

5 Phil. 485

[G.R. No. 3021. January 02, 1906]

LEONISA YTURRALDE ET AL., PLAINTIFFS AND APPELLEES, VS. ALBINO SANTOS ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

This was a motion to dismiss a bill of exceptions in a Case tried in the Court of Land Registration. The judge of that court refused to sign the bill on the ground that the time for the presentation thereof had expired. The appellant applied to this court under the provisions of section 499 of the Code of Civil Procedure for an order requiring the judge to sign and certify the bill. Such an order was issued, based upon the decision of Fischer vs. Ambler (1 Phil. Rep., 508). (Albino Santos vs. Simplicio del Rosario, judge of the Court of Land Registration,^[1] 4 Off. Gaz., 522.) Pursuant to such order the bill of exceptions was signed and sent here, and the appellee has now moved to dismiss it.

The judgment was entered on November 9, 1904; the appellant excepted thereto on November 17; on December 6 he presented a motion for a new trial; this was denied on December 7; on December 13 he presented to the judge for signature the bill of exceptions. Upon these facts the bill should be dismissed.

If the exception taken by the appellant on November 17 can be considered as the notice of an intention to present a bill of exceptions required by section 143 of the Code of Civil Procedure, it was then the duty of the appellant to present the bill of exceptions within ten days thereafter, which time expired on November 27. The bill was not then presented. No application was made to the court to extend the time for such presentation, and no agreement was made with the adverse party to that effect, and when it was presented, on the 13th of December, the time for the presentation thereof had expired.

If, on the other hand, the exception taken on November 17 can not be considered as the

notice of an intention to present a bill of exceptions, then the appellant did nothing from the 9th day of November to the 6th day of December which could in any event be considered as such notice. Said section 143 requires the notice to be given as soon as practicable, and it is apparent from the record in this case that it was practicable to give this notice before twenty-seven days had elapsed.

The motion to dismiss the bill of exceptions is granted, with costs against the appellant. So ordered.

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

^[1] Page 171, supra.
