

VALENTIN A. FERNANDO, PLAINTIFF AND APPELLEE, VS. CARLOS DE LA CRUZ, DEFENDANT AND APPELLANT.

G.R. No. 41481. May 08, 1935

Ponente: VICKERS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-41481/>

VICKERS, J.:

The defendant appeals from the following order of the Court of First Instance of Bulacan:

"Se ha presentado en esta causa mocion de sobreseimiento fundada en que no se ha perfeccionado la apelacion de la sentencia dictada por el Juzgado de Paz, de acuerdo con el articulo 76 delCodigo de Procedimiento Civil, segun esta enmendado por la Ley No. 3615.

"Examinando el expediente de esta causa, se ve que el apelante presto una fianza bajo el articulo 88 para suspender la ejecucion de la sentencia durante la tramitacion de la apelacion. Pero no h& prestado fianza que exige el articulo 76, como requisito esencial para la apelacion. No se debe confundir la fianza exigida por el articulo 88 con la prescrita por el articulo 76. La primera es para la suspension de la sentencia; la segunda es para la apelacion. La falta de esta segunda fianza es un defecto fatal de acuerdo con la doctrina f espiritu de la decision de la Corte Suprema en el asunto de Lazaro contra Endencia y Andres (57 Jur. Fil., 578). Por falta de dicho requisito no se ha conferido jurisdiccion en apelacion al Juzgado de Primera Instancia.

"Por todo lo expuesto, el" Juzgado sobresee la apelacion interpuesta en esta causa, y se ordena su devolucion Juzgado de Paz de origen para los tramites correspondientes."

In support of the appeal it is alleged that the lower court erred:

"I. Al declarar de que no se ha prestado la fianza de apelacion de cincuenta pesos (P50) por el demandado apelante al interponer su apelacion, y al declarar que la fianza prestada es una fianza especial cuyo fin es solo para suspender la ejecucion de la sentencia dictada por el juzgado de paz, de origen.

"II. Al estimar la mocion del demandante de sobreseimiento de la apelacion y al sobreseer la apelacion elevada ante dicho Juzgado, por el apelante y al ordenar la devolucion del expediente al juzgado de paz de procedeneia."

It appears from an examination of the record that in the justice of the peace court of Bustos, Bulacan Province, the defendant was ordered to restore to the plaintiff the parcels of land in question, to pay him the sum of P741 for accrued rents, and P300 a year as rent from April 3, 1930, without a special finding as to costs. Defendant was notified of the decision on May 3, 1932, and on May 4th he filed his notice of appeal to the Court of First Instance. On May 8, 1933 the defendant deposited in the municipal treasury of Bustos the sum of F16 for the payment of the filing fees in the Court of First Instance, and filed with the justice of the peace on the same date a bond for P800, which reads in part as follows:

"Por cuanto el demandado en el asunto arriba intitulado ha apelado al Juzgado de Primera Instancia de Bulacan, contra el fallo dictado por el Juez de Paz de 20 de abril de 1933 condenandole a devolver o a entregar al demandante ciertos terrenos descritos en la sentencia y a pagar la cahtidad de P741 en concepto de alquileres

y danos y perjuicios por la detencion y ocupacion de los mismos y P5 como costas del juicio.

"Por tanto, en consideration a lo expuesto y a la admision de la apelacion presentada por el demandado, nosotros, los abajo firmantes, por la presente nos obligamos mancomunada y solidariamente por la cantidad de P800 a responder del pago de los alquileres, danos y perjuicios, y costas a que pudiera ser condenado el demandado apelante por el Juzgado de Primera Instancia en apelacion."

The bond was approved by the justice of the peace, and the case was forwarded to the Court of First Instance.

On December 12, 1933, in the course of the trial, plaintiff filed a motion for the dismissal of the appeal and the return of the case to the justice of the peace court of Bustos for the execution of the judgment on the ground that the appellant had not perfected his appeal in accordance with the law, because he failed to furnish a bond for P50, in accordance with section 76 of the Code of Civil Procedure, for the payment of all costs which the court might award against him. The trial judge sustained the motion and dismissed the appeal in the above-quoted order. Appellant contends that the bond of P800 furnished by him was not only for the payment of the damages for which the justice of the peace found that the defendant was liable, but also for the payment of any costs that might be awarded against him.

The appellee on the other hand maintains that in accordance with the law it was necessary for the appellant to execute a separate bond of P50 to guarantee the payment of the costs that might be awarded against him in the Court of First Instance. It cannot be denied that it was a condition of the bond furnished by the appellant that the bondsmen jointly and severally bound themselves in the sum of P800 to answer for the payment of the rents, damages, and costs which the appellant might be condemned to pay by the Court of First Instance. The narrow question, therefore, is whether or not it was necessary for the appellant to execute a separate bond on the sum of P50 to guarantee the payment of the costs which he might be condemned by the Court of First Instance to pay.

The trial judge cites in his order the decision of this court in the case of Lazaro vs. Endencia and Andres (57 Phil., 552), where it was held that the 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 made within a period of five days from notice of the decision. That decision clearly has no application in the present case. Section 88 of the Code of Civil Procedure, as amended by Act No. 4115, provides that either party may appeal from the judgment of the justice of the peace to the Court of First Instance within five days after receipt by him of notice of the rendition of the judgment, and the suit shall be conducted therein in the same manner as appeals from justices of the peace in other civil actions. Section 76 of the Code of Civil Procedure, relating to appeals from justices of the peace in other civil actions, provides that an appeal in civil causes¹ shall be perfected by filing with the justice of the peace, within fifteen days after the entry of the judgment complained of, a notice[^] that the party intends to appeal, and by depositing with such justice the appellate court docket fee of sixteen pesos¹, and by filing with him a bond in the sum of fifty pesos, executed to the adverse party by the appellant and by at least one sufficient surety, conditioned that the appellant will pay all costs which the Court of First Instance may award against him.

It is apparent from the foregoing that as a general rule appeals from justices of the peace in forcible entry and detainer actions are perfected in the same manner as appeals in other civil actions, except that the appeal must be taken within five days instead of fifteen; but section 88 further provides that if the defendant appeals from the judgment of the justice of the peace, and desires to stay execution of the judgment pending the appeal, he shall give to the plaintiff security by an obligation, with sufficient sureties, approved by the justice of the peace, to enter the action in the Court of First Instance, and to pay rents, damages, and costs; and the defendant and the sureties shall be liable upon their obligation for damages and costs down to the time of the final judgment in the action. It will be noted that the defendant must give a bond "to enter the action in the Court of First Instance, and to pay rents, damages, and costs." In the latter case he not only perfects his appeal, but also stays the execution of

the judgment. In other words, the defendant, who appeals to the Court of First Instance may give a bond to pay the costs alone, or he may give a bond to pay rents, damages, and costs. It is perfectly clear, therefore, that the bond to pay rents, damages, and costs includes the condition to pay the costs. Why should he give two bonds to pay the costs? Our attention has not been called to any provision of law or any decision of this court requiring the appellant to give a separate bond in the sum of P50 for the payment of costs when he furnishes a satisfactory bond to pay rents, damages, and costs. On the contrary, the very wording of the law, which provides that if the defendant desires to stay execution of the judgment pending the appeal, he shall give a bond "to enter the action In the Court of First Instance, and to pay rents, damages, and costs" seems to contemplate the giving of only one bond, provided it is filed within the time for taking the appeal. This bond must, of course, be sufficient to cover not only rents and damages¹, but also costs.

In the present case the defendant gave a bond for P800 to answer for the rents, damages, and costs. As already stated, the amount of the rents found by the justice of the peace to be due the plaintiff was P741. Section 88 of the Code of Civil Procedure, as amended by Act No. 4115, further provides that during the pendency of the appeal in any case in which a stay of execution of a judgment restoring possession has been allowed, it shall be the duty of the defendant to pay to the plaintiff or into the Court of First Instance, at the option of the defendant, 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 to exist, or," in the absence of a contract, to pay to the plaintiff or into court, as above provided, on or before the 10th 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. There is no contention that the bond furnished by the appellant was not sufficient in amount. The contention of the plaintiff was, as we have stated, that the appellant should have given a separate bond in the sum of P50 for the payment of the costs.

In our opinion the appeal of the defendant was perfected in accordance with the law, and the order in question is therefore set aside, and the Court of First Instance of Bulacan is ordered to proceed with the trial of the case.

The plaintiff will pay the costs in this court.

Malcolm, Abad Santos, Hull, and Diaz, JJ., concur.

Order set aside and case remanded with instruction.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.