

## **C. P. FELICIANO, PETITIONER, VS. GIL CALIMBAS AND FRANCISCO ZANDUETA, AS JUDGE OF FIRST INSTANCE OF BATAAN, RESPONDENTS.**

*G. R. No. 42241. August 31, 1934*

Ponente: IMPERIAL, J.

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### **IMPERIAL, J.:**

The petitioner brought this action for mandamus to compel the Judge of the Court of First Instance of Bataan to approve certify the record on appeal filed by him in special proceedings No. 1370 of said court.

In said case, the court allowed to probate the will, which had been presented, made by the deceased Francisco Paguio. The petitioner, who was oppositor to the probate, appealed from the order prayed that a bond, which should be filed by him, be fixed. The court fixed it at P500. On June 20, 1934, the petitioner delivered to the clerk of court, as bond, a check for the sum of P500, issued in favor of said official drawn against the Philippine National Bank, which was duly certified or accepted by the cashier of said bank. On the 29th of the same month the court approved the appeal ordered the clerk of court to forward the record to this court. While the record was in this jurisdiction, the attorney for the petitioner prayed that the same be returned to the trial court, alleging that the appeal was not perfected as the record on appeal had not been attached or forwarded, nor even filed with the court for approval. The motion was granted the record returned. On July 7th of the same year, the petitioner filed the record on appeal with the court. The respondent Gil Calimbas opposed its approval the court refused to approve it on the ground that it was filed outside the ten (10) days from June 20, 1934, the date upon which the check had been presented.

The respondents contend that the check, being accepted, was equivalent to a cash bond required no further approval, consequently the 10-day period for the filing of the record on appeal should be computed from June 20th, the date of its presentation. According to section 780 of the Code of Civil Procedure, the bond that should be filed in such appeal must be satisfactory to the court. This means that it must be examined approved. Section 34 of the Revised Rules provides. that the record on appeal, in special proceedings, shall be filed within ten (10) days from the date upon which the appeal is perfected, which takes place on the date on which the bond is approved. Inasmuch as the court refrained from expressly approving the check approved the appeal when the record on appeal had not yet been filed, we understand that the approval of said appeal was in reality equivalent to an approval of the bond or check. Now then, inasmuch as the record on appeal was filed within ten (10) days from said date, it follows that the same should have been approved.

We seriously hesitate to agree that a check accepted by the bank, against which it has been drawn, is equivalent to bank notes, or currency, or a cash bond. Everybody knows that the payment of a check, under such circumstances, may yet be withheld for other reasons not always easy to enumerate. If, for instance, the drawer succeeds in withdrawing his funds before the check is presented for payment, there is no doubt but that the same could not be collected.

Wherefore, it appearing that the rejected record on appeal was filed on time, let the writ applied for be issued, requiring the respondent judge, or his successor, to approve certify said record on appeal, with costs against the respondent Gil Calimbas. So ordered.

Malcolm, Villa-Real, Buite, Goddard, JJ., concur.

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