

[G. R. No. 19329. November 16, 1922]

FRANK & COMPANY, INC., PETITIONER, VS. ENRIQUE CLEMENTE, THE HONORABLE SIMPLICIO DEL ROSARIO AND THE HONORABLE M. VIVENCIO DEL ROSARIO, RESPONDENTS.

D E C I S I O N

OSTRAND, J.:

This is a petition for a writ of mandamus ordering the respondent judge to fix a date for the taking of the depositions of certain witnesses and to issue subpoenas for their appearance. The case is now before us upon demurrer to the petition. The petition reads as follows:

“1. That the petitioner is a corporation duly organized and existing under the laws of the Philippine Islands with its principal office in the City of Manila therein; the defendant Enrique Clemente is an adult resident of the City of Manila; and the defendants the Honorable Simplicio del Rosario and the Honorable M. Vivencio del Rosario are both of them judges of the Court of First Instance of the said City of Manila.

“2. That on April 18, 1922, at the instance of the petitioner a temporary restraining order was issued in case No. 21937, entitled ‘Frank & Co., Inc. vs. Enrique Clemente,’ then pending in the Court of First Instance for the City of Manila, prohibiting the defendant in said case from negotiating or disposing of seven certain promissory notes of a total face value of P10,000, which said notes were in words and figures as follows:

” *‘Pagare en 15 de junio de 1922, a “The Belgian Catholic Missionaries” o su orden y en la Ciudad de Manila la suma de mil quinientos pesos (P1,500), moneda filipina, valor recibido; y un interes de doce por ciento (12%) al aiiio a contar de esta fecha.*

" ' Manila, I. F., 18 de marzo de 1922.

" 'FRANK & CO., INC.

By (Sgd.) " 'GEORGE I. FRANK "

'Presidents

save and except that each succeeding note in the series falls due on the 15th day of a month subsequent to June 15, 1922, and except also that the last note was in the sum of P1,000 instead of P1,500.

"3. That thereafter the defendant appeared before the Court of First Instance and filed a motion, copy of which is hereto attached and marked Exhibit A, praying for leave to negotiate and transfer the said notes, which were alleged to belong to the Magallanes Press, Inc., in his representative capacity as President of the said Magallanes Press, Inc., notwithstanding the injunction or temporary restraining order hereinabove referred to.

"4. That this motion came on for hearing before the Honorable M. Vivencio del Rosario, one of the judges; in vacation of the Court of First Instance of Manila having jurisdiction at the time of the said controversy, and the present petitioner, plaintiff in that case, opposed the said motion on the ground, among other things, that the Magallanes Press, Inc., was not the owner of the said notes and never had been the owner thereof, but that the title to the said notes was, and at all times had been, in the defendant Enrique Clemente in said case, against whom the plaintiff had a good defense on said notes, copy of which opposition is hereto attached, marked Exhibit B and made a part of this petition. The defendant presented affidavits also in support of his motion.

"5. That the Honorable M. Vivencio del Rosario then held that the motion could not well be decided without a determination of the issues of fact thus raised, and in order to give both parties an opportunity to call and examine witnesses and present other proof, set a date for the reception of such evidence before the court on the 19th day of June, 1922, whereupon at the instance of the petitioner, the said Honorable M. Vivencio del Rosario issued citations to compel the appearance before the court on the said day of the defendant Enrique Clemente, of Jose Ma. Cavanna, who, as Secretary of the Magallanes Press, Inc., had

executed an affidavit in support of the defendant's motion, and of Father Faniels, as representative of the payee of the said notes. At the same time since the proceedings were in the nature of the taking of depositions, the petitioner served the adverse party with notice for the taking of the depositions of the three witnesses above named and an affidavit showing that the case was one for the taking of depositions' under the terms of Act No. 190; copies of the said notice and affidavit are hereto attached, marked Exhibits C and D respectively, and made parts of this petition.

"6. That on the 17th day of June, 1922, the Honorable M. Vivencio del Rosario, being compelled to leave the City of Manila, transferred this case to the Honorable Simplicio del Rosario, one of the respondents herein.

"7. That on the 19th day of June, 1922, the case being called before the Honorable Simplicio del Rosario, representations were made to the court on behalf of the defendant that Father Faniels, although duly served with subpoena had not appeared, because he was 'busy;' whereupon petitioner asked that the matter be postponed for a later date, and the defendant moved that the proceedings be entirely quashed on the ground that the witnesses could properly be examined upon all questions relating to the notes upon the trial of the case in chief, and hence, there was no need for the taking of depositions, notwithstanding the orders of Judge Vivencio del Rosario.

"8. That on June 22, 1922, the Honorable Simplicio del Rosario made an order vacating the citations already issued for Father Faniels and Jose Ma. Cavanna, and refused to issue any new citations for their appearance at any later date, to which said order the petitioner took exception.

"9. That the motion set out as Exhibit A is still pending before Judge Vivencio del Rosario, and if the plaintiff is not permitted to take any depositions or present any proof in support of his contention, there is grave danger that the motion may be decided without an adequate presentation of the facts to the prejudice of this petitioner.

"10. That one of the notes of the series is already overdue and it has been presented by a holder claiming to be a holder thereof in due course, notwithstanding the injunction hereinabove referred to, and there is danger that

the other notes may be transferred to holders in due course who may subject the petitioner to suits on the said notes, and that against such suits the plaintiff may have no defense.

"11. That the petitioner has, as a matter of law, a right to take these depositions of the defendant Enrique Clemente, of Jose Ma. Cavanna, and of Father Faniels, and to compel them to bring into court such documents as may be necessary to establish the petitioner's claims in respect to the pending motion, and as to the merits of the case in chief.

"12. That citations *duces tecum* for the appearance of these witnesses have been issued in the following terms: " 'You are hereby required to appear before the Court of First Instance of Manila * * * on the 19th day of June, 1922, at 8.30 a. m., and to bring with you into court the following:

(That to Father Faniels)

" 'All such books of account of the Belgian Catholic Missionaries as may be necessary to show the financial transactions during the years 1921 and 1922 had between said Belgian Catholic Missionaries and Enrique Clemente and or Frank & Company, Inc.

(That to Jose Ma. Cavanna)

" 'All such books of account of the Magallanes Press, Inc., showing transactions during the year 1922 with the Belgian Catholic Missionaries.

" 'The seven promissory notes dated March 18, 1922, and signed by Frank & Co., Inc., in favor of the Belgian Catholic Missionaries * * * which are necessary as testimony in the above-entitled case.

" 'Hereof fail not under the penalty of the law,' by the Honorable M. Vivencio del Rosario, which said citations are those, as above stated, which were vacated by the Honorable Simplicio del Rosario.

"Wherefore, petitioner prays:

"(a) That the Honorable Simplicio del Rosario, or whoever may at the time have jurisdiction of the controversy in chief, case No. 21937, as judge, be ordered and

directed to fix a date for the taking of the depositions of the witnesses named and to issue subpoenas for the appearance of said witnesses named, and subpoenas *duces tecum* in the form heretofore employed for the bringing before the court of the necessary books and documents.

“(b) That the Honorable M. Vivencio del Rosario be enjoined from deciding the pending action, Exhibit A, until the plaintiff’s proof by deposition or otherwise have been taken and submitted to the court.

“(c) That the petitioner have and recover his costs against the defendant Enrique Clemente.

“(d) That the petitioner have such other and further relief as to the court may seem equitable and just.”

Exhibit D, the affidavit referred to in paragraph 5 of the petition, reads:

“Hartford Beaumont, being first duly sworn, upon oath deposes and says:

“That he is of legal age; that he is the attorney for the plaintiff in the above entitled action; that the testimony of the witnesses Jose Ma. Cavanna, Enrique Clemente, and Father Faniels is required upon a motion; and that the said witnesses are material, important and necessary witnesses in determining the issue or issues raised in this case.”

The respondents demur to the petition on the grounds that (1) there is a defect of parties respondent and (2) the petition does not state facts sufficient to constitute grounds for the issuance of a writ of mandamus.

The demurrer must be sustained upon the second ground stated. The affidavit Exhibit D above quoted shows that the deposition in question are sought to be taken under subsection 5 of section 355 of the Code of Civil Procedure. The pertinent provisions of that section read as follows:

“The testimony of a witness in the Philippine Islands may be taken by deposition, in an action, any time after the service of the summons or the appearance of the defendant, and, in a special proceeding, after the question of fact has arisen

therein, in the following cases:

“5. When the testimony is required upon a motion, or in any other case, when the oral examination of a witness is not required.”

The petitioner apparently contends that the question whether certain depositions are “required” upon a motion must be determined solely by counsel and that whenever the necessity for them has been so determined, a judge of the Court of First Instance must, upon demand, perforce take the deposition.

We cannot subscribe to this view. If judges of the Courts of First Instance may be compelled to take testimony or depositions on every motion which the fancy of the parties litigant may dictate and upon the simple statement of counsel that the testimony or deposition is “required upon the motion” and without stating just what he expects to prove by the witness or witnesses to be examined, there would be nothing to prevent counsel from having every witness in a case examined by the court in advance of the trial and merely for the purpose of securing information as to the character of the evidence likely to be presented at the trial. The Code of Civil Procedure allows such examinations of “a party to the action or proceeding, or an officer, or a member of a corporation which is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended” (subs. 1, sec. 355), and it was evidently the intention of the law-makers that “fishing” for evidence or information by way of depositions should be limited to the cases enumerated. If we hold that subsection 5 of section 355 gives a party litigant unrestrained freedom to demand and secure the compulsory attendance of any or all witnesses and have their depositions taken by the court, the other subsections of the same section would seem superfluous. The waste of time and energy and the hindrance to the dispatch of the business of the court resulting from such a state of affairs are too obvious for argument and need not be dwelt upon here.

In order to prevent abuse it is therefore clear that a trial court must possess a certain measure of control over the right of parties to have depositions taken by the judge of the court. Moreover, considerable discretion is necessarily left with the trial court in determining the quantum of evidence required to prove a particular fact. It is thus? well

settled that the court may limit the number of witnesses upon collateral issues and sometimes upon the main issue. Of course, the discretion so residing in the court must be reasonably exercised so as to deprive the parties of no material rights, but this is a question which can but rarely be raised by a petition for a writ of mandamus.

In the instant case the inferior court at first was of the opinion that testimony was required for the proper determination of the motion then before it. Later on the same court, presided over by another judge, decided that the testimony was not required. There was nothing irregular in this; the proceeding was still under the control of the court and it laid within its sound discretion to vacate an order relating to the order of the proceedings or the taking of testimony. All matters necessary to the proper administration of justice, which are not regulated by precise rules are within the discretion of the judge. (38 Cyc., 1296.)

Mandamus will not lie to control or review the exercise of the discretion of any court when the act complained of is either judicial or quasi-judicial (26 Cyc., 158). In the language of section 515 of the Code of Civil Procedure, this court may interfere by mandamus whenever the inferior "court or judge unlawfully neglects the performance of a duty which the law specifically or specially enjoins as a duty imposed upon such court or judge." Our attention has not been called to any provision of law which specifically or specially enjoins upon a judge or a Court of First Instance the duty of taking depositions, and in the instant case such duties as the respondent judges are called upon to perform by the petitioner are largely, if not wholly, discretionary. There can, of course, be no objection to the taking of lawful depositions before any of the numerous officers authorized thereto by law, and the petitioner "may" (see sec. 361, Code of Civil Procedure) have the depositions desired by him taken by a judge of the Court of First Instance, but we will not, by mandamus, compel the judge to do so under the circumstances of this case. The petition is denied with the costs against the petitioner. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

