

6 Phil. 429

[ G.R. No. 3500. September 07, 1906 ]

**MACONDRAY & CO., PLAINTIFF, VS. J. M. QUINTERO, JUSTICE OF THE PEACE OF THE CITY OF MANILA, AND R. G. RICOY, DEFENDANTS.**

**D E C I S I O N**

**WILLARD, J.:**

This is an action of mandamus brought originally in this court. On the 10th day of May, 1906, the plaintiff recovered a judgment against the defendant, Ricoy, in the court of the defendant, Quintero, a justice of the peace of this city. Ricoy attempted to appeal from that judgment and presented an instrument which he claimed was an obligation such as is required by section 88 of the Code of Civil Procedure. The justice of the peace approved the bond and sent the papers to the Court of First Instance. On the 21st day of July that court made an order to the effect that the instrument presented was not such an obligation as the law required and, upon the motion of the plaintiff, remanded the case to the court of the justice of the peace. From this order or judgment Ricoy did not appeal.

The object of the present suit is, to secure a mandamus compelling the justice of the peace to issue an execution upon the judgment rendered by him on the ground that it is still in force. The defendants have appeared and answered, and the plaintiff has demurred to the answers and the case is now before us for determination of the questions presented by these demurrers.

(1) An appeal from a judgment of the justice of the peace is not perfected, and that judgment is not vacated until a bond or obligation such as is required by law has been filed in that court.

(2) While the justice of the peace has the right to determine the question as to the sufficiency of the sureties, he has no right to determine conclusively whether the instrument is or is not such a bond or obligation as is required by law.

(3) In the present case the Court of First Instance decided by a final judgment or order which was not appealed from that no sufficient bond or obligation had ever been given for the purposes of the appeal. Whether that decision is right or wrong (and in view of the case of *Mejia vs. Alimorong*,<sup>[1]</sup> [3 Off. Gaz., 620], it would seem to have been wrong) is of no importance in this case. That order or judgment is still in force, unappealed from, and it settles the rights of the parties in this case with reference to the validity of that instrument.

(4) No sufficient bond or obligation having been given in the court below according to the law established in this case and settled by that final order, the judgment of the justice of the peace has never been vacated and is still in force and can be executed. The demurrers to the answers of the respective defendants are sustained and they are each of them given a period of five days from the date of the notice of this resolution in which to amend. If no amended answers are filed within that time, the clerk, without further order from this court, will render final judgment in this case in favor of the plaintiff and against the defendants for the relief demanded in the complaint, with costs against the defendant Ricoy. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.*

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<sup>[1]</sup> 4 Phil. Rep., 572.

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