

STROUP V. FRANK A. HUBBELL CO., 1919-NMSC-073, 25 N.M. 525, 184 P. 976 (S. Ct. 1919)

STROUP et al.
vs.
FRANK A. HUBBELL CO.

No. 2377.

SUPREME COURT OF NEW MEXICO

1919-NMSC-073, 25 N.M. 525, 184 P. 976

November 05, 1919, Decided

Appeal from District Court, Bernalillo County; Raynolds, Judge.

Action by A. R. Stroup and another against the Frank A. Hubbell Company. Judgment for plaintiffs, and defendant appeals. On motion to strike the bill of exceptions. Motion sustained.

SYLLABUS

SYLLABUS BY THE COURT

Chapter 43, section 36, Laws 1917, **held** to prevent the extension of time to settle and sign bills of exception, unless a praecipe for the record on appeal or error shall have been filed in the clerk's office within the time prescribed.

COUNSEL

MARRON & WOOD, of Albuquerque, for appellant.

JOHN F. SIMMS, of Albuquerque, for appellees.

JUDGES

PARKER, C. J. ROBERTS, J., concurs.

AUTHOR: PARKER

OPINION

{*525} {1} PARKER, C. J. The appellant was granted an appeal to this court on February 11, 1919. Fifty-six days thereafter he obtained from the district court an

extension of time in which to settle and sign the bill of exceptions. Under that extension order the bill of exceptions was settled and signed on May 14, 1919, and the day following a praecipe for the record was filed by appellant. The appellees have moved to strike the bill of exceptions, on the ground that the trial court was {*526} without power to extend the time to settle and sign the same because the appellant had not filed a praecipe for the record within 30 days after the taking of the appeal.

{2} In *Security Investment Co. v. Socorro*, 25 N.M. 200, 179 P. 748, we construed section 36, chapter 43, Laws 1917, and held that such act prevented the extension of time to settle and sign bills of exception unless a praecipe for the record on appeal or error shall have been filed in the clerk's office within the time prescribed.

{3} The motion, therefore, will be sustained, and the bill of exceptions stricken; and it is so ordered.

ROBERTS, J., concurs.