

RAFAEL MOLINA Y SALVADOR, PETITIONER, VS. ANTONIO DE LA RIVA ET AL., RESPONDENTS.

G.R. No. 4244. September 20, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

In *Molina vs. De la Riva* (6 Phil. Rep., 12) a judgment in this case in favor of the plaintiff and against De la Riva was affirmed and the case remanded for execution of the judgment. Upon the return of the record to the court below, a motion was made that *Somes and Spalding*, the sureties upon the appeal bond, be cited to appear and show cause why execution should not be issued against them as well as against the defendant, De la Riva. They appeared and showed cause and a judgment or order was entered holding them liable upon the bond and ordering an execution to issue against them. From this order they appealed to this court, where the order was affirmed. (*Molina vs. De la Riva*, 7 Phil. Rep., 345.)

The order made by this court upon that appeal is as follows:

"We accordingly affirm the order of the court below, with the costs of this instance. After the expiration of ten days let judgment be entered in accordance herewith, and the case be remanded to the court below for execution."

Judgment was entered in this court in accordance with such order and the case remanded to the court below on the 6th of February, 1907.

The case is now before us upon a proceeding brought by *Somes and Spalding*, the sureties, under section 499 of the Code of Civil Procedure, for the purpose of compelling the judge of the court below to sign a bill of exceptions containing the proceedings which took place in the case after it was remanded in pursuance of the order of this court reported in 7 Phil. Rep., 345. An order was issued by this court requiring the judge of the court below to state his reasons for refusing to sign the bill of exceptions.

That court has answered, stating its reasons, and the question to be determined is, whether such reasons are sufficient. An original suit in this court for a mandamus to compel that court to sign a bill of exceptions has been dismissed. (*Somes et al. vs. Crossfield et al.*, [1] 5 Off. Gaz., 462.)

On the 6th day of February an order of that court was made directing an execution to issue against De la Riva and the sureties for the collection of the judgment. On the same day the defendant and the sureties made a motion for a modification of this order; this motion was granted on the 9th of February, and on the 26th of February the court, upon motion of the plaintiff, *Molina*, vacated its order of modification, and ordered an execution to issue against the sureties as directed by the judgment of this court.

To this order *Somes and Spalding* excepted, and this is one of the exceptions which they claim the right to have reviewed by this court. In substance it is nothing more than an exception to the order of the Court of First Instance directing the execution of the judgment of this court. It is very apparent that no exception lies to such an order. If

it did, a case could never end, for as often as an order for the execution of the judgment was made, it could be excepted to and the case brought here for review.

On the 27th day of February, after the sureties had excepted to the order above mentioned, they presented a motion in which they claim that, by reason of acts executed by the creditor Molina, they had been relieved of their responsibility as sureties in accordance with the provisions of article 1852 of the Civil Code, and they asked that the order of the 26th of February be modified so as to declare that they had been released from all obligation upon the bond in question. This motion was denied, and to the order denying it the sureties excepted. This is the other exception which they seek now to have reviewed in this court. Their claim is that after a case has been tried in this court, a judgment ordered for the plaintiff, and the case remanded to the court below for the execution of the judgment, and an order made by that court such purpose, they can, by motion, present new issues of fact and law upon the question of whether they are liable at all or not upon their obligation and at that stage of the case have a further trial upon such issues. This contention can not be sustained. Some of the facts set out in their motion took place before any judgment was rendered against them. These facts they should have brought to the attention of the court then by an amended or supplemental answer. Some of the facts set out in the petition seem to have occurred after the judgment of this court dated in February, 1907. The Code of Civil Procedure (sec. 105) allows supplemental pleadings to be filed, but that section does not allow a supplemental answer to be filed and a trial thereon had after the case has passed to final judgment and an order been made for the execution of the sentence. In such circumstances a defendant must commence an original action asking that the proceedings for the execution of the sentence be enjoined.

It is true that in this very case we allowed a bill of exceptions relating to matter occurring after final judgment had been entered herein against the defendant De la Riva, but that bill of exceptions related exclusively to the liability of the sureties Somes and Spalding, who were brought into the case for the first time after the final judgment against De la Riva, and who, as we held, were entitled to have the question of their liability for this debt passed upon by this court. That has been done and it has been finally determined that they are so liable. No further bill of exceptions relating to that liability can be allowed in this case.

We hold that the reasons given by the court below for refusing to sign the bill of exceptions are sufficient, and this proceeding is hereby dismissed. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

[1] Page 283, *supra*.

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