

6 Phil. 112

[ G.R. No. 3137. April 11, 1906 ]

**ROMAN DE LA ROSA, PLAINTIFF AND APPELLEE, VS. GREGORIO REVITA,  
DEFENDANT AND APPELLANT.**

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

**WILLARD, J.:**

This is a motion to dismiss a bill of exceptions. The judge below refused to sign and certify the bill of exceptions, and proceedings were commenced by the appellant in this court in accordance with the provisions of section 499 of the Code of Civil Procedure to compel him to do so. This court, following the ruling laid down in the case of Fischer vs. Ambler (1 Phil. Rep., 508), issued an order directing the judge to sign and certify the bill of exceptions, stating therein the facts relating to the time and manner in which the bill of exceptions was prepared and presented. Pursuant to such order the judge below signed and certified the bill of exceptions, and the appellee has now moved to dismiss it.

It appeal's that the judgment was entered on the 2d day of December, 1905, in favor of the plaintiff and against the defendant. The defendant and appellant was notified of the judgment on the 6th day of December. On the 7th day of December he moved for a new trial on the ground that the findings of fact were not justified by the evidence. This motion was denied on the same day. To the order denying this motion defendant excepted on the same day. On the 29th of December, 1905, the defendant presented a written exception against the judgment, and on the 24th day of January, 1906, presented to the court for signature a bill of exceptions. The motion for a new trial presented on the 7th day of December amounted to an exception to the judgment (Antonia de la Cruz vs. Santiago Garcia,<sup>[1]</sup> No. 2485, August 17, 1905.)

When that motion was denied it became the duty of the appellant, as soon as practicable thereafter, to give notice of his intention to present a bill of exceptions, and to present the same within ten days after the giving of such notice. In this case nothing which could be

considered as such notice was done by the defendant between the 7th day of December and the 29th day of December, upon which latter day he for the first time gave notice of his intention to present a bill of exception. There is nothing in the case to show any excuse for this delay. The claim of the appellant that such notice may be presented any time during the term of court at which the judgment is rendered is not supported either by the statute (sec. 143, Code of Civil Procedure) or by the decisions of this court. In this case the notice given twenty-two days after the decision and motion for a new trial was not given within a reasonable time, and came too late. (*Leonisa Yturralde vs. Albino Santos et al.*,<sup>[1]</sup> 4 Off. Gaz., 123; *Bryan, Landon Co. vs. American Bank et al.*,<sup>[2]</sup> No. 3120, February 28, 1906.) The motion to dismiss the bill of exceptions is granted, with costs against the appellant. So ordered.

*Arellano, C. J., Torres, Johnson, Carson, and Tracey, JJ.*, concur.

*Mapa, J.*, did not sit in this case.

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<sup>[1]</sup> 4 Phil. Rep., 680.

<sup>[1]</sup> 5 Phil. Rep., 485.

<sup>[2]</sup> 5 Phil. Rep., 672.