

PARISSI *v.* TELECHRON, INC. ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT.

No. 302. Argued March 29, 1955.—Decided April 11, 1955.

In this case, receipt by the Clerk of the District Court of a notice of appeal within the 30-day period prescribed by 28 U. S. C. § 2107 satisfied the requirements of that section; and untimely payment of the \$5 fee required by 28 U. S. C. § 1917 did not vitiate the notice of appeal.

Reversed.

Harry A. Smith argued the cause for petitioner. With him on the brief was *Charles P. Bauer*.

Charles H. Walker argued the cause for respondents. With him on the brief were *Charles E. Nichols* and *Henry J. Zafian*.

PER CURIAM.

The judgment is reversed. The petitioner's notice of appeal to the Court of Appeals from a judgment of the District Court for the Northern District of New York, together with his appeal bond, was received at the office of the Clerk of the District Court within the 30 days prescribed by 28 U. S. C. § 2107 for filing a notice of appeal. In dispatching these papers the petitioner inadvertently failed to include the \$5 fee required by 28 U. S. C. § 1917 to be paid "upon the filing" of a notice of appeal. The Clerk notified the petitioner of his omission, and declined to "file" the notice of appeal until he received the \$5 fee three or four days later. By that time the 30-day period for appeal had expired. Upon petitioner's motion the District Court made a *nunc pro tunc* order according the notice of appeal a filing date as of the date it was originally received by the Clerk.

The Court of Appeals, without opinion, dismissed the appeal as untimely. We think that the Clerk's receipt of the notice of appeal within the 30-day period satisfied the requirements of § 2107, and that untimely payment of the § 1917 fee did not vitiate the validity of petitioner's notice of appeal. Anything to the contrary in such cases as *Mondakota Gas Co. v. Montana-Dakota Utilities Co.*, 194 F. 2d 705 (C. A. 9th Cir. 1952), we disapprove. Our conclusion does not leave § 1917 without other sanctions.

Reversed.