

TRINIDAD CARRANCEJA, PETITIONER, VS. P. M. MOIR, JUDGE OF FIRST INSTANCE OF AM BOS CAMARINES, AND ONG-SACO, RESPONDENTS.

G.R. No. 9720. March 26, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action in this court to secure a writ of mandamus directed to the Court of First Instance of Ambos Camarines requiring it to dismiss an appeal pending in that court from a justice's court of that province.

From the allegations of the complaint, which are admitted, it appears that a summary proceeding for the possession of land was begun in the justice's court in the municipality of Daet, Ambos Camarines. Judgment was in favor of the plaintiff. An appeal was immediately taken to the Court of First Instance, a bond given, and deposit made as required by law. During the pendency of the appeal the appellant failed to make the payment of the rents due during the month of November, as required by the judgment of the justice's court and by the law. A motion was thereupon made by the appellee for the dismissal of the appeal. Said motion was duly brought on for a hearing and the appellant, on the hearing, and after the time during which the payment should have been made as required by law had expired, paid into court the rents for the month of November, the court received the same and, basing its opinion on said payment, denied the motion. This action is brought for a writ of mandamus to compel the Court of First Instance to dismiss the appeal in accordance with law.

Section 88 of the Code of Civil Procedure, so far as material to the question at issue, reads as follows: "During the pendency of the appeal it shall be the duty of the defendant to pay to the plaintiff or into the Court of First Instance, at the option of the defendant, the amount of rent due from, time to time under the contract, if any, as found by the judgment of the justice of the peace to exist, or, in the absence of a contract, to pay to the plaintiff or into court, as above provided, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment. * * * Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the Court of First Instance, upon the motion of the plaintiff, of which the defendant shall have notice, upon proof of the failure of the defendant to make such payments, shall forthwith dismiss the appeal. The dismissal of the appeal shall revive the judgment of the justice of the peace and it may thereupon be enforced by execution as though no appeal had been taken. * * *"

The record clearly demonstrates, and there is no question about the fact, that the judgment of the justice's court required the appellant to pay the appellee monthly a certain sum as rent of the land the possession of which was in dispute in that court; that said rent was paid by the appellant up to the month of November, but was not paid by him for that month. The first ten days of the month of December were allowed to pass without payment by the appellant; and payment of the rent was neither made nor tendered until the 27th of December, after the motion had been made for the dismissal of the appeal and while the hearing of that motion was in progress.

The law seems to us as clear as it is imperative. If, during the first ten days of a given month, the appellant does not pay the rent of the preceding month in the sum found by the justice's court, and a motion is made for the dismissal of the appeal and proof presented of nonpayment, the appellate court must dismiss the appeal forthwith. The appellate court is given no discretion in the matter. It cannot exercise its judgment. The dismissal of the appeal, after the required facts are proved, is simply a ministerial duty which it must perform. If it refuses to perform it, mandamus will issue to compel performance. While mandamus will not be used by a superior court to compel an inferior court to perform an act the performance of which is discretionary with the inferior court, it will require the performance of an act where, in the performance of that act, the court can exercise neither judgment nor discretion but acts simply as a ministerial officer.

The writ should issue:

This decision is in no sense in conflict with that of *Requepo vs. Judge of First Instance of Ilocos Sur* (21 Phil. Rep., 77), or *Tirangbuaya vs. Judge of First Instance of Rizal* (14 Phil. Rep., 613).

In the first case the action was in the justice's court for possession of land. Judgment was in plaintiff's favor for possession and damages. The defendant served notice of an appeal to the Court of First Instance but did not file an undertaking or deposit the sum found by the justice's court as damages and costs, as required by section 88 of the Code of Civil Procedure, as amended by Act No. 1778. Nevertheless, the justice's court certified the record to the Court of First Instance, where the cause was placed on the docket. Later the appellee moved to dismiss the appeal on the ground that the appellant had not only failed to file an undertaking but also to pay the damages and costs required by the section referred to. The court denied the motion and directed the appellant to file a bond within twenty-four hours. It was filed as directed and on the following day the appellee made another motion to dismiss the appeal, which was likewise denied. An action was brought in this court for a writ of mandamus compelling the court to dismiss the appeal. In that case we said:

"Had the defendant Rosales presented the bond or undertaking to the justice of the peace and if such bond or undertaking had been defective, these defects could have been cured in the Court of First Instance, even over the objection of the plaintiff, provided that it had been made to appear to the Court of First Instance that the appeal was taken in good faith and not for delay; but where, as in the case, under consideration, no attempt whatever was made to comply with the express provisions of the statute, the Court of First Instance acquired no jurisdiction of the subject-matter of the action, except to dismiss the appeal if the appellee, in due time, requested the dismissal. We find no adjudicated case, either in this jurisdiction or in the United States, where the appellate court has been allowed to take and retain jurisdiction where no attempt was made in the justice of the peace court to comply with the statute.

"The dismissing of the appeal upon the first motion of the plaintiff is a ministerial act wherein the defendant judge had no discretion. It is well settled that this court has the power to compel judges of inferior courts to perform purely ministerial acts under positive laws."

In the second case (*Tirangbuaya vs. Judge of First Instance of Rizal*) an application was made in this court for a writ of certiorari, directed to the Court of First Instance of Rizal, requiring that the record of that court be sent up in order that it might be examined and the action of the court vacated relative to an appeal pending in that court from a judgment of a justice's court of that province, in a summary proceeding brought for the possession of land under section 80 of the Code of Civil Procedure. In that case the appellants filed an undertaking for costs only, failing to provide for the payment of rents and damages as required by law. It 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. The appellee moved the appellate court to dismiss the appeal on the ground that the bond was invalid; and the court, instead of dismissing the appeal, gave the appellants three days in which to file an amended bond. The bond being defective,

the appellee claimed that the appeal was not perfected and that the Court of First Instance should have dismissed the appeal on motion. In the resolution of that question this court said:

"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."

The court further said with respect to the alleged failure of the appellants to deposit the sum required as well as to give the bond: "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 motion the irregularity in the proceeding must be taken to have been waived by the appellees, for whose benefit alone the provision requiring the deposit was made."

We do not regard the case of *Requepo* an authority against our decision in the case at bar. It holds that, in case the appellant does absolutely nothing to meet the requirements of the statute relative to appeals, the appellate court has no power or jurisdiction other than to dismiss the appeal. The decision was put squarely on the lack of jurisdiction to do anything except dismiss. The appellant having done nothing even to initiate the proceedings necessary to take an appeal, the mere certification of the record by the justice's court conferred no appellate jurisdiction on the Court of First Instance. Having no appellate jurisdiction in the premises, it had no power to act therein. Its only authority was to dismiss. Having only one course to pursue, only one thing to do, and its duty being to do it, the Supreme Court held that the appellate court had no authority to exercise judgment; and that, if it refused to perform that duty, *mandamus* would lie.

In the case at bar the appellant did nothing to meet the requirements of the law in relation to the particular matter to which the proceeding refers. Each failure to pay the monthly rental at the time required by law produced a situation complete in itself and entirely independent of every other act performed in taking the appeal or which was or might have been performed during the pendency thereof. That situation was one which, apart from every other fact in the case, had, by express provision of law, a virtue of its own by which the appeal was rendered as completely innocuous as if not a single act required by law had been performed in taking the appeal. Relative to the payment of the rent for November, the appellant did nothing, making no effort to pay it either in whole or in part. He was inactive until the 27th of December, when he sought to do the thing as to the performance of which the law limited him to the first ten days of December. With the termination of the first ten days of December the appellee obtained the right to dismiss the appeal absolutely, or else he had no right to ask for the dismissal of the appeal under any circumstances. If he was not entitled to a dismissal when he made his motion, then the Code means nothing. We believe that the law means what it says; and that appellee's rights accrued and became complete and effective on the termination of the ten-day period and no subsequent act of the appellant could impair them.

Nor is the case of Tirangbuya in conflict with the present judgment. In that case the appellant, in good faith, sought to perform at least some of the acts necessary to take the appeal. He gave an undertaking. It was not in accordance with the requirements of the law, being for costs only, whereas it should have been conditioned "to pay rents, damages and costs." It was accepted and approved by the justice of the peace as required by section 88 of the Code of Civil Procedure and the record was certified to the appellate court in the ordinary way. The bond was imperfect but it was accepted and approved by the only person authorized by law to accept and approve it. The Court of First Instance has no authority to pass on the sufficiency of the bond in the first instance. That power rests exclusively with the justice of the peace. Moreover, there is no express statutory obligation, on the part of the Court of First Instance, to dismiss an appeal which is defective by reason of appellant's failure to give the undertaking required by law or to do the other things which he must do in the justice's court before his appeal is perfected. In other words, in cases like that presented by Tirangbuya vs. Court, the Court of First Instance is not expressly required by statute to dismiss the appeal, nor is it authorized expressly by statute to do so. In passing on the sufficiency of the bond and the failure of the appellant to fulfill, in the justice's court, the other requirements of the statute, the Court of First Instance is exercising no more the implied authority conferred by section 88 and other sections of the Code of Civil Procedure, than its general appellate powers conferred by Act No. 136. There is nothing in section 88 which expressly authorizes, much less requires, the Court of First Instance to dismiss an appeal by reason of defects in a bond or on account of other defects occurring in an attempt, in the justice's court, to perfect an appeal. The act of perfecting an appeal is within the supervision of the justice of the peace exclusively; and what the Court of First Instance does is to determine "its own power from the acts performed by the justice of the peace in his court.

There is lacking, therefore, in the case we are discussing, as also in the Requepo case, the peculiar element which is the whole foundation of the case at bar, namely, an express and imperative statute commanding the Court of First Instance to dismiss an appeal when certain facts exist. There is nothing of that with respect to the failure to comply with the requirements which, the statute says, must be met in the justice's court before an appeal is perfected, namely, the giving of a bond and the making of a deposit. As to the powers of the appellate court in case of such defects the Code of Civil Procedure is silent. The distinction, therefore, between the case at bar and the one under discussion is clear. In the one case the code is express and imperative and the appellate court has no discretion. In the other it is silent, imposing no express duty or obligation.

While, in the case we are discussing, the language of section 88 with respect to the duties and obligations of the justice of the peace is substantially as imperative as that referring to the duties and obligations of the Court of First Instance in cases such as the one at bar, it should be noted that such language refers solely to the justice of the peace, whereas nothing is said relative to the duties and obligations of the Court of First Instance respecting an appeal in which the conditions required by law to be performed in the justice's court have not been properly performed therein.

It is clear, therefore, that in cases like that of Requepo and of Tirangbuya vs. Judge of First Instance, the duties of the appellate court are ordinarily of a different nature from those in the case at bar. In the one case they are discretionary, in the other ministerial. The court, in cases Where it may use its judgment, may decide either way and not subject itself to mandamus; whereas, where duties are purely ministerial, the court, if it decide wrong, is subject to mandamus.

Moreover, the case of Tirangbuya vs. Judge of First Instance was for certiorari. We have held in numerous cases that the only question to be considered in an application for a writ of certiorari is whether the court against which the writ is to be directed had jurisdiction to perform the act complained of (Herrera vs. Barretto and Joaquin, 25 Phil. Rep., 245; Gala vs. Cui and Rodriguez, 25 Phil. Rep., 522; De Fiesta vs. Llorente and Manila Railroad Co.,

25 Phil. Rep., 554; Province of Tarlac vs. Gale, 26 Phil. Rep., 338.) If it did, the writ will not lie, and if it did not, it will; and this regardless of whether the court decided the matter right or wrong. In that case, therefore, the only question before the Supreme Court for resolution was whether or not the Court of First Instance, in permitting an amendment of the bond, was acting within its jurisdiction. No question arose as to whether the court acted legally or illegally, whether it erred or did not err. This is clear, not only from what has been said, but also from the fact that the court really held, in deciding the case, that the Court of First Instance had jurisdiction and, therefore, dismissed the application for the writ.

The statements quoted from this case, however, as we have already indicated, are not in conflict with the holding in the case at bar for the reasons already stated, namely, that in that case (1) there was a part performance of the conditions required for an appeal which, it was held in that case, gave the Court of First Instance jurisdiction over the appeal; and (2) there was an absence of express obligation on the part of the Court of First Instance to dismiss, it having, by part performance on the part of the appellant, obtained jurisdiction over the appeal, and there being no statute expressly requiring it to do so under such circumstances. There having been a part performance of the conditions required to perfect the appeal, the Court of First Instance was not without jurisdiction; and, having, therefore, the right to decide the motion to dismiss, it acted within its powers whichever way its decision went. Nor was it subject to mandamus, as it had the right to use its judgment upon the facts and the law and decide the motion in accordance with what it conceived the law to be.

In the case before us there was no part performance and the court was not authorized to use its judgment in the decision of the case. It had only one course to follow. The appellant having done nothing toward the payment of the rents for November, there was nothing which the appellate court could amend by; and, it having no right to exercise its judgment with reference to the dismissal of the appeal, it is subject to mandamus for failure to dismiss.

We regard the dismissal of the appeal in the case before us as consonant with the decisions of this court and in accord with the spirit and intention of the law. If the appellant may decline to pay the rents during the time specified by statute and thereby compel the appellee, in order to obtain the money that is legally due him, to hire a lawyer and make a motion to the court, and then be permitted, after causing the trouble, expense and delay of such a motion, to enter at the last moment and make the payment, the purpose and object of the law will be defeated. A willful appellant may thus cause the appellee more trouble and expense than the rents are worth and at the same time maintain his appeal in full force and effect.

It is adjudged and decreed that a writ of mandamus issue, directed to the Court of First Instance of the Province of Ambos Camarines, commanding that it dismiss the appeal now pending before it in the case of Trinidad Carranceja vs. Chino Ong-Saco, with costs against the appellant. No costs in this instance. So ordered.

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

Carson, J., dissents.

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