

2 Phil. 654

[ G.R. No. 1403. October 31, 1903 ]

**JOSE K. ALEMANY ET AL., PETITIONERS, VS. HON. JOHN C. SWEENEY,  
RESPONDENT.**

**D E C I S I O N**

**WILLARD, J.:**

This is an original action brought in this court, under the provisions of section 515 of the Code of Civil Procedure, against one of the judges of the Court of First Instance of Manila. The case is now before us on a demurrer to the complaint.

It appears therefrom that prior to the 2d day of April, 1903, Dona Juana Moreno de Rastrollo had been guardian of the minors Leandro Gruet and Paz Gruet. On the 2d day of April the plaintiffs presented a petition to the Court of First Instance of Manila, asking that the guardian be removed and that the plaintiff Dona Andrea Atayde be appointed guardian of the persons, and the plaintiff D. Jose E. Alemany administrator of the property, of the minors. On April 7 the court granted the prayer of the petition and made the appointments as requested. The plaintiff Alemany gave a bond in 25,000 pesos. On the same day the former guardian, Dona Juana Moreno, died. On the 17th of April the court annulled the appointments of the plaintiffs and appointed Don Carlos Rastrollo in their place until the will of Dona Juana had been proved.

The seventh and eighth allegations of the complaint are as follows:

“7. On the 22d of April the deponents filed notice of appeal, accompanied by the necessary bond, against the decision referred to, in so far as it unjustly removed them from their offices, reserving the right of appeal against the appointment of Senor Rastrollo when such appointment should be made final.

“8. The court took no cognizance of the said notice of appeal, but instead, in

accordance with the motion of the attorney, Sefior Herrero, no copy of which motion was served on the respondents, said judge rendered judgment ratifying the annulment of the appointments of the deponents and confirming Don Carlos Rastrollo's appointment as guardian and giving in the decision his reasons therefor."

The date of this last order does not appear. The plaintiffs allege that they heard of it during the first days of June, and on June 10 appealed from it so far as it made the appointment of Don Carlos final.

The appeals presented on April 22 and on June 10 were denied by the defendant.

The prayer of the complaint is that a mandamus be issued to the defendant directing him to allow the appeals.

It will be necessary to consider only the appeal of April 22, for if that was improperly denied by the defendant the demurrer will have to be overruled, whatever might be said of the appeal of June 10.

The plaintiffs having been appointed guardians of the minors on April 7, on April 17 this appointment was annulled and another person was appointed in place of them. This order annulling the appointment of the plaintiffs must be considered as an order removing them from the office. As an order removing them, the plaintiffs had a right to appeal from it under section 783 of the Code of Civil Procedure, which is as follows:

*"SEC. 783. Appeals allowed in other cases affecting settlement of estates.—Any person legally interested in any other order, decree, or judgment of a Court of First Instance in the exercise of its jurisdiction in special proceedings in the settlement of the estates of deceased persons, or the administration of guardians and trustees, may appeal to the Supreme Court from such order, decree, or judgment, when such order, decree, or judgment constitutes a final determination of the rights of the parties so appealing, and the appeal shall be effected in the manner provided in the two preceding sections: Provided, That no appeal shall be allowed from the appointment of a special administrator."*

This order was a final order because it terminated the right of the plaintiffs to the

possession of the office. By section 781 of the Code of Civil Procedure the party aggrieved is required to file an application for an appeal within twenty days after the entry of the order. This the plaintiffs have done. The appellants are also required to execute a bond conditioned as provided in section 780. The plaintiffs allege that they have tendered the required bond. It was not suggested at the argument that the complaint was insufficient in not alleging more fully that the bond was a sufficient one; neither is this one of the grounds stated in the written demurrer. We of course have no power to control the judgment of the court below in passing upon the sufficiency of the bond, but the record in this case justifies us in saying that the appeal was denied entirely on' other grounds. We think that the complaint shows that the plaintiffs did all the law required of them to perfect their appeal.

While it is not stated in any one of the sections 779, 781, and 782 that the court must allow the appeal, yet section 780 says that "before an appeal is allowed" a bond shall be given. However this may be, it is in any event the duty of the court to approve the bond. That duty in this case was purely a ministerial one, holding as we do that the plaintiffs presented a bond sufficient as to sureties and amount. When such a bond is presented, it is the duty of the judge to approve it, and his refusal to do so brings the case within section 515 above cited.

The claim of the defendant that the complaint is defective in not specifying the section of the Code which he has infringed can not be sustained. The Code requires (sec. 90) that the complaint contain "a brief statement of the facts constituting the cause of action." It is not necessary to state in the complaint the law applicable to the case.

The case is not covered by section 700 of said Code cited by the defendants. The original proceeding for the removal of Dona Juana Moreno was not an "action commenced against her for money, debt, or damages." Her death can have no effect upon the case. It took place on the same day that the plaintiffs were appointed. If it preceded that appointment the question of her removal disappeared, the guardianship became vacant, and the court had a right to fill it. If it followed the appointment, she had a right to appeal from the order removing her. But this right terminated with her death.

The demurrer is overruled, and the defendant is given ten days from the date of this order in which to file his answer to the complaint.

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

*Johnson, J., did not sit in this case.*

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