

FURST & THOMAS v. VARNER.

Opinion delivered June 8, 1925.

EXCEPTIONS, BILL OF—NECESSITY OF FILING WITHIN TIME.—Where a bill of exceptions was not filed within the time fixed by the court, a bill filed pursuant to a vacation order of the trial judge extending the time was unavailing.

Appeal from White Circuit Court; *E. D. Robertson*, Judge; affirmed.

Avery M. Blount, for appellant.

John E. Miller and *Cul L. Pearce*, for appellees.

SMITH, J. The only error assigned for the reversal of the judgment in this case is that the court below erred in giving and in refusing to give certain instructions.

The order overruling the motion for a new trial was made on January 31, 1924, at which time the court allowed ninety days for preparing and filing a bill of exceptions. The court adjourned on February 16, 1924, until May 19, 1924, but on April 8 the trial judge made an order in vacation extending the time for filing the bill of exceptions for thirty days. The court was not in session at any time between February 16 and May 19. A bill of exceptions was filed with the clerk of the trial court on May 29.

In the case of *Routh v. Thorpe*, 103 Ark. 46, it was said that “ * * * before a purported bill of exceptions can be considered as a part of the record on this appeal, it is necessary that the transcript brought to this court must show that the bill of exceptions was duly filed with the clerk within the time fixed by the court while in session.” Other cases to the same effect are cited by appellee.

Here, the court while in session allowed ninety days for filing the bill of exceptions, and it was not filed within the time limited. The additional time allowed for that purpose was given in vacation and was unavailing.

The errors complained of are of such nature as can be brought to the attention of this court only by a bill of exceptions, and, as the bill of exceptions was not filed within the time fixed by the court while in session, the one filed cannot be considered, and the judgment of the court below must therefore be affirmed, and it is so ordered.
