

JOSE T. LLOREN, ETC., PETITIONER VS. THE HON. JESUS DE VEYRA, ETC., ET AL., RESPONDENTS.*G.R. No. 13929. March 28, 1962*

Ponente: BAUTISTA ANGELO, J.

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Petitioner Lloren, as Justice of the Peace of Itogon, Benguet, went to the office of the chief of police of the Baguio Gold Mining Company at Itogon situated within its compound after obtaining a permission from Alan A. Bakewell, general superintendent of the company, to conduct a preliminary examination of the witnesses living there who could not afford to go to the municipal hall of Itogon to testify in Criminal Case No. 894 filed in his court. In connection with said examination, Bakewell interrupted the proceedings by insulting a witness who was then under investigation for which reason Lloren suspended the proceedings and cited Bakewell to appear and show cause why he should not be held in contempt for his misbehavior. Bakewell, instead of appearing personally, submitted thru a counsel a written explanation of his behavior which the justice of the peace considered improper and contemptuous. Considering the submission of said written explanation not a sufficient compliance with his order, Justice of the Peace Lloren set a date for hearing requiring Bakewell, or his counsel, to appear regarding the incident, and having both failed to do so, Lloren issued an order directing that Bakewell be brought before him on February 7, 1958 pursuant to Section 3, Rule 64, of the Rules of Court. The warrant having been served upon Bakewell, the latter was placed under the custody of the Itogon police force. But in the afternoon of the same day, Bakewell was released by virtue of a writ of preliminary injunction issued by the court of first instance as a result of a petition for certiorari which Bakewell filed imputing to Justice of the Peace Lloren the commission of a grave abuse of discretion (Special Civil Action No. 752).

After this case had been heard, with due notice to respondent, the court, Honorable Jesus De Veyra, presiding, rendered decision holding that respondent justice of the peace committed an abuse of discretion in issuing the warrant of arrest against petitioner Alan A. Bakewell thereby ordering that the writ of preliminary injunction issued against said justice of the peace be made permanent. Copy of this decision was received by respondent on March 18, 1958. On April 2, 1958, he filed a motion for reconsideration, which was denied on April 14, 1958. Copy of the order of denial was received by respondent before the close of office hours in the afternoon of April 16, 1958. Immediately thereafter, he notified the clerk of court of his intention to appeal, and after having raised the necessary cash bond, he tendered it to said clerk of court, but because it was no longer within office hours the clerk of court advised respondent to make the deposit on the following day and file in due form his notice of appeal. The next morning, April 17, 1958, respondent filed his appeal bond and notice of appeal as suggested by the clerk of court, but on April 21, 1958, Judge De Veyra, sustaining the opposition of petitioner, denied the appeal on the ground that the same was not perfected within the reglementary period. Whereupon, respondent interposed the present petition for mandamus.

It appears that the decision rendered by respondent court dated March 14, 1958 was received by Justice of the Peace Lloren on March 18, 1958. On April 2, 1958, Lloren filed a motion for reconsideration, which was denied

on April 14, 1958. Copy of the order of denial was received by Lloren before the close of office hours in the afternoon of April 16, 1958. He filed his appeal bond and written notice of appeal on April 17, 1958. The question that now arises is: Was the appeal perfected outside of the reglementary period of 15 days? (Section 17, Rule 41, Rules of Court.)

It is contended by petitioner Lloren that from March 18, 1958 to April 2, 1958 there is an intervening period of 15 days, and having filed his motion for reconsideration on April 2, the exact number of days that has actually elapsed was only 14 days, because he filed his motion for reconsideration on exactly the 15th day. This day was interrupted and so when he received copy of the order denying his motion for reconsideration he was entitled to at least 1 more day within which to appeal. Applying the rule of computation prescribed in Rule 28 that the first day should be excluded and the last included, it follows that when he filed his notice of appeal and appeal bond on April 17, 1958, the same were filed exactly within the reglementary period of 15 days.

Counsel for respondent, however, sustains the contrary view. He argues: "By mathematical operation, we find that from March 18 (when petitioner received a copy of decision) to April 17, 1958 (when he filed his notice of appeal and appeal bond) there are actually 30 days, March 18 being excluded and April 17 being included in the counting. In the same manner, we find that from April 2, 1958 (when petitioner filed his motion for reconsideration) to April 16, 1958 when he received a copy of the order denying his motion for reconsideration) there are actually 14 days, April 2 being excluded, and April 16 included in the counting. Deducting, therefore, 14 days from 30 days the result is 16 days. This means that petitioner (respondent below) filed his notice of appeal and appeal bond on the 16th day or one day late, tardiness which is sufficient to bar the appeal." This method of computation is in accordance with the rule followed by this Court in the case of *Federal Films, Inc. vs. Judge of the First Instance of Manila*, 78 Phil., 472, which expressly modified the method of computation adopted in the case of *Taroma vs. Cruz and Galinato*, 68 Phil., 281.

After a mature deliberation, where the members of the Court delved once more into the methods of computation in *San Luis vs. Montejo*, etc. discussed in the cases mentioned by counsel for respondent, the Court resolved not to follow the ruling in either of them and to adhere strictly to the rule of computation embodied in Rule 28 of our rules. The idea that prevailed is that since petitioner Lloren filed his motion for reconsideration on the 15th day of the period within which he may perfect his appeal, that day should be excluded so that when he received copy of the order denying his motion for reconsideration he had still 1 day within which to perfect his appeal. This period of one day should be computed again in accordance with the rule above cited by excluding the day of receipt and including the next day, which in this case is April 17, 1958. Hence, the Court concluded that the appeal interposed by petitioner Lloren was still within the reglementary period.

WHEREFORE, petition is granted. Respondent court is ordered to give course to petitioner's appeal, with costs against respondent Alan A. Bakewell.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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