

MANUEL ABELLO, PLAINTIFF AND APPELLANT, VS. SENORA PAZ KOCK DE MONASTERIO, DEFENDANT AND APPELLEE.

G.R. No. 1072. May 08, 1903

Ponente: LADD, J.

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LADD, J.:

August 8, 1902, the Court of First Instance of Occidental Negros made, an order disallowing the will of Senora Josefa Montilla y Ianson, which had been presented to it for probate by the person named therein as executor. August 12, 1902, an application for an appeal was duly filed in that court under section 781 of the Code of Civil Procedure. August 16, 1902, the appeal was admitted by the court, and it was ordered that a certified copy of the record should be transmitted to this court, which was done November 1, 1902. In the order admitting the appeal and directing the transmission of the copy of the record to this court, nothing was said with reference to the filing of an appeal bond by the appellant, and none has been filed. The appellee moves that the appeal be dismissed for failure to file such bond.

We have held that a person appealing from the settlement of an administrator's account under section 778 does not lose his right to prosecute the appeal by failure to file a bond within twenty-one days from the entry of the order, no time, for the filing of the bond having been fixed by the court from which the appeal was taken. (Hernaez vs. Norris, decided March 31, 1903.[1] In that case the court below had refused to admit the appeal by reason of the failure to file the bond within twenty-one days, and upon a petition for a mandamus to the judge directing him to admit the appeal, we made an order fixing a period within which the party might file the bond and thus perfect the appeal. The present case is governed by identical considerations, and justice will be done all parties interested by a similar disposition.

It is ordered that the appellant, within forty days from notification of this decision, file in the court below a bond conditioned as provided in sections 780 and 781 of the Code of Civil Procedure, in an amount and with sureties to the satisfaction of said court. Upon failure to comply with this order the appeal will be dismissed. So ordered.

Torres, Cooper, Willard, Mapa, and McDonough, JJ., concur.

Arellano, C. J., did not sit in this case.

[1] Page 83, *supra*.

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