

L. H. HENNING, PLAINTIFF AND APPELLEE, VS. THE WESTERN EQUIPMENT AND SUPPLY CO., DEFENDANT AND APPELLANT.

G. R. No. 44513. January 16, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a motion filed by the defendant the Western Equipment and Supply Co. to reconsider and set aside the decision of this court of November 27, 1935, granting the motion of the plaintiff-appellee L. H. Henning and ordering the dismissal of the appeal interposed by said defendant-appellant, and to render another denying said motion to dismiss the appeal in question.

The question for reconsideration is whether or not the mailing of a notice of intention to appeal is equivalent to the filing thereof in the corresponding office of the clerk of court.

From the promulgation of the decision in the case of *Layda vs. Legazpi* (39 Phil., 83), wherein the ruling was laid down that the aggrieved party, after notice of the ruling upon his motion for a new trial, has five days within which to file notice of his intention to present a bill of exceptions, the rule has been that said motion should be filed or deposited with the clerk within said period of five days. (*U. S. vs. Tenorio*, 37 Phil, 7; *Yango vs. Ocampo*, 57 Phil., 1.) Effective April 1, 1933, this court adopted a new rule for proceedings before it, Rule 13 of which reads:

"13. All notifications required by these rules shall, unless otherwise expressly provided, take effect five days from service. This period shall be computed from the day upon which the notice is served. The date of the mailing of motions, pleadings, or any other papers or payments or deposits required by the rules of this court, as shown by the post-office registry receipt, shall be considered as the date of their filing, payment, or deposit in this court."

And effective June 1, 1933, this court likewise prescribed new rules for the Courts of First Instance. Although the latter rules do not contain the same provision above quoted, Rule 26 thereof reads:

"26. Proof of personal service of a notice of motion or pleading shall be filed, such proof to consist of a written admission of the party served or the affidavit of the party serving containing a full statement of the date, place, and manner of the service. If the service is made by mail, proof thereof shall be made by affidavit of the person mailing, and by the production of the registry receipt issued by the mailing office if the same is registered. The registry return card shall be filed immediately upon receipt thereof by the sender, or in lieu thereof the letter unclaimed."

It will be seen that Rule 13 of the revised rules of this court expressly provides that the date of the mailing of motions, pleadings, or any other papers or payments or deposits required by the rules of this court, as shown by the post-office registry receipt, shall be considered as the date of their filing, payment, or deposit in this court. The requirement that the notice of intention to appeal should be filed in the office of the clerk of court is a ruling laid down by this court in said case of *Layda vs. Legazpi*. We see no reason why this court should establish a

difference between the filing of motions and other judicial papers in it and the filing thereof in the Courts of First Instance, as to place. This court having established in its rules that the date of the mailing of judicial papers shall be considered as the date of their filing in this court, to maintain the former ruling that a judicial paper shall be considered duly presented only when filed with the clerk of a Court of First Instance would be to establish two distinct procedures for similar cases, which would be anomalous and contrary to the purposes of uniformity which should be followed as closely as possible in judicial proceedings. The absence in the rules prescribed by this court for Courts of First Instance of the same provision contained in the rules of this court relative to the place where a judicial paper may be filed has clearly been an involuntary omission inasmuch as this court could not have intended and does not wish to establish different procedures in similar cases whether in the Courts of First Instance or in this court, being contrary to its policy to simplify judicial procedure in order to avoid confusion. Consistent with the idea and the desire to establish uniformity in judicial proceedings and to simplify them, we supply the involuntary omission committed in drafting the rules for the Courts of First Instance and, interpreting the spirit thereof, we hold that, the same as in this court, the date of the mailing of a notice of intention to appeal shall be considered as the date of the filing thereof in the corresponding Court of First Instance.

Wherefore, the motion for reconsideration is granted and, setting aside the decision the reconsideration of which is sought, the motion to dismiss the appeal interposed by the defendant-appellant the Western Equipment and Supply Co. is denied. So ordered.

Avancena, C. J., Malcolm, Abad Santos, Vickers, Butte, and Goddard, JJ., concur.

Recto, J.: I concur in the result.

DISSENTING OPINION

IMPERIAL, J.:

The incident now under consideration was brought about by the motion to dismiss the appeal, filed by the attorney for the plaintiff-appellee.

The motion to dismiss was based on two grounds: (1) That the notice of intention to appeal presented by the defendant-appellant was not presented within five (5) days after his motion for reconsideration and new trial had been denied, but on the seventh day; and (2) that the court acquired no jurisdiction to approve the bill of exceptions presented by the defendant-appellant because the appellee neither was notified nor received copy thereof. This second ground of the motion for dismissal, in my opinion, implies the proposition that the bill of exceptions was presented out of time and, consequently, the court had no jurisdiction to approve it because the judgment appealed from had already become final. It is unnecessary to state that the proposition likewise involves the affirmation that this court acquired no appellate jurisdiction on the ground that the bill of exceptions had not been presented in due time.

We all agree in the pertinent facts. It is taken for granted that the notice of intention to appeal was presented out of time or on the seventh day after the appellant had been notified that its motion for reconsideration and new trial had been denied. It is likewise admitted that the bill of exceptions was presented by the appellant also out of time, that is, on the 12th day after it had filed its intention to appeal. In this dissenting opinion I shall try to show as briefly as possible that the motion for dismissal was correctly sustained by this court and that the second motion for reconsideration should be denied instead of being favorably acted upon as was done in the majority opinion.

The decision of this court promulgated on November 27, 1935, declaring the defendant-appellant's appeal abandoned, was based on the legal doctrine laid down in the case of *Layda vs. Legazpi* (39 Phil., 83), which

reads:

"In an ordinary action the aggrieved party has (a) thirty days within which to present a motion for a new trial; (B) after notice of the ruling upon his motion, he has five days within which to present 'notice of his intention to present a bill of exceptions'; (c) after the presentation of 'notice of his intention to present a bill of exceptions' he has ten days within which to present his bill of exceptions (Lim vs. Singian and Soler, 37 Phil., 817); (d) failure to comply with any of the foregoing requirements, within the various periods mentioned, will cause the judgment to become final, upon which a writ of execution may issue, and the presentation of a bill of exceptions will not give the appellate court jurisdiction; (e) each and all of said periods may be extended by order of the court upon application made prior to the expiration of the original period."

In dismissing the appeal, we said that there was no good reason for not applying the doctrine because "to present notice of intention to appeal" meant that the notice had to be presented to the clerk of court or at his office and that the mailing thereof was no compliance with the requirement. In that connection we demed that the verb "to present" in relation to the notice of intention to appeal meant to file or deposit in the clerk's office. Now the majority, in granting the second motion for reconsideration and setting aside the decision originally promulgated, applies the provision contained in Rule 13 of the Rules of the Supreme Court which, in my opinion, is not applicable to proceedings in the Courts of First Instance, unless we agree that the rules of both courts are common to all and may be applied reciprocally at the discretion of the litigants and their attorneys. The pertinent part of said rule reads as follows:

"13. - - - The date of the mailing of motions, pleadings, or any other papers or payments or deposits required by the rules of this court, as shown by the post-office registry receipt, shall be considered as the date of their filing, payment, or deposit in this court."

I repeat that I see no good reason to apply a rule adopted exclusively for proceedings before the Supreme Court to Courts of First Instance. Neither can the liberal spirit invoked be considered in this case as logical reason to apply said provision. I understand that a liberal construction should be made only when a legal provision is susceptible of two interpretations, one strict and the other liberal. But it is beyond my understanding how by a mere act of liberality a rule promulgated solely to regulate the proceedings before the Supreme Court may be extended to the Courts of First Instance. If this court were of the opinion that the same rule should govern in the Courts of First Instance, the proper thing would be to amend the rules of the latter courts for the purpose of incorporating it. In my opinion, to proceed otherwise is to introduce confusion in judicial proceedings which will be beneficial neither to the litigants nor to the members of the bar.

It is stated in the majority resolution that the non-inclusion of said part of Rule 13 was entirely due to an involuntary omission. With all due respect to the majority opinion, I cannot subscribe to this view. Said provision was not inserted in the Rules of Courts of First Instance because, generally, the office of the clerk of court is always accessible to the attorneys for the litigants and ordinarily the papers are filed personally without resorting to the mail. Furthermore, in connection with the notice of intention to appeal, the Rules of the Supreme Court and those of the Courts of First Instance could not allow that the mailing thereof should be equivalent to its filing in the clerk's office because the legal doctrine laid down in *Layda vs. Legaspi*, in accordance with which it should be presented in the office of the clerk of court and not in any other place, was already in force. It is a principle of procedural law that when the law requires that a pleading be presented, the mailing thereof is no compliance therewith nor is it equivalent to its presentation or filing with the office of the clerk of court (*Allen vs. National F. Ins. Co.*, 146 S. W., 808; *Diaz vs. Pastor*, 29 P. R., 88; *Oronoz vs. Montalvo*, 20 P. R., 254; *Patxot vs. Nadal*, 19 P. R., 350).

There is another reason which, in my opinion, prevents the extension of the application of said part of Rule 13 to

Courts of First Instance and disproves the assertion that the non-inclusion thereof in the Rules of Court of First Instance was merely the result of an involuntary omission. I refer to the provisions of section 384 of the Code of Civil Procedure directing the presentation to and receipt by the clerk of court of complaints, answers, motions, reports, and other papers affecting an action pending in court. With such an express and clear provision as this, I cannot understand how it can be concluded that the mailing of the notice of intention to appeal is equivalent to the filing thereof in court or in the clerk's office, or that there is the necessity of extending Rule 13 of the Rules of the Supreme Court to the Courts of First Instance and that the non-inclusion thereof in the Rules of Courts of First Instance was merely due to an oversight.

Finally, I am of the opinion that the mailing of the appellant's notice of intention to appeal is not equivalent to the filing thereof in court or in the clerk's office, where the case was pending, and, consequently, that said notice of intention to appeal was presented out of time, for which reason alone the motion for dismissal should be sustained and the second motion for reconsideration denied.

As to the second ground of the motion to dismiss, I am of the opinion that it is likewise well founded and should be granted. If the notice of intention to appeal should have been presented at the latest on July 25th, it being the last day of the five-day period, and if, as admitted, the bill of exceptions was presented only on August 6th, it is evident that it was presented out of time, or on the twelfth day after the filing of the notice of appeal, and therefore the Court of First Instance had no jurisdiction to approve it, nor this court acquired jurisdiction to take cognizance thereof on appeal.

DISSENTING OPINION

DIAZ, J., :

I concur in the dissenting opinion of Justice Imperial.

Rule 13 of the rules to which the opinion of the majority refers in the resolution has been established to apply exclusively to cases or incidents of the nature of those provided therein arising from cases pending in this court; and Rule 26 of the Rules of Courts of First Instance does not authorize, either by inference or otherwise, the extension of the provisions of said rules in the sense of permitting the application of said Rule 13 to cases similar to those mentioned therein docketed in the courts in question. It is arbitrary to do so, it not appearing that said rules are amended in the manner they should be amended, to justify such action. This is all the more true because by reading the rules preceding said Rule 26, from Rule 20-a, it is evident that it refers to notices and pleadings which have passed between the litigants and not to pleadings which the law requires to be presented to the Court of First Instance or to the clerk thereof. For these reasons and those stated in the opinion of Justice Imperial, I also dissent from the majority opinion.

HULL, J., dissenting: I concur with Justices Imperial and Diaz.

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