

**J. A. WOLFSON, AS TRUSTEE FOR THE CREDITORS OF THE
PHILIPPINE NATIONAL IMPORT & EXPORT CO., PETITIONER,
VS. SIMPLICIO DEL ROSARIO, JUDGE OF THE COURT OF FIRST
INSTANCE OF MA...**

G.R. No. 22401. August 01, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of certiorari, the petitioner alleging that the respondent Judge of the Court of First Instance exceeded his jurisdiction in recalling a certain order of execution issued in due form in pursuance of a final judgment.

The record shows that the petitioner, acting as trustee for the creditors of the corporation, the Philippine National Import & Export Co., was specially authorized by the Court of First Instance of Manila in cause No. 23277, entitled "In the Matter of the Voluntary Dissolution of the Philippine National Import & Export Co." to institute actions against the delinquent subscribers to the capital stock of said company; that acting in pursuance of said authorization the petitioner brought numerous actions in the Court of First Instance of Manila seeking to recover unpaid subscriptions to the capital stock of the Philippine National Import & Export Company; that among these actions was cause No. 24762, an action against the respondent Anselmo T. Fajardo to recover the sum of P2,705; that on February 5, 1923, the parties in said cause No. 24762 entered into a stipulation and confession of judgment and that on February 21, 1924, the court entered judgment in the exact terms of said stipulation for the sum of P2,405 plus interest at the rate of 6 per cent per annum on the sum of P2,705 from September 6, 1922, said sum to be paid within eighteen months from the date of the judgment, in installments of not less than P65 per month, payable on or before the 5th day of each and every month, commencing with the month of March, 1924, but the whole sum to be paid within eighteen months from the date of the judgment.

The judgment further provided that should the defendant make default in the payment of any of the installments on their respective due dates, then, at the option of the plaintiff, the whole balance remaining due and unpaid should immediately become due and payable and execution forthwith issue.

The defendant, the herein respondent, Anselmo T. Fajardo, defaulted in the payment due on April 5, 1924, and on April 7 the petitioner filed a motion in the Court of First Instance reciting that the defendant had failed to comply with the terms of the judgment and asking that execution issue for the total amount of the unpaid balance.

The writ of execution was duly issued and on the following day, April 8, the respondent Fajardo made tender of the payment of P65 to the petitioner, but the tender was declined. The said respondent thereupon deposited the P65 with the clerk of the Court of First Instance, and on April 14 filed a motion in that court setting forth, among other things, that his failure to make payment on time was due to his temporary absence in the provinces and prayed that the order for execution be revoked. Without having been set down for hearing and without previous notice to the petitioner, the motion was granted on April 15 and the writ of execution quashed.

The petitioner thereupon, under date of April 23, 1924, filed an exception and motion stating in substance that the judgment of February 21, 1924, was final; that the court was without jurisdiction to amend, modify and after the aforesaid judgment; and that the recall of the writ of execution would indirectly have the effect of altering the judgment and was beyond the jurisdiction of the court. After due hearing this motion was denied, the court declaring that the recall of the writ of execution did not amount to a modification of the judgment under which the writ was issued, but was only an interpretation thereof in the interest of justice.

On the facts stated, it seems obvious that the respondent judge exceeded his jurisdiction in recalling the writ of execution in question. It is very true that the court retains a certain amount of control over a writ of execution even after it leaves its hands, but such control is limited and regulated by fairly definite rules of law and is not unrestricted. A writ of execution may thus be quashed when it appears that it has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid, or when the writ has been issued without authority, etc. But the writ will not be recalled by reason of any defense which could have been made at the time of the trial of the case, nor can the recall be made so as to practically change the terms of a judgment which has become final. Neither does a part payment of the judgment authorize the quashal or recall of the writ in its entirety if the full amount of the judgment is due and payable. (Morris vs. Lake, 17 Miss., 521; Williamson vs. Ong, 1 Va., 84.)

In the present case the judgment upon which the writ was issued is so clear and definite as to admit of no special interpretation. It provides that in default of the prompt payment of not less than P65 per month on or before the 5th day of each and every month commencing with the month of March, 1924, the whole balance remaining due upon the judgment shall immediately become due and payable. This judgment is final and cannot now be interfered with by the court. No days of grace are allowed the defendant by the terms of the judgment and the court has no power to so construe it as to virtually add to it a pro- vision for days of grace.

The petition for a writ of certiorari is therefore granted and the respondent judge is hereby directed to issue a writ of execution against the property of the respondent Anselmo T. Fajardo for the full amount of the unpaid balance of the judgment aforesaid. So ordered.

Johnson, Street, Malcolm, Villamor, and Romualdez, JJ., concur.

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