G. R. No. 37279,[1] is not applicable. We are not concerned here with the finality of an order. We are in truth and in fact concerned with the enlargement of the time fixed by


Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

law for the filing of bills of exceptions, which we are satisfied could not be done by the mere filing of a motion, as contended by the petitioner. To hold otherwise, would be to subject compliance with the law limiting the time for filing bills of exceptions to evasion and delay with all their concomitant evils.

The points raised by the petitioner under the second and third propositions can not now be entertained here. He waived his right to raise them by his failure seasonably to object and except to the order of the court, Exhibit M. If he was convinced that the bill of exceptions Exhibit A was sufficient to fulfill the legal requirements, he should have declined to amend it or to file another bill of exceptions, and should have compelled the respondent judge to sign the tendered bill of exceptions by applying to this court for a writ of mandamus for the purpose. Having failed to assert his rights in due time and in the proper manner, the petitioner can not now be heard to complain by reason of his own failure.

The petition for a writ of mandamus is, therefore, denied with costs against the petitioner. So ordered.

Avanceña, C. J., Villamor, Villa-Real, Hull, Vickers, Imperial, and Butte, JJ., concur.

---

[1] G. R. No. 25137, Alvarez and Alba vs. Escolin, promulgated July 12, 1926, not reported. [1] Decided by order of June 16, 1932.


*Study hands-free: podcast-style lessons with read-along highlighting - batas.org*

ABOUT BATAS.ORG

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

### The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

### Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

### Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

### The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

### Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

### A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at https://batas.org**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.