

ALEJANDRO POLICARPIO, PLAINTIFF AND APPELLEE, VS. LUIS BORJA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 5006. March 22, 1910*

Ponente: MAPA, J.

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In a civil action instituted in the court of the justice of the peace of Gapan, Province of Nueva Ecija, between Luis Borja as plaintiff and Alejandro Policarpio as defendant, judgment was rendered in favor of the former, of which the latter was notified on July 24, 1908. On the afternoon of Saturday, the 8th of the following month of August, the last day of the fifteen specified by law as the period for the filing of an appeal, the said Alejandro Policarpio met the justice of the peace in a private house, for the purpose, according to his own statement, of appealing, and the justice told him to return the following Monday. Apparently the said justice believed in good faith that this day was within the term prescribed by law for an appeal. Policarpio did not return on the following Monday, and on the petition of Luis Borja the execution of the judgment was ordered on the following Tuesday.

In view of these facts, the aforesaid Alejandro Policarpio filed suit in the Court of First Instance, praying for the annulment of the said judgment of the justice of the peace on the ground that, owing to the latter's error in computing the days comprised within the legal term for an appeal, he was prevented from filing in due time his appeal against the judgment aforesaid.

The case having come to trial, after the evidence had been adduced by both parties, the court rendered judgment annulling that of the justice of the peace, by virtue of the provisions of section 148 of the Code of Procedure in Civil Actions, concluding that the facts alleged in the complaint had been proved. "It is a fact," the judgment states, "that the plaintiff was prevented from filing his appeal within the term fixed by law, either through error on his part or through error of the justice of the peace."

The important question to be decided in this case is what the present plaintiff did on the 8th day of August with respect to his appeal against the judgment rendered by the justice of the peace whether he did or did not file the said appeal in due form, for not having so done, not having actually filed an appeal on that day, no importance could attach to the fact that the justice of the peace told him to return on another day. On such a supposition, it could not be said that he was prevented from appealing within the legal term for a cause or reason not imputable to himself.

The plaintiff says, in testifying with regard to what occurred on the said 8th of August, that he met the justice of the peace and told him that he would file his appeal; that he carried with him his written appeal and showed it to the justice, who did not receive it, telling him to return on Monday; and that he took no sureties with him, but that he did carry money, although he made no intimation of his wish to deliver the money to him, in view of the fact that the latter told him to return on Monday. On the other hand, the justice of the peace testified in his behalf that the plaintiff did not present to him, nor did he carry on that occasion any document whatever; that neither did he present to him any bond, and that he merely said to him that he wished to appeal, wherefore the justice told him to

return on Monday. On this witness being asked why he did not admit the appeal as it was the fifteenth day, he answered literally as follows: "It was because he brought nothing with him on that occasion."

Section 16 of Act No. 1627, amendatory of section 76 of Act No. 190, provides as follows:

"An appeal in civil causes 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 pesos, 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. In lieu of such a bond, the appellant may file with the justice a certificate of the proper official that the appellant has deposited twenty-five pesos with the municipal treasurer (in Manila with the Collector of Internal Revenue) and that said sum is available for the satisfaction of any judgment for costs that may be rendered against appellant by the appellate court in said cause."

Even admitting as true the whole testimony of the plaintiff, the conclusion is that all he did on that occasion amounted to no more than a mere intention to appeal, which was not carried out, or at least was not effected in the manner required by law. Neither did he deposit the P16 for the court fee, nor execute the bond required by law, nor even make any offer of the one or the other, nor did he make the slightest intimation that he was willing at that moment to comply with the said requirements, which was the least that he could have done in order to file his appeal in due form. Far from doing this, he himself asserted that he took no sureties with him and did not tell the justice of the peace that he carried money. And he also testified that what he said to the latter was only that he would file an appeal. But the appeal was not filed. He did not comply with, nor did he do anything to comply with any of the essential formalities prescribed by law for the perfecting of an appeal. As the justice of the peace states, when he saw that the plaintiff brought nothing, that is, neither money for a deposit nor a bond, he told him to return on Monday. Consequently, the fact of saying that he was to return on another day was not the reason why the appeal was not filed within the term specified by law; it was said because the plaintiff did not then formally file the appeal. We find, therefore, that it has not been shown that the latter was prevented through error or other cause not imputable to himself from filing the appeal in due time.

The judgment appealed from is reversed and the petition contained in the complaint is denied, without special finding as to costs of this instance.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

Carson, J., dissents.

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