

1 Phil. 448

[G.R. No. 955. October 29, 1902]

**RAMON CHAVES, PLAINTIFF AND APPELLEE, VS. RAMON NERY LINAN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

The bill of exceptions, brief, and assignment of errors were filed in this case on the 21st of August, 1902. The parties stipulated in writing, under date of September 17 following, that the appellee should be allowed to file his brief in reply to the brief of the appellant, which brief, with the bill of exceptions and assignment of errors, had been duly served upon him. A motion was subsequently made by counsel for the appellee for the dismissal of the bill of exceptions brought up by the appellant, on the ground, first, that neither the said appellee nor his attorneys had been notified of the motion of the appellant in the Court of First Instance for a new trial under article 146 of the Code of Civil Procedure; second, that the said motion was decided by the judge below without the knowledge or presence of the appellee; third, that the said bill of exceptions does not show that the appellant has taken any exceptions in the course of the trial in the court below; and fourth, that neither the appellee nor his attorney had received notice of the presentation to the judge of the said bill of exceptions, or of the allowance of the same, and that therefore the appellee had no opportunity to make objections or offer amendments thereto, and that the same is incomplete and incorrect.

On page 8 of the bill of exceptions it appears that the defendant made a motion for a new trial, upon the grounds therein stated, which motion was overruled, and that he then presented to the judge the corresponding bill of exceptions.

If no notice of the motion which was overruled by the court below was served upon the plaintiff, no prejudice has been suffered by him, and for this reason the judge considered it proper to deny the motion without service of notice upon the adverse party, in accordance

with the provisions of section 146 of the Code of Civil Procedure.

The bill of exceptions was presented in due time and allowed by the judge. The appellee has not stated in what the bill is deficient or why the said bill is not complete or correct, or, if it was incomplete or incorrect, what prejudice has been occasioned tiim thereby. On the other hand, the appellant in his motion for a new trial based the motion upon the ground that the conclusions drawn from the facts are contrary to the evidence.

Furthermore, it is to be observed that, according to the stipulation between the parties, a day was fixed upon which the appellee was to file his brief, and that brief was, in fact, so filed on the day following the hearing of this motion, and in the said brief the affirmance of the judgment below is prayed for. For these reasons the appellee's motion for the dismissal of the bill of exceptions must be overruled. So ordered.

Cooper, Willard, Mapa and Ladd, JJ., concur.
