

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
OLIMPIO CABRERA, EVARISTO LEONCION (ALIAS EVAEISTO
CANIETE), AND MANUELA, TUBAN, DEFENDANTS AND APPELLANTS.**

G. R. No. 45092. March 30, 1937

Ponente: LAUREL, J.

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LAUREL, J.:

On March 28, 1935, the justice of the peace court of Dauin, Oriental Negros, found the defendants and appellants herein guilty of swindling under article 318 of the Revised Penal Code and sentenced each one of them to suffer one month and one day imprisonment, to pay a fine of thirty-two pesos, and in case of insolvency to undergo subsidiary imprisonment which shall not exceed ten days, and to pay the costs proportionately. On the same day, the accused verbally announced their intention to appeal to the Court of First Instance of the province, and then and there filed an appeal bond which was approved by the justice of the peace. The record of the case was elevated to the Court of First Instance of the province on March 30, 1935. On May 17, 1935, the provincial fiscal filed a motion in that court asking that the record of the case be returned to the justice of the peace court of Dauin for execution on the ground that no written notice of appeal was filed and perfected within the statutory period of fifteen days as prescribed in section 43, as amended, of the Code of Criminal Procedure. The Court of First Instance granted the motion and, on December 17, 1935, directed the execution of the judgment of conviction. The defendants, upon being notified of this order on December 23, 1935, moved for reconsideration, which motion was overruled on January 23, 1936. On February 11, 1936, they filed an exception and notice of appeal from said order.

The instant case, upon the facts stated, is controlled by *Ricana and Glory vs. Provincial Warden of Tayabas* (54 Phil., 821), in which it was held, citing the case of *United States vs. Tenorio* (37 Phil., 7), that the word "filing", as used in the law, means, "a written notice of intention of taking an appeal." The filing and approval of the appeal bond by the justice of the peace is not a sufficient notice of appeal under section 43, as amended, of the Code of Criminal Procedure (*Elegado vs. Tavora*, 59 Phil, 140).

However, this court, on March 24 of this year, pursuant to its power conferred by section 13 of Article VIII of the Constitution to promulgate rules concerning pleading, practice, and procedure, has amended section 43 of the Code of Criminal Procedure by providing that "the convicted party may appeal from any final judgment of a justice of the peace in a criminal cause to the Court of First Instance by notifying such justice thereof, verbally or in writing, within fifteen days after the entry of judgment," and as this amendment should be extended to the defendants and appellants in this case, the order of December 17, 1935 of the lower court is hereby revoked and the record of this case remanded thereto with instruction that said court take cognizance of the appeal interposed by the said defendants and appellants from the decision of the justice of the peace court of Dauin, Oriental Negros, and otherwise proceed in accordance with law. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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