

**LAUREANO ELEGADO, SIMEON GALERO, AND ARISTON RABDON,
PETITIONERS AND APPELLANTS, VS. NICANOR TAVORA, JUSTICE OF
THE PEACE OF SAN FERNANDO, LA UNION, RESPONDENT AND
APPELLEE.**

G.R. No. 39003. December 16, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal from a decision of Judge Buenaventura Ocampo in the Court of First Instance of La Union, denying the petition for a writ of mandamus to require the respondent justice of the peace to allow the appeal presented by the petitioners in the criminal case in which they were convicted. The present case was submitted for decision in the Court of First Instance on the following stipulation of facts:

"1. Que los acusados en la causa criminal No. 2832 del Juzgado de Paz de San Fernando, La Union, que son los recurrentes en esta causa, han sido condenados por dicho Juzgado a cuatro meses y un dia de prision cada uno;

"2. Que inmediatamente despues de haberse dictado la sentencia por el Juez de Paz de San Fernando, La Union, el abogado de los acusados, en Corte abierta, manifesto su intencion de apelar el asunto al Juzgado de Primera Instancia de esta provincia;

"3. Que el Juez de Paz de San Fernando, en el mismo dia, 17 de octubre de 1932, a peticion del mismo abogado de los acusados, autorizo mediante carta que es el Exhibit C al Juez de Paz del Municipio de Rosales, Pangasinan, para recibir la fianza de los acusados en la cantidad de P200;

"4. Que, en virtud de la carta Exhibit C, el Juez de Paz de Rosales, Pangasinan, recibio y aprobo la fianza formalizada por los acusados, los aqui recurrentes, en la cantidad de P200, adjuntando en el escrito de fianza una carta sin firma que pedimos sea marcada como Exhibit D y que explica por si misma;

"5. Que el Exhibit D se recibio por el Juez de Paz de San Fernando, La Union, el dia 27 de octubre de 1932, juntamente con la fianza, tal como ha sido aceptada y aprobada por el Juez de Paz de Rosales, Pangasinan;

"6. Que el 2 de noviembre de 1932, el Juez de Paz de San Fernando, La Union, expidio la orden que, para su identificacion, pedimos sea marcada como Exhibit E, la cual orden es una copia del original que obra en el Expediente No. 2832 del Juzgado de Paz de San Fernando, La Union, ordenando la ejecucion de la sentencia dictada en dicho expediente;

"7. Que los recurrentes en esta causa, desde el 17 de octubre de 1932, no han presentado otra apelacion mas que la formalizada verbalmente en Corte abierta, por el abogado Sr. Basco;

"8. Que el Exhibit A no se ha facilitado copia a la parte contraria."

The attorney for the appellants alleges that the lower court erred in declaring that the appellants herein did not present their appeal in due form in criminal case No. 2832 of the justice of the peace court of San Fernando, La

Union; and in dismissing the complaint in the present case.

The contention of the petitioners in the lower court was that their oral statement in the justice of the peace court of their intention to appeal to the Court of First Instance was a sufficient compliance with the law. In this court the attorney for the appellants relies principally upon the fact that the petitioners presented an appeal bond within fifteen days, which was approved by the justice of the peace, as set forth in paragraphs 3, 4, and 5 of stipulation of facts.

Section 43 of General Orders, No. 58, as amended by section 34 of Act No. 1627 and section 1 of Act No. 3785, reads as follows:

"From all final judgments of the Court of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts, an appeal may be taken to the Supreme Court as hereinafter prescribed. The convicted party may appeal from any final judgment of a justice of the peace in a criminal cause to the Court of First Instance by filing a notice of appeal with such justice within fifteen days after the entry of judgment. Upon such notice being so filed, the justice shall forward to the Court of First Instance all original papers and a transcript of all docket entries in the cause, and the provincial fiscal shall thereupon take charge of the cause in behalf of the prosecution: Provided, however, That the period of fifteen days within which the accused may file his notice of appeal either from a judgment of a justice of the peace court or from a judgment of a Court of First Instance shall be interrupted from the time a motion for new trial is filed."

In the case of the United States vs. Tenorio (37 Phil., 7), referring to appeals from decisions of Courts of First Instance, this court held that an appeal in a criminal case must be perfected in the manner and form prescribed by section 45 of General Orders, No. 58; that said section is almost an exact copy of section 1240 of the Penal Code of California, and was evidently taken from said Code; that we are justified in following the interpretation given by the supreme court of the state from the statutes of which the provisions of our own laws are copied; that in accordance with the decisions of the Supreme Court of California a recital in the appeal that a notice of appeal has been served and filed is no evidence that an appeal has been taken; that the notice of appeal must be served and filed; that giving notice in open court that an appellant intends taking an appeal is an essentially different proceeding from filing such notice with the clerk of the court; that the word "filing" as used in section 45 can be construed only as requiring a placing or depositing with the clerk of a written notice of intention of taking an appeal.

In the case of Ricafia and Glory vs. Provincial Warden of Tayabas (54 Phil., 821), it was held that if section 43 of General Orders, No. 58 had been intended to provide a different manner of giving notice of the intention to appeal from a decision of the justice of the peace from that given when the appeal is taken from the Court of First Instance, a verb other than "to file" would have been employed to indicate that the notice might be given either verbally or in writing; that as the petitioners gave only a "verbal notice of their intention to appeal", they did not comply with the requirements of the law, and their alleged notice of intention to appeal did not produce the desired legal effect.

The case just cited is similar in many respects to the case now under consideration. In that case the petitioners verbally announced their intention to appeal to the Court of First Instance of Tayabas, and an appeal bond was filed by the justice of the peace at P600; the bond was signed by the petitioners and their bondsmen, and the petitioners were temporarily released. It appears, however, that the bond was not approved by the proper justice of the peace. About thirty days after the judgment had been rendered, the petitioners were arrested because they had not perfected their appeal in accordance with the law.

The attorney for the appellants in the case at bar calls attention to the fact that the bond sent by the petitioners to

the justice of the peace of San Fernando was accompanied by a letter requesting the justice of the peace to give effect to their notice of appeal announced in open court. It appears, however, from the agreed statement of facts that this letter was not signed by any one.

Appellants' attorney also calls our attention to the decision of this court in the case of the United States vs. Sotavento and Sotavento (40 Phil., 176), in which it was held that an accused does not lose his right to prosecute his appeal to final judgment merely because he failed to serve a copy of his written notice of appeal on the provincial fiscal. The decision in that case does not support the contention of the present petitioners, but emphasizes the fact that the notice of appeal must be in writing. It states that the exercise of the right of appeal should be effected in writing within a period of fifteen days. Furthermore, it appears that there was a difference of opinion in the court as to the grounds of the decision in that case. The writer of the opinion expressed the opinion that the fiscal would be informed of the appeal filed by the accused when notified of the order issued by the lower court upon forwarding the case to the Supreme Court on account of the appeal. Four justices concurred. Justices Johnson and Araullo held that the Government being the adverse party the filing of the written notice with the clerk was tantamount to service upon the adverse party. Justice Malcolm concurred in the result for the special reasons existing in that case, but expressly stated that the exception made in that case should not be allowed to overturn judicial precedents and to nullify the law.

In our opinion no reason has been adduced that would justify us in accepting a bond in lieu of the written notice of appeal expressly required by law.

For the foregoing reasons, the decision appealed from is affirmed, with the costs against the appellants.

Avanceña, C. J., Street, Villa-Real, Hull, Imperial, and Diaz, JJ., concur.
Malcolm, J., dissents.

DISSENTING

ABAD SANTOS, J.:

I think the judgment should be reversed. The law provides that: "The convicted party may appeal from any final judgment of a justice of the peace in a criminal cause to the Court of First Instance by filing a notice of appeal with such justice within fifteen days after the entry of judgment. Upon such notice being so filed, the justice shall forward to the Court of First Instance all original papers and a transcript of all docket entries in the cause, and the provincial fiscal shall thereupon take charge of the cause in behalf of the prosecution." (Code of Criminal Procedure, section 43.)

The object of the notice of appeal is merely to advise the justice of the peace of the defendant's intention to appeal to the Court of First Instance. Clearly, that object is attained when the notice is given in open court. It has been held that statutes giving and regulating the right of appeal are remedial in their nature, and should receive a liberal construction in furtherance of the right of appeal. (2 R. C. L., 29, 30.) "Statutes giving the right of appeal are liberally construed in furtherance of justice; such an interpretation as will work a forfeiture of that right is not favored." (2 Lewis' Sutherland Statutory Construction, 1304, 1305.)

In the case at bar, it is admitted that immediately after the rendition of the judgment by the justice of the peace, counsel for the defendants below, the petitioners herein, gave notice in open court of the latter's intention to appeal to the Court of First Instance; that, at the request of said counsel, the amount of the bond for the temporary

release of; the defendants was fixed; and that the bond was later filed and approved. Upon these admitted facts, I am of the opinion that the requirement for the perfection of an appeal had been fully complied with by the petitioners.

With all due respect to the opinion of the majority of the court, I believe that it takes too narrow a view of the law. It sacrifices substance to form, and reduces the protection of human rights to a mere formula.

DISSENTING

BUTTE, J.:

The case of Ricaña and Glory vs. Provincial Warden of Tayabas (54 Phil., 821), definitely settled, I think, the proposition that an oral notice of intention to appeal from a decision of the justice of the peace is not a sufficient compliance with the provisions of section 43 of General Orders, No. 58, the Code of Criminal Procedure. In that case an appeal bond was submitted but it does not appear to have been accepted or approved by the justice of the peace. In the present case the appeal bond was accepted and approved by the justice of the peace. The recitals of the ordinary appeal bond plainly show that it is the intention of the defendant to appeal from the decision of the justice of the peace. Section 43 of General Orders, No. 58 does not prescribe any special form of notice of appeal. The primary object of filing a notice of intention to appeal is to require the justice to forward to the Court of First Instance the original papers and a transcript of all docket entries in the cause. It seems to me that, in view of the fact that the bond itself recites the intention of the accused to appeal, when that bond is examined, accepted and approved by the justice of the peace, it discloses to the justice the real intention of the accused to prosecute his appeal as effectively as if a mere formal notice was filed.

In the present instance the justice accepted the oral notice of appeal as sufficient and permitted the accused to go to all the trouble of preparing a bond and obtaining the signatures of the sureties on the assumption of all the parties including the court that nothing further needed to be done to perfect the appeal. I think that the filing, acceptance and approval of the bond is a very substantial compliance with the requirement that a written notice of intention to appeal be given and I concur in the conclusion of Justice Abad Santos that the decision of the majority sacrifices substance to form.

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