

FRANCIS LUSK, PETITIONER, VS. FREDERIC STEVENS, LEON ROSENTHAL AND GONZALO P. NAVA, RESPONDENTS.

G. R. No. 45325. February 27, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition for certiorari filed by Francis Lusk, praying this court to review and set aside the judgment rendered by the Court of Appeals on September 10, 1936, the dispositive part of which reads as follows:

"Wherefore, it is hereby declared and adjudged that the order issued by the Court of First Instance of Manila of July 30, 1936, herein Exhibit B, was issued in excess of jurisdiction and therefore null and void, and of no effect whatever, and that the writ of preliminary injunction heretofore issued should be, and is hereby, made permanent, without special pronouncement as to costs. So ordered."

In support of his petition, the petitioner assigns the following alleged errors as committed by said Court of Appeals, to wit:

"1. The Court of Appeals erred in holding that a judgment rendered under the provisions of sections 207 and 208 of the Code of Civil Procedure, like the decision rendered in the original case No. 49620 of the Court of First Instance of Manila, which is self-executing, is stayed by the filing of the bill of exceptions, and in not holding that the provisions of section 144 of the Code of Civil Procedure are not applicable to such self-executing judgment.

"2. The Court of Appeals erred in holding that the order of the lower court of July 30, 1936, which merely reaffirms the legal force and effect of a self-executing judgment rendered under the provisions of sections 207 and 208 of the Code of Civil Procedure, was issued in excess of jurisdiction of the lower court, when as a matter of law, the lower court does not lose jurisdiction over the case until after the bill of exceptions is approved by the court, and the said order of the court of July 30, 1936, was issued before the bill of exceptions, tendered by Leon Rosenthal, Frederic Stevens and Gonzalo P. Nava, was approved.

"3. The Court of Appeals erred in denying the motion for reconsideration presented by the petitioner herein."

The pertinent facts necessary for the resolution of the questions of law raised in this appeal may be summarized as follows:

The herein petitioner, Francis Lusk, filed a complaint in the Court of First Instance of Manila against the herein respondents Frederic Stevens, Leon Rosenthal, and Gonzalo P. Nava, which was docketed as civil case No. 49620, praying for the annulment of the latter's election as members of the board of directors of the Zambales Chromite Mining Co., Inc., a domestic corporation, and the holding of another election.

On June 12, 1936, said court rendered judgment in favor of the therein plaintiff and herein petitioner and against the therein defendants and herein respondents, who interposed an appeal therefrom.

On July 20, 1936, the therein plaintiff and herein petitioner, Francis Lusk, filed a motion in the Court of First

Instance of Manila, praying that, notwithstanding the appeal taken by the therein defendants and herein respondents, the execution of the judgment be not stayed and immediate compliance therewith ordered.

On July 29, 1936, the therein defendants and herein respondents presented their bill of exceptions. This notwithstanding, on the following day, that is, on July 30, 1936, the Honorable Francisco Zandueta, Judge of the Court of First Instance of Manila, upon an ex parte petition, ordered the immediate execution of said judgment.

On August 1, 1936, said Judge Francisco Zandueta approved the bill of exceptions.

On August 10, 1936, the therein defendants and herein respondents filed a petition for certiorari in the Court of Appeals, praying for the annulment of Judge Francisco Zandueta's order of July 30, 1936, directing the immediate execution of the judgment rendered in said civil case No. 49620 of the Court of First Instance of Manila, on the ground that in so doing said judge had abused his discretion and exceeded his jurisdiction, and for the issuance of a writ of preliminary injunction prohibiting said judge from enforcing the order in question. Said ancillary remedy was granted by the Court of Appeals.

On September 10, 1936, the Court of Appeals rendered judgment granting the relief sought by the respondents, declaring said exceptional writ of execution null and void and without effect, and making the writ of preliminary injunction permanent.

The only question to be decided in this case is whether or not the Court of First Instance of Manila had jurisdiction to issue the order of July 30, 1936, directing the execution of the judgment of quo warranto rendered in civil case No. 49620, the special reasons which the court had for issuing it not having been stated in the bill of exceptions; or, having jurisdiction, whether or not the court acted in abuse of discretion.

The Honorable Francisco Zandueta, in issuing his order of July 30, 1936, directing that execution of the judgment rendered in civil case No. 49620 be not stayed and that a new election of directors of the Zambales Chromite Mining Co., Inc., be held as soon as possible, after service of the notices required in said judgment, based his opinion upon the provisions of section 208 of the Code of Civil Procedure. His said order reads:

"After carefully considering the provisions of law relative to judgments rendered in special proceedings of the nature of quo warranto and the decisions cited in the written memorandum of the attorneys for the plaintiff, the court is of the opinion that the judgment is self-executing and requires no other proceeding for the enforcement of its provisions. Under the law, in the case of a judgment which, in itself, orders immediate compliance with its provisions, as the judgment rendered in this case, the presentation of the bill of exceptions does not, of itself alone, stay compliance with and execution of said judgment. In other words, the provisions of section 144 of the Code of Civil Procedure are not applicable to judgments rendered in special proceedings of quo warranto inasmuch as the law expressly provides that in such proceedings the order of the court shall immediately become obligatory upon the corporation and its officers as soon as a duly certified copy thereof is served upon its secretary personally or left at its principal office. If the effects of the judgment were stayed by the appeal taken by the defendants, it is evident that the remedy granted the plaintiff by the court would be illusory. This result is certainly not contemplated by law. Even granting that section 144 of the Code of Civil Procedure were applicable to the judgment rendered in this case, the court is of the opinion that the reasons stated in the plaintiff's motion and in the oral arguments adduced by his attorney, which the court finds to be well founded, not only justify but also require the immediate compliance with the judgment rendered in this case in order to carry out the operations and business of the Zambales Chromite Mining Company. Therefore, in order to enforce and carry out the judgment of the court, it is necessary for the court to appoint two other judges for the holding of the new election of directors. Section 208 of the Code of Civil Procedure so expressly provides."

The above-cited section 208 of the Code of Civil Procedure reads:

"SEC. 208. Judgment where director of a corporation found to have been illegally elected.—When the action is

brought against a director of a corporation and the court finds that at his election either illegal votes were received or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted, and of induction in favor of the person who was entitled to have been declared elected at such election. Or, in such case, the court may, in its discretion, order a new election to be held at a time and place and by judges of election appointed by the court; notice of such election and naming of the judges shall be given for the time and in the manner provided by law for notice of elections of directors of such corporations; the order of the court shall become obligatory upon the corporation and its officers when a duly certified copy thereof is served upon its secretary personally or left at its principal office; and the court may enforce its order by attachment or in any other manner it deems necessary."

It should be noted that the above-quoted section 208 does not provide that the order or judgment rendered in a quo warranto proceeding shall automatically become final and executory from the time of its promulgation. The only provision thereof relative to the execution of the judgment is that "the order of the court shall become obligatory upon the corporation and its officers when a duly certified copy thereof is served upon its secretary personally or left at its principal office." Inasmuch as the orders or judgments rendered by Courts of First Instance in quo warranto proceedings are appealable, as any other final judgment, such orders or judgments are executory only when they have become final and no remedy remains for their review or annulment. Such being the case, the order referred to in the above-quoted section 208 is one which is final in character, against which no other remedy exists. Neither does Chapter IX of the Code of Civil Procedure, comprising sections 162 to 272, which defines special remedies—among them quo warranto—and prescribes the procedure to be followed for the obtainment thereof, contain any provision relative to the time when the judgments rendered therein become final and executory, the form and requisites to be complied with for the perfection of appeals taken therefrom, or the conditions under which a writ of execution may be issued, pending the appeal, for which reason this court is compelled to resort to the general provisions of said Code of Civil Procedure on the matter.

Section 144 of Act No. 190 provides:

"SEC. 144. Stay of execution.—Except by special order of the court, no execution shall issue upon a final judgment rendered in a Court of First Instance until after the period for perfecting a bill of exceptions has expired. But the filing of a bill of exceptions shall of itself stay execution until the final determination of the action, unless for special reasons stated in the bill of exceptions the court shall order that execution be not stayed, in which event execution may at once issue. But the court may require as a condition of a stay of execution that a bond shall be given reasonably sufficient to secure the performance of the judgment appealed from in case it be affirmed in part or wholly."

The above-quoted legal provision prohibits, as a general rule, the execution of a final judgment rendered in a Court of First Instance before the expiration of the period for perfecting the bill of exceptions, and provides that the filing of said bill of exceptions shall automatically produce the effect of staying execution of the judgment in question until the final determination of the action. However, it established an exception which is that the court, for special reasons stated in the bill of exceptions, may order that execution of the judgment be not stayed, in which case execution should issue at once. In the present case, final judgment was rendered on June 12, 1936, in favor of the petitioner and against the respondents, the latter having appealed to the Court of Appeals on the same date. Pending the perfection of the appeal and before the expiration of the period fixed by law for the presentation of the bill of exceptions, the petitioner filed a motion praying, for the reasons stated therein, that execution of the appealed judgment be ordered. After carefully considering the reasons stated in said motion and hearing the arguments of the attorney for the plaintiff, the court was convinced that the facts alleged in said motion were true and that what was sought therein should be granted, and granted it because it was of the opinion that such concession was authorized not only by section 208 but also by section 144, both above-quoted, and that the reasons stated by the plaintiff in his motion and in the oral arguments adduced by his attorney were well founded,

thereby warranting and demanding immediate compliance with the judgment rendered in said case in order to carry out the operations and business of the Zambales Chromite Mining Company. While it is true that the bill of exceptions does not state the special reasons of the trial court for issuing the writ of execution, pending the perfection of the appeal, the essential thing that gives juridical force to the exception to the general prohibition against the issuance of a writ of execution of a judgment, pending an appeal, is not the statement of said special reasons in the bill of exceptions, but the existence thereof. The statement of the special reasons is but a mere formality in order that said bill of exceptions may contain all the orders issued in the case and the exceptions taken thereto for the purposes of the appeal. The omission hereof may be cured at any time, even after the approval of said bill of exceptions and, therefore, it cannot be a ground for nullity of the exceptional writ of execution issued when there are special reasons that prompted the issuance thereof:

In the case of *Gutierrez Hermanos vs. Oria Hermanos & Co.* (39 Phil, 92, 97), this court said:

"As to the second error assigned regarding the execution of the sentence, we hold that Act No. 190, section 144, does not truly have for its object the annulment, of an order of execution before the expiration of the period fixed for the perfecting of the bill of exceptions, unless for special reasons stated in the bill of exceptions the court shall order that execution be not stayed, because, if such reasons really existed, the failure to state them in the bill of exceptions does not vitiate the order of execution, for, according to the doctrine laid down in the case of *Macke vs. Camps* (5 Phil., 185), the Supreme Court will not interfere to modify, control, or inquire into the exercise of the discretion of the Court of First Instance to direct by special order that execution issue upon a final judgment before the period for preparing a bill of exceptions has expired, unless it appear that there has been an abuse or excess of authority on the part of the trial judge and, consequently, this error assigned can not be sustained, inasmuch as it is not shown that there has been an abuse or excess of authority."

As already stated above, in issuing the writ of execution which is the subject matter of the petition for certiorari instituted in the Court of Appeals, the trial court, after considering carefully the facts alleged in the plaintiff's motion and hearing his attorney's oral argument, found that said facts were well founded and that they not only warranted but also demanded immediate compliance with the judgment rendered in said case in order to carry out the operations and business of the Zambales Chromite Mining Co., Inc. Not having neither the motion nor the oral arguments of the plaintiff's attorney before it, this court is not in a position to know the special reasons which convinced the court of the propriety of the issuance of the exceptional writ of execution; but even if this court had them in view and found them insufficient, it could not annul the writ in question because, as the law has rested the determination of the sufficiency or insufficiency of the special reasons upon the sound discretion of the court issuing the writ, this court can not interfere with the exercise thereof, unless it appears that there has been an abuse or excess of authority in doing so, as already held by this court in numerous decisions (*Calvo vs. De Gutierrez*, 4 Phil., 203; *Macke vs. Camps*, 5 Phil., 185; *Gutierrez Hermanos vs. Oria Hermanos & Co.*, 39 Phil., 92; *Gamay vs. Gutierrez David*, 48 Phil., 768). In this case, the attention of this court has not been called to, and it has not been shown that there had been an excess of jurisdiction on the part of the Court of First Instance of Manila or an abuse in the exercise of its discretion. On the contrary, the only reason of the Court of Appeals for declaring the exceptional writ of execution under consideration null and void, is the failure to state in the bill of exceptions the special reasons found by the trial court, convincing it of the imperative necessity of issuing the writ.

For the foregoing considerations, this court is of the opinion and so holds: (1) That it is the existence of special reasons that confers discretionary power upon a Court of First Instance whether or not to issue a writ of execution pending an appeal, under section 144 of the Code of Civil Procedure; (2) that the statement of said special reasons in the bill of exceptions is a mere formality, inasmuch as section 144 does not make it mandatory and, therefore, the omission thereof, which may be cured even after the approval of the bill of exceptions, does not invalidate the

exceptional writ of execution issued; and (8) although a Dill of exceptions, which does not state the exceptional writ of execution and the special reasons which prompted the issuance thereof, is defective, the said writ is valid and legal when, in the opinion of the court, such special reasons exist.

Wherefore, reversing the judgment of the Court of Appeals under review, the writ of preliminary injunction, issued against the exceptional writ of execution entered by the Court of First Instance of Manila, is ordered dissolved, with the costs to the respondents. So ordered.

Avancena, C. J., Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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