2 Phil. 137

[G.R. No. 1240. April 18, 1903]

FRANCISCO ENRIQUEZ, PETITIONER, VS. BYRON S. AMBLER, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

D E C I S I O N

COOPER, J.:

This case is one in which the court exercises original jurisdiction conferred by section 17 of the Organic Act.

The respondent has moved to dissolve the injunction issued in the case by one of the judges of this court in support of the, prohibition proceedings, and has also presented a demurrer to the petition.

The petition for prohibition, in so far as material to this inquiry, contains the following allegations:

That petitioner between the years 1883 and 1897 was the executor and testamentary administrator of D. Antonio Enriquez y Sequera, and that in the year 1897 D. Rafael Enriquez was substituted in his stead as such administrator.

That on the 31st day of December, 1902, the Hon. Arthur F Odlin, one of the judges of the Court of First Instance, entered an order in the administration proceedings directing petitioner to render an account of his administration.

That on the 20th day of February, 1903, the judge of the Court of First Instance made an order reciting that the petitioner had refused to obey the order of the court of the 31st of December, 1902, and the petitioner was cited to appear before the court to show cause why he should not be punished for contempt in disobeying the order; that on the 2d day of March, 1903, the contempt proceedings coming on to be heard, the Court of First Instance entered an order finding the petitioner guilty of contempt and directing him to be

imprisoned in Bilibid for the period of six months or until he should produce the account in question, or until the further orders of this court. That immediately after the announcement of this judgment the plaintiff appealed against the same and executed a bond to the satisfaction of the court for the sum of $5,000, conditioned as required by law. That after the filing of said appeal bond the petitioner was again cited to appear on the 3d day of March, 1903, for further proceedings with reference to the enforcement of the order for contempt. That the petitioner believes and alleges that it is the purpose of the judge of the Court of First Instance to carry into execution the said sentence notwithstanding the appeal interposed and the execution of the appeal bond; that by reason of the execution of the appeal bond the Court of First Instance lost its jurisdiction, and the petitioner prays this court that the judge of the Court of First Instance be prohibited from taking further proceedings in the matter until the decision of the appeal and the further order of the Supreme Court.

Section 240 of the Code of Civil Procedure, 1901, upon the construction of which depends the decision of this case, reads as follows:

> "The judgment and orders of a Court of First Instance, made in cases of contempt, except in cases arising under section 231, may be reviewed by the Supreme; Court; but execution of the judgment and orders shall not be suspended until there is filed by the person in contempt, in the court rendering the judgment or making the order, an obligation with sureties to the acceptance of the judge, in an amount to be by him fixed, and conditioned that if judgment be against him, he will abide and perform the order of judgment. But such review shall be had only after final judgment in the action in the Court of First Instance, and when the cause has regularly passed to the Supreme Court by bill of exceptions, as in this act provided."

This being a demurrer to the petition, all of the allegations must be taken as true. From these allegations it appears that, after the entry of judgment for contempt by the Court of First Instance, the petitioner took an appeal to this court, and that he has executed a bond, with sureties, conditioned as required by law, which has been accepted by the judge.

It is contended by the respondent that by the terms of the statute an appeal can be taken only after final judgment in the Court of First Instance, and when the cause has been regularly passed to the Supreme Court by bill of exceptions; that the order of the Cdurt of

First Instance directing the appellant, Francisco Enriquez, to render an account, being in favor of the heirs of the estate, they have no cause to appeal the case; that as no final judgment can be entered in the administration proceedings, the provisions of section 240 regulating the appeal is not applicable to this character of case, and that the execution of the judgment for contempt should not be suspended.

The section unquestionably confers the right of appeal upon a party against whom a judgment for contempt of court has been rendered. The appeal has been taken and a bond has been executed in strict compliance with the requirements of the statute. The right to an appeal can not be construed away, by holding that the party is not entitled to appeal until final judgment in the principal action, and that where no final judgment is contemplated an appeal from a contempt proceeding can not be allowed.

If it is a case where no final judgment is to be made, then the party against whom the judgment is rendered in the contempt proceedings must be entitled to perfect his appeal without awaiting further proceedings.

The intention of the statute in requiring that the appeal from the contempt proceedings should await final judgment in the principal case was to prevent different appeals from the two judgments in the same proceedings, and its purpose was to postpone the appeal in the contempt case until the principal case came up on a final judgment.

If the proceedings were such that there was to be no final judgment entered in the case, then there would be no reason why the appeal from the contempt proceedings should not be perfected and brought up at once. The phrase in question is perhaps susceptible to still another construction.

In ordinary actions the case is appealed to this court by bill of exceptions, while in special proceedings cases are brought here by the distinctive method of appeal. In a case brought here by bill of exceptions no appeal can be taken until a final judgment has been rendered; while in special proceedings appeals may be taken at various stages of the proceedings. Appeals are allowed to any person legally interested in any order, decree, or judgment of the Court of First Instance in the exercise of its jurisdiction in special proceedings, in the settlement of estates of deceased persons, when such order, decree, or judgment constitutes a final determination of the rights of the parties so appealing.

However this may be, the party against whom the judgment in contempt proceedings has been entered is undoubtedly entitled to an appeal and review of the judgment.

By filing the appeal bond the judgment must be suspended. The statute expressly declares that this shall be the effect of filing the appeal bond. It is unimportant whether the jurisdiction of this court lias attached or not. The Court of First Instance has been deprived of its power to take further action on the judgment for contempt. In the event that the appeal is regarded as perfected to this court, the lower court would be acting without jurisdiction. Should this not be the case and the Court of First Instance still retains the jurisdiction of the principal suit, the attempt to enforce the judgment for contempt after the filing of the bond would be to proceed in excess of jurisdiction.

For these reasons the demurrer to the petition must be overruled.

In support of the motion to dissolve the injunction it is contended by the respondent in the case, that an injunction will not lie against a judge of a court; that it is a writ which can be used only against the parties to the proceedings.

This court in construing section 222 relating to mandamus, and section 220 relating to prohibition, lias held that suits of this character are to be regarded as ordinary suits; that the complaint must be filed and the ordinary citation issue thereon as in ordinary suits; that the parties, in case of emergency, can avail themselves of section 230, which relates to expediting such proceedings, and also to the provisions of section 229, which relates to preliminary injunctions in certiorari, mandate, and prohibition proceedings.

The writer did not concur in these decisions, but regarded mandamus and prohibition as suits of a summary character and requiring such speedy action upon the part of the court as to avoid the necessity for resorting to the provisions of sections 229 and 230.

The decisions in these cases have settled the practice in favor of regarding the mandamus and prohibition as ordinary actions to be aided by the provisions of sections 229 and 230.

Under this construction, whether the preliminary injunction provided for in this section may be strictly in accordance with the idea of an injunction in other jurisdictions, it must be regarded here as an aid or adjunct to the remedy of prohibition by which further proceedings by an inferior court will be suspended.

The demurrer to the petition and the motion to dissolve the injunction must both be overruled, and it is so ordered and adjudged.

Arellano, C. J., Torres, Willard, Mapa, and *Ladd, JJ.,* concur.

McDonough, J., did not sit in this case.

Date created: April 14, 2014