

3 Phil. 137

[ G.R. No. 1534. January 04, 1904 ]

**FORTUNATO RICAMORA, PETITIONER, VS. GRANT T. TRENT, JUDGE OF FIRST INSTANCE OF CEBU, RESPONDENT.**

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

**WILLARD, J.:**

This case was tried in the Court of First Instance for the Province of Cebu by the late Judge Carlock, and decided in favor of the plaintiff. After the death of Judge Carlock, the defendant presented a bill of exceptions to Judge Trent, acting as the judge of that court, for allowance and signature. He refused to sign it, and the defendant procured an order to show cause under section 499 of the Code of Civil Procedure. The judge has filed an answer stating the reasons for his action.

We construe the answer as indicating that, by means of the stenographer's notes, it will be possible to prepare a bill of exceptions which will contain a true statement of what took place at the trial. The judge was of the opinion, however, that he had no power to sign such a bill of exceptions because he was not the judge who tried the case. In this we think there was error.

Whatever may be the rule in other jurisdictions, it is certain that under our law the signature of the judge who tried the case is not an absolutely indispensable requisite of a valid bill of exceptions. In speaking of the power of this court to settle a bill of exceptions under said section 499, this court said: "We think that the remedy provided in this section applies not only to cases where the judge has declined to take action on the bill of exceptions tendered by the party

or has refused to certify such bill without substituting another in its place, but to cases where he has certified a bill of exceptions but has refused to embody therein some or all of the exceptions embraced in the bill tendered him, and which the party claims to have been properly taken." (Gonzaga vs. Norris, 1 Off. Gaz.,346.<sup>[1]</sup>)

By this section this court is given the power to determine what took place at the trial in the court below not only without any statement of the judge who presides at such trial on that subject but even against his statement.

Section 143 of the Code of Civil Procedure nowhere states that the bill of exceptions shall be presented to the judge *who tried the case*. It is capable of the construction that the judge referred to is a judge of the court at the time the bill is presented for signature. In determining which construction is proper, section 499 and the construction which we have given it are entitled to great weight. The legislature having provided that this court might settle a bill of exceptions against the statements of the trial judge, it is more probable that they intended to intrust that power to the judge actually presiding in the court at the time the bill is tendered rather than to make the signature of the trial judge indispensable, when by reasons of death or absence it would be impossible to obtain such signature. In every such case the judge of that court would be better able to determine what took place at the trial than this court is in cases falling under section 499.

In determining the intention of the legislature we are entitled to take into consideration moreover the consequences which would follow from a contrary decision. In this case Judge Carlock's death has made it impossible to secure a "bill of exceptions unless his successor is allowed to sign it. The result is that the defeated party is deprived of his right to appeal without any fault of his own. The legislature never could have intended such a result. The only other relief would be for the court to grant a new trial. This would involve the parties and the province in a large and additional expense without in a majority of cases any reason therefor. This result could not have been intended by

the legislature. In most cases as in this case the evidence is preserved in the stenographer's notes, and it is as easy for one judge to determine what took place at the trial as another.

An order will be entered directing the judge below to sign and allow a bill of exceptions after he has made it conform to the facts as they may appear from the stenographer's notes or other evidence.

*Arellano, C.J., Torres, Cooper, Mapa, McDonough, and Johnson, JJ., concur.*

---

<sup>[1]</sup>1 Phil. Rep., 334.

---