

1 Phil. 529

[ G.R. No. 1005. December 03, 1902 ]

**JOSE V. L. GONZAGA, PETITIONER, VS. W. F. NORRIS, JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS, RESPONDENT.**

**D E C I S I O N**

**WILLARD, J.:**

This case is before us on a return made by the judge below to a writ of mandamus issued under the provisions of article 499 of the Code of Civil Procedure, *Gonzaga vs. Norris*, August 26, 1902.

No motion for a new trial having been made this court can not weigh the evidence nor retry the questions of fact. Consequently the testimony of the witnesses has no place in this bill of exceptions except so far as it is necessary to explain the exceptions that were taken and their relevancy. So far as we can ascertain, no exception was taken which requires for its elucidation any one of the fifteen documents presented by the plaintiff, except document fourteen. They were all received in evidence and there is no exception relating to any of them. The first bill of exceptions proposed by the appellant contains in detail the evidence of many witnesses who testified without objection or exception on the part of the plaintiff. This evidence was properly excluded from the bill of exceptions. The proposed bill contains also the plaintiff's opening statement as to what the facts of the case were. This was properly excluded. Eight pages are also devoted to a legal argument against the judgment. This has no place in any bill of exceptions.

All of the exceptions contained in the plaintiff's proposed bill are in the bill signed by the judge. It is of no consequence who prepared the bill. If it is a correct and full statement of the exceptions, the fact that it was prepared by the adverse party or by the court is not important. It appears, however, that the bill prepared by the plaintiff and the amendments prepared by the defendant were discussed and considered by the court and both counsel at a session held for the purpose of settling the bill.

There was no error committed by the judge as to the points mentioned. But in other respects the bill signed by him is incomplete. Article 143 requires the bill of exceptions to state enough of the evidence to show the relevancy of the exceptions and the bearing which the answer excepted to has on the case.

In most of the exceptions, from No. 3 to No. 18, inclusive, in the bill as allowed this is not done. The judge limited himself to stating the question and his reasons for overruling the objection. Supposing that those reasons were insufficient, there remains only the question with no answer and nothing to show the connection of the question with the other testimony in the case or the issues therein. Exception No. 14 is an example of how the exceptions are stated. It is as follows:

“No. 14. The defendant on cross-examination asked a witness for the plaintiff the following question: ‘Do you know if your brother sowed sugar cane in the Rosario estate the year nineteen hundred?’ The plaintiff objected; the court overruled the objection on the ground that the question was pertinent; the plaintiff took exception.”

The bill of exceptions signed by the judge should be amplified by adding to the several exceptions the evidence contained in the indicated pages of the first bill of exceptions presented by the plaintiff. If such evidence is not truly stated in said bill, the court will make the necessary corrections so as to make it conform to the truth.

The additions are as follows:

To exception No. 3, so much of the evidence of Feliciano Alintara as is contained on page 17 of the first bill of exceptions tendered by the plaintiff.

To exception No. 14, all of the testimony of Pedro Saison on page 33 of said bill.

To exceptions Nos. 15 and 18, all of the evidence of Inocente Idemne on pages 33 and 34 of said bill.

To exception No. 16, all of the evidence of Flaviano Alintana on pages 34, 35, and 36 of said bill.

To exception No. 17, all the testimony of Benedicto Tanigue on page 36 and on page 37 Of

same bill to the answer to the question objected to.

To exceptions Nos. 8, 9, and 10, all the testimony of Aquilino Saosas on pages 38 and 39 of said bill.

To exceptions Nos. 12 and 13, document No. 14, and the testimony of Feliciano Alintara on pages 39, 40, and 41 of said bill.

To exception No. 7, the testimony of Inocente Idemne on page 11 of the so-called extract of the said bill.

The exceptions relating to the jurisdiction of the court and the challenge of the judge and those numbered 19, 20, and 21 are sufficiently stated. We do not find in the plaintiff's bill exceptions Nos. 4, 5, 6, and 11.

The respondent in this proceeding is directed to correct the bill of exceptions as hereinbefore indicated and sign and certify the same.

*Arellano, C. J., Torres, Cooper, Smith, Mapa, and Ladd, JJ., concur.*

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