

3 Phil. 424

[G.R. No. 1403. March 19, 1904]

JOSE E. ALEMANY ET AL., PETITIONERS, VS. JOHN C. SWEENEY, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

D E C I S I O N

WILLARD, J.:

On October 31, 1903, this court held that the complaint in this case stated a cause of action. On December 29, 1903, it held that the answer stated no defense. The case coming on to be heard in its order on the calendar, on January 20, 1904, the defendant asked leave to file an amended answer. The only allegation or denial in the proposed amended answer which is at all material is the allegation that when the plaintiffs, on April 22, gave notice of an appeal from the order of April 17 removing them, they presented no bond. This statement appears to be untrue, for the plaintiffs present a certified copy of the bond on file in the court below. It is to be noticed further that when the defendant denied the appeal he placed his ruling on other grounds, and his order says nothing about any alleged failure to present a bond.

The application to file the amended answer is denied.

We have already held that the plaintiffs are entitled to their appeal from the order of April 17. It only remains to decide whether they are entitled to appeal from the second order. It does not appear from the complaint when this second order was made. The allegation that the plaintiffs gave notice of appeal within twenty days after they learned of the order is not sufficient. The code requires the appeal to be taken within twenty days after the order is made, not within twenty days after notice thereof. As to this order it does not appear that the

appeal was taken in time, and the plaintiffs are therefore not entitled to have it allowed.

In view of the position taken at the argument by counsel for the defendant, we may add that, in requiring this appeal to be admitted, we do not in any way determine whether the order made on April 17 was void or valid. We simply hold that the plaintiffs have a right to bring the case here by appeal for the purpose of having that question argued and determined.

Judgment will be entered directing the defendant, upon the presentation of a bond sufficient in amount and" sureties, to approve the same, and to allow the appeal of the plaintiffs from the order of April 17, 1903, annulling the appointments of the plaintiffs as guardians of the minors Leandro and Paz Gruet, with costs against the defendant.

Arellano, C. J., Torres, Cooper, Mapa, McDonough, and Johnson, JJ., concur.
