

**ALFREDO HIDALGO RIZAL, PETITIONER, VS. JOSEFA RIZAL
MERCADO ET AL., RESPONDENTS.***G.R. No. 46100. May 26, 1939*

Ponente: VILLA-REAL, J.

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We are here concerned with a new trial of the present petition for certiorari granted the petitioner Alfredo Hidalgo Rizal by resolution of this court dated February 4, 1939, in which each of the parties submitted a memorandum in support of his contention.

Alfredo Hidalgo Rizal petitions this court to reverse the decision rendered by the second division of the Court of Appeals dismissing the appeal taken by petitioner from the judgment of the Court of First Instance of Manila, and to order the said Court of Appeals to reinstate the appeal thus dismissed by it and to decide said appeal on its merits.

In answer to the petition, respondents Josefa Rizal Mercado et al., express their assent to what is prayed for therein in order that they may not be condemned to pay costs and ask that judgment be rendered on the merits.

The ultimate facts which the second division of the Court of Appeals took into consideration and upon which it relied in dismissing the appeal above-mentioned, are as follows:

On January 10, 1935, the Court of First Instance of Manila rendered in civil case No. 44808 a judgment against the therein defendant and herein petitioner, Alfredo Hidalgo Rizal. On the fourteenth of the same month and year, he received notice of said judgment. On the twenty-third, also of the same month and year, the aforesaid defendant and petitioner filed a motion for reconsideration based on the ground that the judgment is contrary to law and the weight of the evidence. The trial court denied the motion for reconsideration by order of January 30, 1935. On February 6, 1935, the defendant and petitioner received notice of the order denying his motion for reconsideration and on the eighth of that month and year he excepted to said order and asked for a new trial on the same ground that the judgment rendered in the case is contrary to law and the weight of the evidence. By order of February 16, 1935, the Court of First Instance of Manila denied the motion for new trial, and on February 21, 1935 defendant filed his exception and notice of appeal. On March 2, 1935 he filed the corresponding bill of exceptions.

From January 14, 1935, when defendant received notice of the judgment against him, to January 23, 1935, when he filed his motion for reconsideration—which is equivalent to a motion for new trial (*Pascua vs. Ocampo and Aguilar*, 59 Phil., 48; *Blouse vs. Moreno and Garcia*, 60 Phil., 741; *Levett vs. Sy Quia*, 61 Phil., 847; *Rodriguez vs. Rovira*, 63 Phil., 476)—nine days elapsed with twenty-one of the thirty days within which he is entitled to file his motion referred to, still remaining. The filing of his said motion for new trial suspended the running of the twenty-one days left to him and they did not begin to run again until February 6, 1935 on which date he was notified of the order denying his motion for new trial (*Layda vs. Legazpi*, 39 Phil., 83, and cases therein cited; *San Miguel Brewery vs. Legarda*, 48 Phil., 507; *Agra vs. Zandueta*, 56 Phil., 528; and cases therein cited). The filing

of his second motion for new trial on February 8, 1935, did not suspend the running of the twenty-one days left to him, inasmuch as it was based on the same grounds relied upon in the first motion.

In the case of *Aquino vs. Tongco* (61 Phil, 840), this court enunciated the doctrine that a party desiring to appeal from a judgment rendered against him may file several motions for new trial within the period of thirty days, but that each of them must have to be based on different legal grounds. According to this doctrine, the petitioner could file other motions for new trial within the twenty-one days which he still had. If, instead of excepting to the resolution which denied his second motion for new trial and of filing his notice of intention to appeal to the Court of Appeals, he had filed a third motion for new trial, this would have been proper, since no more than thirteen days would have had elapsed, with eight days still remaining within which he could file another motion for new trial. If the third motion for new trial which he could file on February 21, 1935, were valid; but nevertheless the same is denied by the court, the petitioner would have five days to file his exception and notice of intention to appeal if he had no wish to take advantage of the remaining period to file another motion for new trial; or if the third motion were not valid and had not suspended the running of the remaining period of eight days, said period would have expired on the eighth day, or on March 1, 1935. In that event, the expiration of the period would be equivalent to the denial of his third motion for new trial, and he would have the right to file his exception and notice of intention to appeal within five days. Hence, from whatever point of view the question of the filing of the exception and notice of intention to appeal on February 21, 1935 may be considered, said filing was done on time and the submission of the bill of exceptions on March 2, 1935, or nine (9) days thereafter, was also done on time because for that purpose petitioner had ten days counting from the date of the notice of intention to appeal referred to.

For the foregoing considerations, we are of the opinion and so hold that if the filing of a notice of intention to appeal in an ordinary civil case is done within the period remaining for the presentation of another motion for new trial, the filing is timely, although five days may have elapsed from the denial of the last motion for new trial, as long as it is done within the thirty days authorized by law for the presentation of motions for new trial, not including the time which the trial court may have spent to decide said motions.

Wherefore, the writ prayed for is granted, the decision appealed from is reversed, and the case is ordered returned to the Court of Appeals for further proceedings, with costs against the respondents. So ordered.

Avanceña, C. J., Imperial, Diaz, Concepcion, and Moran, JJ., concur.

[1] Original decision in this case, October 28, 1938, has not been published.

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