

G.R. No. 21

[G.R. No. 21. December 08, 1902]

SIMONA BRILLANTES, PLAINTIFF AND APPELLEE, VS. MANUEL BRILLANTES ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

By an order of July 30 of this year the appeal was declared to have been abandoned, and the appellants' rights to have lapsed by the expiration of more than two years. In consequence the judgment appealed was declared a finality. The appellant, Manuel Brillantes, upon the day following the service upon him in his residence of notice of the order, service having been made by the judge of Abra, filed a petition asking for the vacation of the said order, and that he be allowed the term of twenty days or more provided for by article 370 of the old Code of Civil Procedure, for the purpose of coming to an understanding with Solicitor Santos, or some other solicitor, to represent him before this court. Among other grounds he alleged that he was prevented from prosecuting the appeal by *force majeure*, to wit, by war, and that the term prescribed by article 394 of the law cited had not expired when the *force majeure* ceased, and that therefore he considered himself entitled to avail himself of the remedy prescribed by article 399 of the same law.

The petitioner has not proven, nor has he even offered to prove, that he was prevented from prosecuting his appeal before the expiration of the term of two years by *force majeure*, or by any cause independent of his own will. For this reason his application, brought conformably to the provisions of articles 395, 399, and 400 of the Code of Civil Procedure, must be overruled, and consequently the vacation of the order prayed for by Manuel Brillantes in his petition of September 20 last is denied, with the costs. The directions contained in the order referred to will be carried into effect. So ordered.

Arellano, C. J., Cooper, Smith, Willard, Mapa, and Ladd, JJ., concur.