

**JUAN NEPOMUCENO, PETITIONER, VS. PRIMITIVO SAN AGUSTIN,
AUXILIARY JUDGE OF FIRST INSTANCE, SECOND GROUP OF
JUDICIAL DISTRICTS, ELIGIO GATMAITAN ET AL., RESPONDENTS.**

G.R. No. 15988. January 12, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original action commenced in the Supreme Court for the writ of mandamus to compel the respondent judge to sign and certify a certain bill of exceptions heretofore presented to him and which he refused to sign and certify upon the ground that the same had been presented out of time. The undisputed facts are:

That on the 23d day of September, 1919, the judge of the Court of First Instance of the Province of Pampanga rendered a judgment in a certain cadastral survey action which was then pending in said court; that the petitioner herein received notice of said decision on the 6th day of October 1919; that on the 7th day of October, 1919, the petitioner herein presented a motion for a new trial and requested that said motion for a new trial be set down for hearing upon the 13th day of October, with notice to all interested parties; that said motion not having been decided, the petitioner herein, in a request dated the 20th day of October, 1919, again requested that the hearing of said motion be set down for the 28th day of October; that notwithstanding the request for a hearing of said motion for a new trial on the 13th and 28th days of October, the same was set down by the respondent judge for hearing on the 8th day of November, 1919, and so far as the record shows, no notice of said hearing was given to the petitioner herein; that on the 7th day of November, 1919, the petitioner herein presented a bill of exceptions, notwithstanding the fact that the motion for a new trial, which had been presented thirty days theretofore, had not yet been decided.

The presentation of said bill of exceptions was accompanied with the following statements.

"That on this date is presented Juan Nepomuceno's bill of exceptions in the above entitled case, reserving his right to amend it, as may be the case, by including therewith the order which this court shall render upon the motion for a new trial filed by Juan Nepomuceno and the corresponding exception to such order in case same is a denial of said motion, with the consequent notice of appeal:

"That the aforesaid bill of exceptions is hereby submitted for your approval with its amendments which will have to be included therewith in case the motions for a new trial be denied."

On the 10th day of November, 1919, the respondent judge denied the said motion for a new trial, and refused to sign and certify the bill of exceptions which was presented on the 7th day of November for the reason that it had not been presented within thirty days from notice of the decision.

The lower court, following the provisions of section 26 of Act No. 2347, held that a bill of exceptions in a land registration case had to be presented within thirty days from the receipt of notice of the decision. The lower court, however, overlooked the fact, and many decisions of this court, that, while the appellant must present his bill of

exceptions, under said section 26 of Act No. 2347, within thirty days from notice of the decision, the time during which the judge was considering a motion for a rehearing was eliminated; or, in other words, that the thirty days' period did not run during the period while the court was considering the motion for a new trial.

In the present case, notice of the decision was received on October 6th. The thirty days did not begin to run, then, until the 7th. On that day the petitioner herein presented a motion for a new trial. No part of the thirty days, therefore, had expired before the presentation of the motion for a new trial. Neither did the period of thirty days run during the time the judge was considering the motion for a new trial. The motion for a new trial was denied on the 10th day of November. The thirty days began to run, then, from the date and notice of the order denying the motion for a new trial. Inasmuch, however, as the petitioner herein had presented his bill of exceptions on the 7th day of November, 1919, before the motion for a new trial had been denied, no part of the thirty days provided for in said section (sec. 26) had run. Therefore, the bill of exceptions was presented within time and the judge should have signed and certified the same. (*Layda vs. Legazpi*, 39 Phil., 83; *Roman Catholic Bishop of Tuguegarao vs. Director of Lands*, 34 Phil., 623; *Estate of Cordoba, and Zarate vs. Alabado*, 34 Phil., 920; *Bermudez vs. Director of Lands*, 36 Phil., 774; *Santiago vs. Manuel and Tumale*, 39 Phil., 869; *Government of Philippine Islands vs. Abural*, 39 Phil., 996.)

The rule is, that in a land registration case the bill of exceptions must be presented within thirty days from the receipt of notice of the decision; but the time during which the judge is considering a motion for a new trial is not counted as a part of said thirty days. In other words, the appellant has thirty days, from the notice of the decision, within which to present his bill of exceptions after eliminating the time during which the judge was considering a motion for a new trial.

For all of the foregoing reasons, the writ of mandamus prayed for is hereby granted, with costs against the respondents. So ordered.

Arellano, C. J., Torres, Araullo, Street, Malcolm, and Avanceña JJ., concur.

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