

**MARTIN ENRIQUEZ AND DAMASA PONSECA, PETITIONERS, VS.
BASILIO BAUTISTA, JUDGE, COURT OF FIRST INSTANCE OF BATAAN,
AND LAUREANO PAGUIO, RESPONDENTS.***G.R. No. L-1443. September 09, 1947*

Ponente: PARAS, J.

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PARAS, J.:

In Special Proceeding No. 1645 of the Court of First Instance of Bataan, the herein petitioners, Martin Enriquez and Damasa Ponseca, filed a petition for intervention on October 11, 1946, which was the third of the kind, the first having been denied on June 14, 1939, and the second on July 22, 1946. Said petition was denied by the respondent Judge, Hon. Basilio Bautista, in his order dated October 25, 1946, a copy of which was sent by registered mail by the Clerk of the Court of First Instance of Bataan to petitioners' attorney, c/o House of Representatives, Manila, on the same date; and according to the certification of the acting assistant superintendent of the Manila Post Office, said registered letter was returned to its sender as "UNCLAIMED" on December 3, 1946, after the addressee had failed to call for it notwithstanding the three notices issued therefor on October 28 and 31 and November 3, 1946. On December 14, 1946, the Clerk of the Court of First Instance of Bataan remailed the same notice to petitioners' attorney who received it on January 6, 1947. On January 28, 1947, petitioners' new attorney filed a record on appeal, with a view to the perfection of their appeal from the order of the respondent Judge dated October 25, 1946, which record on appeal was disapproved by the respondent Judge in his order of March 12, 1947, on the ground that the same was presented out of time. The petitioners have therefore filed the present petition for mandamus, praying for an order from this Court directing the respondent Judge to approve said record on appeal.

Petitioners' main contention is that their original attorney actually received notice of the order in question on January 6, 1947, the date when he in fact got the letter remailed by the Clerk of the Court of First Instance of Bataan on December 14, 1946, and that there is no proof showing that said attorney ever received the three notices sent by the Manila Post Office regarding the registered letter sent by said Clerk of Court on October 25, 1946, it being intimated in this connection that said attorney might have failed to get said notices because the House of Representatives was not then in session and he stayed either in Manila or in Bataan. It is further argued that, even assuming that said attorney got said notices, their effect was nullified or superseded by the action of the Clerk of the Court of First Instance of Bataan in mailing another copy on December 14, 1946, which was in turn received by him on January 6, 1947.

Petitioners' contentions are without merit. The allegation that petitioners' former counsel never received the postal notices cannot prevail over the positive statement of the superintendent of the Manila Post Office to the effect that three notices were sent to him, and such statement is fortified by the legal presumption that official duty was regularly performed. It is noteworthy that the registered letter of the Clerk of the Court of First Instance of Bataan containing a copy of the order in question was sent to the very address given by petitioners' attorney in the petition for intervention, and there is no showing that the clerk of court was ever notified by him of any change of

address. The excuse that the attorney did not stay in one place permanently, cannot be accepted, inasmuch as an attorney owes it to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from his address of record.

The fact that the Clerk of the Court of First Instance of Bataan mailed another notice on December 14, 1946, did not affect the completed service resulting from the sending of the three notices by the Manila Post Office, since said act was unnecessary and the same was not ordered by the court. The further circumstance that on November 19, 1946, petitioners' original attorney filed in the Court of First Instance of Bataan an independent action covering the subject matter of his petition for intervention, seems to imply knowledge on his part of the order in question or, at least, a waiver of said intervention or disregard of its result.

Under section 8 of rule 27 of the Rules of Court, "Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time." There is no reason whatsoever why this rule should not be given effect in this case. Accordingly, the petitioners must be deemed to have been served with notice of the order in question five days after October 28, 1946, or on November 3, 1946. It being admitted that the record on appeal was filed on January 28, 1947, the same was clearly filed beyond the 30-day period from November 3, 1946.

The petition is hereby dismissed, with costs against the petitioners. So ordered.

Moran, C.J., Feria, Pablo, Hilado, Bengzon, Padilla, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

Petitioners pray that the order of the lower court dated March 12, 1947, be set aside together with the lower court's order disapproving the record on appeal which was filed on January 28, 1947. The issue in this case is whether the 30 days reglementary period to appeal should be counted from January 6, 1947, when Atty. Bonifacio Camacho actually received notice of the order, or, when the first notice of the registered mail under which the order was sent to said attorney was returned unclaimed to the Court of First Instance prior to December 14, 1946. In the first place, the record on appeal was filed on time.

Section 8 of Rule 27 is invoked. To apply it, it is necessary that the addressee must have received the notice of the postmaster mentioned in the section. The question here is resolved as to whether petitioners' counsel received the notice. Petitioners' former counsel alleged that he never received any of the three postal notices allegedly sent to him.

The majority is of opinion that said allegation cannot prevail over the positive statement of the superintendent of the Manila Post Office to the effect that the three notices were sent to him. It is added that the statement is fortified by the legal presumption that official duty was regularly presumed.

Delivering notice and receiving it are two different things. The superintendent's statement to the effect that the notices were sent is not evidence to the effect that they were actually received. As a matter of fact, reception is denied.

When section 8 of Rule 27 uses the words "from the date of first notice of the postmaster," it should refer to notice actually received by the addressee and not to a notice merely sent but could not have been received at all.

We must not suppose that the authors of the rules had the far-fetched idea of giving effect to a notice merely sent but not received.

Notice means information or announcement. The word came from the Latin words "notitia," a being known or knowledge, "notus," known, and "noscere," to know. Therefore, a notice simply sent is no notice at all if it is not actually received by the person to whom information is intended to be imparted.

The theory of giving effect to a notice sent but not received as if actually received is based on untruth, and there is no administration of justice when the same is founded on fiction. Truth is an essential element of an administration of justice which deserves such a name. The theory, by its inherent absurdity, necessarily will lead to injustice. While fiction is highly useful in arts, in dramatical representations, in moving pictures, it should never be the ground for determining the rights and interests of litigants. Such will result in a mockery of justice, and the Supreme Court ought to be the last in surrendering to such a folly. Without truth there cannot be justice. Truth and justice are like Siam Twins: inseparable. Tribunals should always insist on having the truth and judging only upon satisfactory evidence of the truth. The quest for truth is their main responsibility. To judge by means of untruths is to debase the noblest function in the hands of humanity.

The period for appeal must be reckoned from January 6, 1947, when notice was actually received by petitioners' counsel, and not when the postal notices, not received by him, were sent to his address.

We vote to grant the petition.

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