

JUAN SUMULONG, PETITIONER, VS. HONORABLE CARLOS A. IMPERIAL ET AL., RESPONDENTS.*G.R. No. 28725. December 17, 1927*

Ponente: MALCOLM, J.

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This is an original proceeding instituted in this court to obtain a writ of prohibition directed to the probate court of the City of Manila prohibiting, during the pendency of petitioner's appeal, its carrying out, or taking any steps whatever to enforce certain orders requiring the petitioner, as administrator of the estate of the late T. H. Pardo de Tavera, to pay his widow the sum of P5,000. The material facts out of which this controversy arises, as set forth in petitioner's complaint and defendant's answer, are these:

As stated, Juan Sumulong is the administrator of the estate of T. H. Pardo de Tavera. During the course of the administration, the administrator has sanctioned the paying out from time to time of various sums for the support of the widow and the children of the deceased. Eventually, on August 31, 1927, the widow, Dona Concepcion Cembrano, asked the court to order the administrator to pay her the amount of P5,000. Against the opposition of the administrator, the court on September 14, 1927, conformed to the motion of the widow. The administrator asked for a reconsideration without obtaining a favorable ruling. Thereupon, the administrator filed a statement in writing appealing to the Supreme Court from the adverse order. The court fixed the appeal bond at P500 on October 10, 1927, and four days later the bond was presented for approval.

We come now to the more directly controlling facts. A chronological statement will best disclose them. On October 14th the record on appeal was filed by the petitioner. On October 17th the appeal bond was approved by the court. On the same day the widow again petitioned the court to secure her allowance of P5,000. On October 24th the record on appeal was approved by the court. On the same day the court ordered the administrator to turn over to the widow the P5,000. Following this came the usual motion for reconsideration presented by the petitioner and its denial by the court, but with a proviso directing the administrator to comply with the order relating to the payment of the P5,000. The administrator twice unsuccessfully prayed for a suspension of the order pending appeal. Finally, on November 12th the judge peremptorily commanded the administrator to pay the widow the sum of P5,000 before 11 a. m. on November 15th, with the admonition that on failure to obey, the administrator would be ordered arrested by the court.

The last order and related orders of the trial court have been suspended by a temporary injunction issued by a member of this court. The respondents have answered admitting most of the allegations made in the complaint. It is our understanding that there is no dispute between the parties relative to any pertinent fact.

The subject of inquiry is the extent of power in the court proceeded against. The question arises here if the probate court had jurisdiction to issue its orders or whether it had lost jurisdiction by the perfecting of the appeal.

In connection with the legal question, it will be recalled that the appeal bond was approved on October 17, 1927, or a week before the record on appeal was approved and the order of the court directed to the administrator was

promulgated. Petitioner argues from this fact that the bond for appeal determines the date when jurisdiction in the lower court ceases and that consequently the court was thereafter without jurisdiction. It is true that in the case of *Calderon vs. McMicking* ([1908], 10 Phil., 650) it was held in effect that when notice of appeal in special proceedings has been given and the bond filed and approved no order of the court allowing the bill is necessary. But that ruling was made before the adoption of Rule 16 of the Courts of First Instance having to do with appeals in special proceedings and before the principles in *Buenaventura and Del Rosario vs. Ramos* ([1921], 42 Phil., 490) were announced. It is now necessary for the trial court both to approve the appeal bond and the record on appeal.

With this subsidiary point out of the way, we advert to the controlling facts, which are that the appeal bond was approved on October 17th; that the record on appeal was approved on October 24th; and that on the same day the court ordered the administrator to pay the widow the P5,000, and thereafter attempted to enforce compliance with the order.

In Part II, Special Proceedings, of the Code of Civil Procedure is found Chapter XLII styled "Appeals, in Special Proceedings." It is probable that section 783 in that chapter governs the appeal taken by the administrator from the order of the Court of First Instance directing him to pay the widow P5,000. The cited section states that the appeal shall be effected in the manner provided in the two preceding sections. These sections (781 and 782) in turn, require the filing with the Court of First Instance of an application for an appeal and the execution and filing of a bond. The nature of the bond is as provided in section 780 and is conditioned that the person appealing "will prosecute the appeal to effect and pay the intervening damages and costs occasioned by such appeal." No other principle can be derived from the law than that on the perfecting of an appeal in special proceedings, the trial court loses its jurisdiction. There may be exceptions to this rule, but the instant case does not disclose one of them.

Jurisdiction over the subject matter of an action or the parties thereto, though it has once confessedly attached, may subsequently terminate, and when this happens, the court is as destitute of jurisdiction as if jurisdiction either of the subject matter or of the person had never existed. That is an obvious rule. The jurisdiction of a court may be terminated by the perfecting of an appeal to some other court, accompanied by an undertaking sufficient to stay proceedings until the appellate court has exercised its jurisdiction. All further proceedings dependent upon, or in the way of the enforcement of, the order or judgment whose effect has been thus terminated by the appeal are unauthorized and will be prohibited. (22 R. C. L., pp. 19 et seq.; III Am. St. Rep., pp. 946 et seq.)

It is rarely that we find an authority almost exactly identical with the case before us, but that happens in this instance. We desire to refer to *Ruggles vs. Superior Court* ([1894], 103 Cal., 125). With the later dissent of the Chief Justice, Mr. Justice Van Fleet, speaking for the Supreme Court of California, rendered the following decision:

"Application for prohibition. Petitioner is the administrator of the estate of one Henry Welch, deceased, in course of administration in the department of said respondent superior court presided over by said Hon. J. V. Coffey, judge thereof. On February 16, 1894, an order was made and entered in said estate, directing petitioner, as such administrator, to pay to the widow of said deceased seven thousand three hundred and seventy-five dollars, as accrued and unpaid family allowance. From this order the administrator, on February 20, 1894, perfected an appeal to this court. Thereafter, the widow moved this court to dismiss said appeal, which motion was subsequently, on the fifth day of March, denied, and the appeal is still pending and undetermined. Subsequent to the denial of said motion, the respondent judge, on the seventh day of March, at the instance of the widow, caused a citation to be issued and served upon petitioner, requiring said petitioner to show cause before the respondent superior court, on the eighth day of March, 1894, why he should not be punished for contempt in failing and refusing to obey the order of February 16th, requiring him to pay said

family allowance. On the last-mentioned date, petitioner, in obedience to the citation, appeared before said court, and in response thereto brought properly to the attention of the court the said appeal and the order of this court denying the motion to dismiss the same, and then objected that neither the superior court nor the judge thereof had any power or jurisdiction to proceed with or hear said matter of contempt, or to enforce said order for the payment of family allowance, by reason of the pendency of the appeal. But notwithstanding the showing so made by petitioner, and disregarding his objections, said superior court and the judge thereof, respondents, threatened to proceed in said matter, and to punish petitioner for his refusal to obey said order; whereupon this application for prohibition was made.

"The sole question arising is as to whether the superior court is acting in excess of its jurisdiction in the premises. Under the facts stated we are constrained to hold that it is. The appeal from the order in question operated as a supersedeas, and stayed all further proceedings in the court below in the particular matter involved in the order appealed from. By the appeal the order or decree is set at large, and the subject matter removed from the jurisdiction of the lower court, until the appeal has been determined, and the matter remitted back from the appellate court. In the case of *Pennie vs. Superior Court*, 89 Cal., 31, the lower court made an order for family allowance, from which an appeal was taken. Pending the appeal the lower court made an order directing the administrator to pay the money allowed by the previous order. The latter order was annulled by this court on certiorari, upon the ground that the appeal had removed the subject matter of the order from the jurisdiction of the superior court, and it had not authority to further proceed with its enforcement pending the appeal. And in the recent case of *Ex parte Oxford*, 102 Cal., 656 (opinion filed in Department Two of this court June 8, 1894), the same question arose: An administratrix of an estate in probate had been ordered to pay a certain claim against the estate. She appealed from the order, but, notwithstanding her appeal, the lower court 240017-17 proceeded against her as for a contempt in refusing obedience to its order, and punished her by imprisonment until she should comply with the order. This court discharged her on habeas corpus, holding that 'the petitioner, having appealed and stayed all proceedings upon the order which she is charged with violating, cannot, pending her appeal, be punished for a failure to obey it.

"It is urged here by the respondents, however, as it was on the motion to dismiss the appeal, that the appeal attempted to be taken by petitioner herein is ineffectual to stay the hand of the lower court, because no appeal lies from an order such as the one under consideration. But that question does not arise in this proceeding. An appeal from the order has been taken to this court, and this court has refused to dismiss it; this determination is as effectual for the purposes of this proceeding as if determined for all purposes. Its effect is that this court is thus far entertaining the appeal, and while it does so the respondents are not at liberty to proceed in the matter. Whether the order in question shall be ultimately held appealable is a question that will properly arise in the matter in which the appeal is pending, but, for the reason stated, it is not involved here.

"The proceedings complained of being in excess of the jurisdiction of respondents, a peremptory writ should issue as prayed.

"It is so ordered.

"De Haven, J., Garoutte, J., Harrison, J., McFarland, J., Beatty, C.J., and Fitzgerald, J., concurred.

"Rehearing denied."

The only real difference between the California case and the Philippine case is that the probate court of Manila attempted to enforce its judgment on the same day that the record on appeal was approved. We have no means of knowing which act was done first. We must, therefore, assume that the two acts were as nearly simultaneously performed as is physically possible. But we do not think this consideration is disastrous to the petitioner's contention. The approval of an appeal bond and of a record on appeal would be inconsistent with the rendition of an order which would make the appeal nugatory. A compliance by the administrator with the order would render the appeal futile and illusory. The two orders were entirely antagonistic one with the other. The only reasonable

deduction must be that with the confirmation of the appeal bond and of the appeal, jurisdiction in the court below ceased. It is our opinion that the probate court of Manila was without jurisdiction to order the administrator to pay the widow of the late Doctor Tavera the sum of P5,000, following the approval of the appeal bond and the record on appeal, when the appeal was taken precisely to secure a reversal of the order relating to the payment of the P5,000. Agreeable to the foregoing, the preliminary injunction heretofore issued shall be made permanent and the writ shall issue as prayed, without costs.

Avanceña, C, J., Johnson, Street, Villamor, Ostrand, Johns, Romnaldez, and Villa-Real, JJ., concur.

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