2 Phil. 83

[G.R. No. 1034. March 31, 1903]

DOMINGO HERNAEZ Y SALINAS, ADMINISTRATOR OF THE INTESTATE ESTATE OF PEDRO HERNAEZ, PETITIONER, VS. W. F. NORRIS, JUDGE OF THE SPECIAL COURT OF NEGROS, RESPONDENT.

D E C I S I O N

LADD, J.:

This is a petition by the legal administrator of the intestate estate of D. Pedro Hernaez for a mandamus, to be directed to the judge, of the Special Court of Negros, requiring him to admit an appeal which the petitioner claims was duly taken by him from an order settling the account of D. Pelabio Hernaez as judicial administrator of the estate.

It is stated in the petition that the order was made June 7, 1902; that the parties were notified of the order June 11; that on June 12 the petitioner filed a notice of appeal therefrom; that no order was made by the court upon notice of appeal or fixing the amount of the bond required; and that the petitioner thereupon filed a bond for 500 pesos in accordance with the verbal indication of the judge. It is not stated in the petition when this bend was filed, but it is stated that it was returned to the petitioner, and that on July 20 an order was made by the court disallowing the appeal as not having been duly taken.

The answer of the judge states that the appeal was disallowed for the reason that the appellant did not file the bond within twenty-one days from the entry of the order appealed from.
Taking the facts stated in the petition and answer to be true the question is presented whether in an appeal under section 778 of tin1 new Code of Civil Procedure from the settlement of an administrator's account, where the appellant has filed a notice of appeal within twenty-one days and no order has been made by the judge limiting the time for filing an appeal bond, the appeal is lost by failure to file such bond before the expiration of the period of twenty-one days.

Section 779 of the Code provides as follows: "The person thus appealing [under section 778] shall perfect his appeal within twenty-one days after the entry of the order, decree, or judgment by the Court of First Instance, by filing with the clerk of that court a statement in writing that he appeals to the Supreme Court from such order, decree, or judgment. The clerk shall thereupon transmit to the Supreme Court a certified transcript of the account embraced in the order, decree, or judgment, and of the order, decree, or judgment appealed from, and of the appeal."

Section 780 is as follows: "Before an appeal is allowed the person appealing under the two preceding sections shall give a satisfactory bond to the court, conditioned that he will prosecute the appeal to effect and pay the intervening damages and costs occasioned by such appeal."

The language of these sections, read together, admits of the construction that the right to the appeal is conditionally secured by the filing of the notice of appeal within the prescribed period, subject to be defeated if the party fails to file a satisfactory bond within such period as may in each case be specially fixed by the judge. We hold this to be the meaning of the law. No inconvenience that we can perceive would result from a practice in accordance with this construction, and, on the other hand, great inconvenience and hardship, arising from the difficulties in communication which exist in many parts of the Archipelago, would inevitably result from requiring the filing of a bond satisfactory to the judge in all cases indiscriminately within a nonextendible period of twenty-one days. Where the provisions of the Code are open to more than one construction we are bound to prefer that one which, under the very exceptional conditions in which it must necessarily be administrated in these Islands, will most effectually "promote its object and assist the parties in obtaining speedy justice." (Sec. 2.)

A mandamus will not be issued to the defendant as judge of the Special Court of Negros, that court having ceased to exist under the provisions of the law by which it was created. (Act of the Commission, No. 166, sec. 6.) Upon the filing of a bond within twenty-one days from the service of this order upon the petitioner satisfactory to the judge of the Court of First Instance of the Province of Negros to which the record in the proceeding in which the appeal was taken has been transferred, it will be the duty of the clerk of such court to transmit to this court a certified transcript of the account embraced in the order appealed from and of the appeal. In case the clerk fails so to do the petitioner may apply for an amendment making him a party to this petition and asking for such order as may be necessary in the premises.

Arellano, C. J., Torres, Willard, and *Mapa, JJ.,* concur.

DISSENTING

COOPER, J.:

I am unable to concur in the opinion of the majority of the court.

The application for mandamus should be denied for the reason that the time for filing the appeal bond had expired before the appeal bond was presented to the judge of the Court of First Instance for his approval.

The method for perfecting such an appeal is regulated by sections 779 and 780, Code of Civil Procedure, 1901.

Section 779 reads as follows:

> "The person thus appealing' shall perfect his appeal within twenty-one days after the entry of the order, decree, or judgment by the Court of First Instance, by filing with the clerk of that court a statement in writing that he appeals to the Supreme Court from such order, decree, or judgment. The clerk shall thereupon transmit to the Supreme Court a certified transcript of the account embraced in the order, decree, or judgment, and of the order, decree, or judgment appealed from, and of the appeal."

Section 780 reads as follows:

> "*Bond for appeal*.—Before an appeal is allowed the person appealing under the two preceding sections shall give a satisfactory bond to the court, conditioned that he will prosecute the appeal to effect and pay the intervening damages and costs occasioned by such appeal."

The judgment of the Court of First Instance was rendered on the 7th day of June, 1902.

The appeal bond was not presented to the judge for his approval until the 20th day of July,

more than forty days having elapsed after rendition of judgment.

The statute requires that the appeal must be perfected within twenty-one days, and, hy the express language of section 780, before an appeal is allowed the bond must be given.

To perfect the appeal two requisites must concur, to wit, the notice of appeal, and the filing of the appeal bond. It is said that section 780 does not fix the time within which the appeal bond must be filed. But if the appeal must be perfected within twenty-one days after the rendition of the judgment, and if it can not be perfected until the appeal bond has been filed, then the inevitable conclusion is that the appeal bond must be filed within twenty-one days. The two sections taken together seem so plain as not to justify a resort to the rules of construction. Any doubt that might arise can be settled by the common rule of construction applying to adopted and reenacted statutes. "Where a statute of a foreign jurisdiction, which had there received a settled judicial construction, is adopted, wholly or in part, and enacted as a law of the State adopting it, it is presumed that the construction previously put upon it is adopted with it, and it should be interpreted according to such construction." (Black on Interpretation of Laws, p. 159.)

This section of our Code was taken from the Vermont statutes.

By a comparison of section 780 with section 2589 of the Vermont statutes, it will be seen that section 780 is a literal copy of section 2589, which was a reenactment of section 2273, B. L. Vt.

Prior to the adoption of our statutes, in 1884 the supreme court of Vermont in the case of Lambert, administrator, *vs*. Merrill's Estate (56 Vt. Rep.p. 464), held that the bond must be filed within twenty days from the date of the decision appealed from, and where the bond has not been filed within twenty days the appeal will be dismissed. This decision is affirmed by the same court at the January term, 1894, in the case re Bod well, 66 Vt. Rep., p. 231.

This construction of section 780 harmonizes our statutes with those existing generally throughout the United States. Where the law requires that a bond shall be filed in order to perfect an appeal, under these statutes it is the rule that there is no effective appeal until the bond is filed and that the bond must be filed within the time prescribed by law. All the requirements of the statute for taking and perfecting an appeal are deemed juridictional and must be strictly complied with. (2 Enc. PI. and Pr., 16; Elliott's App. Pro., 208.)

The court does not indicate in its decision within what time the appeal bond should be filed.

This leaves the practice in a state of uncertainty. There are no compensating benefits for, this uncertainty in procedure. Neither convenience nor justice requires it. On the contrary, it is inequitable to delay indefinitely a party in the enforcement, of his judgment by the defendant simply filing a notice of his intention to appeal.

Section 2 of the Code of Civil Procedure is cited in support of the decision, The section reads as follows:

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

This provision of the Code might be cited with the same or with still greater force in support of the opposite contention. The object of section 780 is to protect by prompt means a party in whose favor the judgment has been rendered from the damages resulting from the delay in its enforcement. The statute should be liberally construed to promote this object. This will not be done if the provision is so construed as to permit the defendant to delay indefinitely the enforcement of the judgment without security.

The clause in question should not be used to undo legislative' intent nor to confer upon the court a general dispensing power as to the requirements of the law.

The method required by the legislative authority in appeals is exclusive. It can not be disregarded and the court's own rules substituted therefor.

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