

FLAVIA LAZARO, PETITIONER, VS. PASTOR M. ENDENCIA, JUDGE OF FIRST INSTANCE OF PANGASINAN, AND CATALINA ANDRES, RESPONDENTS.*G. R. No. 38291. November 16, 1932*

Ponente: HULL, J.

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This is an original petition in this court, and although the prayer calls for the issuance of a writ-of mandamus, the facts stated in the petition indicate that the appropriate remedy, supposing the action to be well founded, is the writ of prohibition. The petition will accordingly be viewed in the light of an application for this remedy. The facts upon which the petition is based are as follows: The respondent, Catalina Andres, with others, brought suit in the justice of the peace court of Manaoag, Pangasinan, against the present petitioner for forcible entry and detainer. Judgment dismissing the case was rendered by the justice of the peace and the plaintiffs were notified on May 24, 1932. On May 29, 1932, they filed a notice of appeal with the justice of the peace, but deposited only eight pesos (P8) as docket fee instead of sixteen pesos (P16) as required by section 76 of Act No. 190 as amended by Act No. 3615. On June 7, 1932, or fourteen days after receiving notice of judgment, Catalina Andres deposited the additional eight pesos (P8) to complete the amount of said docket fee.

The appeal was docketed in the Court of First Instance of Pangasinan as civil case No. 6336. The complaint was reproduced and an answer was filed by the defendants. The defendants, at the same time, filed a motion to dismiss said appeal on the ground that it had not been perfected in accordance with law by reason of the failure of the appellants to pay the full amount of the docketing fee within the period prescribed by law. They contend that under section 88 of Act No. 190, an appeal in cases of forcible entry and detainer should be perfected within five days after notice of the judgment; and that the docketing fee not having been paid within that period the appeal had not been perfected on time, and consequently the Court of First Instance acquired no jurisdiction to take cognizance of the appeal. Said motion was dismissed by the court in its order of July 9, 1932.

Petitioner now comes to this court asking relief. Examining the statutes there can be no question that payment of the full amount of the docket fees is an indispensable step for the perfection of an appeal, which in cases of forcible entry and detainer, must be within a period of five days from notice. The statute looks to early determination of such cases, and if the contention of the respondent should be upheld there would be no definite rule in such cases. There would be as much right to contend for twenty-eight days or forty-two days as there is to contend for fourteen, as is done herein. In the absence of an indispensable step, the appeal was not perfected and the Court of First Instance of Pangasinan was therefore without jurisdiction to hear and determine the appeal. (Schultz vs. Concepcion, 32 Phil., 1.)

Only this question of law being involved, the writ of prohibition will be granted and the the Court of First Instance of Pangasinan, will refrain from exercising jurisdiction over the ease. With costs against the individual respondents. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Villa-Real, Abad Santos, Vickers, Imperial, and Butte, JJ., concur.

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