

**THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, PETITIONER, VS.
FRANCISCO YCASIANO, ANTONIO OPISSO, JUDGE OF FIRST
INSTANCE OF MANILA, AND THE SHERIFF OF THE CITY OF MANILA,
RESPONDENTS.**

G.R. No. 28679. February 02, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of certiorari with a view to setting aside an order of the respondent Judge, in which order it was declared that the attorney for the petitioner had been duly notified of the denial of a motion for a new trial presented by said attorneys in civil case No. 23627 of the Court of First Instance of Manila.

It appears from the record that some years ago, Francisco Ycasiano, one of the respondents herein, was in possession of a parcel of land as tenant of the petitioner, the Roman Catholic Archbishop, for a term of years. The Manila Railroad Co. instituted condemnation proceedings in regard to a tract of land in which the parcel in question was included, and during the pendency of the proceedings and a little more than three months before the expiration of the term of Ycasiano' a lease, an amicable settlement was had between the Railroad Company and the petitioner and a deed of sale for the land was executed by the latter in favor of the Railroad Company. No mention of the lease was made in the deed and in January, 1923, Francisco Ycasiano, having been ousted from his possession of the land before the termination of the" lease, brought an action for damages against the herein petitioner. Upon trial the Court of First Instance on August 7, 1926, rendered judgment in favor of Ycasiano for damages in the sum of P4,620, and three days later, notice thereof was served on the firm of Feria & La O as attorneys for the Roman Catholic Archbishop of Manila. On August 23, 1926, an exception to the judgment was filed by said attorneys, which exception was signed as follows by Leonardo Abola, an assistant attorney in the office of Feria & La O:

"Feria & La O

"Por: (Signed) LEONARDO ABOLA

"Abogados del Demandado

"THE ROMAN CATHOLIC ARCHBISHOP OF MANILA

"China Bank Bldg.

"Manila"

On September 4th of the same year, a written motion for a new trial was filed. The motion was signed "Feria and La O por F. R. Feria" as attorneys for said defendant and was supported by an affidavit of F. R. Feria, which affidavit was subscribed and sworn to before Leonardo Abola, as notary public. It was submitted to the court for determination on September 11, 1926, and was denied on the same day, the presiding judge indicating his ruling by writing the following words at the bottom of the last page of the motion: "Overruled. Manila, 11 de Septiembre de 1926, Geo. R. Harvey, Juez." On September 13, 1926, notice of the denial of the motion for a new trial was

served upon attorneys Feria and La O by leaving a copy thereof in the hands of Leonardo Abola. Abola in an affidavit subsequently submitted to the Court of First Instance states that he had no recollection of having received the notice, but the weight of the evidence leaves no doubt whatever upon that point.

Abola informed neither Feria nor La O of the receipt of the notice and they had no knowledge of the denial of the motion for a new trial until December 9, 1926, when a motion for the execution of the judgment was presented by the plaintiff Ycasiano. In the meantime, Attorney Feria on various occasions made inquiries from Judge Harvey's stenographer as to the status of the case and always received the answer that no ruling on the motion had as yet been dictated to said stenographer.

It was subsequently found that the record of the case had not been returned to the archives of the office of the clerk of the court, but had remained in the hands of the deputy clerk attached to Judge Harvey's branch of the court during the whole period from the hearing of the motion for a new trial until the filing of the motion for the execution of the judgment.

The herein petitioner's contention is that the notification of the ruling of the court on the motion for a new trial was not served in the manner provided for in the Rules of the Court of First Instance; that said notification therefore was invalid and of no effect; and that consequently the judgment had not become final, but that the aggrieved party still had the right to take an appeal and perfect the same.

The provisions for the service of notices of the orders of a Court of First Instance are found in paragraph 2 of the Rules of those Courts. The paragraph reads as follows:

"2. As soon as an order, decree, or decision is filed by the judge, the clerk shall give notice by registered mail or personally to both parties or their attorneys. When notice is given by registered mail, the notice shall be considered made as of the date appearing in the registry return receipt."

Counsel for the petitioner interprets this rule to mean that unless the service is made by registered mail, the notice must be served directly upon the parties themselves or upon their counsel and that the personal delivery of it to a stranger is not a valid service. That interpretation is correct. Service "personally" can only mean personal service, namely "service of process on one by actual delivery thereof to him, as distinguished from substituted service at his residence or constructive service by publication" (Shumaker and Longsdorf's Cyclopedic Law Dictionary). Bouvier says that personal service is "the delivery of a writ to the person therein named in person. Leaving a copy at his place of abode is not personal service; 12 Wis., 336." It follows that if this were the only question involved, the petitioners would have made out a good case for a writ of certiorari and would have been placed in position to perfect an appeal from the judgment in the original case.

But unfortunately there is another circumstance which compels us to decide the present case adversely to the petitioner. Leonardo Abola, to whom the notice in question was delivered, was a lawyer and though he enjoyed the privilege of seeking and serving clients of his own, he was at the same time an assistant attorney in the office of Feria & La O. As such assistant he appeared in the original case by preparing, signing, and filing an exception to the judgment therein rendered. In a measure, he might therefore be regarded as of counsel in the case though his relation to it may, perhaps, be better described by designating him as an agent of the counsel. But whether we consider him as of counsel or regard him merely as an agent, the result will be the same; *qui facit per alium, facit per se* and Feria & La O, having authorized Abola to sign the exception to the judgment and thus appear in their behalf and that of their client, cannot now be heard to deny that he was at least their agent in the case and as such authorized to accept service of the notice in question. Personal service on one; of the members of counsel for the aggrieved party would have been sufficient service on all of them and so was the service on their authorized agent. To hold otherwise would frequently lead to embarrassing complications and would neither be good sense

nor good law.

As far as the record shows, the probabilities are that the petitioner had a good case for appeal and we regret to be unable to grant his petition for relief in this proceeding. In this connection, we may permit ourselves to suggest that he might possibly have fared better if he had availed himself of the remedy provided for in section 113 of the Code of Civil Procedure. It was also a mistake to direct the inquiries as to the ruling on the motion for a new trial to the court stenographer instead of to the clerk of the court, who as the custodian of the records should have the means to give accurate information in such matters; the so-called minute orders are frequently, if not generally, entered without the intervention and knowledge of the court stenographer.

The petition for a writ of certiorari is denied without costs. So ordered.

Johnson, Street, Malcolm, Villamor, Johns, and Villa-Real, JJ., concur.

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