

---

Carroll v. Pryor.

---

CARROLL V. PRYOR.

1. BILL OF EXCEPTIONS: When must be filed.

The time for filing a bill of exceptions is limited by the statute to the next succeeding term, and cannot extend beyond it, and ought not, as a matter of sound discretion, to extend beyond the time fairly necessary to allow the attorney, with reasonable diligence, to prepare it.

Courts of Chancery are competent to relieve against any hardships arising from accident, mistake, or fraud, if from any such cause the bill could not be presented in the time allowed.

---

Carroll v. Pryor.

---

APPEAL from Ashley Circuit Court.

HON. T. F. SORRELLS, Circuit Judge.

R. C. Newton and J. Carroll, for Appellant.

EAKIN, J. The bill of exceptions in this cause was not signed and ordered to be made matter of record until the second term after the motion for a new trial. Time had been given until the next term, but it was not filed then, nor is there even the barest suggestion of any reason why it was not. At the time of signing, a record entry was made reciting that the attorneys on both sides conceded that the facts therein stated were true, and explaining that the judge of the court had signed it then, to give the parties the benefit of the adjudication of this court upon the matter. It is expressly stated, however, that the signing and admitting the bill to record was without consent.

Originally, bills of exceptions were required to be taken, reduced to writing, signed, and made matter of record during the trial; upon the spot—"dum pervet opus." It is much the safest way; but for convenience the practice obtained of giving time, at first during the term, and afterwards to a latter day. Any considerable time after trial is still unsafe, although permissible. It cannot be expected of a judge of ordinary memory, trying many cases, to carry in his mind a perfectly clear conception of all the material evidence in any case. Slight changes of expressions give different shades of meaning. Nor will it do to allow bills of exception to be, at any time, made up and filed by agreement of attorneys. It would not only be unsafe to litigants, but might lead, if encouraged, to the practice of bringing matters here for adjudication upon questions never before the court of original jurisdiction at all.

The Statute has limited the time which a judge may give for reducing a bill of exceptions to writing. It cannot extend beyond the succeeding term, and ought not, as a matter of sound discretion, to extend beyond the time fairly necessary to allow the attorney, with reasonable diligence, to prepare it. Courts of Chancery are competent to relieve against any hardships arising from accident or mistake or fraud, if from any such cause the bill could not be presented in the time allowed.

Disregarding the bill of exceptions, we find no error in the record.

Affirm.

---