

MARCELO GAJITON AND FAUSTA FABIO, PETITIONERS AND APPELLEES, VS. RAYMUNDO MERIS Y MORALES, JUSTICE OF THE PEACE OF MANAOAG, PANGASINAN, RESPONDENT AND APPELLANT.

G. R. No. 31842. February 25, 1930

Ponente: JOHNSON, J.

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JOHNSON, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } This action was commenced in the Court of First Instance of the Province of Pangasinan on the 4th day of May, 1928. Its purpose was to secure a writ of mandamus against the respondent Raymundo Meris y Morales, as justice of the peace of Manaoag, ordering him to notify the petitioners of the judgment rendered by him in civil case No. 887 and to admit the appeal of said petitioners in that case. The respondent answered, denying generally and specifically each and every allegation of the complaint. By way of special defense he alleged that the petitioners failed to file the appeal papers in said civil case No. 887 within the period of fifteen days, and prayed that he be absolved from all liability under the complaint, with costs against the petitioners.

The parties submitted the case on a stipulation of facts. It appears from said stipulation of facts that the petitioners herein were defendants in civil case No. 887 of the court of the justice of the peace of Manaoag; that said case was set for trial for the third time on April 2, 1928; that the parties appeared on that day, accompanied by their respective attorneys; that the defendants presented a demurrer, which was overruled; that the defendants expressly waived their right to answer, and told the justice of the peace that he could render a judgment by default against them, but that, in such case they would appeal from said judgment; that they left the court room; that the justice of the peace rendered a judgment by default against them, and made an entry thereof on the same day, April 2, 1928; that on April 12, 1928, the defendants inquired from the justice of the peace about the judgment, and on November 23, 1928 filed their papers on appeal, which the justice of the peace refused to admit on the ground that the period for appeal had already elapsed.

Upon the foregoing facts the Honorable Francisco Zanduetta, judge, rendered a judgment ordering the respondent (1) to notify the petitioners of the judgment rendered in civil case No. 887; (2) to admit the appeal in said case, including the docket fee and the bond; and (3) to stay the execution of the judgment in said case No. 887. The dispositive part of the decision reads as follows:

"Por tanto, se dicta sentencia ordenando al Juez de Paz de Manaoag, Raymundo Meris Morales, a que notifique de su sentencia dictada en la causa civil No. 887 incoada en su Juzgado por Victoriano Cabuyangan contra los aqui recurrentes; admitir el escrito de apelaci6n que presentaron; los derechos de dicha apelacion y la fianza correspondiente; debiendo dejar de ejecutar la sentencia apelada"

From that judgment the respondent appealed.

The principal contention of the appellant is, that the judgment rendered by him in civil case No. 887 became final and unappealable after the lapse of fifteen days from the date of the entry thereof in the docket, and that the lower court erred in ordering him to admit the appeal. We are of the opinion that the appellant's contention is correct and should be sustained. Under the provisions of sections 72 and 76 of Act No. 190, an appeal from a judgment of the justice of the peace should be perfected within fifteen days from the date of the entry of said judgment. In civil case No. 887 the entry of the judgment was made by the respondent on April 2, 1928, but the petitioners tried to perfect their appeal on April 23, that is, twenty- one days later. Clearly, the appeal was not perfected within the fifteen days fixed by law.

The period of fifteen days for the perfection of the appeal must be counted from the date of the entry of the judgment and not from the date of the notification. In the case of *Agcaoili vs. Rivera* (G. R. No. 26768) [1] decided on March 25, 1927, this court said:

"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."

A mere notice of intention to appeal, made to the justice of the peace during the period fixed by law, is not sufficient if within that period the necessary appeal papers are not filed with the justice of the peace. In the case of *Policarpio vs. Borja* (16 Phil., 31) this court announced the following doctrine:

"The general rule is that a failure to perfect an appeal from a judgment of a justice of the peace within the period allowed by law bars the appeal. When the interested party, in conversation with the justice of the peace, states that he intends to appeal, but does not present the necessary papers, or the appropriate sureties or bond, or make the necessary deposit, the fact that he is told by the justice to return another day will not justify a failure to perfect the appeal within the specified period."

In view of the foregoing, the judgment appealed from should be and is hereby reversed, the complaint is dismissed, and the respondent is hereby relieved from all liability under the complaint, with costs against the appellees. So ordered.

Malcolm, Villamor, Ostrand, Johns, Romualdez and Villa- Real, JJ., concur.

[1] Not reported.

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