

PEDRO TIRANGBUAYA ET AL., PLAINTIFFS, VS. THE JUDGE OF FIRST INSTANCE OF RIZAL ET AL., DEFENDANTS.

G.R. No. 5393. December 16, 1909

Ponente: CARSON, J.

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CARSON, J.:

This is an application to this court in the exercise of its original jurisdiction for a writ of certiorari to the Court of First Instance of the Province of Rizal, whereby the applicants seek to quash certain proceedings in that court in an action for unlawful detainer of land, appealed thereto from a court of a justice of the peace.

The applicants allege that the judge of the Court of First Instance exceeded his authority in taking jurisdiction of the appeal in question, and allowing the appellants time to amend their bond on appeal, the bond, as it is alleged, being fatally defective, first, in that it does not show on its face the number, place, and date of issue of the certificates of registration of the sureties, in violation of section 125 of Act No. 1189; second, in that it is a bond for costs only, whereas section 2 of Act No. 1778 imperatively prescribes that the appeal bond in such actions shall be given "to enter the action in the Court of First Instance and to pay rents, damages, and costs."

Counsel for applicants contend that the appellants from the judgment of the justice of the peace having failed to execute a valid bond, as required by the provisions of Act No. 1778 which prescribe the conditions under which an appeal may be taken from a court of a justice of the peace to a Court of First Instance in actions for unlawful detainer of lands, the Court of First Instance had no jurisdiction over the action thus appealed, except to dismiss the appeal; and that the order directing and authorizing the appellants to execute new bonds in compliance with those provisions was in excess of the jurisdiction of the court, and should be quashed in certiorari proceedings, there being no other adequate or available remedy against the alleged unlawful usurpation of authority by the Court of First Instance, no appeal lying from the final judgment of a Court of First Instance to this court in a civil case appealed from a court of a justice of the peace.

It appears from applicants' complaint that the appellants from the judgment of the court of the justice of the peace filed a bond for costs in the sum of P200.00, which was approved by the justice of the peace, who allowed the appeal to the Court of First Instance and forwarded the record to that court; that applicants, the appellees in the action thus appealed, moved the Court of First Instance to dismiss the appeal on the ground that the bond is invalid; and that the court instead of dismissing the appeal gave the appellants three days in which to file an amended bond.

The respondents in this proceeding severally demur to the petition for the writ, and the questions now submitted for consideration are, first, whether the facts alleged in the petition sustain the contention of counsel for the applicants that the Court of First Instance of Rizal had no jurisdiction over the action for unlawful entry and detainer appealed from the court of the justice of the peace, except for the purpose of dismissing the same; and, second, whether the trial court exceeded its authority in authorizing the appellants to file a new appeal bond.

The first ground upon which counsel for applicants base their contention that the bond filed in the court of the

justice of the peace was fatally defective may be disposed of without much discussion. There is nothing in section 125 of Act No. 1189 which invalidates a bond because of its failure to show on its face that at the time of its execution the sureties presented their certificates of registration to any official or had in their possession such certificates. It is true that that section provides that any person who transacts any business with any public offices or officers shall present his certificate of registration when he transacts such business, and doubtless the justice of the peace might and should have required the sureties to produce their certificates of registration when they executed the bond; but there is no requirement that a note of such fact should be entered on the bond nor does the law provide that the lack of such a note invalidates the bond. The law provides that when any contract, deed, or other document is acknowledged before a notary, that official shall certify in a note on the face thereof that the parties thereto have presented to him their certificates of registration, and it expressly provides also that the lack of a note to this effect shall invalidate the notarial act. But this provision applies to no other public official, and as the intervention of a notary was wholly unnecessary in the execution of the bond in question, it was not incumbent upon the sureties to have the fact that they presented certificates of registration certified on the face of the bond, and, of course, the lack of such certification in no wise invalidates the bond.

The defect in the bond arising from its failure to provide for the payment of rents and damages as well as costs presents a more serious question. We have frequently held that the legislature, under its general authority to regulate appellate procedure, may require appeal bonds of the appellant in both civil and criminal cases, and in our decisions we have on many occasions recognized and accepted the general principle that acts required by statute to perfect an appeal are jurisdictional, and must be complied with to vest the appellate court with power to entertain the appeal. Manifestly, therefore, neither the appellate nor the trial court, over the objection of appellee, can dispense with the statutory security or accept a security of a different character from that named in the statute, and it follows, as of course, that where no bond is given, the appeal must, upon motion of the appellee, be dismissed or stricken from the docket, unless it appears that the requirement has been waived by the appellee, as a technical step in appellate procedure purely for the appellee's benefit.

So also when an instrument purporting to be an appeal bond is so fatally defective as to be absolutely void or is not such an instrument as is contemplated by the statute, the appellate court acquires no jurisdiction. (*Macondray & Co. vs. Quintero et al.*, 6 Phil. Rep., 429.)

But an appeal bond or undertaking is sufficient where it substantially complies with the statute, although it varies from its language, provided its legal effect is to secure to the appellee all the rights contemplated by the statute requiring the bond. (*Mejia vs. Alimorong*, 4 Phil. Rep., 572.)

Between these extremes, however, a great variety of cases may arise and in actual practice do arise, wherein appeal bonds or undertakings, while they can not be said to be absolute nullities, are nevertheless so defective in form or substance that they fail to secure to the appellee all the rights contemplated by the statute requiring the bond or undertaking, and, therefore, entitle him to a dismissal of the appeal unless a proper amendment is made. In such cases the question presents itself whether the defective bond or undertaking may not be sufficient to sustain the jurisdiction of the appellate court, at least for the purpose of permitting an amendment of the defective bond or the filing of a new bond, although it is admittedly insufficient without amendment to confer complete jurisdiction, when the appellee insists on his right to have the benefit of the bond or undertaking prescribed by the statute.

In the case of *Johnson vs. Johnson* (31 Ohio St., 131, 135) it was held that notwithstanding the fact that an appeal bond "omitted some of the conditions required by the section regulating the appeal," the "undertaking was too substantial, in both form and substance, to be treated as a nullity, and it should not have been so treated, unless the jurisdiction of the court of common pleas in appeals from the probate court, for the purpose of amendment, does

not attach until an undertaking is filed, containing all the conditions prescribed by the section giving the appeal. A rule so strict would tend to defeat, rather than promote the administering of justice in our courts."

In *Coulter vs. Stark* (7 Cal., 244), following *Howard vs. Harman* (5 Cal., 78), the court said:

"But had the undertaking been defective, objection should have been made in the county court upon the appeal, when upon a proper showing, the party might have been permitted to file a proper undertaking. When the appeal is taken bona fide, and not for delay, the appellate court will always permit another undertaking to be filed. This is no injury to the respondent. In proceedings before justices of the peace, there can not reasonably be required the same strictness as in the higher courts."

In the case of *Deen vs. Hemphill* (7 Fed. Cases, 350) the court said:

"It is admitted that the decision of the circuit court upon the first question (permitting a new bond to be filed after having sustained a motion to quash the old one) is contrary to the practice which has heretofore generally prevailed in this territory. It is, however, sanctioned by the practice of several of the States, * * * and seems to be founded on reason. (*Brown vs. Matthews*, 1 Rand (Va.), 462; 1 Munf. (Va.), 397.) The object in requiring a bond from the party appealing is to secure the rights of the adverse party; and it seems to us, if the bond be given at any time before the suit is finally acted upon by the circuit court, the rights of the parties are as effectually protected as if the bond taken by the justice had been valid and sufficient. The fact that the justice failed to take a good bond should not operate to the prejudice of the party."

(See also *Foster vs. Foster*, 7 Paige (N. Y.), 48.)

Our statute prescribing the conditions upon which an appeal from a judgment of a justice of the peace may be perfected would appear to be so positive and express in its terms as to forbid our holding that the Court of First Instance can acquire jurisdiction where no security is given or where the instrument purporting to be an appeal bond is a nullity and absolutely void (*Macondray & Co. vs. Quintero et al.*, 6 Phil. Rep., 429); but we think that under the liberal rules of procedure and amendment laid down in the Code of Civil Procedure we can and should hold that when in good faith, and not for the mere purpose of delay, a bond, undertaking, or other instrument which (while it may fall far short of securing all the rights contemplated by the statute requiring the bond, and is defective in either form or substance) secures to the appellee at least a partial protection of his rights, such bond, undertaking, or other instrument, when approved by the justice of the peace is sufficient to confer jurisdiction on the Court of First Instance, at least for the purpose of amendment; and that in such cases the appellant should be allowed, upon reasonable terms, to perfect the bond wherein it is defective, or to file a new bond such as is required under the statute providing for the allowance of appeals.

Counsel for applicants in their brief point out other alleged irregularities in the proceedings whereby the action was transferred from the court of the justice of the peace to the Court of First Instance, especially the alleged failure of the appellants to deposit with the court the amount of damages allowed in the court of the justice of the peace, as required by the statute; but since the petition does not expressly allege the failure of appellants so to do, this question is not properly before us in ruling upon the demurrer to the complaint. We may say, however, that in the event that appellants in the proceedings below did in fact omit to make the deposit as is intimated by counsel in his brief, we see no reason why the omission should not be corrected in the same manner as the defect in the bond may be corrected on the motion of the appellee, by an order dismissing the appeal unless the deposit be made within a fixed number of days; and in the absence of such a motion the irregularity in the proceedings must be taken to have been waived by the appellees, for whose benefit alone the provision requiring the deposit was made.

The several demurrers of the various defendants are sustained, and plaintiffs will be given a period of five days

from the date of the notice of this decision in which to amend their complaint. If an amended complaint is not filed within that time, the clerk, without further orders from this court, will enter final judgment in this case in favor of the defendants, denying the issuance of the, writ prayed for, with costs against the plaintiffs. So ordered.

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

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