1 Phil. 480

[G.R. No. 1064. November 13, 1902]

A. S. WATSON & CO., LIMITED, PLAINTIFFS AND APPELLANTS, VS. RAFAEL ENRIQUEZ ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

The plaintiff, at the commencement of this action obtained a preliminary injunction as prayed for in its complaint. The case was afterwards tried, and in September, 1902, a final judgment therein was entered in favor of the defendants and the temporary injunction was dissolved.

On the 20th of September a bill of exceptions was perfected and signed by the judge, and a certified copy thereof was then transmitted to this court. In this court the plaintiff has presented a motion asking that the preliminary injunction be continued.

Before discussing the power of this court to grant a preliminary injunction, under these circumstances, it seems necessary to determine whether or not the preliminary injunction granted below was continued in force by the filing of the bill of exceptions. Article 144 of the Law of Civil Procedure, now in force, says: "But the filing of a bill of exceptions shall of itself stay execution until the final determination of the action, unless," etc. Article 1007 of the Revised Statutes of the United States states the manner of obtaining a supersedeas in cases pending in the Federal courts. The meaning of the word "supersedeas" as used in that section has been defined as follows: "A supersedeas, properly so called, is a suspension of the power of the court below to issue an execution on the judgment or decree appealed from; or, if a writ of execution has issued, it is a prohibition emanating from the court of appeals against the execution of the writ." (Hovey *vs.* McDonald, 109 U. S., 150.)

As so construed, article 1007 of the Revised Statutes of the United States is substantially the equivalent of our article 144. This question as to whether a supersedeas has, in the

Federal courts, the effect of continuing in force an injunction dissolved by the lower court has frequently been passed upon by the Supreme Court. That court has said: "The general ruling is well settled that an appeal from a decree granting, refusing, or dissolving an injunction does not disturb its operative effect. (Hovey *vs.* McDonald, 109 U. S., 150-161; Slaughterhouse Oases, 10 Wall., 273-297; Leonard *vs.* Ozark Land Company, 115 U. S., 465-468.) When an injunction has been dissolved it can not be revived except by a new exercise of judicial power, and no appeal by a dissatisfied party can of itself revive it" (Knox Co. *vs.* Harshman, 132 U. S., 14.)

> "The truth is that the case is not governed by the ordinary rules that relate to a supersedeas of execution, but by those principles and rules which relate to chancery proceedings exclusively. * * * In this country the matter is usually regulated by statutes or rules of court, and, generally speaking, an appeal, upon giving the security required by law, when security is required, suspends further proceedings and operates as a supersedeas of execution. * * * But the decree itself may have an intrinsic effect which can only be suspended by an affirmative order either of the court which makes the decree or of the appellate tribunal. This court, in the Slaughterhouse Cases, 10 Wall., 273, decided that an appeal from a decree granting, refusing, or dissolving an injunction does not disturb its operative effect. Mr. Justice Clifford, delivering the opinion of the court, says: 'It is quite certain that neither an injunction nor a decree dissolving an injunction passed in circuit court is reversed or nullified by an appeal or writ of error before the cause is heard in this court.' It was decided that neither a decree for an injunction nor a decree dissolving an injunction was suspended in its effect by the writ of error, though all the requisites for supersedeas were complied with. It was not decided that the court below had no power, if the purpose of justice required it, to order a continuance of the status quo until a decision should be made by the appellate court, or until that court should order the contrary. This power undoubtedly exists, and should always be exercised when any irremediable injury may result from the decree as rendered." (Hovey vs' McDonald, 109, U. S., 159.)

In Minnesota the supersedeas statute provided that the appeal from the order of judgment should "stay all proceedings thereon and *save all rights affected thereby.*" The court of this State, relying upon the last of the two clauses quoted, held that an appeal from an order

dissolving an injunction continued the injunction in force. The evils which would result from such a holding are forcibly pointed out by Judge Mitchell in a dissenting opinion. He said: "Although a plaintiff's papers are so insufficient on their face or so false in their allegations that if he should apply oh notice for an injunction, any court would, on a hearing, promptly refuse to grant one, yet, if he can find anywhere in the State a judge or court commissioner who will improvidently grant one *ex parte*; which the court on the first and only hearing ever had dissolves, he can, by appealing and filing a bond, make the *ex parte* injunction impervious to all judicial interference until the appeal is determined in this court. * * * Such a result is so unjust and so utterly inconsistent with all known rules of equity practice that no court should adopt such a construction unless absolutely shut up to it by the clear and unequivocal language of the statute." (State *vs.* Duluth St. Ry. Co., 47 Minn., 309.)

The supreme court of that State afterwards, although adhering to that decision on the ground of *stare decisis,* stated that in their opinion it was unsound. (State ex rel. Leary *vs.* District Court, 78 Minn., 464.)

We have in these Islands no appeal from orders granting or dissolving preliminary injunctions, yet what was said by Justice Mitchell applies to a case where, upon a full trial in a court below, the judge has decided that neither upon the facts nor the law is the plaintiff entitled to any relief. To allow a plaintiff in such a case, by taking an appeal and giving a supersedeas bond, to continue an injunction in force would be manifestly unjust.

We adopt the rule announced by the Supreme Court of the United States and hold that the filing of the bill of exceptions in the case at bar did not operate to revive the preliminary injunction which was dissolved in and by the final judgment.

We also adopt the other conclusion of that court to the effect that the judge below has the power, if the purposes of justice require it, to order a continuance of the *status quo* until a decision should be made by the appellate court or until that court should order to the contrary. We have already in effect declared that principle in the case of Maximo Cortes *vs.* Palanca Yutivo, decided August 6, 1902.

Article 163 of the Code of Civil Procedure provides that "a preliminary injunction may be granted by any judge of the Supreme Court in any action pending in the Supreme Court." This language is broad enough to include not only actions commenced here within the original jurisdiction of this court, but also actions pending here on a bill of exceptions or appeal. We therefore have the power to grant a preliminary injunction in the present case.

The motion is based upon the bill of exceptions and upon nothing else. If no error was committed by the court below, the plaintiff can not recover in the action, and of course would not be entitled to a preliminary injunction. We have looked into the record far enough to satisfy us that the probabilities of the plaintiff prevailing in this court are not strong enough to justify us in granting the temporary relief asked. The motion is denied.

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

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