

**MANILA PUBLISHING COMPANY, PLAINTIFF AND APPELLANT, VS.
HONORABLE JOSE BERNABE, JUDGE OF THE MUNICIPAL COURT OF
MANILA, YAP SULAN AND JOSE CASIMIRO, SHERIFF OF THE CITY OF
MANIL...**

G.R. No. 31067. September 14, 1929

Ponente: JOHNS, J.

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JOHNS, J.:

The facts are very simple, and the question is purely legal.

The case of Yap Sulan vs. Manila Publishing Company, the plaintiff here, and the Sheriff of the City of Manila, was tried before the defendant, Jose Bernabe, Municipal Judge, on December 5, 1927, and at the conclusion of the trial, the judge reserved his decision without stating when he would render it. He rendered his decision on December twelfth, of which this plaintiff received notice and a copy on December twentieth, but the decision was rendered and dated December twelfth. December 29, 1927, within nine days after it had received notice of the judgment and seventeen days after its rendition, plaintiff gave notice of its intention to appeal from the judgment of the municipal court to the Court of First Instance, and paid the to cover the docketing fee and made the deposit of to cover the costs.

The question presented involves the construction of the following sections of the Code of Civil Procedure:

"At the conclusion of the trial, the justice shall render judgment for the plaintiff to recover such sum as he finds to be justly his due, with costs; or for the defendant to recover his costs, as the law and evidence may warrant. If there is a counterclaim or plea in offset the justice shall render judgment for the sum found in arrear from either party, with costs. But he may adjourn the disposition of the case to a stated day, not exceeding one week from the time of the conclusion of the trial, for the consideration of judgment, if he require time for consideration." (Section 66, Code of Civil Procedure.)

"An appeal in civil causes shall be perfected by filing with the justice of the peace, within fifteen days after the entry of the judgment complained of, * * *." (Section 76, Code of Civil Procedure.)

Applying the facts to this law, it will be found that the case was tried on December fifth and that judgment was rendered on December twelfth, of which the plaintiff received notice on December twentieth, from which it gave notice of intention to appeal on December twenty-ninth, nine days after it received notice of the decision, and seventeen days after the rendition of the judgment.

The question presented was squarely met and decided by the second division in the case of *Agcaoili vs. Rivera*, G. R. No. 26768,[1] in which the court says:

"Upon appeal to this court the defendant argues that the fifteen days' period, allowed for an appeal from a judgment of a justice of the peace in an ordinary civil action, must be counted from the date of the notification of the judgment and not from the date of its entry. This contention cannot be sustained. The language of

sections 72 and 76 of the Code of Civil Procedure is so clear as to require no special interpretation and leaves no doubt that the appeal must be perfected within fifteen days from the date of the entry of the judgment."

It is admitted here that the case was tried on December fifth, and that the judgment in question was rendered on December twelfth, or within the time specified in Section 66. That is to say, that the law specifically provides for the rendition of judgment within one week after trial, and it must be assumed that official duty has been performed. Yet there is no claim or pretense that the attorneys ever gave any notice to the clerk of the court or made any effort or inquiry to find out about the rendition of the judgment, and that they received the first information from the clerk on December twentieth. But even then, they could have given notice of appeal at any time on or before the twenty-seventh, but did not give the notice until December twenty-ninth, which was seventeen days after the judgment was rendered.

A vicious practice has grown up among some of the attorneys of the lower courts and of this court in relying upon clerks of the court, which has resulted in the dismissal of a number of appeals. When employed by their respective clients, it is the duty of attorneys to guard, look after and protect the interests of their clients, and not to leave such matters to the clerks of the court. It is for those reasons that attorneys are employed and paid by their clients and for which the clerks are not employed and are not paid.

For example, in this case, by a simple telephone call to the Clerk's Office of the municipal court, the attorneys for the plaintiff could have easily found out that the judgment was rendered on December twelfth, which was within the time provided by law, and even after the receipt of notice from the clerk on the twentieth, they could have given the notice of appeal at any time on or before the twenty-seventh, which would have been within the specified time.

As to this class of cases, the law in question is plain, positive and certain, and specifically provides that an appeal shall be taken "within fifteen days after the entry of the judgment complained of."

The complaint is dismissed, and the judgment of the lower court is affirmed, with costs. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Romualdez, and Villa-Real, JJ., concur.

[1] Promulgated March 25, 1927, not reported

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