

LAZARO REMO ET AL., PLAINTIFFS AND APPELLANTS, VS. PASTOR ESPINOSA, DEFENDANT AND APPELLEE.

G.R. No. 3870. February 14, 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 in an action of some years' standing, to recover cocoa lands. "The record comes before us in such imperfect condition that it would be impossible to review the proofs were we called upon to do so. There are no stenographic notes and what appear to be the minutes of the judge are in pencil, barely legible, and not available for use in this court.

The facts are not before us for review, for the reason that the appellant has not moved for a new trial upon proper statutory grounds, his motion appearing to have been made under subdivision 2 of section 145 of the Code of Civil Procedure, so that its denial by the trial judge was discretionary and not subject to exception. Moreover, the grounds of the motion, not only in the printed bill of exceptions but when verified by comparison with the original record, are so vaguely stated, possibly because of the omission of necessary words, as not to define their nature or object. Therefore the judgment of the trial court must be affirmed, if sustained by the facts recited therein and those admitted in the pleadings. The trial judge in his judgment goes in great detail over the evidence, which justifies his conclusion. His refusal to delay the trial in order to allow the plaintiffs to procure proof rebutting that of the defendants was proper.

The judgment of the trial court is affirmed with the costs of this instance. So ordered.

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

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