

MARIA ELLI, ET AL., PLAINTIFFS AND APPELLEES VS. JUAN DITAN, ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. L-17444. June 30, 1962

Ponente: PAREDES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c1a698a3627d/>

PAREDES, J.:

In a Forcible Entry case instituted by Juan Elli and Maria Elli, in the Justice of the Peace Court of Bacon, Sorsogon, against Juan Ditan and Marcial Broiiola, judgment was rendered, after due hearing, the dispositive portion of which reads—

"In view of the foregoing, the defendant is ordered to return the land and restore the plaintiffs in their original possession of the land; pay the plaintiffs P200.00 as damages and P100.00 alt attorney's, fees and pay the costs of this suit".

Plaintiffs and defendants were furnished with copies of the above judgment on July 17, 1959.

On July 28, 1959, the defendants, thru Atty. Fernando Gerona, Jr., "Attorney for defendants-appellants", filed with the said Justice of the Peace Court, a Notice of Appeal. The record of the case was received by the CFI on August 6, same year. On August 11, 1959, a Notice of Appealed Case was sent by the Clerk, Court of First Instance,, to the parties, which were received on August 15, and 17, by Maria Elli and Juan Ditan, respectively and on September 18, 1959, by Marcial Bronola. In spite of receipt by the parties, the defendants failed to file their Answer to the Complaint, which was deemed reproduced. Under date of December 23, 1959, the plaintiffs, thru counsel, presented a Motion to Declare Defendants in Default and to set date for presentation of Evidence. The CFI declared defendants in default on January 7, 1960; On March 10, 1960, after hearing wherein the plaintiffs presented oral as well as documentary evidence, the CFI rendered the following judgment—

"WHEREFORE, the Court hereby sentences the defendants to vacate the premises and return the possession thereof to the plaintiffs. They are hereby sentenced jointly and severally to pay the plaintiffs the sum of P480.00 as damages. The Court cannot grant the plaintiffs a greater amount than this, because the defendants are defaulted. The defendants shall pay the costs of this action."

Copies of the above decision were received by the defendants, on April 5, 1960. On April 20, 1960, defendants thru counsel, presented a pleading captioned "Motion to Reconsider Decision dated March 10, 1960", where, in the main, it was contended that the reason for the failure to file Answer was due to lack of notice to counsel. The defendants claim that inasmuch as they were represented by counsel, notice should have been sent to said counsel, and there being no notice to him, there is no service in law and, therefore, they can not be in default. On May 6, 1960, the court a quo handed down an Order denying the motion, stating that there was no need to send the notice to counsel, since in appeals from the Justice of the Peace Court no summons is necessary in order that defendant may have to file Answer, and that the notice of receipt of appealed case may be either sent to the attorney or the party. This Order is now before Us on appeal, defendants claiming that it was error on the part of the lower court to consider that notice to them was sufficient.

The provisions of the rules pertinent to the issues raised by the parties are Sec. 2, Rule 27, and Sec. 7, Rule 40, which are reproduced below:—

"SEC. 2. Every order required by its terms to be served, every pleading subsequent to the complaint, every written motion other than one which may be heard ex-parte, and every written notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected thereby. If any such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court, where the attorney appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side," (Rule 27).

"SEC. 7. Upon the docketing of the cause under appeal, the complaint filed in the Justice of the Peace or municipal court shall be considered reproduced in the Court of First Instance and it shall be the duty of the Clerk of the Court to notify the parties of that fact by registered mail, and the period for making an answer shall begin with the date of the receipt of such notice by the defendant." (Rule 40).

Under the above provisions, therefore, it would seem quite clear that service, notice, and the like, should be made on the party, if not represented by counsel. The moment a party appears by counsel, notice and other processes should be made upon said counsel, service upon the parties himself not being considered service in law. It is true that under Sec. 7, Rule 40, the Rule requires that notification be made on the parties by registered mail. The word parties as used in said provision, should not, however, be interpreted to mean the parties themselves. The word "parties" is used because, more often than not, in the Justice of the Peace Court, the parties are not represented by a lawyer. A party can appear in his own behalf, and notice to him would be sufficient. The moment an attorney appears for any party, notice should be given to the former. 44 * * * Where a party appears by attorney in an action or proceeding in a court of record all notices thereafter required to be given in the action or proceeding must be given to the attorney and not to the client; and a notice given to the client and not to his attorney is not a notice in law" (Palad vs. Cui, et al. 28 Phil. 44). In legal contemplation, therefore, and under the facts of the present case, there was no legal service of the notice, and the defendants could not be in default.

The Order appealed from, is hereby set aside. The case is remanded for further and appropriate proceedings in the premises. No costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Dizon, Regala and Makalintal, JJ., concur.
Barrera, J., concurs in the result.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.