

103 Phil. 681

[G.R. No. L-10657. May 16, 1958]

**NUMERIANO L. VALERIANO, ET AL., PLAINTIFFS AND APPELLANTS, VS.
CONCEPCION KERR, ET AL., DEFENDANTS AND APPELLEES.**

D E C I S I O N

PARAS, C.J.:

This is an appeal from an order of the Court of First Instance of Rizal, denying plaintiffs' petition for relief from a previous order dismissing plaintiffs' complaint.

The plaintiffs claim that through accident, mistake or excusable negligence, they failed to appeal from the order of dismissal within the reglementary period.

There is no question that on December 12, 1955 attorneys for the plaintiffs received copy of the order dated November 29, 1955 dismissing the latter's complaint and that no appeal therefrom was interposed within thirty days. It is contended, however, that the plaintiffs had thought all along that their case was being prosecuted by their lawyers; that it was only on or about February 1, 1956 that they came to know of the dismissal and of the omission to appeal; that the plaintiffs never intended either to discontinue or abandon the suit or to agree to the dismissal; and that immediately after February 1, 1956 they took steps leading to the filing of their petition for relief.

The facts relied upon by the plaintiffs do not constitute a sufficient ground for setting aside the order of dismissal. They were represented by counsel, and notice to the latter was notice to the plaintiffs. If a final order or judgment can be reopened every time a party alleges that he has not previously been aware thereof and that his attorney, on a mistaken notion or without authority, has failed to appeal, the end of litigations would be speculative, if not dependent

upon the will of the parties.

Wherefore, the appealed order is affirmed with costs against the plaintiffs.

So ordered.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

Date created: February 17, 2017