

BYBEE V. WHITE, 1930-NMSC-029, 34 N.M. 600, 287 P. 290 (S. Ct. 1930)

**BYBEE
vs.
WHITE**

No. 3497

SUPREME COURT OF NEW MEXICO

1930-NMSC-029, 34 N.M. 600, 287 P. 290

March 24, 1930

Appeal from District Court, Chaves County; Richardson, Judge.

Action by S. C. Bybee against E. C. White. From the judgment, defendant appeals. On plaintiff's motion to strike the bill of exceptions.

SYLLABUS

SYLLABUS BY THE COURT

Under the present Rules of Appellate Procedure, a bill of exceptions settled and signed in time to be included in the transcript of record filed on or before the return day will not be stricken from the record.

COUNSEL

O. E. Little, of Roswell, for appellant.

Reese & Reese, of Roswell, for appellee.

JUDGES

Bickley, C. J. Watson, Parker, Catron, and Simms, JJ., concur.

AUTHOR: BICKLEY

OPINION

{*601} OPINION OF THE COURT

{1} Appellee moves to strike the bill of exceptions, claiming that it was settled too late.

{2} The transcript of the record and proceedings in the case was filed within the time allowed by extensions of time granted. The bill of exceptions settled upon notice and without objection is contained in the transcript. Appellee bases his contention upon the failure of appellant to secure extension of time in which to secure the settling and signing of the bill of exceptions, as well as an extension of time in which to file the transcript. He relies upon *City of Las Vegas v. People's Bank & Trust Co. et al.*, 33 N.M. 238, 264 P. 951. This case was decided when section 36, chapter 43, Laws 1917, was in force. That section, with others in the same chapter, put certain limitations upon the time of settling and signing the bill of exceptions, unless extension of time was secured, and contained certain limitations upon the right to extension of time. But said sections were repealed by chapter 93, Laws 1927. Under our rule-making power, Rules of Appellate Procedure were adopted, effective March 1, 1928, superseding in many instances the statutes repealed. The statutory time limit on settling bills of exceptions was not incorporated in our rules. As we said in *Alexander Hamilton Institute v. Smith*, 33 N.M. 631, 274 P. 51: "The changes and additions result in liberalizing the procedure." See, also, *State v. Faircloth*, 34 N.M. 61, 277 P. 30.

{3} We now hold that the bill of exceptions is settled and signed in time, if it is duly incorporated in the transcript of the record and proceedings in the case, filed on or before the return day of the appeal or writ of error, original or as extended.

{4} For the reasons stated, the motion will be denied, and it is so ordered.