

FEDERICO HIDALGO, PLAINTIFF, VS. A. S. CROSSFIELD AND JOSE DE LA PENA Y DE RAMON, AS ADMINISTRATOR OF THE ESTATE OF JOSE DE LA PENA Y GOMIZ, DEFENDANTS.

G.R. No. 6492. December 09, 1910

Ponente: CARSON, J.

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CARSON, J.:

This is an original action, instituted in this court under the provisions of section 515 of the Code of Civil Procedure, wherein the petitioner prays that a writ of mandamus be issued, directed to the Hon. A. S. Crossfield, judge of the Court of First Instance, directing Him to execute and carry out the judgment of this court, rendered on appeal on the 17th day of August, 1910, in the case of De la Pena vs. Hidalgo.[1]

Petitioner alleges that on the 11th day of October he appeared by his attorney in the Court of First Instance of the city of Manila, and orally prayed the judge thereof, the Hon. A. S. Crossfield, to issue a writ of execution on the above-mentioned judgment, and at the same time to issue an order directing the clerk to turn over to him a certain cash deposit, which petitioner alleges he placed in the hands of the clerk in lieu of an appeal bond in the course of the proceedings had in the court below, and to the release of which as he alleges, he was entitled as a necessary and immediate consequence of the judgment of this court rendered on the appeal of the case above-mentioned. Petitioner further alleges that respondent refused to issue execution on the judgment in question, and declined to order the clerk to turn over the cash deposit as requested.

Respondent denies that petitioner or his attorney did in fact ask for the issuance of execution, and disclaiming all intent or desire to fail or neglect to comply with the terms of the judgment in question, so far as it imposed any duty upon him, alleges that in response to the request for an order directing the turning over of the cash deposit in the hands of the clerk to the petitioner, he, the respondent, informed counsel for the petitioner that he would take the proper action in that regard as soon as the parties in interest had been duly notified, and he had time to examine the judgment by virtue of which petitioner claimed the right to the deposit. The record discloses that on the day the application for the release of the deposit was made, an order was issued by respondent to the various parties in interest to appear within four days from the date thereof and show cause if any they had, why the deposit should not be released.

There is considerable conflict in the testimony as to precisely what occurred on the occasion when counsel for petitioner appeared in open court, and as he alleges, orally moved the court to issue execution on the judgment of this court, and to order the release of the cash deposit; but it is not necessary for us to make any findings on the disputed facts, because we are of opinion that, granting the truth of the petitioner's allegations and of the evidence he submitted in support thereof, and taking into consideration only those allegations of respondent which are supported by the testimony offered by him and uncontroverted by the evidence offered by the petitioner, the writ of mandamus prayed for should not issue.

The issuing of an execution is a ministerial act, and must be carefully distinguished from the awarding of an

execution, which is a judicial act. "To award is to adjudge, to give anything by judicial sentence/" and when it is said that a party is awarded an execution upon a judgment it should be understood thereby that it is judicially declared that the party has a right to have the judgment executed. It need not, therefore, be expressly granted nor even mentioned in the judgment. The prevailing party is always entitled as of right to the execution of the judgment in the manner and form prescribed by law, so that the very act of granting judgment is of itself an award of execution thereon. (Freeman on Executions, 3d edition, Vol. I, par. 9a, and cases there cited.) The right of a party to have an execution having been duly adjudged, the mere issuing of the writ when the time for its issuance as prescribed by law has arrived; that is to say, the preparation and delivery of the formal writ or order to the sheriff, or other officer charged with the execution of judgments, directing him to proceed with the execution is a mere compliance with the provisions of the award of judgment, and essentially a purely ministerial act.

In the absence of statutory provisions to the contrary, and speaking generally, all courts which have power and jurisdiction to render judgments have inherent powers to enforce such judgments, for "If a court is competent to pronounce judgment, it must be equally competent to issue execution to obtain its satisfaction. A court without the means of executing its judgment and decrees would be an anomaly in jurisprudence, not deserving the name of a judicial tribunal. It would be idle to adjudicate what could not be executed, and the power to pronounce necessarily implies the power of execution." (U. S. vs. Drennan, Hemp., 325.) Hence where the statute does not otherwise provide, and when a party has a right to execution, it becomes the imperative duty of the court to issue the proper writ; and this duty will necessarily be performed by the judge or justice himself when the court has no clerk; but when the court has a clerk, in whose hands is intrusted the court seal, and who is charged with the keeping of the court records and the issuance of process under the seal of the court, the imperative duty of issuing the writ of execution, which in such cases as we have seen is purely a ministerial function of the court, manifestly devolves upon him, unless in a particular case the judge elects to perform the duty himself instead of intrusting it to his ministerial officer.

It is evident, therefore, that in the absence of statutory designation of the officer or person whose duty it is to issue execution, mandamus will lie to the judge or justice of an inferior court who has no cleric; but that under similar circumstances mandamus will not lie to the judge if the court has a clerk who could issue the writ, because in such cases the duty of issuing the writ is not obligatory on the judge, who may, and in general does leave the performance of this purely ministerial function of the court to the clerk. And on the other hand, the duty being imperative and obligatory upon the clerk, the writ in such cases properly lies to him in the event of his refusal or neglect to perform it.

Our statute, section 444 of Act No. 190, expressly provides that writs of execution must be "sealed with the seal of the court, and subscribed by the judge, or clerk thereof," and it has been suggested that the effect of this provision is to impose the duty on each of these officers, so that in the event of the failure of either of them to perform it when called upon to do so by a party entitled to the writ, mandamus should issue to compel him to perform the duty thus imposed upon him. We do not think so. This provision in so far as a grant of authority to the judge and clerk to issue writs is to be inferred therefrom, is merely declarative of the authority, which, as we have seen, might be exercised by those officers of the court in the absence of express statutory provisions. It does not, in itself, impose the imperative duty of issuing these writs on either the judge or clerk. It merely declares that either of these officers may, and that one of them must subscribe the writ, and we must look elsewhere in seeking to determine whether the imperative duty is imposed by statute upon either of them.

Section 384 of the Code of Civil Procedure, which treats of the general duties of clerks of Courts of First Instance provides that:

"The clerk shall be the recording officer of all the proceedings of the court. He or his deputy may, at any time,

receive and file all complaints, answers, motions, reports, injunctions, orders, judgments, decrees, or other papers affecting an action or special proceeding offered for the purpose; and shall indorse upon all such papers the time when and the party by whom they were respectively filed, and may issue, under the seal of the court, all process authorized by law to be issued by him and proper in any action or proceeding pending in the court of which he is clerk. * * *."

This provision of the code, read together with the provision which requires the name of the judge or clerk to be subscribed to the writ expressly confers authority and imposes the duty upon the clerks of the Courts of First Instance to issue writs of execution; and since, as we have seen, the issuance of the writ in a proper case is a purely ministerial function of the court, the duty thus imposed on the clerk becomes an imperative one when he is requested to issue the writ by a judgment creditor who is entitled to execution on his judgment. But there is no provision of law which expressly or by implication imposes the imperative duty of performing this ministerial function of the court upon the judge when the court is provided with a clerk. On the contrary, the code clearly recognizes the right of the judge to leave the issuance of executions to the proper ministerial officer, in the various sections which provide that by special order the judge may "direct" that execution issue in certain cases. In no case does it provide that a judge himself shall issue the execution when the court is provided with a clerk. And the various provisions of the code touching the functions of the various officers of the Court of First Instance clearly indicate that such courts being provided with a clerk, the judge may, and in the orderly conduct of the business of his court, he usually should leave to the proper ministerial officers of the court the performance of this, as well as all other ministerial functions which these officers are authorized to perform.

The imperative duty of issuing writs of execution not being imposed by statute upon the judges of Courts of First Instance, a judge of one of these courts is strictly within his rights when he leaves the performance of this purely ministerial duty to the clerk, and it is manifest that mandamus will not lie to compel him to issue the writ.

The prayer of the petitioner for mandamus to the judge of the court below, in so far as it is based on his failure to direct the release of the fund on deposit in the hands of the clerk of the court may be disposed of without much discussion. The record clearly discloses, and petitioner substantially admits that respondent did not absolutely refuse to issue the order; and that, on the contrary, he informed counsel for petitioner that he would do what was proper in that regard, but that first it would be necessary for him to carefully acquaint himself with the contents of the judgment of this court, for the purpose of ascertaining its true meaning and effect; and further, that before issuing the order the various parties in interest should be notified and given an opportunity to show cause, if any they had, why the order should not issue, intimating as one of the reasons for giving all the parties an opportunity to be heard, that in the event that any of the parties were to perfect an appeal from the judgment of this court to the Supreme Court of the United States, the release of the deposit might not be justified.

Without deciding whether, in any event, an appeal of the judgment of this court to the Supreme Court of the United States would or would not have furnished a sufficient reason for denying the motion to release the deposit in the event that this question had been raised, we are of opinion that the prayer for mandamus based as it is on respondent's refusal to issue the order without first giving the parties in interest an opportunity to be heard should be denied. The release of the deposit was not expressly directed in the judgment of this court which was certified to the court below, and the right of petitioner thereto is at most an inference to be drawn from the terms of the judgment. While we can conceive of instances wherein an inference of this nature might be so clear, definite, and free from doubt as to justify a court in acting thereon without having all the parties to the action before it; nevertheless, we think that in any case wherein there is no final judgment, order or decree expressly directing the release of such a deposit, the better practice would be to decline to issue an order for its release unless it appears that all the parties in interest have had notice of motion therefor, and an opportunity to be heard to show cause, if any they have, why it should not issue. The very fact that money is deposited with the court implies, as a rule, that

there are in the proceedings different parties claiming an interest therein, and in the absence of a final and unappealable judgment, order, or decree expressly adjudicating the rights of the various claimants thereto, the turning over of such funds on an ex parte motion would be an extremely dangerous practice which might lead to great abuse.

The petition for a writ of mandamus should be dismissed with the costs against the petitioner. So ordered.

Arellano, C. J., Mapa, Johnson, Moreland, and Trent, JJ., concur.

[1] 16 Phil. Rep., 450.

CONCURRING

TORRES, J.,

The undersigned, though he concurs in the denial of the remedy of the writ of mandamus applied for by Federico Hidalgo's counsel, does not concur upon the grounds stated in the decision by the majority.

It is true that the fulfillment of a final judgment and the issuing of the writ of execution pursuant thereupon is a ministerial duty and act of the court, but the undersigned understands that once that a judgment which had brought a suit to a close, has become final, or immediately the court has received the decision rendered by the Supreme Court by virtue of an appeal taken from the judgment of the Court of First Instance, whether such decision in second instance be one of affirmation or reversal, if the judge within a reasonable delay should not issue an order providing for the fulfillment and execution of the final judgment, whether pronounced in first instance or in second instance on appeal, the party interested in the conclusion of the suit should apply to the judge by means of a written motion praying for the fulfillment of the executory judgment and the issuance of the proper writ of execution.

The written motion is deemed necessary and conducive to a good administration of justice, for thereby it would be shown in the record whether the interested party's prayer is in accord and agreement with the sense and terms of his motion, or whether he requests therein something different and not included within the final judgment, the execution of which he seeks. Moreover, the ruling of the judge on the said motion, admitting or denying it, would in turn show, in an authentic manner, whether the latter was or was not in agreement with the said final judgment and the legal provisions in force. I do not believe it proper, nor in accordance with the principles of procedural law, to address verbal petitions to the judges on such important points as the fulfillment and execution of an executory judgment. It is reasonable to admit that the judge may be spoken to regarding points of slight importance, or that a verbal petition be addressed to him asking him to rule on a written petition or motion previously presented and of which he, has knowledge, but I do not esteem it conducive to a good and right administration of justice that petitions relative to features of the utmost importance in a suit be made verbally, nor that the judges rule on such verbal petitions likewise viva voce.

It behooves the serenity of justice and the seriousness which should always be the concomitant of judicial acts, that every proceeding be recorded in writing, so that at any time and place the truth of what occurred in the courts may always be evident, without the slightest doubt.

With respect to the ministerial duty of the clerk of the court in connection with the issuance of the writ of execution, I believe that the clerk never ought to issue a writ of execution without the previous existence of a

ruling, order, or decision of the judge providing for the fulfillment of a final judgment and the issuance of the writ of execution, in which case the clerk of the court is in duty bound to issue the writ of execution already ordered by the judge. The form of the writ is immaterial and it matters not whether it be issued under the signature of the judge and of the clerk or the latter's alone, but it would be the most expedient, in my opinion, inasmuch as its issuance has already previously been ordered by the judge, for the writ to issue by order of the judge with the signature only of the clerk of the court and the proper seal.

For the foregoing reasons, and in view of the fact that the petition of the plaintiff Hidalgo as well as the ruling of the judge thereon, were both merely verbal, it is proper, in my opinion, to deny the application for a writ of mandamus.

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