

## **SANTOS CONTRERAS, RECURRENTE, CONTRA RAFAEL DINGLASAN, JUEZ DE PRIMERA INSTANCIA DE MANILA, EL SHERIFF DE MANILA, Y PEDRO SANTOS, RECURRIDOS.**

*G.R. No. L-1280. August 27, 1947*

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### **PABLO, M.:**

El Juzgado Municipal de Manila dicto sentencia el 5 de junio de 1946 en el asunto de desahucio, Pedro Santos contra Santos Contreras, condenando al ultimo a pagar al demandante la cantidad de P160 en concepto de alquiler de la casa ocupada durante los meses de abril y mayo de 1946 y la suma de P100 mensual correspondiente a los meses subsiguientes hasta que el demandado restituya la casa. Contra esta sentencia el demandado apelo para ante el Juzgado de Primera Instancia. No presento fianza de apelacion de P25, pero presto una supersedeas bond en la cantidad de P300 para responder de los alquileres, daños y costas.

Desde julio de 1946, el demandado-apelante comenzo a depositar la cantidad de P100 mensual en la escribania del juzgado para el pago de los alquileres de la casa por los meses que vayan venciendo.

En 10 de octubre de 1946 el Juzgado de Primera Instancia dicto sentencia condenando al demandado a desalojar la casa y a pagar la cantidad de P40 para el mes de abril de 1946 y la cantidad de P100 mensual para mayo y meses subsiguientes hasta que el demandado haya desalojado la finca.

El 14 de noviembre de 1946 el demandado presento su mocion de nueva vista que fue denegada.

El 28 de noviembre de 1946 el demandado presento un escrito excepcionandose de la decision y anunciando su intencion de apelar para ante el Tribunal Supremo y al mismo tiempo presento su expediente de apelacion con señalamiento del dia 7 de diciembre para su vista.

En 9 de diciembre de 1946 antes de actuar el Juzgado sobre la aprobacion del expediente de apelacion, el demandado presento una supersedeas bond en la cantidad de P400 para responder de los alquileres, daños y costas. En el mismo dia el Juzgado de Primera Instancia desaprobo el expediente de apelacion por la razon de que no ha sido perfeccionado de acuerdo con la regla 41.

El 16 de diciembre de 1946 el demandado presento una mocion de reconsideracion de la orden de 9 de diciembre y fue denegada el 24 del mismo mes.

El 20 de enero de 1947 el Juez ordeno la ejecucion de la sentencia.

Como recurrente, el demandado-apelante acude a este Tribunal en un recurso original de mandamus con un interdicto prohibitorio preliminar y pide que la orden del Juzgado de Primera Instancia de Manila de 9 de diciembre de 1946 desaprobando el expediente de apelacion sea revocada juntamente con la orden de 24 de diciembre denegando su mocion de reconsideracion y que se ordene al mismo Juzgado que apruebe el expediente de apelacion.

Los recurridos sostienen que no se ha perfeccionado la apelacion porque el apelante no presto fianza de apelacion

de P60 con infraccion de la Regla 41, articulo 5. Los recurridos no se percatan que el mismo articulo dice en parte "or unless a supersedeas bond is filed." Como se habia prestado ya una supersedeas bond en el Juzgado Municipal para responder de las rentas o daños y costas, la fianza de apelacion de P60 es innecesaria. Los recurridos alegan, ademas, que la supersedeas bond, segun como esta redactada, responde solamente de las costas en que pueda ser condenado el apelante en el Juzgado de Primera Instancia y no incluye las costas que el Tribunal Supremo pueda imponer contra el.

El recurrente contiene que su supersedeas bond de P300 ya le releva de su obligacion de prestar una fianza de apelacion de P60 al apelar contra la decision del Juzgado de Primera Instancia y como argumento invoca la decision en el asunto de Belmonte contra Marin (76 Phil., 198). El apelado Belmonte en dicha causa sostuvo que el Juzgado de Primera Instancia debio haber sobreseido la apelacion contra la decision del Juzgado Municipal porque el apelante Marin no presto fianza de apelacion de P25. (Regla 40, art. 3.) Este Tribunal dijo que como el demandado habia prestado ya una supersedeas bond en la cantidad de P80 para responder de las costas "hasta que se dicte sentencia definitiva," la prestacion de una fianza de apelacion era innecesaria.

En el asunto de Fernando contra De la Cruz (61 Jur. Fil., 460), cuando estaba en vigor aun el articulo 88 del Codigo de Procedimiento Civil tal como fue enmendado por la Ley No. 4115, el Tribunal Supremo dijo:

"Debe observarse que es preciso que el demandado preste una fianza para el registro del asunto en el juzgado de primera instancia y para el pago de los alquileres, daños y perjuicios, y costas." En este ultimo caso no solamente perfecciona su apelacion sino que tambien suspende la ejecucion de la sentencia. En otras palabras, el demandado, que apela al juzgado de primera instancia, puede prestar una fianza para el pago de las costas solamente, o puede prestar una fianza para el pago de las rentas, daños y perjuicios, y costas. Es perfectamente evidente, por lo tanto, que la fianza para el pago de las rentas, daños y perjuicios, y costas incluye la obligacion de pagar las costas. ¿Por que habra de prestar dos fianzas para el pago de las costas? No se nos ha llamado la atencion a ninguna disposicion legal ni a ninguna decision de este Tribunal en que se requiera que el apelante preste una fianza separada por P50 para el pago de las costas cuando presta una fianza satisfactoria para el pago de rentas, daños y perjuicios, y costas. Por el contrario, la misma fraseologia de la ley, que dispone que si el demandado desea suspender la ejecucion de la sentencia mientras este pendiente la apelacion, debera prestar una fianza 'para el registro del asunto en el juzgado de primera instancia, y para el pago de los alquileres, daños y perjuicios, y costas,' parece prever la prestacion de una sola fianza, siempre que se preste dentro del plazo para la interposicion de la apelacion".

El articulo 8 de la Regla 72 del Reglamento vigente dispone que:

"Si se dictare sentencia contra el demandado, se expedira inmediatamente la ejecucion, a menos que se perfeccionare una apelacion y el demandado prestare fianza bastante para suspender la ejecucion de dicha sentencia, aprobada por el juez de paz o municipal y otorgada en favor del demandante para el registro de la causa en el Juzgado de Primera Instancia y para el pago de los alquileres, daños y costas hasta que se dicte sentencia definitiva, \* \* \*. Se transmitiran por el juzgado de paz o municipal la fianza antes mencionada, asi como los otros papeles, a la escribania del Juzgado de Primera Instancia ante el cual se apelare."

La fianza de suspension o supersedeas bond garantiza el pago de la renta adeudada o daños y costas hasta que termine definitivamente el asunto. Como una de las partes no se conformo con la decision del Juzgado de Primera Instancia sino que, por el contrario, interpuso apelacion, no podia terminar el asunto definitivamente en dicho juzgado. La fianza, pues, no debe responder solamente de las costas en el Juzgado de Primera Instancia sino hasta de las del tribunal en que terminara definitivamente el asunto en sentencia final.

El articulo 9 de la misma regla dispone que cuando el demandado apela de la sentencia del Juzgado de Primera Instancia, la ejecucion de la sentencia no sera suspendida a menos que el apelante pague al demandante o al juzgado de apelacion los alquileres que vayan venciendo. Este articulo no ordena la prestacion de otra supersedeas

bond para suspender la sentencia como se exige en el Juzgado de Paz o Juzgado Municipal. Es porque ya existe una, la que se presta en alguno de dichos juzgados cuando se apela contra su decision.

En el caso presente se presto una supersedeas bond defectuosa: su texto no concuerda con los terminos del articulo 8 de la Regla 72; solamente responde por las rentas, daños y costas que pudiera dictar el Juzgado de Primera Instancia, cuando deba responder de las rentas, daños y costas hasta la terminacion final del asunto. El apelado podia haber impugnado la fianza y pedido que se prestase otra para subsanar el defecto de la ya prestada, y el Juzgado indudablemente hubiera accedido a la peticion. Era y es de justicia ordenar la prestacion de una fianza de acuerdo con los terminos de la Regla 72, articulo 8 en vez de ordenar la ejecucion de la sentencia. "El Juzgado de Primera Instancia tiene discrecion para ordenar su prestacion en lugar de ordenar la ejecucion de la sentencia." (Zamora contra Dinglasan e Hilario, 77 Phil., 46, 50.) En el asunto de Mejia contra Alimorong (4 Jur., Fil., 582), se decidio que "una fianza de apelacion es suficiente cuando se ajusta sustancialmente a lo que manda la ley, aunque difiera en sus terminos, con tal de que su efecto legal sea el de asegurar al apelado todos los derechos que se propuso, garantizar la ley, en cuya virtud se exige la fianza." En De Castro y Morales contra Juez de Paz de Bocaue (33 Jur. Fil., 638), este Tribunal dijo:

"Con vista de la doctrina enunciada en el asunto de Tirangbuaya contra Juez de Primera Instancia de Rizal (14 Jur. Fil., 629); Requepo contra Juez de Primera Instancia de Ilocos Sur, y Rosales (21 Jur. Fil., 79) es evidente que las recurrentes tienen derecho al recurso que solicitan y a que se anule y se deje sin efecto la sentencia en cuya virtud se sobreseyo la apelacion interpuesta por dichas recurrentes.

"En el asunto de Tirangbuaya contra Juez de Primera Instancia de Rizal (14 Jur. Fil., 629), declaramos expresamente que en casos de apelaciones contra sentencias recaidas en juicios sumarios en las cuales resulta que, de buena fe, y no con el proposito de retrasar el asunto, se presta 'una fianza, compromiso u otro documento cualquiera el cual 'garantiza el apelado cuando menos una proteccion parcial de sus derechos, tal fianza, obligacion u otro instrumento, una vez aprobado por el Juez de Paz, es suficiente para conferir jurisdiccion al Juez de Primera Instancia,' cuando menos al objeto de permitir que se enmienden los defectos que pudiera tener la fianza; y expusimos nuestra creencia de que la competencia asi adquirida por el Juzgado de Primera Instancia, abarcaria tambien al acto de permitir que se subsanase la omision de no haber hecho el deposito del dinero que se declara adeudado en concepto de alquileres o uso de la finca. Segun la doctrina sentada en aquel asunto, pudieramos haber fundado nuestra sentencia en el presente, en la razon de que el Juez recurrido tenia competencia para conceder a los apelantes un plazo razonable a fin de que subsanasen el no haber depositado el importe de la sentencia dictada por el Juez de Paz, constando que la fianza prestada se proponia claramente a responder de todos cuantos daños y perjuicios pudieran adjudicarse en apelacion."

Que tenia el apelante intencion de garantizar el pago de todas las costas hasta la terminacion del asunto no hay duda alguna, pues solo respondia por P160 por alquileres de abril y mayo y P25 por apelacion segun Regla 40, articulo 3: del importe de la fianza de P300 quedaba un remanente de P135, dos veces mas que la fianza de apelacion (P60), Regla 44, articulo 5.

La justicia sustancial es el ideal hacia el cual deben dirigirse todos los esfuerzos de los tribunales al interpretar y aplicar las disposiciones del Reglamento. (Regla 1, articulo 2.)

En su mocion de 2 de junio, el recurrido pide la ejecucion de la sentencia dictada en la Causa Civil No. 73144 del Juzgado de Primera Instancia de Manila porque el recurrente no deposito los alquileres correspondientes a los meses de Febrero y siguientes. Este Tribunal no puede actuar sobre dicho asunto porque no esta elevado aun en grado de apelacion; precisamente el recurrente pide que se ordenase al Honorable Juez recurrido que apruebe el expediente de apelacion y que lo eleve a esta Superioridad. Una mocion pidiendo la disolucion del interdicto prohibitorio preliminar tal vez hubiera sido procedente; pero el apelante ha depositado ya la cantidad de P400 para los meses de febrero a junio, ademas de estar ya garantizado el pago de las rentas, daños y costas con la segunda

supersedeas bond of P400 presented on 9 de diciembre de 1946 sin contar con la fianza de P200 para responder de los daños y perjuicios que pudiera causar la expedición de la orden de interdicto prohibitorio preliminar.

Procede revocarse la orden del Juzgado de Primera Instancia de Manila de 9 de diciembre de 1946 desaprobando el expediente de apelación, la orden de 24 del mismo mes denegando la moción de reconsideración y la orden de 20 de enero de 1947 ordenando la ejecución de su sentencia y debe ordenarse al Honorable Juez recurrido que apruebe el expediente de apelación y que lo eleve al Tribunal de Apelación correspondiente.

Dictese sentencia a tenor de lo resuelto.

Moran, Pres., Perfecto, Briones, Hontiveros, y Tuason, MM., están conformes.

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### DISSENTING

**PARAS, J.:**

I dissent because the defendant-petitioner knew that the decision against him had become final. He had even asked for the suspension of the execution of the judgment under the provisions of Commonwealth Act No. 689 as amended by Republic Act No. 66.

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### DISSENTING

**FERIA, J.:**

This is a petition for mandamus to compel the respondent judge to approve the record on appeal filed by the petitioner in the Court of First Instance of Manila, which refused to approve said record on the ground that no appeal bond was filed by the appellant for the perfection of an appeal from the Court of First Instance to the Supreme Court.

Before proceeding it may not be amiss to note that in an action for mandamus to compel a respondent judge to allow or approve a record on appeal under section 15, Rule 41, the jurisdiction of this Court is limited to order the respondent judge to do the act complained of or allow the record on appeal, if it is shown that the notice of appeal, appeal bond and record on appeal have been filed within the period fixed by law for the perfection of an appeal, and the respondent judge has refused to approve said record. No other question may properly be raised and decided in the action, and therefore the majority decision which revokes the order of the respondent judge denying the motion for reconsideration filed by the petitioner and ordering the execution of the judgment on the ground that judgment has become final, is improper and unnecessary, because such revocation would be a necessary legal sequence of the approval of the record on appeal if ordered by this Court.

It is also to be observed that the filing of the so-called supersedeas bond for P400 on December 9, 1946, the same date on which the respondent judge disapproved the record on appeal, conditioned upon the payment of rents or damages and costs which may be awarded against the petitioner on appeal in the Supreme Court, can not be taken into consideration in the resolution of this case, because it does not appear that said bond was not even submitted on said or any other subsequent date for approval by the respondent judge as required by section 5, Rule 41, and it was attached to the record nine days after the expiration of the period for perfecting an appeal.

Going into the merits, we are sorry to dissent from the majority decision, inasmuch as from the facts of the case and the law applicable thereto it clearly appears that the petition for mandamus is without merit, because (1) the

petitioner has not only lost but waived his right to appeal if he had still any, and therefore has no cause of action to compel the respondent judge to approve the record on appeal; and (2) the respondent judge has not failed to perform a duty enjoined by law but has, on the contrary, acted in accordance with law in disapproving the record on appeal.

(I) That the petitioner has not only lost his right to appeal as we shall show later, but has waived or abandoned it, is evident. Convinced that the bond he has filed in the municipal court to suspend the execution of the appealed judgment does not cover the appeal bond required by section 5, Rule 41, for the perfection of an appeal from the Court of First Instance to the Supreme Court, as shown by the clear and express terms of the said bond, the petitioner, after the court had ordered the execution of the judgment on December 9, 1946, filed on January 2, a petition for suspension of the execution of the judgment against him for a period of six months in accordance with section 4, of Commonwealth Act No. 689, as amended by Republic Act No. 66, which motion was set for hearing by the petitioner on January 11, 1947, and denied by the respondent judge on January 16, 1947.

The filing of said petition for suspension of execution of judgment constitutes a waiver or an abandonment on the part of the petitioner of his right to prosecute the appeal by mandamus, for the simple reason that, according to law, such petition may only be filed and passed upon by the court after the judgment has become final. An appeal will be considered as abandoned where appellant fails to present or prosecute it within the time prescribed by statute or rule of court, or does an act inconsistent with a prosecution of it (3 Cyc., 201). And that the attorney for the petitioner knew that it had that effect, is evidenced by the fact that on January 15 the petitioner filed ex-parte a motion to be allowed to withdraw his said petition, and now he asks this Court to annul the order of the respondent judge dated January 16, 1947, denying his motion for withdrawal of said petition. His motion to withdraw reads as follows:

"MOTION TO WITHDRAW

"Comes now the undersigned on behalf of the defendant and to this Honorable Court respectfully shows:

"1. That the undersigned desired to have a ruling by the Supreme Court on the right of the defendant to appeal from the decision of this Court which was denied in the order of this Court dated December 24, 1946, by filing a petition for a writ of mandamus;

"2. That the undersigned reiterates his contention that inasmuch as there is a subsisting supersedeas bond which was filed in this Court when this case was appealed from the Municipal Court and that said supersedeas bond answers also for costs, and inasmuch as an appeal bond is required to answer for costs, and inasmuch also as it was held in a recent case decided by the Supreme Court that a supersedeas bond filed before rendition of the decision of the Court of First Instance continues in effect when the defendant appeals to the Supreme Court, the appeal in this case should have been allowed.

"Wherefore, the undersigned respectfully prays that he be allowed to withdraw his petition for the suspension of the execution of the judgment filed on January 2, 1947.

"Manila, January 15, 1947."

The evident purpose of the petitioner in filing a motion to be allowed to withdraw his motion for suspension of the execution of the judgment, was to prosecute his appeal abandoned by such motion, in order that he can have, according to what he states in the same motion, a ruling of this Court on the sufficiency of the supersedeas bond filed in the municipal court for the perfection of an appeal from the decision of the Court of First Instance to the Supreme Court. But the respondent judge denied the petition for the suspension of the execution of judgment and, by necessary implication, the motion to withdraw said petition, on the ground that the court has "found in its decision dated October 10, 1946 that the premises in question are being used by the defendant to carry on his ice

cream business and therefore not used solely for dwelling purpose," and consequently the petitioner was not entitled to such suspension granted only to tenants of residential premises.

(II) The respondent judge acted in conformity with the provision of sections 3 and 13, Rule 41, in disallowing or dismissing the appeal on the ground that no appeal bond has been filed by the petitioner, because the supersedeas bond filed by the petitioner with, and approved by, the municipal court included only the appeal bond for the perfection of the appeal from the municipal court to the Court of First Instance, and not the appeal bond required by section 5, Rule 41, for the perfection of an appeal from the Court of First Instance to the Court of Appeals or the Supreme Court. The supersedeas bond Exhibit A-1 filed by the petitioner with the municipal court expressly stipulated that the principal (petitioner) and his surety Manila Surety and Fidelity Co., Inc. "bind themselves jointly and severally in favor of the plaintiff, that the defendant will diligently prosecute his appeal to the Court of First Instance of Manila, and he will pay whatever rents, damages and acts which may be awarded against him on the appeal or as a dismissal thereof not exceeding the amount of three hundred pesos (P300) Philippine currency."

The execution of the judgment ordered by the respondent judge on the ground that the judgment against the petitioner has become final, because no appeal bond has been filed, should not be confused with the execution of a judgment of the municipal judge during, and without prejudice to, the pendency of an appeal in the Court of First Instance because of failure on the part of the defendant-appellant to file a supersedeas bond to answer for the rents or damages awarded by the inferior court in its judgment, or to pay to the appellee or deposit with the court the rents or damages accruing during the pendency of the said appeal. The law governing the effect of failure to file said supersedeas bond and to pay or deposit said rents or damages has lately been construed liberally by this Court in order to carry out the intention of the Legislature in enacting Commonwealth Act No. 689, as amended by Republic Act No. 66. But the law regulating the perfection of an appeal in forcible entry and illegal detainer as well as in all other cases, or the effect of failure to file on time an appeal bond on the right to appeal, has not been and can not be construed liberally in favor of the tenants, for the legislative intent in enacting Commonwealth Act No. 689 as amended by Republic Act No. 66 can not be extended thereto.

The ruling in the decision of this Court in the cases of *Fernando vs. De la Cruz* (61 Phil., 435), and *Belmonte vs. Marin* (76 Phil., 198), quoted in the majority decision, in which it was held that the supersedeas bond to pay rents, damages and costs, includes the appeal bond for perfecting an appeal from the inferior court to the Court of First Instance is not applicable to the present case, for the question now in issue is whether the supersedeas bond filed by the petitioner in the municipal court covers the appeal bond required for perfecting an appeal from the Court of First Instance to the Court of Appeals or the Supreme Court. And the ruling in the case of *Zamora vs. Dinglasan* (77 Phil., 46) does not also apply, because it referred to execution of the judgment of the inferior court during the pendency of the appeal to the Court of First Instance for failure to make on time the monthly deposit required by section 8, Rule 72, of the Rules of Court.

The majority decision is grounded upon two premises, to wit: (1) That the bond required in section 8, Rule 72, answers not only for costs in the Court of First Instance but also for those in the Supreme Court, because the bond is executed to "pay rents, damages and costs down to the time of final judgment in the action;" and (2) that the bond filed by the petitioner in the municipal court includes the appeal bond for appeal to the Supreme Court, and though defective it guarantees a partial protection of the right of the appellee to costs which may be awarded by the Supreme Court, and therefore it may be amended in accordance with the ruling of this Court in the cases cited in the decision.

(1) Section 8 in its pertinent part, and section 9, Rule 72, read as follows:

"If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond approved by the justice of the peace or

municipal court and executed to the plaintiff to enter the action in the Court of First Instance, and to pay the rents, damages, and costs down to the time of the final judgment in the action, and unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist, or, in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment. All moneys so paid to the Court of First Instance shall be deposited in the provincial treasury, or in the City of Manila in the Insular Treasury, and shall be held there until the final disposition of the appeal. \* \* \* if the case is tried on its merits in the Court of First Instance, any money paid into court by the defendant for the purposes of stay of execution shall be disposed of in accordance with the provisions of the judgment of the Court of First Instance, \* \* \*.

"SEC. 9. Stay of execution on appeal to Court of Appeals or Supreme Court.—Where defendant appeals from judgment of the Court of First Instance, execution of said judgment shall not be stayed unless the appellant pays either to the plaintiff or into the appellate court the same amounts referred to in the preceding section to be disposed of in the same manner as therein provided."

The first premise is wrong, because it clearly appears from the above quoted provisions that the bond provided in section 8 includes only an appeal bond for perfecting an appeal to the Court of First Instance, and not an appeal bond required for an appeal from the Court of First Instance to the Court of Appeals or Supreme Court, for the following reasons:

(a) Because, according to the provisions of said section 8, if the defendant appeals and desires to stay the execution of the judgment, he must execute a sufficient bond "to the plaintiff to enter the action in the Court of First Instance, and to pay the rents, damages, and costs down to the time of the final judgment in the action," and to pay to the plaintiff or to the court the amount of rent due from time to time during the pendency of the appeal; all money so paid to the Court of First Instance shall be deposited in the provincial treasury or the Insular Treasury, and shall be held there until the final disposition of the appeal; and if the case is tried on its merit in the Court of First Instance, any money paid into the court by the defendant for the purpose of stay of execution shall be disposed of in accordance with the provisions of the judgment in the Court of First Instance. And from the above it clearly appears that the phrase "down to final judgment in the action," refers to the "final judgment in the action" entered in the Court of First Instance, or "final disposition of the appeal" in said court, "in accordance with the provisions of the judgment of the Court of First Instance"; for it is an elementary rule of statutory construction that particular words and phrases employed in a statute are not to be considered in themselves alone and construed as if isolated from the rest, but they are to be interpreted with reference to the language surrounding and accompanying them—to the whole context.

(b) Because the subject matter of section 8, Rule 72, is the stay of execution of the judgment of the inferior court in case of defendant's appeal to the Court of First Instance, and that of section 9 is the suspension of execution of the judgment of the Court of First Instance on defendant's appeal to the Court of Appeals or the Supreme Court; and according to a well-established rule of statutory construction, the words of a statute should be construed with reference to the subject matter, and if they are susceptible to several meanings that one is to be adopted which best accords with the subject to which the statute relates. Therefore, as the subject matter of section 8 is appeal from the judgment of justice of the peace or municipal court and suspension of execution of the said judgment during the pendency of the appeal, the words "final judgment in the action" should be construed to mean final judgment in the action by the Court of First Instance on appeal, for such construction best accords with the subject to which said section 8, Rule 72, relates, and not final judgment in the proceeding in the Court of Appeals, or Supreme Court on appeal, to which said section 8 does not relate.

(c) Because to construe that the bond under consideration includes the appeal bond from the Court of First Instance to the Court of Appeals or the Supreme Court would lead to great inconveniences and absurdities, and would make the appeal by the defendant burdensome if not prohibitive. Such a construction would lead to great inconveniences, for it is difficult if not impossible to fix the amount of the bond to be required from defendant-appellant, which according to the decision has to cover the rents or damages and costs which may be awarded to the plaintiff by the Court of Appeals and Supreme Court, since the total amount of monthly rents or damages which would accrue from time to time during the pendency of the appeal depends upon the length of time it would take for the Court of First Instance and the Court of Appeals or Supreme Court to dispose of the appeals. It would lead to absurdities for such a construction or theory assumes, without any basis, that the Court of First Instance will decide the appeal against the defendant-appellant, and besides that the defendant shall necessarily appeal from the adverse decision of the Court of First Instance. And it would make the appeal from the inferior court to the Court of First Instance more burdensome if not prohibitive, because the defendant-appellant would have to file a supersedeas bond to answer not only for said rents or damages that have already accrued, and costs which may be awarded by the Court of First Instance, but also for rents or damages which would accrue from time to time down to final judgment by the Supreme Court and costs which may be awarded by this Court; and the amount of the supersedeas bond may be such as to be in many cases beyond the limited means of the defendant-appellant.

(d) Because section 2, Rule 40, relating to perfection of appeal from the inferior court to the Court of First Instance in all civil actions including forcible entry and illegal detainer, requires only the filing of an appeal bond of P30 or a cash bond of P25; and there is no reason why in case a defendant-appellant desires to appeal and stay the execution of the judgment of the inferior court in forcible entry and illegal detainer, he should be required to put up a bond which shall cover not only the appeal bond required for the perfection of an appeal to the Court of First Instance, but also the appeal bond of P60 required by sections 3 and 5 of Rule 41 for perfecting an appeal to the Court of Appeals or Supreme Court, irrespective of whether or not he would subsequently appeal to said courts.

(e) And, finally, because this Supreme Court in the case of Mitschiener vs. Barrios (76 Phil., 55), in construing the supersedeas bond required in section 8, Rule 72, held that said bond answers only for rents or the reasonable compensation for the use and occupation of the premises adjudicated by the inferior court in favor of the plaintiff, and not those which may accrue from time to time during the pendency of the appeal, and that the deposit made by the defendant with the court of the amount of rents or damages in arrears awarded by the municipal court to the plaintiff and of P25 as appeal bond (together with the notice of appeal and deposit of docket fees), was sufficient to perfect his appeal and to suspend the execution of the judgment of the municipal court. In view of said ruling in the decision in said case, penned by Mr. Justice Perfecto, and signed or concurred in by Mr. Justice Paras, Mr. Justice Briones, Mr. Justice Pablo, the undersigned and the then Justices Jaranilla and De Joya, and promulgated on February 1, 1946, the majority can not now hold, without reversing itself for no reason whatever, that the supersedeas bond under consideration answers for the costs which may be awarded by this Court, on the ground that under section 8, Rule 72, said bond is to pay the rents or damages which may be awarded by the court of last resort, and therefore also the costs therein.

(2) The second premise on which the decision is based is also wrong, because in the present case there is a complete failure on the part of the petitioner to file the appeal bond required for the perfection of appeal from the Court of First Instance to the Supreme Court. The bond for three hundred pesos (P300) filed by the petitioner expressly states that it covers only the costs in the Court of First Instance, and does not guarantee even a partial protection of the right of the appellee to the costs which may be awarded by the Supreme Court on appeal, and therefore it can not confer on the appellate court the power or jurisdiction to allow such defects in the bond to be

amended. And it is an elementary rule in civil law that "The liability of a surety is not to be extended by implication beyond the terms of his contract. To the extent, and in the manner, and under the circumstances pointed out in his obligation, he is bound, and no further." (La Insular vs. Machuca, 39 Phil., 567; Government of the P. I. vs. Herrero, 38 Phil., 410.) Therefore, the decision of this Court in the cases of De Castro vs. Justice of the Peace of Bocaue based on the ruling laid down in the case of Requepo vs. Judge of First Instance of Ilocos Sur and Rosales (21 Phil., 77) and Tirangbuaya vs. Judge of First Instance of Rizal (14 Phil., 613), far from being in support thereof, are against the theory of the majority.

In the case of Requepo vs. Judge of First Instance of Ilocos Sur and Rosales, this Court held the following:

"The defendant, in the justice of the peace court, did not comply or even attempt to comply with these express provisions of the statute. He presented, as we have said, in that court no bond or obligation whatever, neither did he offer to present any such obligation. He did not pay or deposit or offer to do so the damages and costs. He presented a bond only when directed to do so by the Court of First Instance, after the plaintiff had presented a motion asking that court to dismiss the appeal. He has not yet paid or deposited the damages and costs.

\* \* \* \* \*

"In the case of Tiranbuaya vs. Judge of First Instance of Rizal (14 Phil., 613), this court said:

" 'We have frequently held that the Legislature, under its general authority to regulate appellate procedure, may require appeal bonds of the appellant in both civil and criminal cases, and in our decisions we have on many occasions recognized and accepted the general principle that acts required by statute to perfect an appeal are jurisdictional, and must be complied with to vest the appellate court with power to entertain the appeal. Manifestly, therefore, neither the appellate nor the trial court, over the objection of appellee, can dispense with the statutory security or accept a security of a different character from that named in the statute, and it follows, as of course, that where no bond is given, the appeal must, upon motion of the appellee, be dismissed or stricken from the docket, unless it appears that the requirement has been waived by the appellee, as a technical step in appellate procedure purely for the appellee's benefit.

" 'So also when an instrument purporting to be an appeal bond is so fatally defective as to be absolutely void or is not such an instrument as is contemplated by the statute, the appellate court acquires no jurisdiction. (Macondray & Co. vs. Quintero et al., 6 Phil., 429.)

" 'But an appeal bond or undertaking is sufficient where it substantially complies with the statute, although it varies from its language, provided its legal effect is to secure to the appellee all the rights contemplated by the statute requiring the bond. (Mejia vs. Alimorong, 4 Phil., 572.)'

"Had the defendant Rosales presented the bond or undertaking to the justice of the peace and if such bond or undertaking had been defective, these defects could have been cured in the Court of First Instance, even over the objection of the plaintiff, provided that it had been made to appear to the Court of First Instance that the appeal was taken in good faith and not for delay; but where, as in the case under consideration, no attempt whatever was made to comply with the express provisions of the statute, the Court of First Instance acquired no jurisdiction of the subject matter of the action, except to dismiss the appeal if the appellee, in due time, requested the dismissal. We find no adjudicated case, either in this jurisdiction or in the United States, where the appellate court has been allowed to take and retain jurisdiction where no attempt was made in the justice of the peace court to comply with the statute."

**PADILLA, J.:**

I concur in this opinion.

## DISSENTING

**HILADO, J.:**

I regret my inability to see eye to eye with the majority in the disposition of this case.

Petitioner himself says (Petition, par. 9; Annex C of same, par. 5) that the period within which he had to perfect his appeal from the judgment of the Court of First Instance to the Supreme Court expired on November 28, 1946. Rule 41, section 3, provides:

"SEC. 3. How appeal is taken.—Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. \* \* \*" (Italics supplied.)

Section 5 of the same Rule stipulates, among other things, as follows:

"The appeal bond shall be in the amount of sixty pesos (P60) unless the court shall fix a different amount, or unless a supersedeas bond is filed. \* \* \*" (Italics supplied.)

Sections 9 and 13 of the same Rule ordain:

"SEC. 9. When appeal deemed perfected; effect thereof.—Upon the filing of the notice of appeal and the approval of the appeal bond and the record on appeal, the appeal is deemed perfected and the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, and to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court.

"SEC. 13. Effect of failure to file notice, bond, or record on appeal.—Where the notice of appeal, appeal bond, or record on appeal is filed but not within the period of time herein provided, the appeal shall be dismissed." (Italics supplied.)

Considering the provisions of the aforequoted sections of Rule 41 together, it seems apparent that the appeal must be perfected within 30 days from notice of the order or judgment appealed from (of course, discounting any interruption of said period pursuant to other pertinent provisions of the Rules), failing which the order or judgment automatically and by operation of law becomes final and unappealable, subject in proper cases to the equitable remedy afforded by Rule 38. As specifically provided in section 13, where the notice of appeal, appeal bond, or record on appeal is filed but not within the period prescribed, the appeal shall be dismissed. In the case where a supersedeas bond is filed, as contemplated in section 5, the appeal bond is naturally dispensed with. But when should that supersedeas bond be filed in cases like the present? I answer this question by saying that normally it will have been filed even before the commencement of the thirty-day period in forcible entry and detainer cases where such supersedeas bond is filed with the justice of the peace or municipal court, pursuant to section 8 of Rule 72, and in exceptional cases, it may be filed thereafter but in my opinion never after the expiration of the thirty-day period for perfecting the appeal under Rule 41. The reason is not far to seek. The right of appeal not being inherent but purely statutory (*Layda vs. Legazpi*, 39 Phil., 83, 85), and the Rules having prescribed, among other cases, a definite period and specified other conditions for perfecting such appeal from the Court of First Instance to the superior courts, compliance with such conditions within such period is jurisdictional under pain of the judgment becoming final (*Layda vs. Legazpi*, *supra*). Said period has been set because the definite determination of judicial controversies is a matter of public concern. It is against public policy to hold the rights and liabilities of the parties in suspense for any period beyond what the law and rules have considered justifiable (*Dy Cay vs. Crossfield & O'Brien*, 38 Phil., 521; *Layda vs. Legazpi*, 39 Phil., 83, 88). The time limit is fixed upon the last day of the period for perfecting an appeal. Upon the expiration of that day, the court rendering

the order or judgment, as well as all other courts, the litigants, as well as other parties who may have to do presently or in future with the case determined,—all should be able to know whether the determination is final or still subject to change.

The following fundamental principles laid down in the Layda case, *supra*, are still good law:

"1. \* \* \* Jurisdiction of appellate courts is not conferred by consent of the parties. The right to appeal is statutory.

"2. \* \* \* Judgments in ordinary civil actions become final and may be executed the moment the time for perfecting an appeal has elapsed. If the appellant allows that time to elapse, his right to appeal is lost. A failure to perfect the appeal, within the time prescribed, is jurisdictional and the certification of a bill of exceptions (now record on appeal) thereafter cannot restore the jurisdiction which is lost.

\* \* \* \* \*

"5. \* \* \* Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by the law. The very object for which courts were constituted was to put an end to controversies \* \* \*."

In the specific case under consideration, the lower court, as well as all other parties concerned were confronted with the question of whether or not upon the expiration of the 28th day of November, 1946, the last of the thirty-day period, the judgment of said court became final, considering that petitioner on that same day filed his notice of appeal and submitted to the Court of First Instance of Manila his record on appeal without any appeal bond, nor a supersedeas bond for the appeal from the Court of First Instance to the Supreme Court. That question could not any longer be held in the air until the appellant saw fit to file a supersedeas bond for said appeal or announced his choice for not doing so, suspending in the meantime the answer to the all-important question of whether or not the litigation was over and the judgment could be relied and acted upon as the law of the case. In this case, that supersedeas bond was not filed until December 9, 1946 (Annex A-2 of petition), eleven days after the expiration of the thirty-day period.

But it is said in the majority decision that this supersedeas bond was unnecessary because a supersedeas bond (Annex A-1 of petition) for P300 had already been posted on June 15, 1946, in the municipal court when the case was still there and in course of being appealed to the Court of First Instance. However, one does not need to read this bond twice to see that it was given only for the purposes of the appeal to the Court of First Instance, as clearly appears from the following undertaking therein: "\* \* \* that the defendant will diligently prosecute his appeal to the Court of First Instance of Manila and he will pay whatever rents, damages and costs which may be awarded against him on the appeal \* \* \*", clearly meaning the appeal to the Court of First Instance antecedently mentioned in the same sentence. This undertaking makes it as clearly referring to the appeal from the municipal court to the Court of First Instance as the second supersedeas bond refers to the appeal from the Court of First Instance to the Supreme Court from the following undertaking therein: "\* \* \* that the defendant will diligently prosecute his appeal to the Supreme Court of the Philippines \* \* \*".

The filing of the second supersedeas bond is a conclusive proof that the first was intended as exclusive of the appeal from the Court of First Instance to the Supreme Court. Moreover, said first bond expressly stipulates that it was to secure the diligent prosecution of the appeal to the Court of First Instance of Manila and the payment of whatever rents, damages and costs which may be awarded against the appellant "on the appeal"; and suretyship and guaranty contracts being strictly construed (*Gov't. of P. I. vs. Herrero*, 38 Phil., 410; *La Insular vs. Machuca*, 39 Phil., 567), said bond can not be interpreted so as to extend its obligation beyond the natural scope of its express terms. In *Government of Philippine Islands vs. Herrero*, *supra*, it was held that "Sureties are only

chargeable according to the strict letter of the bond. The extent of their liability is to be measured by the terms of their contract." In *La Insular vs. Machuca*, supra, it was said that "The liability of a surety is not to be extended by implication beyond the terms of his contract. To the extent, and in the manner, and under the circumstances pointed out in his obligation, he is bound, and no further."

The rule of liberality established in Rule 1, section 2, is invoked. But the construction of the first supersedeas bond, as executed by the obligors, is different and distinct from the construction of the Rules of Court. However, even the cited rule, in establishing the general principle of liberality, expressly provides that such liberality should be aimed at assisting the parties in obtaining just, speedy, and inexpensive determination of their controversies. We have advisedly underscored the word "speedy", for to encourage or aid an appeal from a judgment through the perfection thereof beyond the airtight time limitation of Rule 41, section 3, would be going against the objective of speediness in the determination of judicial controversies. If the appellee could not have shortened the period within which the appeal should have been perfected as little as by one day, why should the appellant be permitted to lengthen it by eleven days?

The effect of the majority opinion is to return to a most unsatisfactory and confusing state of affairs existing before the promulgation of Rule 41, section 3, the remedying of which, I take it, was the very object of said section. That was the condition of the law which was deplored by this Court itself in *Layda vs. Legazpi*, supra, from which we quote:

"Since the decision in the case of *Gomez Garcia vs. Hipolito* (2 Phil., 732), hundreds of motions have been made for the purpose of dismissing bills of exceptions. The court has been annoyed by such motions, due to the fact that the time for the presentation of bills of exceptions has not been definitely fixed.

"Since the pronouncement of numerous decisions upon the question when bills of exception should be presented, the Legislature adopted Act No. 2347 (sections 26 and 27), which has made more certain that period. By virtue of section 26 of said Act, the losing party in a land registration case must present his bill of exceptions within thirty days, counting from the date on which he received a copy of the decision, unless that period is extended by order of the court before its expiration. (*Roman Catholic Bishop of Tuguegarao vs. Director of Lands*, 34 Phil., 623; *Bermudez vs. Director of Lands*, 36 Phil., 774; *Estate of Cordoba and Zarate vs. Alabado*, 34 Phil., 920.)

"From said thirty days there may be deducted the time which the court occupied in considering a motion for a new trial and until notice of the decision on said motion is received.

"Since the announcement of the rule in the two above-cited cases, scarcely a motion has been presented for the dismissal of a bill of exceptions in a land registration case. The question whether or not the bill of exceptions is presented within time in a land registration case, now, is simply a matter of counting the days. Uncertainty leads to confusion, annoyance and delay.

"A more difficult question is presented when we consider the exact period within which a bill of exceptions must be presented in ordinary actions. That period is not definitely fixed, in the terms of days, by any statute. In fact, that period is about as uncertain and indefinite as it could possibly be made." (Pp. 85-86; italics supplied.)

The provision of section 3, Rule 41, in fixing at thirty days from notice of order or judgment the period for appeal, did exactly in the way of fixing the period what section 26 of Act No. 2347 did for appeals in land registration cases, namely, to make the period "simply a matter of counting the days", as this Court remarked in the *Layda* case. And said provision of the Rules of Court afforded the most needed remedy to cure the vagueness and confusion then prevailing in the matter of the period for appeal in ordinary actions which, as this Court truly said in the said case, was "about as uncertain and indefinite as it could possibly be made." Now, by allowing the

present petitioner, as appellant in the main case, virtually to lengthen by eleven days the period for perfecting his appeal, what could prevent a future appellant from lengthening the period by thirty days, or more? Are we going to base the resolution of this question upon the varying circumstances of each particular case, and say that the extension should only be "reasonable"? How could litigants and lower courts definitely and with certainty decide what would be and what would not be reasonable in those cases without again and constantly coming to this Court for final decision? This would jettison the salutary effects of the very rule which was promulgated to remedy the preexisting confusion and throw judicial proceedings again into the same chaos of uncertainty and doubt. It would surely usher in a repetition of the "confusion, annoyance and delay" which this Court so justly lamented in the Layda case.

One of the cases cited in support of the majority decision is that of *Fernando vs. De la Cruz* (61 Phil., 435), a case which was also cited in *Belmonte vs. Marin* (76 Phil., 198). But it will be seen that in the *Fernando* case, this Court in saying that the supersedeas bond to be given for the appeal to the Court of First Instance had rendered unnecessary a separate appeal bond expressly added: "provided it is filed within the time for taking the appeal" (p. 440 of report). If said case is to be, by analogy, an authority here where the appeal is from the Court of First Instance to the Supreme Court, it will be in support of my stand that the supersedeas bond to be given for the purposes of such appeal should be filed within the time for taking the same appeal.

Neither can I agree that the supersedeas bond filed in the municipal court was merely defective in so far as the securing of the costs in the Supreme Court is concerned. If the intention of the makers of said bond had been also to include said costs but the idea was only inaccurately or inartificially expressed in the instrument, then I would agree that it would have been only defective. But the supersedeas bond filed in the municipal court did not provide that it was to cover "rents, damages and costs, down to the final judgment in the case", as petitioner now contends in paragraph 9 of his petition. In other words, if the supersedeas bond is made and executed in terms materially different from those required in Rule 72, section 8, it can not legally produce the effects contemplated by said provision, for the obligation of the sureties is not what the Rule expects but what the obligors voluntarily undertake, their contract being a voluntary one.

Last but not least: We must remember that this is a case of mandamus to compel approval of the record on appeal. To prosper it must come within the provisions of Rule 41, section 15. To be within the said section, the lower court must have erroneously disallowed the record on appeal—it must have disallowed what it was its ministerial duty to allow. Or otherwise expressed, the allowance of that record on appeal must have been "an act which the law specifically enjoins as a duty" of said court. But how could we say this when the appeal had not been perfected within the reglementary period of thirty days, because the supersedeas bond (Annex A-2), which would have been the substitute for the appeal bond, was filed eleven days thereafter.

The majority decision (p. 47, ante) contains this quotation:

" 'El Juzgado de Primera Instancia tiene discrecion para ordenar su prestacion (of a bond) en lugar de ordenar la ejecucion de la sentencia' (*Zamora contra Dinglasan e Hilario*, 77 Phil., 46, 50)."

If, applying the above doctrine to the case at bar, Judge Dinglasan had discretion to admit the belated supersedeas bond, and allow the record on appeal, instead of taking the course that he took, he necessarily had discretion to make his choice between the two courses of action, for discretion, by its very nature, does not operate only in one direction but in more than one. A one-way course of action would only imply a duty. Where the court has discretion, the manner of its exercise can not, of course, be controlled by mandamus, although the exercise itself can be thus compelled.

I vote to deny the petition.

**BENGZON, J.:**

I concur in the above dissent.

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