

MARCOS DE FIESTA ET AL., PETITIONERS, VS. JULIO LLORENTE, AS JUDGE OF THE COURT OF FIRST INSTANCE OF TARLAC, AND THE MANILA RAILROAD CO., RESPONDENTS.

G.R. No, 8783. October 14, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is a petition for a writ of certiorari presented by the defendants in an action of eminent domain.

An action for the condemnation of real estate was begun by The Manila Railroad Company against the petitioners sometime during the year 1908. Such proceedings were had in the action that, on the 30th day of April, 1912, an order was entered by the Honorable Herbert D. Gale, then holding, by special appointment, a term of court in the Province of Tarlac, confirming the report of the commissioners and entering judgment in conformity therewith. On the 6th day of May, 1912, said Herbert D. Gale having left the province and the Honorable Julio Llorente, the judge regularly sitting in that province, having returned to duty, a motion was made before him for a new trial upon several grounds, among them being that fraud had been practiced upon the plaintiffs and the court by the defendants; that the judgment was against the weight of the evidence; that it was contrary to law; that the damages allowed were excessive; and also upon the ground of newly discovered evidence. In addition to these grounds others were urged at various times by the applicant for a new trial. After duly considering the motion and the arguments of counsel, the court vacated the judgment confirming the report of the commissioners, set aside the report itself, and ordered a new trial.

This petition for certiorari is based upon the ground that the Court of First Instance, having once entered a judgment confirming the report of the commissioners in a condemnation proceeding, has no authority or jurisdiction to entertain a motion for, or to grant, a new trial. To support this contention several special arguments were made by the petitioners :

They argued that all of the grounds upon which the application for a new trial was based were presented to the court and passed upon by it at the time of the confirmation of the referees' report; that the application for a new trial was not made in good faith but had ulterior purposes; that the alleged newly discovered evidence was not such in fact and did not fall within the provisions of the code and the decisions of this court sufficiently to warrant the granting of a new trial upon that ground. Other arguments of a similar character were made and urged with force and earnestness.

We do not stop to consider the merits of these arguments or to pass upon them one way or the other. We simply say in regard to them that they do not, in any sense, go to the power, authority or jurisdiction of the court to act in the premises. They deal, rather, with the proposition whether the court committed an error in its decision. In other words, such arguments as these are not founded in the lack of jurisdiction of the court or in the excess thereof, but in errors committed in the exercise of that jurisdiction. We have recently said in the case of *Herrera vs. Barretto and Joaquin* (p. 245, ante) that if a court has jurisdiction of the subject matter and of the person, decisions upon all

questions pertaining to the cause are decisions within its jurisdiction, and, however irregular or erroneous they may be, cannot be corrected by certiorari. In that case we said:

"It has been repeatedly held by this court that a writ of certiorari will not be issued unless it clearly appears that the court to which it is to be directed acted without or in excess of jurisdiction. It will not be issued to cure errors in the proceedings or to correct erroneous conclusions of law or of fact. If the court has jurisdiction of the subject matter and of the person, decisions upon all questions pertaining to the cause are decisions within its jurisdiction and, however irregular or erroneous they may be, cannot be corrected by certiorari. * * * While the issuance of the mandatory injunction in this particular case may have been grossly irregular and erroneous * * * nevertheless its issuance was within the jurisdiction of the court and its action is not reviewable on certiorari. It is not sufficient to say that it was issued wrongfully and without sufficient grounds and in the absence of the other party. The question is, did the court act with jurisdiction?

"* * * One of the fundamental questions in a mandamus against a public officer is whether or not that officer has the right to exercise discretion in the performance of the act which the plaintiff asks him to perform. It is one of the essential determinations of the cause. To claim that the resolution of that question may deprive the court of jurisdiction is to assert a novel proposition. It is equivalent to the contention that a court has jurisdiction if he decides right but no jurisdiction if he decides wrong. * * * In the case at bar no one denies the power, authority, or jurisdiction of the Court of First Instance to take cognizance of an action for mandamus and to decide every question which arises in that cause and pertains thereto. The contention that the decision of one of those questions, if wrong, destroys jurisdiction, involves an evident contradiction.

"Jurisdiction is the authority to hear and determine a cause—the right to act in a case. Since it is the power to hear and determine, it does not depend either upon the regularity of the exercise of that power or upon the rightfulness of the decisions made. Jurisdiction should therefore be distinguished from the exercise of jurisdiction. The authority to decide a cause at all, and not the decision rendered therein, is what makes up jurisdiction. Where there is jurisdiction of the person and subject matter, as we have said before, the decision of all other questions arising in the case is but an exercise of that jurisdiction."

From these observations it is clear that the arguments urged by counsel above referred to do not touch the jurisdiction or power of the court to act in the premises, but simply challenge his right to act in a given way.

It is also contended that in a proceeding for the condemnation of real estate, the court, after entering a judgment confirming the report of the commissioners, loses jurisdiction and control of the action and cannot thereafter touch or alter the judgment in any way. An earnest and forceful argument was made to sustain this proposition, and reference was had to the various sections of the condemnation act to strengthen it. We are of the opinion, however, that the proposition is not sustainable.

An action for the condemnation of real estate is, in this jurisdiction, so far as procedure and appeals are concerned an ordinary action. It is begun by summons and complaint, to which may be interposed an answer and demurrer as in other actions; and from the judgment therein an appeal may be taken by bill of exceptions as in other cases. It differs essentially from other actions only in the fact that it has commissioners for the determination of certain questions in the case, and the court, in acting on the referees' report, performs a somewhat different function from that which he performs in ordinary actions. This fact, however, does not alter the essential character of the action, so far as the procedure is concerned or so far as it affects the right to appeal.

The fact that the plaintiff in condemnation proceedings may, immediately on the filing of judgment in its favor, enter into possession of the premises and begin the projected improvements thereon, is not sufficient upon which to base an argument that the judgment becomes instantly final and absolute and not subject to modification or vacation. It seems to us that the fact that the statute permits an appeal by bill of exceptions destroys completely that proposition. With the right to attack a judgment in an appellate court goes the corollary right to attack it in the

court below. The concession of the appeal is an admission that the judgment is not final in the absolute sense. It is open to attack, and if it may be attacked in one place it may in the other. It would be unreasonable to give to a party the right to appeal from a judgment which was erroneous and unsustainable, and at the same time not concede the opportunity of avoiding the expense and delay of an appeal by a motion to the court to correct the judgment and thereby cure the errors. If one is given by law the right of an appeal it would seem that he would have the corresponding right to obtain the same remedy by the usual and ordinary course of a motion to correct the judgment or for a new trial; and it would appear to be but reasonable that a court from whose judgment an appeal may be taken should have the power, where error is patent and obvious, to avoid a reversal by itself correcting the judgment upon motion or by granting a new trial.

Furthermore, it is, generally speaking, the inherent power of every court whose jurisdiction is general and superior to hear, with certain limitations as to time, motions for the correction of errors in the judgment and for the granting of new trials where the errors are such that they cannot be corrected by mere modification of the judgment. In the case of *Arnedo vs. Liongson* (18 Phil. Rep., 257) the court said at pages 264 and 265:

"We are of opinion, however, that under the new system of procedure and organization of the courts no such rigid limitation on the right to amend and vacate judgments is prescribed by law or required by sound rules of practice: for while on the one hand the common-law rule under which plenary control over its judgments is held to be in all courts during the term wherein they are entered is not applicable here for the reasons above stated, on the other hand, the reasons for denying to courts the right to set final judgments aside in their discretion do not demand or require the denial to the courts of plenary control over the proceedings, including the judgment, up to the moment when the judgment becomes final in the sense that the party in whose favor it is rendered is entitled to execution thereon as of right.' Our statutes definitely prescribe the time when executions may issue as of right and does not leave its determination to the discretion of the court. Up to this time none of the parties can be said to have acquired any definite right in or to the judgment, and they have no just cause of complaint if prior thereto the court takes such action as may be necessary to correct any error into which in its opinion it may have fallen, and if an appeal lies from the judgment, such action on the part of the court may well avoid unnecessary and wasteful expense and delay incident to an appeal, reversal, and new trial."

Also, at page 267 the court said: "Again, since the express authority to grant new trials under the provisions of section 145 of the Code of Civil Procedure is limited to cases wherein the judgments thus set aside are rendered in 'actions,' it is clear that this section can have no direct application in cases wherein the question is one of setting aside judgments, orders, and decrees entered in the special proceedings dealt with in Part II of the code, or decrees adjudicating title in the Courts of Land Registration, or in any other proceeding which does not fall under the definition of the word 'action' as found in section 1 of the code. But the mere failure expressly to confer upon the courts the power to grant new trials in this numerous class of cases should not and cannot be construed as a denial to the courts in these Islands of the jurisdiction to grant new trials so universally recognized in the system of procedure in England and the United States from whence the body of our procedural law has been adopted, so far as such jurisdiction is not inconsistent with the general system of procedural law in force in these Islands. Indeed the right to vacate such judgments and grant new trials has always been freely exercised by the courts throughout the Islands, and the only questions in respect to this very salutary practice which are properly open for consideration at this time are the limitations and restrictions under which the right should be exercised. And while we cannot have recourse to the common-law rule of practice which is predicated on the so-called 'term system' of procedure and practice in determining these limitations and restrictions, we think that applying to our system of procedure and practice the reasoning upon which that rule is based, which is as applicable here as in England or the United States, the plenary power of the court over its proceedings in the absence of express statute, must be held to terminate when the judgment becomes final in the sense that the party in whose favor the judgment is rendered is entitled to have execution thereon as of right."

Courts of First Instance have general jurisdiction over actions for the condemnation of real estate, and, within the sphere of action, their power and authority are no more restricted than in other actions which properly come before them. To deprive a court, under such circumstances, of power to modify or vacate its own judgment would be to limit its power without authority of the statute and in violation of precedent.

The petitioners for certiorari, to support their contention, have referred to the case of *Arnedo vs. Liongson*, already referred to. That case does not in our judgment sustain the proposition to which it was cited. It is true that we held in that case that: "In the absence of statutory provisions expressly extending the time within which the courts in these Islands may vacate judgments on the ground of error of fact or of law into which the court may be of opinion that it has fallen, these courts have no jurisdiction thus to vacate judgments after they have become final in the sense that the party in whose favor they are rendered is entitled as of right, to have execution thereon."

But it is also true that we held in that case that: "When not otherwise provided by statute, all courts in the Islands have plenary control over the proceedings had before them, as also of judgments entered therein, until such judgments become final in the sense that the party in whose favor they are rendered is entitled as of right, to have execution thereon, and, in the exercise of a sound discretion, the courts may take such action touching the vacation and amendment of these judgments as truth and justice may require."

In discussing this case it should be noted, in the first place, that it dealt with a petition for certiorari in a contested election proceeding. This court has held in numerous cases that proceedings to contest an election are proceedings of a special nature in which the power and jurisdiction of the court are distinctly limited, and, in those proceedings, it has only such power as is expressly conferred by the statute or is necessarily implied. In other words, it is, in that case, a court of limited jurisdiction. In the *Liongson* case above cited the court said at page 272:

"The remedy furnished for the trial of election contests, such as that under consideration, is one of the provisions of a general election law. Its peculiar and distinguishing features are manifestly the result of the demands of public policy that such contests should be instituted with the utmost promptitude, and dispatched and determined in the most summary manner consistent with the right of the various contestants to have an opportunity to be heard, and to submit evidence in support of their contentions; this in order 'to put a speedy and certain end to the litigation between the parties about a public matter so well calculated to promote and perpetuate discords and feuds'—'and destroy confidence on the local magistracy and demolish their efficiency.' To this end, the statute confers exclusive and final jurisdiction over these election contests upon the Court of First Instance of the province wherein the contested election was held; and maps out a system of procedure, radically different from that prescribed in ordinary actions, and complete in outline from the 'institution' to the 'determination' thereof, and the execution of the judgment whereby the contest is 'determined;' a system, which in our opinion, does not contemplate and by necessary implication denies the right of the trial court to review its judgment and to grant a new trial or enter a new judgment."

See also *Navarro vs. Veloso* (23 Phil. Rep., 625); *Topacio vs. Paredes* (23 Phil. Rep., 238).

Such proceedings are quite different from an action for the condemnation of real estate over which the courts have had plenary control from time immemorial.

It should be noted, in the second place, that, under the statute relating to proceedings in contested elections, the moment the judgment is entered and the corresponding order to the board issued, it passes out of the hands of that court and into those of the executive branch of the Government.

In those cases the judicial and executive branches of the Government seem to be working together for the accomplishment of a single result, that is, the determination of who was duly elected for the particular office under consideration. The province of the judiciary is limited to the determination of the question of which

candidate received the highest number of votes cast in that particular election and the issuance of the corresponding order to the proper board. The proceeding is then taken over by the executive branch of the Government, which, from that moment, has exclusive authority to deal therewith. One of the reasons leading to the decision in the Liongson case was the fact that the judicial and executive branch of the Government, in contested election proceedings, act together, the one alone up to a certain point, the other acting alone thereafter. The one has no jurisdiction after a certain point; the other has no jurisdiction before that point is reached. In the Liongson case the court said at page 274:

"Examining more particularly the provisions of the statute touching the determination of election contests, we find that it clearly contemplates the bringing of all the proceedings on the merits of all such contests to an end promptly upon the determination of the contest by the court. If, as a result of the contest, no one of the candidates appears to have been duly elected, the court shall forthwith so certify to the Governor-General, who shall order a special election to fill the office or offices in question; if as a result of the contest, the court is of opinion that the canvass of the board of canvassers was incorrect, it clearly becomes the duty of the court, without waiting the end of the term, to issue its mandamus directing the correction of the canvass; and on the other hand, if it appears that the canvass was correct, it is as clearly the duty to decline to issue the mandamus; and in all cases the imperative duty is thereupon imposed upon the clerk of the court to give immediate notice of the determination of the contest to the Executive Secretary. All this, manifestly, in order that the executive department of the Government may thereupon take such further steps as may be proper and necessary in giving to the election its proper effect, or for the holding of a new election, in the event that the court is of opinion that no person was in fact elected. We think that there can be no doubt these express provisions for what may be described as the immediate execution of the 'determination' of the contest by the court without giving any discretion to the court to stay the execution of its judgment, authorizing and directing the executive officers of the Government to proceed thereafter as if there were no contest pending, clearly, unmistakably, and unequivocally indicate the purpose of the legislator to bring these election contests to an end by the entry of the judgment of the court, without leaving it in the discretion of the court to reopen the contest thereafter."

In the third place, it will be observed that the Liongson case declares that the courts lose their plenary control over their judgments and decrees, as regards time, only when the party in whose favor it is rendered is entitled to execution "as of right."

It is important to determine exactly what is meant by this expression, as used in that case, and for that purpose it will be convenient to examine the decision itself. Discussing the rule in relation to criminal cases, the court points out that this plenary control is in the courts "before the expiration of the period allowed for the taking of appeal, or in the language of the rule we have just laid down, before the prosecution can have execution upon the judgment of conviction 'as of right.'" Again we said, discussing section 145 of the new Code of Civil Procedure: "We think that the true limitation as to time within which this power is vested in the courts is the expiration of the period within which a bill of exceptions may be perfected, or in other words, of the period during which, under the provisions of section 144 of the Code, execution may not issue 'except by special order of the court.'"

Again we said, discussing the provisions of Act No. 867, that: "The time within which this right (the exercise of plenary control by the courts over their decisions) may be exercised in such cases must be held to coincide with the period therein allowed for the perfection of appeals in such cases; or in other words, * * * the period during which execution may not issue 'as of right.'"

We think that these extracts, examined in connection with the opinion itself, justify us in saying that, with reference to the subject under discussion in the Liongson case, the court was of opinion that the phrase "the time when the prevailing party is entitled to have execution as of right" is, in general, identical with the phrase "the time when the prevailing party has lost his right to appeal."

By express statutory provision or, in certain cases, by special order of the court, execution may issue in favor of the prevailing party, before the expiration of the period allowed for appeal; but it is manifest that the prevailing party, or anyone acquiring an interest in the judgment under him, who procures the execution of the judgment under such circumstances, takes the risk of being obliged to restore and of responding for any loss or damage which results from the reversal of the judgment on appeal.

The use of the phrase "as of right" in this connection does not mean merely the time when, under the circumstances of the case, he has a right to have execution; for it is to be presumed that when execution is issued by special order of the court he had a right to have it issued. It means, rather, that he has such a right to have execution issue, that he will not be liable to restore in the event of a reversal on appeal; and this right can exist only when the judgment, so far as it appears from the face of the record, is final as a result of the lapse of the time allowed for appeal. A judgment in an action for condemnation does not have this character prior to the expiration of the time to appeal. While, by express provision of the statute, the plaintiff may enter upon the property and begin the proposed improvements thereon immediately after the judgment is entered, he does so at the risk of having the judgment reversed and being obliged to restore possession and to pay the defendant the damages occasioned. In other words, until after the expiration of the time for an appeal the judgment cannot be executed in favor of the plaintiff as of right. Up to that time, therefore, it is, under the *Liongson* case, subject to the control of the court. For these reasons certiorari will not lie.

Arellano, C. J., Torres, Mapa, Carson, and Trent, JJ., concur.

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