

MARIA DE LA CONCEPCION VACANI, PLAINTIFF AND APPELLEE, VS. ENRIQUE LLOPIS, DEFENDANT, EUSTAQUIO FOZ AND VIOTORIANO SANTIAGO, APPELLANTS.

G.R. No. 4910. February 10, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

The Court of First Instance entered judgment against the defendant on September 16, 1907, sentencing the said defendant to deliver to the plaintiff the sum of P6,000, with legal interest thereon at the rate of 6 per cent per annum from May 11, 1907, and costs; from which judgment the defendant appealed to the Supreme Court of the Philippine Islands on October 5, 1907, and, in order to stay the execution of the said judgment, filed the corresponding appeal bond signed by the sureties Don Eustaquio Foz and Don Victoriano Santiago, which bond was duly approved by the judge below who ordered¹ the stay of the execution on October 25, 1907.

The bill of exceptions having been brought to this court, the appeal was dismissed with the costs against the appellant, on the 13th day of April, 1908, and the bill of exceptions was returned to the Court of First Instance of Manila on April 14, 1908.[1]

The appeal was dismissed for failure of the appellant Llopis to present his brief within the time required by the rules of the court.

On the 9th day of May, 1908, the Court of First Instance issued an execution on the judgment against the defendant Llopis, which the sheriff returned unsatisfied. The plaintiff then made a motion that execution be issued against the sureties. This motion was granted. They afterwards moved to set aside the order granting the motion and this last motion of theirs having been denied, they have appealed.

The bond is as follows:

"KNOW ALL MEN BY THESE PRESENTS: That Enrique Llopis, of Manila, as principal, and Eustaquio Foz, of Manila, and Victoriano Santiago, of Manila, as sureties, hereby acknowledge themselves to be jointly and severally bound to the said Maria de la Concepcion Vacani in the sum of six thousand five hundred pesos (P6,500), Philippine currency, for which payment well and truly to be made, we, our heirs and legal representatives, jointly and severally bind ourselves.

"The condition of the foregoing bond is as follows:

"That the appellant is bound to the appellee in the sum of six thousand five hundred pesos (P6,500), Philippine currency, to secure the fulfillment and payment of the judgment so appealed in case the same should be affirmed in whole or in part.

"In the proper case this obligation shall be null and void, otherwise it shall remain in its full force and value."

The entire claim of the appellants is based upon the proposition that they bound themselves to pay the judgment

only in case it should be affirmed by the Supreme Court in whole or in part; that the dismissal of the appeal was not an affirmance of the judgment and that consequently there has been no breach of the condition of the bond. The bond follows the language of the Code of Procedure, which is as follows:

"SEC. 144. Except by special order of the court, no execution shall issue upon a final judgment rendered in a Court of First Instance until after the period for perfecting a bill of exceptions has expired. But the filing of a bill of exceptions shall of itself stay execution until the final determination of the action, unless for special reasons stated in the bill of exceptions the court shall order that execution be not stayed, in which event execution may at once issue. But the court may require as a condition of a stay of execution that a bond shall be given reasonably sufficient to secure the performance of the judgment appealed from in case it be affirmed in part or wholly."

We have reached the conclusion that the dismissal in this case amounted to an affirmance of the judgment and that the sureties are therefore responsible upon the bond. The reasons for our conclusion are stated in the opinion of the Supreme Court of California in the case of *Karth vs. Light* (15 CaL, 324), which was delivered by Chief Justice Field, afterwards, for a long time, Associate Justice of the Supreme Court of the United States. In that case the court said:

"In 1857 the plaintiff recovered a judgment against Houck and Meyers for the possession of certain premises, situated in the city of Sacramento. From the judgment Houck appealed to the Supreme Court; and to stay its execution, pending the appeal, filed the undertaking upon which the present action is brought. The undertaking provides in the terms of the statute, that the defendants 'will not commit, or suffer to be committed, any waste thereon; and that, if the judgment be affirmed, they will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of the possession thereof, pursuant to the judgment, not exceeding two thousand dollars.' By this undertaking, proceedings upon the judgment were stayed. At the January term of 1858, the appeal was dismissed by the Supreme Court, for want of prosecution; and the question presented for determination is, whether this dismissal was equivalent in law to an affirmance of the judgment, within the statute? Upon the solution of the question, the liability of the sureties on the undertaking depends. The court below held that the dismissal of the appeal was not such an affirmance of the judgment, and as hence there could be no breach of the undertaking, ordered a nonsuit.

"The object of the undertaking was to retain the defendants in the ejection, in the possession of the premises, pending the appeal, and at the same time to afford indemnity to the plaintiff for any loss he might sustain, by the deprivation of the use of the premises, or by waste committed thereon-if the judgment in his favor should not be reversed by the appellate court. The appellant, in fact, asserts a right to retain possession against the judgment, upon the ground that such judgment will be ultimately held invalid by the court to which he has appealed. Whether, then, the dismissal of an appeal is to be deemed equivalent to an affirmance of the judgment, will depend upon the question whether, after such dismissal, the judgment can be again open to examination."

The court, after an examination of its rules, held that the judgment could not again be examined and that it therefore became final and to all intents and purposes within the meaning of the statute was affirmed.

Under the law here in force there is no doubt that the dismissal of the appeal in this case for failure of the appellant to file his brief, ended the controversy. After such dismissal the defendant had no right to have the judgment against him reviewed in this court.

The same doctrine announced in the California court is also stated in the case of *McConnel vs. Swailes*, (3 III, 571). It was there said (p. 573):

"This court does not entertain a doubt but that the dismissal of an appeal, or certiorari, is equivalent to a regular, technical affirmance of the judgment, so as to entitle the party to claim a forfeiture of the bond, and

have his action therefor. The bond given in such case is conditioned 'to pay the debt and costs, in case the judgment shall be affirmed, on the trial of the appeal.' (R, L., 395; Gale's Stat, 409.) What is the object of this requirement, and what its meaning and intention? Manifestly to secure the opposite party in his debt and costs, in case the judgment shall not be reversed; in case he shall be, in the circuit court, the successful party. By a dismissal of the appeal, either by the court, or by the act of the appellant himself, the appellee is the successful party; he has not lost what he gained before the magistrate. He is placed in the same situation lie occupied before the appeal was taken; and we see no propriety in attributing to such a judgment of dismissal less efficacy than to a more formal and technical one of affirmance."

The judgment of the court below is affirmed, with the costs of this instance against the appellant.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.

[1] Not reported

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