

**BUENAVENTURA SALAVERIA, ANACLETO SALAVERIA AND
VICTORIA DE LOS REYES, PLAINTIFFS AND APPELLANTS, VS.
RAMON ALBINDO, MELECIO ALBINDO AND SEBASTIANA ALBINDO,
DEFENDANTS AND APPELL...**

G.R. No. 15486. July 18, 1919

Ponente: MALCOLM, J.

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MALCOLM, J.:

The attorney for the plaintiffs and appellants has asked for a reconsideration of a resolution of the court dismissing their appeal. Inasmuch as the action taken by the court appears to be a departure from a former practice, advantage is taken of this opportunity to state our reasons.

The facts are clear. Both plaintiffs and defendants appealed from a judgment of the Court of First Instance of Tayabas. The attorney for the plaintiffs and appellants moved in this court for the dismissal of the appeal of the defendants on the ground of abandonment, because the said defendants had failed to pay the filing fees within the time fixed by the rules of the Supreme Court. On an examination of the record, the court found not only this contention to be true, but that, likewise, the plaintiffs and appellants had fallen into the same mistake, and accordingly dismissed both appeals. It is this action which plaintiffs desire to have rescinded.

The Code of Civil Procedure in section 787, provides that "if the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the bill of exceptions or appeal for failure to prosecute if the fees are not paid within a reasonable time and after reasonable notice." Supplemental to the law, it is understood that for a number of years records were permitted to lie in the archives of the court for indefinite periods of time, simply because appellants had failed to pay the necessary fees. This undesirable situation coming to the knowledge of the court, it ordered the clerk to report all such cases which had thus been abandoned for over six months, for dismissal. Still later, the court shortened the period to two months. It was this practice which was in vogue when the new rules of the court were adopted.

The Rules of the Supreme Court of the Philippine Islands effective after the first day of January, nineteen hundred and nineteen, were drafted with the primary object of expediting justice. The Committee on Rules of the Supreme Court, in its report submitting the rules, gave as a principal change in the Rules of the Supreme Court, "the discouragement of dilatory tactics by imposing upon the moving party the duty of proceeding promptly under penalty of dismissal of the appeal." On the supposition that the Supreme Court was, as it is, a court of appeal, periods of time were fixed within which attorneys must act, not particularly to make these periods arbitrary, but in order to urge on the sluggish and the dilatory. If certain provisions were followed, the appeal would prosper. If certain other provisions of the rules were not followed, automatically the appeal would disappear. In line with this idea, there was inserted in the new rules, section 14 (&), reading" as follows;

"The clerk of the lower court shall give notice in writing, by registered mail to the attorneys for the appellant and appellee, of the date of transmission of the bill of exceptions or record on appeal to this court, and shall

certify to this court, that he has complied with this requirement and shall attach to such certificate the registry return card. It shall be the duty of the appellant in all civil cases, within ten days from the expiration of the periods respectively prescribed by rule 13, computed from the date of the receipt of the notice of the transmission of the bill of exceptions or record, as shown by the certificate of the clerk of the lower court, and the registry return card, to pay the clerk of this court the fees for the docketing of the appeal. If the docketing fee is not paid within the period prescribed by this rule, the appeal shall be deemed abandoned and dismissed, and the clerk of this court shall return the bill of exceptions or record to the court below, accompanied by a certificate under the seal of the court, showing that the appeal has been dismissed pursuant to section 500 of the Code of Civil Procedure and this rule. Upon the receipt of such certificate in the court below the case shall stand as though no bill of exceptions had been allowed or appeal taken."

At present, therefore, instead of a case being permitted to sleep indefinitely, or for six months, or for two months, if the appellant in a civil case does not pay the clerk of the court the docketing fees within ten days after the expiration of a period determined according to the city or province, computed from the date of the receipt of the notice of the transmission of the bill of exceptions or record, the appeal is deemed abandoned. It is automatically dismissed without the necessity of a motion. It is this rule which counsel for plaintiffs invoked, as a club over counsel for defendants, and it is this same rule which should, here be applied both to the plaintiffs and the defendants.

The court announces that hereafter the provisions of the Rules of the Supreme Court of the Philippine Islands relating to the payment of fees, particularly as appearing in section 14 (b) thereof, will be followed. For this reason, the motion of reconsideration is denied. The resolution of the court dismissing the appeals and ordering the return of the record to the trial court will stand. So ordered.

Arellano, C.J., Torrest, Johnson, Araullo, Street, Avanceña, and Moir, JJ., concur.

Resolution dismissing appeals and ordering return of record affirmed.

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