

PORT BANGA LUMBER CO., PLAINTIFF AND APPELLEE, VS. EXPORT & IMPORT LUMBER CO., DEFENDANT AND APPELLANT.

G.R. No. 7967. September 05, 1914

Ponente: CARSON, J.

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CARSON, J.:

Final judgment having been entered in this court in the above-entitled cause,[1] an appeal to the Supreme Court of the United States was allowed by one of the members of this court, who at the same time directed that a certified transcript of the proceedings be transmitted to that court upon the filing by the petitioner of a supersedeas bond in the sum of \$20,000 United States currency approved by him.

Thereafter the citation of the plaintiff company was duly signed and a supersedeas bond in the amount indicated was accepted and approved by the member of the court who allowed the appeal.

One of the sureties whose name is signed to the supersedeas bond now moves this court to permit him to withdraw from the bond, and, further, to relieve him from all liability thereunder.

The acceptance of the bond and the signing of the citation by one of the justices of this court transferred the jurisdiction of the cause appealed to the Supreme Court of the United States. The power of the justice over the appeal and the security, in the absence of fraud, was exhausted when he took the security and signed the citation. "From that time the control of the supersedeas as well as the appeal was transferred to the Supreme Court of the United States." (Draper vs. Davis, 102 U. S., 370.)

In the case of Jerome vs. McCarter (21 Wall., 17), the Supreme Court of the United States, in discussing the jurisdiction of a justice to take security on allowing an appeal to that court said:

"The justice who takes the security on appeal is the sole and exclusive judge of what it should be, and his decision is final, unless he violates a statute or a rule of practice."

And again, in the case of Morrin vs. Lawler (91 Fed. Rep., 693), it was said that the practice in the Federal courts prescribes that—

"When all the steps necessary to perfect an appeal to an appellate court have been properly taken, the action is within the control of that court and the trial court should not engage in undoing or modifying the proceeding by which such jurisdiction has been obtained."

We think that under these rulings and upon principle it is manifest that this court has no jurisdiction to hear and decide this application by the bondsmen, which would necessarily have the effect of annulling the bond and vacating the supersedeas, and perhaps of terminating further proceedings on the appeal. The appeal was allowed and the transcript of the record ordered certified to the court above, on condition that an approved bond be filed with the record.

The motion is denied.

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

[1] 26 Phil. Rep., 602

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