

**A. LEVETT, PLAINTIFF AND APPELLEE, VS. JOSE SY QUIA BT AL.,
DEFENDANTS. THE YEK TONG LIN FIRE & MARINE INSURANCE
CO., LTD., APPELLANT.**

G.R. No. 43916. August 27, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This case concerns a motion filed by the plaintiff A. Levett for the dismissal of the appeal taken by the defendant, the Yek Tong Lin Fire & Marine Insurance Co., Ltd., on the ground that said appeal was not perfected within the reglementary period and that the appealed decision has become final.

The pertinent facts necessary for the resolution of the question raised in said motion are as follows:

On February 13, 1935, the defendants-appellants received notice of the adverse decision of the Court of First Instance of Manila.

On March 11, 1935, or twenty-six days after receipt of said notice, the defendant-appellant, the Yek Tong Lin Fire & Marine Insurance Co., Ltd., excepted to said decision and filed a motion for reconsideration on the ground that the judgment of the Court of First Instance of Manila is manifestly against the law and the facts of the case.

On March 19, 1935, said defendant-appellant received notice of the order of even date denying its motion for reconsideration and on March 21, 1935, it excepted to said order of denial and filed a motion for a new trial on the ground that the judgment is manifestly against the law and the preponderance of evidence in the case.

On March 27, 1935, said defendant-appellant received notice of the order dated March 25, 1935, denying its motion for a new trial, and on the same date, March 27, 1935, excepted to said order and filed its notice of appeal.

On April 6, 1935, the defendant, the Yek Tong Lin Fire & Marine Insurance Co., Ltd., presented the corresponding bill of exceptions.

From February 13, 1935, when the defendant-appellant received notice of the decision against it, to March 11, 1935, when it filed its motion for reconsideration, twenty-six days elapsed, leaving only four of the thirty days fixed by law for the filing of its motion for a new trial. The filing by the defendant-appellant on March 21, 1935, of its motion for new trial based on the same grounds as those of its motion for reconsideration, did not suspend the running of the remaining four days nor the period of five days for the filing of its notice of appeal, which began on March 19, 1935, when it was notified of the order denying its motion for reconsideration; and when it filed its exception and notice of appeal on March 27, 1935, eight days had already elapsed, that is, more than the period of five days for the presentation of said exception and notice of appeal. When it filed its bill of exceptions on April 6, 1935, eighteen days had already elapsed, also in excess of the period of ten days within which it should have filed said bill of exceptions. (Aquino vs. Tongco, G. R. No. 44104, promulgated on August 23, 1935, p. 840, ante.)

For the foregoing considerations, we are of the opinion and so hold: (1) That a motion for a new trial filed after a motion for reconsideration based on the same grounds is denied, does not suspend the period of five days for the filing of the exception and notice of appeal; (2) that failure to file an exception and notice of appeal within five days after notice of the order denying the motion for reconsideration having the nature of a motion for a new trial, makes the judgment appealed from final and executory; and (3) that a bill of exceptions filed eighteen days after receipt of notice of the denial of the motion for reconsideration is late and the approval thereof by the court is null and void, having been made without jurisdiction.

Wherefore, the motion is granted and the dismissal of the appeal taken by the defendant the Yek Tong Lin Fire & Marine Insurance Co., Ltd., is ordered. So ordered.

Avanceña, C.J., Malcolm, Abad Santos, Hull, Vickers, Imperial, Butte, Goddard, Diaz, and Recto, JJ., concur.

Motion granted and appeal dismissed.

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