

RURAL PROGRESS ADMINISTRATION, PETITIONER, VS. DOMINADOR TEMPOROSA ET AL., RESPONDENTS.

G.R. No. L-2612. April 27, 1949

Ponente: TUASON, J.

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TUASON, J.:

This proceeding relates to the refusal of the Court of Appeals to dismiss respondent's appeal from a judgment of the Court of First Instance of Laguna. The ground of the motion to dismiss was that no appeal bond had been filed before the record on appeal was approved.

All are agreed that appeal bond is essential to the perfection of an appeal. That such bond was not submitted up to the time the record on appeal was approved is attested by the record.

The reasons for the Court of Appeals' order denying the motion to dismiss are not stated. It appears from the statements of counsel in the course of the oral argument that the Court of Appeals relied on the case of *Santiago vs. Valenzuela* (78 Phil., 397).

There is little or no analogy between that case and the case at bar. In the case cited, the appellee not only failed to object to the approval of the record on appeal in the Court of First Instance but he moved the Supreme Court to dismiss the appeal only after the appellants had presented their brief.

The petitioner here is not guilty of unreasonable delay. If the intervenor and appellee did not oppose the approval of the record on appeal in the court below, it was because of the belief that all the legal requirements had been fulfilled. The counsel for the appellant himself helped to lull the counsel for the intervenor and appellee into this belief; the former had asked for an extension of 30 days to file the record on appeal and an appeal bond thereby implying that such bond was forthcoming. When they discovered the omission, appellee's counsel lost no time in taking steps to have the appeal dismissed by the Court of First Instance, and when that motion was denied because, according to that court, the record had been transmitted to the Court of Appeals and it had lost jurisdiction over the case, the motion was, without unnecessary delay, reiterated in the appellate court.

The writ is granted with costs against respondent Temporosa.

Moran, C.J., Paras, Feria, Pablo, Montemayor, and Reyes, JJ., concur.

Bengzon, J., concurs in the result.

DISSENTING

PERFECTO, J.:

We dissent.

There is not enough ground to reverse the action of the Court of Appeals.

Failure to file an appeal bond can be corrected and in the present case correction will not do any harm to any party.

The right to appeal must not be defeated by a mere procedural technicality.

The administration of justice must not be made futile by resort to technical matter of form that do not affect the substantial rights of the parties.

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