

## ISIDORO SANTILLAN, PLAINTIFF AND APPELLEE, VS. TOMAS ALMONTE, DEFENDANT AND APPELLANT.

*G.R. No. 6734. February 03, 1913*

Ponente: CARSON, J.

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### CARSON, J.:

This appeal has been pending before this court for a considerable time, due in part to the suggestion in the record of the death of the plaintiff and appellee.

We find, however, on reviewing the whole record of the proceedings, that a bill of exceptions in this case had been certified to this court, and that a motion for the dismissal of this bill of exceptions had been filed by the plaintiff and appellee and duly submitted by the parties for resolution prior to the death of the plaintiff and appellee. Under these circumstances, and holding us we do that the motion to dismiss the bill of exceptions was well founded, we think that all the proceedings in this court may well be disposed of by the entry of an order dismissing the bill of exceptions, without burdening this court and the interested parties with the discussion or the decision of the incidental motions filed in connection with the suggestion of the death of the plaintiff and appellee.

The motion to dismiss having been duly submitted, neither the deceased plaintiff and appellee nor his heirs or legal representatives can be prejudiced in any way by the favorable resolution of that motion; and the rights of the defendant and appellant, who had full opportunity to be heard when the motion was submitted, will in no wise be impaired by the resolution of the motion adversely to him, notwithstanding the death of the plaintiff and appellee since the date of its submission.

Plaintiff and appellee alleged in his motion, and it was not denied by the defendant and appellant, that, from and after the date when the defendant and appellant was notified of the entry of judgment in the court below, twenty one days elapsed before he took any steps whatever looking to the prosecution of a bill of exceptions thereto. It appears of record that nothing whatever was done by the defendant and appellant during all that period; that he did not inform the court at the time when he received notice of the entry of judgment of his desire to prosecute his bill of exceptions, nor was the court advised that he had any such intention until he filed his formal exception to the judgment twenty one days thereafter. No explanation of this delay was offered either here or in the court below, counsel insisting that he was within his rights, under the provisions of section 143 of the Code of Civil Procedure, in thus postponing action for twenty-one days after receipt of notice of the entry of judgment.

The pertinent provisions of that section are as follows:

"Sec. 143. Perfecting bill of exceptions.—Upon the rendition of final judgment disposing of the action, either party shall have the right to perfect a bill of exceptions for a review by the Supreme Court of all rulings, orders, and judgments made in the action, to which the party has duly excepted at the time of making such ruling, order, or judgment. The party desiring to prosecute the bill of exceptions shall so inform the court at the time of the rendition of final judgment, or as soon thereafter as may be practicable and before the ending of the

term of court at which final judgment is rendered, and the judge shall enter a memorandum to that effect upon his minutes and order a like memorandum to be made by the clerk upon the docket of the court among the other entries relating to the action \* \* \*."

We have frequently had occasion to construe the meaning of the language of this section, and especially the meaning of the phrase "or as soon thereafter as may be practicable," and without renewing the discussion at this time, we think it is sufficient to say that we are of opinion that where more than twenty days elapse from the date when a party has received notice of the entry of judgment without his taking any steps whatever looking to the perfecting of a bill of exceptions, and it appears that he has failed to inform the court that he desires to prosecute a bill of exceptions, such party (in the absence of satisfactory proof that for some sufficient reason it was "impracticable" to so inform the court that he desired to prosecute his bill of exceptions prior to the time when he does in fact do so) loses his right under the provisions of section 143 to perfect a bill of exceptions to the judgment. (De la Rosa vs. Revita, 6 Phil. Rep., 112; Yturalde vs. Santos, 5 Phil. Rep., 485; Bryan-Landon Co. vs. American Bank, 5 Phil Rep., 672.)

The bill of exceptions certified in this case should be and is hereby dismissed, with the costs in this instance against the defendant. So ordered.

Arellano, C. J., Mapa, Johnson, and Trent, JJ. concur.

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