

**JULIA MANUELA LICHAUCO AND MIGUELA ZAMORA, PETITIONERS,
VS. ANTONIO G. LUCERO, JUDGE OF THE COURT OF FIRST INSTANCE
OF PANGASINAN, AND MANUEL JOSE LICHAUCO, RESPONDENTS.**

G.R. No. L-2944. January 31, 1950

Ponente: REYES, J.

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REYES, J.:

This is an action for certiorari to annul an order of the respondent Judge setting aside a prior order of another Judge of the same court for the issuance of a writ of execution in a case decided by said court but already elevated to the Court of Appeals.

It appears that in said case the plaintiff Manuel Jose Lichauco, as a result of the cross-complaint interposed by the defendants, was adjudged to acknowledge the defendant Julia Manuela Lichauco as his natural child and to give her support in the sum of P50 a month. The case was appealed by plaintiff to the Court of Appeals, where it was docketed as CA-G. R. No. 8635, but after the submission of appellant's brief, the record of the case in that court was totally destroyed during the battle for the liberation of Manila. Neither party applied for the reconstitution of the destroyed record, but on November 29, 1947, the appellees (petitioners herein) filed a motion for the execution of the judgment appealed from on the ground that appellant's failure to ask for the reconstitution of the record within the period fixed by this Court operated as an abandonment of his appeal and rendered the said judgment final and executory.

On September 22, 1948, Judge Mañalac granted the motion and ordered execution to issue. Appellant asked for a reconsideration, and, although his motion was filed more than three months after he was notified of the order, it was granted by Judge Lucero, who vacated the order of Judge Mañalac and quashed the writ of execution issued thereunder. It was appellee's turn to ask for reconsideration. But their motion for that purpose having been denied, they brought the present action for certiorari to have Judge Lucero's order annulled.

It should at once be stated that the appeal of the case to the Court of Appeals divested the Court of First Instance of its jurisdiction over the same, so that the order for execution issued by the Court of First Instance pending resolution of said appeal was void as having been rendered without jurisdiction. As such, it could be set aside at any time.

It is, however, contended that the appeal should be deemed abandoned because of appellant's failure to ask for the reconstitution of the destroyed record. We can not subscribe to this contention, because once the record of the case is destroyed or lost, the duty of having the same reconstituted devolves upon both parties, so that the omission of one party alone to ask for reconstitution should not be construed as an abandonment of the case. Moreover, it was for the appellate court where the appeal was pending and not for the Court of First Instance, which had already lost jurisdiction, to determine whether the appeal had been abandoned or not, and until that determination had been made by the appellate court, the Court of First Instance would have no power to declare the judgment appealed from final and executory.

It follows from the foregoing that the order complained of should be affirmed.

It appears, however, that although the record of the case in the Court of Appeals vjs.s totally destroyed, the original record in the Court of First Instance of Pangasinan, including the evidence, has remained intact. In the circumstances, rather than put the parties to the necessity of filing a new action and conducting a. new trial, we would be serving the interests of justice if we let them continue the old case by allowing them to prosecute the appeal anew, giving them reasonable time for that purpose.

Wherefore, the petition for certiorari is denied and the appellant Manuel Jose Lichauco is given thirty days from the time he is notified of this decision to bring his appeal anew to the Court of Appeals. Without costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.

Paras, J., see dissenting opinion.

Feria, J., no part.

DISSENTING OPINION

PARAS, J.:

I dissent from so much of the decision of the majority as allows appellant Lichauco to appeal anew from the decision of the Court of First Instance of Pangasinan to the Court of Appeals within thirty days.

Under section 29 of Act No. 3110, in case the parties interested in a destroyed record fail to petition for the reconstitution thereof within the statutory period, they shall be understood to have waived the reconstitution and may file their respective actions anew. In view of the failure of the parties in the case herein Involved (which was pending in the Court of Appeals when its records were destroyed) to timely move for proper reconstitution, the only course for us to follow is to hold that a new action is necessary. By allowing appellant Lichauco to appeal, this Court in effect sanctions the late filing of a petition for reconstitution, or the filing of an appeal after the expiration of the reglementary period. This result is very obvious. Suppose the appellees (herein petitioners) had not moved for the issuance of a writ of execution in the trial court, may appellant Lichauco validly institute, after the expiration of the statutory period, reconstitution proceedings in the Court of Appeals, or instead prosecute anew an appeal from the decision of the trial court. Of course not, and yet this is the very procedure authorized in the majority decision.

There are certain disadvantages and difficulties incident to the bringing of a new action, and whether they would prove to favor one or the other party, this Court has no right to disregard the intent and purposes of the Reconstitution Law (Act No. 3110).

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