

TIMOTEO TAROMA, PETITIONER, VS. ROMAN A. CRUZ, JUDGE OF FIRST INSTANCE OF ILOCOS NORTE, AND GERMAN GALINATO, RESPONDENTS.*G.R. No. 46248. May 27, 1939*

Ponente: DIAZ, J.

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The present mandamus proceedings may well be said to be an incident in the land registration case (Registration Case, No. 287; G. L. R. O. Record No. 52007) tried before the respondent judge in the Court of First Instance of Ilocos Norte under the provisions of Act No. 496. They have been instituted with a view to determining whether or not the appeal taken in said case by the petitioner from a judgment rendered therein against him, was interposed within the period of thirty days fixed by section 14 of Act No. 496, as amended by section 26, subsection (b) of Act No. 2347.

The respondent judge decided the question in the negative, declaring that petitioner filed his bill of exceptions on the thirty-first day after he was notified of the decision, and therefore outside of the aforesaid period of thirty days, and refused to receive it, with the result that petitioner could not perfect his appeal. It is to compel him to accept the bill of exceptions referred to and to give course to the appeal that petitioner commenced these proceedings.

The pertinent facts related to the issue and not disputed by the parties are the following: The petitioner received on April 5, 1938 a copy of the decision which the respondent judge had rendered in the aforementioned land registration case; and filed his motion for new trial as a formal requisite to perfect his appeal on May 3, 1938, and his bill of exceptions on the twenty-first of the same month and year, which was three days after he was notified of the order which denied his motion for new trial.

Relying upon the foregoing facts, petitioner maintains that he perfected his appeal within the period of thirty days, inasmuch as he makes the following computation: From April 5 to May 3, 1938, both dates excluded, only twenty-seven days elapsed; from May 3 when he filed his motion for new trial to May 18, 1938 when he was notified of the order of the respondent judge denying it, both dates included, 16 days passed, which period, petitioner contends, should not be counted against him, in view of the rule established and sanctioned several times by this court in the cases of *Paez vs. Berenguer* (6 Phil., 521); *Lavitoria vs. Court of First Instance of Tayabas* (32 Phil., 204); *Roman Catholic Bishop of Tuguegarao vs. Director of Lands* (34 Phil., 623); *Estate of Cordoba and Zarate vs. Alabado* (34 Phil., 920); *Roman Catholic Archbishop of Manila vs. Ruiz and Catli* (36 Phil., 279); *Bermudez vs. Director of Lands* (36 Phil., 774); *Director of Lands vs. Maurera and Tiongson* (37 Phil., 410); *Layda vs. Legazpi* (39 Phil., 83); *Director of Lands vs. Sanz* (45 Phil., 117); and from the aforementioned date of May 18, 1938 to the twenty-first of the same month and year, the first date excluded, following the rule of computation provided by section 4 of Act No. 190, no more than three days elapsed, which is equivalent to saying that, according to his computation, petitioner perfected his appeal within the prescribed period.

The respondent judge, in turn, maintains that the bill of exceptions in question was filed by the petitioner thirty-one days after the decision from which he desired to appeal had been promulgated, and computes the time that has elapsed as follows: From April 5 to May 3, 1938, excluding the first and including the last day, there were twenty-eight days; from the eighteenth to the twenty-first of the same month and year, also excluding the first and including the last day, there were three days, to arrive later at the conclusion that, excluding the time during which petitioner's motion for new trial was under the respondent judge's consideration until petitioner was notified of the order denying it, or from May 4 to May 18, 1938, thirty-one days elapsed or one day more than the thirty days fixed by law.

In other words, the same facts and the same question may be thus expressed: From April 5 to May 21, 1938, according to the theory of both petitioner and respondents, after the first day is excluded and the last day is included, there were forty-six days. After deducting from these forty-six days the sixteen days which the respondent judge spent in considering the petitioner's motion for new trial plus the time which elapsed since then until the latter was notified of the order denying his motion referred to, there are no more than thirty days. Petitioner then argues that his bill of exceptions was filed within that time. The respondent judge does not admit that there are sixteen days which must be deducted from the forty-six which elapsed from April 5 to May 21, 1938, the first day excluded, because he contends that there is and there should be no more than one rule of computation applicable both to himself and the petitioner, and that is the one provided in section 4 of Act No. 190, restated in section 13 of the Administrative Code, The rule aforementioned really says:

"Unless otherwise specially provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; and if the last be Sunday or a legal holiday it shall be excluded."

It is true, however, that the rule which has been almost invariably followed and observed in this jurisdiction, at least since the case of *Paez vs. Berenguer*, *supra*, is that the time employed by the court in deciding motions for new trial of a party desiring to appeal from an adverse judgment should not be counted against him because it is not within his power to avoid it, nor hasten their resolution, except perhaps by motions when there are substantial grounds therefor. It is not amiss to repeat at this point what this court already said in this same case in its resolution of September 27, 1938 because it squarely resolves the question:

"If the rule of computation provided by section 4 of the Code of Civil Procedure be applied with rigorous technicality, it is clear that the bill of exceptions was filed out of time because from April 5 to May 3, twenty-eight days elapsed, and from the eighteenth to the twenty-first of the same month another three days passed, making a total of thirty-one days. But, as we have already said, it is not here attempted to so compute the period of thirty days, but to apply the rule which we have uniformly held in the sense that the time which the court employs in considering the motion for new trial should be excluded. It is admitted that May 3, being the date on which the motion for new trial was filed, should be excluded; but in the computation of the thirty days, section 4 of the Code of Civil Procedure is intended to be applied and May 3 is sought to be included in the counting so that until said date twenty-eight days had already elapsed. This procedure entirely nullifies the rule of exclusion which we have laid down and which now constitutes a precedent in procedural law. There is neither logic nor sense in this procedure which amounts to the exclusion of May 3 only to be included later on. It is either counted or dropped out. The latter excludes the former; no two antithetical ideas may be harmonized or given effect.

"It is important to observe that section 14 of Act No. 496, as amended by Act No. 2347, referring to registration cases, and section 143 of the Code of Civil Procedure, as amended by Act No. 1123, applicable to ordinary civil cases, do not say that the time consumed by the court in considering a motion for new trial should be deducted from the time within which a bill of exceptions should be filed or the appeal perfected. Notwithstanding this silence, this court, in the series of cases cited, enunciated the rule of exclusion

aforementioned. If this court had then proceeded upon a strict criterion, interpreting and applying only the letter of the law, there is no doubt that it could not have laid down the rule that the time which the court employs in considering a motion for new trial, or a motion for reconsideration which is equivalent thereto, should be deducted from the thirty days granted to perfect an appeal in ordinary civil as well as in registration cases."

In conclusion, we hold that petitioner's bill of exceptions was filed by him in the case above-mentioned exactly on the thirtieth day after he was notified of the decision against him from which he desired to appeal, and, therefore, within the legal period.

Wherefore, the petition is granted and it is ordered that the respondent judge proceed immediately to approve, certify and forward to the Court of Appeals the bill of exceptions in question, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Imperial, and Laurel, JJ., concur.

Villa-Real, Concepcion, and Moran, JJ., see dissenting opinion

DISSENTING OPINION

VILLA-REAL, CONCEPCION, AND MORAN, JJ.:

From April 5, 1938, when the respondent received a copy of the decision of the respondent judge to May 3, 1938 when said petitioner filed his motion for new trial, twenty-eight (28) days elapsed, excluding April 5 and including May 3, according to the provisions of section 4 of Act No. 190; that is to say, the petitioner filed his motion for new trial on the twenty-eighth (28th) day after receiving a copy of the decision, leaving him only two (2) days, out of the thirty (30) granted him by section 14 of Act No. 496, as amended by section 26, subsection (b), of Act No. 2347, within which to perfect his appeal by filing a bill of exceptions. The order denying said motion for new trial was received by the petitioner on May 18, 1938 only, upon which date the aforementioned two (2) days remaining to file his bill of exceptions, which he did not file until the 21st of said month and year, began to run. From May 18, 1938 to the 21st of the same month and year, three (3) days elapsed, because under the provisions of section 4 aforecited of Act No. 190, May 18, 1938 must be excluded and May 21, 1938 must be included; that is to say, the counting must be from May 19 to May 21, 1938, inclusive. The aforesaid motion for new trial was, therefore, filed thirty-one (31) days after the petitioner received a copy of the decision, excluding the time which the respondent judge had employed in considering the said motion for new trial.

The petition for mandamus should, accordingly, be denied.

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