

TOMAS FORTUNA, PLAINTIFF AND APPELLEE, VS. RUFINO VILORIA, AUXILIARY JUSTICE OF THE PEACE OF NARVACAN, AND BALBINO ESCOBAR, DEFENDANTS AND APPELLANTS.

G.R. No. 4526. October 04, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 13th day of June, 1906, Rufino Viloría, acting as justice of the peace of the pueblo of Narvacan, rendered a judgment in favor of Tomas Fortuna and against Balbino Escobar, for the sum of P207.40 and costs.

On the 16th day of June, 1906, Balbino Escobar received notice of said judgment. On the morning of the 22d of June the said Balbino Escobar filed with the justice of the peace a notice of his intention to appeal from this judgment, which appeal was allowed. On the same day, after the justice of the peace had allowed the said appeal, Tomas Fortuna asked that an execution be issued upon said judgment, which request the justice of the peace denied upon the ground that he had allowed the appeal.

On the 3d day of July, 1906, Tomas Fortuna presented a petition in the Court of First Instance of the Province of Ilocos Sur, asking that the said court issue an order directing the justice of the peace to issue an order of execution upon said judgment, upon the ground that the said appeal was null and void, the same having been granted after the time allowed for appeals from judgments of a justice of the peace.

After hearing the respective parties, the lower court decided that the justice of the peace improperly allowed the appeal, and therefore dismissed the same and ordered the cause returned to the justice of the peace with direction that an execution be issued upon the original judgment.

To this order of the lower court the defendant Balbino Escobar duly excepted and appealed to this court.

The contention of the plaintiff is that the appeal, not having been made within the time provided for by law, was null and void, and that therefore the Court of First Instance committed no error in dismissing the same.

Section 76 of Act No. 190 provides the method of perfecting an appeal from a judgment of a justice of the peace. Its provisions are as follows:

"Within five days after the rendition of a judgment by a justice of the peace, the party desiring to appeal may file with the justice a written statement that he appeals to the Court of First Instance, and shall, within said period of five days, give a bond with sufficient surety, to be approved by said justice, payable to the opposite party, in the penal sum of one hundred dollars, conditioned for the payment of all such costs in the actions as finally may be awarded against him. The filing of such statement and giving of such bond, shall perfect the appeal."

Section 4 of Act No. 190 provides the method of computing the time within which an act required by law is to be done. The rule is that the time is computed by excluding the first day and including the last, unless the last be a Sunday or holiday, in which case it shall be excluded. Applying this rule to the present case, counting from the

time the defendant Escobar received notice of the judgment by the justice of the peace, we find that the five days mentioned in said section 76 expired on the 21st day of June. The time, therefore, for perfecting the appeal had expired before Escobar attempted to perfect his appeal, and he had, by reason thereof, lost his right to appeal. The allowance of the appeal by the justice of the peace after the time fixed by law, was therefore void and the Court of First Instance committed no error in dismissing the same and ordering the record returned to the justice of the peace, with direction that his sentence be executed.

With this conclusion, we deem it unnecessary to discuss in detail the errors assigned by the appellant. The judgment of the lower court is hereby affirmed with the costs of this instance. So ordered.

Arellano, C. J., Torres, and Moreland, JJ., concur.

Carson, J., reserves his vote.

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