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NOTES and COMMENTS

THE PERIOD OF APPEAL IN ORDINARY CIVIL AND LAND REGISTRATION CASES

That the rules which govern the determination of the time for appeal in ordinary civil cases differ from those that should be followed in land registration cases, is a principle most fundamental in Philippine jurisprudence. For the former class of cases, the Philippine Supreme Court has laid down the following rules:

(a) The aggrieved party has thirty (30) days after notice of the decision rendered by a court of First Instance within which to present his motion for new trial;

(b) After notice of the ruling upon his motion, he has five (5) days within which to except to the ruling and file a notice of his intention to appeal;

(c) From the date of filing said notice, he has ten (10) days within which to present his bill of exceptions. (Lim v. Singian, 37 Phil. 817.)

(d) Failure to comply with any of the foregoing requirements within the various periods mentioned would cause the judgment to become final upon which a writ of execution may issue and the presentation of a bill of exceptions will not give the appellate court jurisdiction to hear the case.

(e) Each and all of the said periods may be extended by order of the court upon application made prior to the expiration of the original period. (*Layda v. Legaspi*, 39 Phil. 83).¹

The stringency of the rule laid down in *Layda vs. Legaspi*, *supra*, to the effect that the failure to comply with any of the requirements within the several periods therein mentioned would cause the judgment to become final and executory, was tempered in the case of *Pamplona and Vistol v. Suiza and Osuna*, 42 Phil. 99, where the court held that:

"If the party does not desire to have the evidence examined by the Supreme Court, then it is not necessary to present a motion for a new trial nor to make any exception to the ruling of the court thereon. In view of that fact, the courts, in many cases, have held that even though he did not except to the order of the court, nor announce his intention to appeal, the Supreme Court would take jurisdiction over the appeal, providing the bill of exceptions was presented within ten days from the time of the notice of the order of the court denying the motion for a new trial, but that, in such a case, this court would not be justified in making an examination of the evidence."

Thus in the case of *Behn Meyer & Co. v. Antholtz*, 51 Phil. 796, the court held:

"The rules promulgated in *Lalda v. Legaspi* are adhered to, with the qualification that if the aggrieved party files the bill of exceptions within ten days from the time of the notice denying the motion for a new trial, the presentation of the bill of exceptions for approval is tantamount to an announcement of an intention to appeal, and the requirements of the law are substantially fulfilled."

Another question determined in the same case is whether the failure of the losing party to except to the denial of the motion for a new trial for a period of nine days after the receipt of notice, deprives the party appealing of the right to ask the Supreme Court to review the evidence adduced by the parties at the trial. The code of Civil Procedure in its sec. 142 provides that "the party excepting to the ruling, order, or judgment shall forthwith inform the court that he excepts to the

¹ The presentation of a bill of exceptions for approval in due time, is equivalent to, or involves an announcement of, an intention to appeal (*Luengo & Martinez v. Herrero*, 17 Phil. 29).

ruling, or judgment." The term "forthwith" has been held to mean "reasonable time" which varies according to the circumstances of the case. (*Fisher v. Ambler*, 1 Phil. 508). In the instant case, the court held that the exception filed with the bill of exceptions nine (9) days after the receipt of the notice of the denial of the motion for a new trial is considered filed within a reasonable time. Thus, if the bill of exceptions itself may constitute substantially an exception to the order denying the motion for new trial, and such bill of exceptions may be filed within ten days after the receipt of the order denying the motion for new trial—which would be within a "reasonable time" in so far as the filing of the exceptions to such order of denial is concerned—then after the filing of the motion for new trial, all the appellant has to do in order to perfect his bill of exceptions and at the same time to have the appellate court review the evidence adduced in the trial, is to file a bill of exceptions within ten days after the receipt of the notice of the order denying the motion for new trial.

The party desiring to appeal from an adverse judgment may file several motions for a new trial within the period of thirty days, but each must be based on different legal grounds. (*Aquino v. Tongco*, 34 O. G. 1610).

Our highest tribunal has also laid down the principle that the lapse of time taken for deciding a motion for new trial based on a specific ground must be deducted in counting the period of thirty days within which must be filed a motion for new trial based on a formal ground required as a prerequisite to the review of the evidence in the Supreme Court. Thus, if notice is received of the adverse decision of the trial court on the first of June and a motion for new trial on the ground of newly discovered evidence is filed on the eleventh of the same month, if the court sends the party a copy of the order denying the motion on the fifteenth, the period from the eleventh to the fifteenth inclusive, is not considered as part of the period that expired; only the period from the first of June to the tenth has expired; and a motion for new trial based on the ground that the decision is contrary to law may be filed even on the fifth of the next month, that is, within twenty days after the order denying the motion for new trial based on newly discovered evidence, is received. (See *San Miguel Brewery v. Legarda*, 48 Phil. 507).

But when a motion for new trial based on any of the grounds provided in Sec. 145 of the Code of Civil Procedure has been filed, suspending the running of the thirty-day period provided in said section, the filing of another motion for a reopening of the trial based on the same ground as that of the former will not produce the same effect. (Aquino v. Tongco, *supra*.)

To the already complicated variety of decisions on this particular branch of our law we may add the decision in the case of Cabusao v. Sheriff of Pampanga, 38 Phil. 631, where the court held that, when the defeated party moves for a new trial and at the same time gives notice of his intention to appeal, the time within which to file the bill of exceptions must be ten days from the date of notice of the order denying the motion for new trial. However, in the later case of Fontanilla v. Castillo and Salacup, 42 Phil. 543, the Court reversed its former ruling, when it held that even though in his motion for new trial the appellant announced his intention to appeal in case of denial of the same, the period of five days within which to except and announce his intention to appeal after notice of the order denying his motion for new trial, and the period of ten days thereafter within which to present his bill of exceptions, are not abridged, anything to the contrary in Cabusao v. Sheriff of Pampanga, *supra*, being considered *obiter dictum* only.¹

If an appeal is taken from judgment, or order, the bill of exceptions may be perfected before the expiration of the period of thirty days from the entry of said judgment or order, when no petition for new trial has been filed. (San Pedro v. Enaje and Abustar, 53 Phil. 328; Monteverde v. Jaranilla, 33 O. G. 1906). To this extent the rule laid down in Lalda v. Legaspi, *supra*, is modified. (Riosa vs. Lesaca, 34 O. G. 970). This case (Riosa v. Lesaca, *supra*) differs from the cases of Pomplona et al. v. Suiza et al., *supra*, and Behn Meyer & Co. v. Artholtz, *supra*, in that in the former cases, a motion for new trial was filed within the thirty-day period after receipt of the notice of the decision although no exceptions were made to the order denying the motion, while in the present case, no motion for new trial was filed, thus justifying the Court to hold that "the thirty-day period granted by law, after the entry of the judgment, within which to ask for a new trial in ordinary civil

¹The motion for new trial in this case was based on *formal* ground that the decision was contrary to the evidence.

cases, operates to keep the judgment from becoming final until after the expiration of said period, enabling us thereby to lay down the rule, in the absence of any statutory provision, that when an appeal is taken from a final and appealable judgment or order, the bill of exceptions may be perfected before the expiration of the thirty-day period when no petition for new trial has been filed." An order denying a motion to reopen a case under Section 113 of Act 190 is final and appealable. The procedure provided for in section 143 of Act 190 to perfect an appeal in ordinary civil cases, is applicable to appeal from said order. And when no motion for new trial based on the formal ground has been filed, then the bill of exceptions can be filed within 30 days from receipt of the order denying the said motion under section 113 of Act 190. (*Riosa v. Lesaca, supra*).

In land registration cases the procedure is simpler. The motion for new trial as well as the bill of exceptions must be presented within thirty days from the receipt of notice of the decision of the court. However, the time employed by the court in considering the motion for new trial based on *formal* grounds should be deducted from the thirty-day period within which the appellant should appeal. "The thirty-day period * * * stops running upon the presentation of a motion for a rehearing until said motion is decided and notice thereof is given to the appellant". (*Director of Lands v. Maurera, 37 Phil. 410*). In simpler language, the period from the date of the presentation of the motion for new trial, if any is presented, to the date of the receipt of the ruling of the court on the motion, is not included in the computation of the thirty-day period.

This principle received further clarification and interpretation in the recent case of *Timoteo Taroma et al., versus Roman Cruz, Judge of the Court of First Instance of Ilocos Norte et al., G. R. No. 46248, Sept. 27, 1938*. In the long line of decisions wherein the principle was tenaciously adhered to by the Supreme Court, starting with the case of *Garcia v. Ambler and Sweeney, 4 Phil. 81*, to *Agra v. Zandueta, 56 Phil. 528*, our highest tribunal has always either remained silent on the question whether or not the day on which the motion for new trial is filed should be considered a part of the period that had already expired or has followed the rule laid down in section 4 of the Code of Civil Procedure which provides that:

“Unless otherwise specially provided the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; and if the last be Sunday or a legal holiday, it shall be excluded.”

Thus in the computations indulged in by the Supreme Court in those cases where the principle being commented upon was followed, the day on which the motion for new trial was filed was always considered as a part of the period which had expired already.

In the Taroma case the question is sparsely presented. An application for the registration of a piece of land was denied by the trial court in a decision rendered on Feb. 28, 1938. Thereupon the petitioners filed a motion for new trial on May 3, 1938. The order denying the motion was received by the petitioners on May 18, 1938. They presented their bill of exceptions on May 21, 1938. The trial judge refused to approve the same on the ground that it was filed outside of the thirty-day period of appeal in registration cases. The petitioners applied for a writ of mandamus in the Supreme Court to compel the respondent judge to accept the bill of exceptions. The petition was denied. Upon motion for reconsideration, the Supreme Court reversed its previous order and issued the writ ordering the trial judge to approve and certify the bill of exceptions.

The whole question was whether May 3, 1938, the day on which the motion for new trial was filed should be considered a part of the period consumed by the trial judge in considering the motion for new trial. The petitioners contended that said date should be included as part of the time employed by the judge in considering the motion for new trial, while the respondents insisted that it was a part of the period that expired. If the petitioners' contention was right, the period from April 5, 1938, the day on which they were notified of the decision of the trial court, up to May 3, 1938, on which day the motion for new trial was filed, would cover twenty seven (27) days, and since the period from May 18, 1938, the day on which the petitioners were notified of the order overruling the motion for new trial, up to May 21, 1938, the day on which the bill of exceptions was filed covered three (3) days, the bill of exceptions would therefore have been filed on the thirtieth day of the period of appeal. If, however, the respondents were right, the period from April 5, 1938 to May 3, 1938, inclusive would cover twenty-

eight (28) days and, therefore, since the period from May 18 to May 21, 1938, covered three days, the bill of exceptions would have been filed thirty-one (31) days after notice of the decision—just one day past the thirty-day period of appeal.

According to the court, the question presented by the motion for reconsideration is not one of computation, but rather whether to include or exclude the time employed by the trial court in considering the motion for new trial presented on May 3, 1938. In other words, the question is whether the Supreme Court should give life and effect to the rule already laid down as fundamental, that the time so stated should be deducted from the period of time allowed for the perfection of appeals in land registration cases.

Counsel for the petitioners argued that the inclusion of the day on which the bill of exception is filed would render nugatory and of no effect the provisions of section 27 or Act 2347 amending Section 145 of Act 496 and giving the appellant thirty days within which to file the bill of exceptions. Sec. 26 of Act 2347 amending Section 14 of Act 496 gives the aggrieved party thirty days within which to file a motion for new trial. If a party files the motion for new trial on the *thirtieth day* after receipt of the decision, and that day considered to have expired, the party will be deprived of the thirtieth day within which he may file his bill of exceptions as allowed by Sec. 27 of Act 2347. The Court held:

“If we apply with rigorous technicality the rule of computation provided for by section 4 of the Code of Civil Procedure, it is clear that the time within which the bill of exceptions was presented is outside the period of appeal. But since we do not treat here of computations but rather of the question whether to apply the rule of exclusion already uniformly established, therefore the time which the court employs for the determination of the motion for new trial should be deducted from the period of appeal.”

Thus the day on which the motion for new trial was filed was considered *not a part of the period that expired*—for to hold otherwise “would be to absolutely annul the rule of exclusion we have laid down, which rule constitutes part and parcel of our law on procedure.”

The thirty-day period of appeal may be extended, at the discretion of the court, upon a motion for an extension of the same, being made before the expiration of such period. (Director of Lands v. Maurera, 37 Phil. 410.)

However, if the motion for extension is made after the expiration of the period, there is no period to extend, the judgment becomes final, and the court loses jurisdiction over the case (Berumdeg v. Director of Lands, 36 Phil. 774.)

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