

V. SY KIAN (alias TAN YAO, ALIAS ONG HUAT), PETITIONER, VS. EMILIO MAPA, JUDGE OF FIRST INSTANCE OF TARLAC, AND P. ARROYO, JUSTICE OF THE PEACE OF MONCADA, TARLAC, RESPONDENTS.

G.R. No. 43320. April 11, 1935

Ponente: HULL, J.

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HULL, J.:

This is an original action for certiorari, and the facts are as follows: The petitioner was convicted in the justice of the peace court of Moncada, Tarlac. Within the statutory period one Salvador Marzan gave notice of appeal "through his undersigned counsel (Amicus Curise)." The justice of the peace forwarded the record, and the provincial fiscal moved to dismiss the appeal as the same had not been properly taken. When this motion of the fiscal came on for hearing, and neither petitioner nor his counsel appearing, the court, out of abundant caution, directed that the motion be set for hearing at a later date and the petitioner notified of the motion and the date of hearing. This was done and, again, neither the petitioner nor his attorney appeared to resist the granting of the motion of the provincial fiscal. Thereafter the Court of First Instance granted the motion of the fiscal, the appeal was dismissed and the record returned to the justice of the peace. No exception was taken by petitioner to the action of the Court of First Instance, and no action was taken by him until the justice of the peace, in the discharge of his duty, called upon the bondsmen to deliver petitioner to his custody in order to serve the sentence. Whereupon these proceedings were brought.

Marzan is not an attorney-at-law, and the record is silent whether he was authorized to act or is a pure intermeddler. Without discussing whether or not the Court of First Instance should have sustained the motion of the provincial fiscal, said motion did raise a question which the court not only had jurisdiction to decide but it became its duty to act on the motion. Petitioner, being duly notified, had his day in court and likewise the order of the court being a final termination, an exception could have been taken and appeal had. As there was open to him a plain, speedy and adequate remedy, certiorari should not be granted.

Petition denied, with costs against petitioner. So ordered.

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

Petition denied.

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