

SANTIAGO D. REYES, PETITIONER AND APPELLANT, VS. PABLO DANA, RESPONDENT AND APPELLEE.

G.R. No. 7126. November 21, 1914

Ponente: CARSON, J.

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CARSON, J.:

"The death of the appellee in these proceedings having been suggested on the record, This court, on the 8th of January, 1913, issued an order giving the proper representatives of the estate of the deceased, if any there be, thirty days within which to appear and have themselves made parties to the proceedings.

No action has yet been taken by the interested parties, and counsel for appellant now prays that the case be set down for hearing without further delay.

The practice heretofore adopted in this court, in cases where the death of a party has been suggested on the record, has been to suspend the proceedings; to give the proper representatives of the estate of the deceased a reasonable time within which to present themselves voluntarily and to be made parties on proper proof of their right of representation ; and in the event that no such voluntary appearance is entered, to require the opposite party to secure the appointment of a legal representative of the estate of the deceased and to require such legal representative, when appointed, to appear and become a party to the proceedings.

Experience has demonstrated that this procedure has not given satisfactory results, and after due consideration, the court has this day adopted the following additional rules touching proceedings in cases wherein the death of a party is suggested on the record.

"Additional rules of the Supreme Court touching proceedings in cases wherein the death of a party is suggested on the record.

"1. Whenever, "pending appellate proceedings in this court, either party shall die, the proper representatives of the deceased person may voluntarily come in and be admitted parties to the proceedings, and thereupon the proceedings shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, accompanying the suggestion with evidence, by affidavit or otherwise, satisfactorily establishing the death, and may on motion obtain an order that unless such representatives shall become parties within ninety days thereafter, the party moving for such order, if he be the appellee, shall be entitled to have the appellate proceedings dismissed; and if the party so moving shall be the appellant, he shall be entitled, on motion, to open the record, and on hearing to have final judgment entered, disposing of the appellate proceedings as justice may require under all the circumstances of the case.

"Provided, however, That the court may, in the interests of justice, extend the time thus allowed for the appearance of such representatives; and

"Provided further, That a copy of every such order shall be printed by the moving party, in some newspaper of general circulation throughout the Philippine Islands, previously designated by the clerk of this court, once a

week for four successive weeks, the cost of such publication to be taxed in like manner as are the costs in other cases; and,

"Provided further, That should it appear that the death occurred after final submission of the case on appeal, the proceedings will not be suspended, unless upon the suggestion of the death on the record it appears that in the, interests of justice an opportunity should be extended the proper representatives of the deceased to come in and be admitted as parties to the proceedings.

"2. Upon the suggestion on the record of the death of a party, pending appellate proceedings in this court, and upon satisfactory proof that there are proper representatives of the estate of the deceased within the Philippine Islands, the opposite party may, on motion, obtain an order that, unless such representatives shall make themselves parties within thirty days from notice of such order, the moving party, if he shall be the appellee, shall be entitled to have the proceedings dismissed, and if he shall be the appellant, shall be entitled to open the record, and on hearing, have final judgment entered, disposing of the proceedings as justice may require under all the circumstances of the case.

"3. When the death of a party is suggested on the record, supported by satisfactory proof of the death, and the representatives of the deceased do not appear within twelve months thereafter, and no measures are taken by the opposite party within that time to compel their appearance, the court may, on its own motion, dismiss the proceedings, or take such other action as may be deemed proper in the premises."

The motion of counsel for appellant is denied, without prejudice to his right to proceed in conformity with the additional rules of court just adopted, which prescribe the appropriate procedure applicable to these proceedings in the status in which we now find them.

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

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