

EUFEMIA LORETO, PLAINTIFF AND APPELLEE, VS. JULIO HERRERA, DEFENDANT AND APPELLANT.

G.R. No. 3855. March 12, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

This is an appeal from a judgment of the Court of First Instance of Tayabas, awarding to the plaintiff certain hemp lands.

Among the errors assigned was the refusal of the judge to adjourn the trial in compliance with a stipulation in writing and absolute in terms, signed by both parties, providing for such an adjournment. "The judge in denying the motion assigned as a reason that the defendant had not cited his witnesses, whereas those of the plaintiff were present in court. In the absence of a better reason than this for the release of either party from his written agreement, it was the duty of the judge to give effect to it and to adjourn the case. His refusal to do so, however, was not excepted to and for this reason can not serve as ground for reversal.

After the denial of this motion the trial proceeded and although the defendant had no witnesses he put in documentary proof as to his title. This, however, by itself is by no means convincing, but oil the contrary we are satisfied that the judge has correctly weighed the evidence before him, which he has recited in his decision, and on the strength of his recital we affirm the judgment.

In citing the evidence before us we refer to the documents only, inasmuch as no other evidence has been properly transmitted to this court. What appear to be intended as the notes of the oral testimony are in English, in pencil handwriting, presumably that of the judge who tried the case. No satisfactory reason is given for not transmitting the notes in typewriting nor is the absence of a stenographer shown, thus dispensing with the customary form of taking and perpetuating testimony. The case is somewhat similar to that of *Remo vs. Espinosa*[1] (6 Off. Gaz., 444), the chief distinction being that in the other case, unlike the present, the evidence could not be reviewed for the lack of a sufficient motion for a new trial. Although Act No. 1123 of the Philippine Commission had dispensed with the printing of testimony on appeal, it has not authorized either the omission thereof from the bill or its inclusion in illegible or inconvenient form; consequently the record before us is defective.

This court has frequently decided that upon the appellant rests the burden of preparing the bill of exceptions in order to bring his appeal properly before us. (*Garcia vs. Hipolito*, 2 Phil. Rep., 732; *Gaspar vs. Molina*, 5 Phil. Rep., 197; *Bustamante vs. Bustamante*, 7 Phil. Rep., 125; Code of Civil Procedure, sec. 501.)

Upon him, therefore, rather than upon the respondent, falls the consequence of the failure of the record. We do not think, however, that the parties litigant in a trial court are left entirely at the mercy of the presiding judge as to the testimony available on appeal. Either party may at the outset request that the evidence be taken in full, and may meet a refusal to comply with this request either by testimony taken at his own instance, which must be made a part of the record, or may move that the notes be taken by a stenographer, if one is present, or otherwise, by the clerk or other person designated by the judge, and a denial of this motion will be subject to exception.

Although there is no express provision of our statutes requiring stenographers to taken notes in civil cases, it is not to be presumed that their appointment and service in the courts is one of caprice. When furnished by the Government to the court, they must be used for the perpetuation of testimony in proper form. In any case, whether stenographic or longhand, notes of testimony should be produced for the use of this court in typewriting, when not printed. In order to settle some of the existing doubts as to the proper practice in this respect, this court has, under the power conferred upon it by section 6 of the Code of Civil Procedure, adopted the following rule, which for the convenience of judges and lawyers is here reproduced :

"RULE 17. In the Courts of First Instance and the Court of Land Registration it shall be the duty of the trial judge, upon motion of any party of record, to cause to be taken all of the testimony received and all the proceedings in any civil cause, action, or proceeding by the official stenographer if his services are available; and in his absence the judge shall cause such evidence and proceedings to be reduced to writing by the clerk or by some other competent person. When testimony taken in a trial court forms a part of any record sent to the Supreme Court, such testimony must be extended in typewriting and duly certified as correct."

Therefore the judgment of the court below is hereby affirmed, with the costs against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Willard, JJ., concur.

[1] Page 136, *supra*.

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