

[G. R. No. 2997. July 27, 1907]

**ANDRES BARTOLOME, PLAINTIFF AND APPELLEE, VS. SIMEON MANDAC ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

JOHNSON, J.:

On the 13th day of November, 1905, the defendants and appellants presented a petition in this court asking that the extraordinary writ of mandamus be issued, directed to the Hon. Dionisio Chanco, judge of the Court of First Instance of the Province of Ilocos Norte, requiring him to certify a bill of exceptions in this cause.

On the 14th of March, 1900, this court, after hearing the reasons given by the said judge of the Court of First Instance of the Province of Ilocos Norte, why he refused to sign and certify said bill of exceptions, issued the said writ of mandamus, directing the said judge to certify the said bill of exceptions. (4 Off. Gaz., 433.)

Later the bill of exceptions was signed and certified, as directed by this court, on the part of the said Judge Chanco on the 16th day of April, 1906.

The facts presented in this cause are as follows:

The plaintiff commenced an action some time in 1904, in the court of the justice of the peace of the pueblo of Dingras, in the Province of Ilocos Norte. After hearing the evidence adduced in said cause, the said justice of the peace rendered a decision in favor of the plaintiff and against the defendants. From this decision the defendants duly appealed to the Court of First Instance of the said province, presenting a bond in the sum of P100. The appeal from the sentence of the justice of the peace was received by the clerk of the Court of First instance of said province on the 27th day of October, 1904.

On the 19th day of July, 1905, the attorney for the plaintiff presented a motion in the Court of First Instance of the said province, asking that said appeal be dismissed for the reason that the defendants had not paid the docket fee in the Court of First Instance, and also requesting that the cause be returned to the court of the justice of the peace of the pueblo of Dingras for the execution of the sentence rendered by the said justice of the peace.

On the 21st day of July, 1905, the judge of the Court of First Instance of the said province, after considering said motion, granted the same and ordered that the said appeal be dismissed and that the cause be returned to the said justice of the peace for execution of the sentence rendered by said justice.

On the 21st day of July, 1905, the clerk of the Court of First Instance of the said province sent by mail a notice of the said order of the court to the defendants.

The record does not show that the defendants had received any notice whatever of the motion presented by the plaintiff on the said 19th day of July, 1905.

On the 4th day of August, 1905, the defendants received notice of the decision of the court dismissing the said appeal.

On the 7th day of August, 1905, the defendants presented a motion in the Court of First Instance of the said province, asking that the said order of the 21st day of July, 1905, made by the judge of the Court of First Instance of the said province, be set aside, which motion was denied by the said judge on the 4th day of September, 1905.

To this order the defendants duly excepted, and gave due notice of their intention to appeal from the said order of the court and to present a bill of exceptions.

On the 13th day of October, 1905, the judge of the said Court of First Instance, refused the defendants the right of appeal, holding that the order of the 4th of September was not an appealable order, and therefore, refused to sign the bill of exceptions presented by the defendants.

The only error assigned by the defendants and appellants is that the lower court erred in dismissing the appeal from the judgment of the justice of the peace of

said pueblo.

The only question presented to this court by the bill of exceptions is, whether or not the judge of the court below was justified in dismissing the appeal without first giving due notice to the parties of said motion of the defendants and appellants.

Rule 10 of the rules of the Courts of First Instance of the Philippine Islands, provides:

“When no other provision is made by law, no action shall be taken on any motions or applications unless it appears that the adverse party had notice thereof three days before the time set for the hearing thereof.”

In the present case the record discloses the fact that the motion to dismiss the appeal was made on the 19th of July, 1905, and the order dismissing said appeal under said motion was made on the 21st day of July, 1905, two days after the presentation of said motion. It is clear, therefore, that the defendants did not have notice of said motion three days before the time set for the hearing thereof. The defendants did not have notice of the pendency of the motion before it was passed upon by the court, and therefore had no opportunity to present their defense. No other provision of law has been called to our attention, and it is believed there is none, justifying the lower court in dismissing the appeal upon the motion of the plaintiff and appellee, with or without first giving the defendants due notice. (Reyes vs. Alburo et al., 5 Off. Gaz., 147.1)

For these reasons the order of the judge of the Court of First Instance of the Province of Ilocos Norte, of the 21st day of July, 1905, dismissing said appeal and ordering the cause returned to the justice of the peace of the pueblo of Dingras, is hereby annulled and it is so ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

