4 Phil. 572

[G.R. No. 1671. July 03, 1905]

LEONARDO MEJIA, PLAINTIFF AND APPELLEE, VS. ANTONIO ALIMORONG, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

This action was commenced before a justice of the peace in the Province of Pangasinan, who rendered judgment for the plaintiff. On the 8th day of August, 1902, the defendant filed in the justice's court a notice of appeal, and in that notice stated that he then presented before the justice as sureties on his appeal bond, Juan Mejia and Angel Alimorong. On the same day the justice made an order allowing the appeal and directing the filing of a bond with sufficient sureties in the sum of $100, payable to the plaintiff. Pursuant to that order the following obligation was presented:

> "Por cuanto ha sido presentada demanda en 1 de Julio de 1902 en el Juzgado de Paz de San Nicolas de la Provincia de Pangasinan demandando a D. Antonio Alimorong sobre propiedad de uri carabao.
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> "Por tanto nosotros Mr. Juan Mejia y Mr. Angel Alimorong vecinos y propietarios de este pueblo, de mancomun et insolidum por el presente nos comprometemos yy garantizamos la fianza de $100 dollars pagadera a la parte contraria que D. Antonio Alimorong preste como apelante de un juicio civil para responder del pago de las costas a que se le pueda condenar en dicho juicio y caso de perder en contra del apelante el litigio a pagar a los Estados Unidos la cantidad citada de $100 dollars.

"JUAN MEJIA.
"ANGEL ALIMORONG."

The copy of the record required by section 77 of the Code of Civil Procedure was sent by the justice of the peace to the Court of First Instance of the Province of Pangasinan, and received therein on the 9th day of September, 1902. In the month of June or July, 1903, the plaintiff made a motion to dismiss the appeal because no proper bond was filed in the justice's court. This motion was granted by the Court of First Instance by an order or judgment on the 8th day of July, 1903, and the defendant has brought the case here for review by means of a bill of exceptions. The judge below dismissed the appeal because it did not appear that the justice of the peace had approved the bond.

Plaintiff's first objection to the bond is that it does not express any consideration. Section 76 of the Code of Civil Procedure requires a bond to be filed. The document presented in the court below is not a bond as that word is understood in the common law in the United States, but is what is there known as an undertaking. The fact that an undertaking was presented in lieu of a bond is not important, for, by section 1 of the same code, it is provided that the word "bond" includes an "undertaking." We know of no law which requires that a consideration shall be expressed in an undertaking in order to make it valid.

The second objection to the document is that there are no affidavits by the sureties to the effect that they are solvent. Section 76 above cited does not require the sureties to justify in this way, and we know of no other provision of the law making such a justification necessary in bonds under this section.

Another objection is that it does not appear when the undertaking was presented to the justice of the peace. The plaintiff, in support of his motion in the Court of First Instance, did not attempt to show that it was not presented within five days after the judgment, and we think that it affirmatively appears from the record that it was so presented.

As has been stated, the notice of appeal filed on the 8th day of August, 1902, shows that on that day the defendant produced before the justice of the peace as sureties the persons who signed this undertaking. The order allowing the appeal was made on the same day, and we have no doubt but that this undertaking was made and filed at that time. Moreover, section 77 of the Code of Civil Procedure provides that the justice of the peace, upon the perfection of the appeal, shall remit a certified copy of the proceedings to the Court of First Instance. The fact that the justice did make out and certify the proceedings in accordance with this section, indicates that the appeal had been properly perfected by the presentation of the bond or undertaking within the five days.

The plaintiff also says that the document is insufficient because it is payable to the United States and not to the plaintiff. It will be observed that it is stated distinctly in the first part of the instrument that it is payable to the opposite party. The statement at the end that it is payable to the United States was entirely unnecessary, and the bond was complete without it. That can be rejected and the instrument still remain a sufficient undertaking under the law, payable to the opposite party.

As has been said, the judge of the court below dismissed the appeal because it did not appear that the justice had approved the bond. Section 76 merely requires that the bond should be approved by the justice. It does not state how he shall indicate such approval. It does not require him to do this in writing upon the bond itself. In our opinion it is sufficient if he in fact was satisfied with the sureties, and did in fact approve the undertaking. That this appears is conclusively shown by the fact that he remitted to the Court of First Instance a certified copy of his record required by section 77. If he had not in fact approved the bond, he never would have sent the papers to the court above.

The last point made as to. the sufficiency of this instrument is that it is conditional; that the sureties merely guarantee the bond which the defendant may give, and that it does not appear that the

defendant ever gave a bond. It is true that the instrument is very unskillfully drawn, but under the provisions of section 288 of the Code of Civil Procedure in construing instruments it is necessary to pursue the intention of the parties. That the par- ties intended this instrument to be the bond which was required by law clearly appears. In his notice of appeal, as has been said, the defendant presented these sureties before the court for the purpose of entering into the bond which the law required. By the order of the court made at the same time, he was directed to furnish such a bond as the law required, and on the same day this document was filed. Section 2 of the Code of Civil Procedure provides as follows:

> "The provisions of this code, and proceedings under it, shall be liberally construed in order to promote its object and assist the parties in obtaining speedy justice."

That article has special application to proceedings before a justice of the peace where, as a general rule, such proceedings are not conducted with the same regard to form which is observed in courts of superior jurisdiction.

In view of all the circumstances in the case, and construing this instrument with reference to such circumstances, we think it imposed upon the sureties an obligation to pay to the plaintiff the costs which he might recover against the defendant in case the appeal was not successful. If it did impose such an obligation, it was, of course, sufficient

The claim of the plaintiff and appellee, that the resolution of the court below dismissing this appeal was not appealable, has already been disposed of by the order of this court made on the 25th day of February, 1904, denying the motion of the plaintiff to dismiss the bill of exceptions on that ground. There was pending in the Court of First Instance a legal proceeding. That proceeding was terminated by the resolution in question. Whether it be called an order or a judgment is immaterial. In any case it was final and effectually disposed of the

proceeding, so that nothing more could be done with it in that court. It was therefore appealable as a final judgment.

The judgment of the court below is reversed and after the expiration of twenty days the case will be remanded to the court below with directions to proceed therewith in conformity with the law. No costs in this court will be allowed to either party. So ordered.

Arellano, C.J., Torres, Johnson, and *Carson, JJ.,* concur.

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