

INES MELGAR AND PEDRO NOEL, PLAINTIFFS AND APPELLEES, VS. TOMAS DELGADO AND ALBERTA ALQUIZOLA, DEFENDANTS AND APPELLANTS.*G.R. No. 30892. July 22, 1929*

Ponente: VILLAMOR, J.

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After the appellants had filed their bill of exceptions and their brief, the appellees moved for the dismissal of the appeal on the ground that the bill of exceptions was not filed in time.

In this case, twenty days after being notified of the judgment, the appellants filed a motion for reconsideration and a new trial on the ground that the evidence was insufficient to justify the decision, and that the judgment was contrary to law. The court heard the motion and denied it on August 18, 1928, in the presence of the appellants, who were orally informed of the denial. But they were not notified in writing of this order of denial until September 13, 1928, on which day the appellants reiterated the exception they had taken in open court, and gave notice of their intention to prepare a bill of exceptions, which they filed on the same date, the 13th of September, and which the court approved in its order of November 7, 1928.

The basic argument of the appellees is that, as the appellants were informed of the order dismissing their motion for a new trial in open court on August 18, 1928, according to the doctrine laid down in *Lay da vs. Legazpi* (39 Phil., 83), after such notification of the order dismissing their motion for a new trial, they had only five days within which to give notice of their intention to file a bill of exceptions,, and after that notice they had only ten days within which to file said bill of exceptions.

In reply to this argument, the appellants allege that although it is true that they were notified in open court of the order denying their motion for a new trial on August 18, 1928, nevertheless, said order was not reduced to writing, nor were their attorneys notified of it in writing until September 13, 1928, on which day they reiterated their intention to present their bill of exceptions, and at the same time filed it, and the court, as we have said, approved it on the 7th of the following November.

The question raised by the parties is, in substance, a determination of the day from which the period within which to file the bill of exceptions in ordinary civil cases begins to run. If the period is to be counted from August 18, 1928, when the appellants were orally notified, it is evident that the bill of exceptions presented on September 13, 1928, was out of time. But if, on the other hand, the period is to be counted from September 13, 1928, when the appellants were notified in writing that their motion for a new¹ trial had been denied, then the bill of exceptions was filed in opportune time.

We are of opinion that the period began to run from the day when the appellants were notified in writing of the order denying their motion for a new trial.

In the first place, Courts of First Instance, being courts of record, are bound to keep a record of their proceedings,

which must appear in writing. According to the definition given in 2 Cyc, 657-658, courts of record are those which are bound to keep, record of their proceedings for a perpetual memorial and testimony thereof. This being so, and applying it to the question under consideration, it cannot be said that the appellants were notified of the order denying their motion for a new trial, until said order had been reduced to writing and filed in the clerk's office.

In the second place, paragraph 2 of the Rules of the Courts of First Instance provides that "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," which shows that the oral notification given in open court to the attorneys of both parties is not the notification prescribed in paragraph 2 of the Rules of the Courts of First Instance, which was made on September 13, 1928, when said order was filed with the clerk of court.

In the third place, section 146 of the Code of Civil Procedure, as amended by Act No. 1596 provides among other things: "* * * if, however, the motion for a new trial was made on the ground that the evidence was insufficient to justify the decision, an exception may be taken to the order overruling such motion, and such exception may be reviewed by the Supreme Court as in other cases," which shows that the ruling on the appellants' motion for a new trial, based, as stated, on the insufficiency of the evidence, must be made in writing, as otherwise, it could not be reviewed by the Supreme Court.

Inasmuch, therefore, as the order denying the motion for a new trial was filed in the clerk's office only on the 13th of September, on which date the appellants were notified of it; and as said appellants announced their intention to appeal on the same date, and forthwith filed their bill of exceptions, it is manifest that, in accordance with the doctrines laid down in *Layda vs. Legazpi*, supra, said bill of exceptions was filed in time and was duly approved by the court below.

Wherefore, the motion to dismiss the appeal taken by the appellants should be, as it is hereby, denied. So ordered.

Avancena, C. J., Johnson, Street, Johns, Romualdez, and Villa-Real, JJ., concur.

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