

34 Phil. 623

[ G.R. No. 11891. July 29, 1916 ]

**THE ROMAN CATHOLIC BISHOP OF TUGUEGARAO, PETITIONER AND APPELLEE,  
VS. THE DIRECTOR OF LANDS, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**JOHNSON, J.:**

This action was commenced in the Court of First Instance of the Province of Nueva Vizcaya. Its purpose was to have registered in the name of the petitioner certain parcels of land, in accordance with the provisions of the Land Registration Law. The registration of said parcels of land was opposed by the Attorney-General.

After a consideration of the questions presented, the lower court ordered that some of said parcels be registered in accordance with the petition. The decision was rendered on the 6th of August, 1915. The bill of exceptions was presented, and the record was received in this court on the 30th of May, 1916. On the 22d of June, 1916, the appellee presented a motion to dismiss the appeal for the reason that the bill of exceptions had not been presented within the time prescribed by law.

Upon a consideration of said motion, we find that the following facts are sustained by the record: First. That the decision was rendered by the lower court on the 6th of August, 1915. Second. That notice of said decision was given to the appellant on the 19th of August, 1915. Third. That on the 25th of August, 1915, the appellant duly excepted to the decision of the court and presented a motion for a new trial. Fourth. That the motion for a new trial was denied by order of the lower court on the 30th of October, 1915. Fifth. That notice of the order denying said motion for a new trial was given to the appellant on the 9th of December, 1915. Sixth. That the bill of exceptions was duly presented on the 18th of December, 1915.

Section 26 of Act No. 2347 provides, among other things, that "The period within which the litigating parties must file their appeals and "bills of exceptions against a final judgment in *land registration* cases shall be 30 days, counting from the date on which the party received

a copy of the decision.”

From an examination of the above facts, it will be noted that more than 30 days elapsed between the date upon which the appellant was notified of the decision (August 19, 1915) and the presentation of his bill of exceptions on December 18, 1915. If the said quoted provision of section 26 above is mandatory in its terms, without qualification, then the bill of exceptions was not presented in time. We have, however, held in many cases that the time which the lower court occupied in a consideration of a motion for a new trial should be eliminated from the time between the notice of the decision and the presentation of the bill of exceptions; that is to say, the presentation of the motion for a new trial stopped the running of the period within which the appellant is required to present his bill of exceptions, and the time will not begin to run again, or in other words, be counted against the appellant, until after he receives notice of the resolution of the court upon the motion for a rehearing. We do not believe that it was the intention of the legislature to require the presentation of a bill of exceptions during the pendency of a motion for a rehearing, for the reason that if, perchance, the lower court should grant a rehearing, the presentation of a bill of exceptions would be unnecessary. Then, if it was not the intention of the legislature to require the appellant to present his bill of exceptions during the pendency of a motion for a rehearing, that time should not be counted against him, and, of course, the time should not begin to run against him until he received notice of the resolution of his motion. Of course it is unnecessary to say that if no motion for a rehearing is presented, the appellant must present his bill of exceptions within the 30 days prescribed by section 26 of Act No. 2347.

Applying the above rule to the facts in the present case, we find that the appellant permitted 6 days to elapse after he received notice of the decision (August 19) before he presented his motion for a new trial (August 25), and after the presentation of his motion (August 25) until he received notice of the resolution of the court upon the same (December 9) the time did not run against him. Having received notice upon December 9, the time within which he was required to present his bill of exceptions again began to run. He presented his bill of exceptions on the 18th of December, or within a period of 9 days. It thus appears that, under the above rule, but 15 days (6 days between August 19 and August 25 and 9 days between December 9 and December 18) of the 30 days allowed by law for the presentation of the bill of exceptions, had expired. The foregoing rule is supported by the following decisions: *De la Cruz vs. Garcia* (4 Phil. Rep., 680); *Santos vs. Villafuerte* (5 Phil. Rep., 739); *Paez vs. Berenguer* (6 Phil. Rep., 521); *Lavitoria vs. Judge of First Instance of Tayabas and Director of Lands* (32 Phil. Rep., 204).

The foregoing rule may be restated as follows: First. In appeals from final decisions of the Court of Land Registration, the bill of exceptions must be presented within 30 days, counting from the day on which the party received a copy of the decision. Second. The time (30 days) begins to run from the day on which a copy of the decision is received. Third. Upon the presentation of a motion for a rehearing, the time (the 30 days) stops running until the same is decided and notice thereof is given. Fourth. The time (the 30 days) again begins to run on the day on which notice of the order denying the motion for a rehearing is received.

We believe that the foregoing rule is in accordance with the intention of the Legislature, as expressed in the provisions of section 26 above quoted. Under this rule the question whether or not the bill of exceptions is presented within the time is simply a matter of counting the days.

For all of the foregoing reasons, the motion to dismiss the bill of exceptions is hereby denied. So ordered.

*Torres, Moreland, Trent, and Araullo, JJ., concur.*

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