

4 Phil. 633

[G.R. No. 2388. August 02, 1905]

**DEOGRACIAS REYES, PLAINTIFF AND APPELLANT, VS. MANUEL SIGUION ET AL.,
DEFENDANTS AND APPELLEES.**

D E C I S I O N

MAPA, J.:

This is a motion to dismiss a bill of exceptions and to have the judgment appealed from declared final.

The bill in question was presented on the 4th day of April, 1904, and Judge John C. Sweeney on the 25th of July of the same year refused to approve it. To this order, notice of which was given to the parties on the same day, the appellant took no exception, but about a month later, to wit, on the 27th day of August, 1904, he presented a motion to the court asking that the said order be set aside, and that his bill of exceptions be approved. This motion was argued before Judge A.S. Crossfield, who granted the same and approved said bill of exceptions, with the amendments suggested by the said appellee on the 10th day of September, 1904, and to the order of the court granting said motion an exception was taken on the 14th of the same month, by the appellees.

The presentation and settlement of a bill of exceptions is an important proceeding in the prosecution of ordinary actions; upon its allowance or disallowance depends whether a case shall, or shall not be reviewed on appeal. This will suffice to give an idea of the importance attaching to the orders that a court may make in regard thereto. They are not orders merely discretionary with the judge, which do not dispose finally of a particular question during the course of a proceeding, but on the contrary their effect may be such as to cause

irreparable injury to litigants. The Code of Civil Procedure contains express provisions governing the subject.

There is nothing in those provisions that authorizes a Court of First Instance to approve a bill of exceptions which another judge of the same court has refused to allow, thus rendering void any order which the latter might have made. Nor would it be easy to harmonize such anomalous procedure with the far-reaching importance of those provisions relating to bills of exceptions. Section 499 of the Code of Civil Procedure provides a means for compelling the court below to sign and certify a bill of exceptions in case it refuses to do so without any legal reason, and it expressly authorizes the aggrieved party to present a petition to the Supreme Court for a writ of mandamus against such judge.

We are of opinion that this is the remedy that the appellant in this case should have sought from the order of Judge Sweeney refusing to allow his bill of exceptions, instead of requesting another judge, about a month later, to set aside that order. This, we think, makes it unnecessary to discuss the other points raised in the motion now before us.

We accordingly dismiss the bill of exceptions and declare the judgment appealed from final, without express provision as to the costs of this motion. So ordered.

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