

[ G.R. No. 1779. April 22, 1904 ]

**FRANCISCO GUTIERREZ REPIDE, PETITIONER, VS. JOHN C. SWEENEY, JUDGE OF THE COURT OF FIRST INSTANCE OF THE CITY OF MANILA, RESPONDENT.**

**D E C I S I O N**

**JOHNSON, J.:**

On the 12th day of January, 1904, an action was commenced in Part III of the Court of First Instance of the city of Manila, between Eleanor Erica Strong and Richard P. Strong, as plaintiffs, and the said Francisco Gutierrez Repide, as defendant. The action was brought for the purpose of annulling the sale of certain shares of stock. The complaint in said case alleged that the defendant had fraudulently secured possession of certain property of the plaintiffs, and requested that judgment be entered requiring the defendant to return the said property to the plaintiffs. The complaint contained a prayer asking that a receiver be appointed to take charge of the said shares of stock pending the final decision of the cause. At the time the said complaint was filed the plaintiffs presented a bond with sufficient sureties, in the sum of \$8,000, gold, United States currency, that being the amount alleged in the complaint to have been paid by the defendant for the said shares of stock. On the same day the court, after being informed of the contents of the said complaint, made an order appointing the sheriff of the city of Manila as receiver to take charge of the said shares of stock, and directed the defendant forthwith to turn over and deliver said shares of stock to said receiver.

On the 13th of January, 1904, the court having been informed from the return of the sheriff that the defendant had not complied with the said order, and at the request of the attorneys for the plaintiff

issued a further order, requiring the said defendant to appear before the court at 11 o'clock a. m. of the same day, to show cause why he should not be punished for contempt for failing to obey said order.

In answer to the order of the court to show cause why he should not be punished for contempt for a failure to comply with the order of the court the defendant appeared and requested that the hearing be postponed until the following morning at 8 o'clock, which request was granted.

On the 14th of January the defendant again appeared and objected to being required to answer the said order, upon the ground that no charge of contempt had been made in writing, as required by section 233 of the Code of Procedure in Civil Actions. The attorneys for the plaintiffs then requested permission to file charges in writing, which permission was granted, and charges in writing were filed.

The court then entered a further order requiring the defendant to show cause why he should not be punished for contempt of court.

The defendant then announced his readiness to show cause why he should not be punished for contempt, and the court then and there proceeded to investigate the charges of contempt under section 235 of the Code of Civil Procedure, hearing the witnesses presented by the said parties.

On the 15th day of January, after closing the said investigation the court made and entered an order in the cause, finding that the defendant was in contempt of court for failure to obey its order, directing the defendant to forthwith turn over and deliver said shares of stock to the said receiver, and directed the sheriff to take charge of the defendant until he complied with the order. The defendant thereupon excepted to the judgment of the court and gave notice of appeal.

The court, after hearing counsel, fixed the bond to be given for the suspension of the execution of the judgment in contempt at the sum of \$60,000, United States currency. The plaintiff alleged, and the

allegation was not denied, that the property withheld by the defendant was worth about \$150,000, Mexican currency.

On the 4th day of February, 1904, the defendant filed an application with the clerk of the Supreme Court for the writ of mandamus, in which he was plaintiff and the Hon. John C. Sweeney, judge of the Court of First Instance, was the defendant, which application prayed that a writ of mandamus issue, commanding John C. Sweeney, judge of the Court of First Instance of the city of Manila, to sign, settle, and allow the bill of exceptions now in his hands, and of which Exhibit A of that complaint was a copy, and that in the meantime the said defendant be restrained and enjoined from committing or permitting the plaintiff to be committed to Bilibid Prison until said bill of exceptions be settled and presented to this court, so that the plaintiff may thereupon ask of this court that he be admitted to bail, and to give a bail bond in a reasonable sum, in order to supersede the operation of the said judgment of the said court, and that the plaintiff have such other remedy as may be proper and agreeable to the due administration of justice, and that he may recover his costs herein against the said defendant.

On the same day application for mandamus was presented to Charles A. Willard, associate justice of the Supreme Court, and after reading the same, he, as such associate justice, granted that part of the prayer of the petition which requested that the defendant be restrained and enjoined from committing or permitting the plaintiff to be committed to Bilibid Prison, upon condition that the said plaintiff give a bond in the sum of \$500, gold.

On the same day the plaintiff presented a bond in the sum of \$500, currency of the United States, with Eduardo Gutierrez Repide and Gustave L. Solignac as sureties. Justice Willard approved the said bond, and the injunction issued.

On the 5th day of February, 1904, under the practice followed in the Supreme Court in such cases, an order was issued and served upon the defendant on the same day, requiring him to appear and answer the said

application for mandamus.

On the 8th day of February, 1904, the defendant in the mandamus proceedings filed his answer in the said cause.

On the 30th day of January, 1904, the defendant in the original cause presented to the judge of the Court of First Instance of the city of Manila, defendant in this cause, a bill of exceptions covering errors complained of growing out of the proceedings in contempt.

Subsequently, to wit, on the 4th day of February, 1904, the judge, defendant herein, refused to sign said bill of exceptions on the ground that the plaintiff was not entitled to have a bill of exceptions settled until the rendition of a judgment upon the merits of the action in the said suit to set aside the alleged fraudulent sale of stock.

The issues presented by the application for mandamus and the answer of the defendant were argued before this court on the 15th day of February, 1904. At the time of the argument the plaintiff requested, among other things, permission to amend the prayer contained in his original application by substituting the following prayer, which was granted:

“Petitioner therefore prays that a writ issue directing the respondent to approve and sign the bill of exceptions now in his hands, a copy of which is hereunto attached, marked ‘Exhibit A,’ and to let petitioner to bail in the said contempt proceedings, and to accept from him a bond, with sureties to the satisfaction of the court, in a sum not to exceed five thousand dollars, United States currency, and that in the meantime respondent be restrained and enjoined from committing the petitioner to Bilibid Prison, or permitting him to be so committed until further orders from this court, and that petitioner be granted such other and further relief as may be proper and agreeable to the due administration of justice, and that he may recover his costs herein against respondent.”

The pleadings in this case raise two questions for the consideration of this court:

First. Whether the defendant, plaintiff herein, is entitled to have a bill of exceptions in the contempt proceedings signed by the trial judge and brought to this court before final judgment is rendered in the action out of which the contempt proceedings grew.

Second. Whether or not the amount of the bond provided for the suspension of the execution of a judgment in a contempt proceedings can be fixed within the discretion of the court issuing the order in contempt, and incidentally, whether or not the amount of the bond should be fixed at a sum which would insure the appearance of the defendant, or whether the amount should be fixed at a sum equal to the value of the property which the defendant refused to turn over.

Section 240 of the Code-of Procedure in Civil Actions provides that:

“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 or 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.”

It will be noted that this section provides that all orders of a Court of First Instance made in cases of contempt, except those arising under section 231, may be reviewed by the Supreme Court. This language would indicate that the party punished for contempt might bring that cause to the Supreme Court at once for review. But the last sentence of said section provides that 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 by law provided.

In accordance with the provisions of this section we are of the opinion that the application for a mandamus to compel the judge to sign the bill of exceptions in the contempt case before final judgment in the principal cause must be denied.

It will be noted that section 240 provides for the suspension of the execution of the judgment in the contempt proceedings by giving a bond. It further provides that the bond must be presented, with sureties, to the acceptance of the judge, and that the judge shall fix the amount of said bond. The said section further provides that the bond shall provide that the person in contempt shall abide by and perform the order or judgment.

Section 238 of the same code provides:

“If the party released on bail fail to appear upon the day named the court may issue another order of arrest, or may order the obligation for his appearance to be prosecuted, or both; and, if the obligation be prosecuted, the measure of damages shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the contempt was prosecuted and the costs of the proceedings, and such recovery shall be for the benefit of the party injured.”

This section clearly provides for a bond to enforce the attendance of a person charged with contempt to appear upon a day named. It also expressly provides that if an action be brought upon the bond “the measure of damages shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the contempt was prosecuted and the costs of the proceeding, and such recovery shall be for the benefit of the party injured.”

The condition of the bond fixed by section 240 is that “he will

abide and perform the order or judgment." The order or judgment in the present cause was that the defendant (in the cause below) turn over to the plaintiff (in the cause below) certain stock alleged to be worth \$150,000, Mexican currency, more or less. It would appear, then, that the bond to be accepted in this present cause should be that the defendant should turn over to the plaintiff the shares of stock in question, or pay to the plaintiff their value. It is clear, therefore, that this bond is not required, primarily, for the, appearance of the defendant.

Section 238 provides for the giving of a bond to enforce the appearance of the defendant, and yet that section provides that the measure of damages in an action upon said bond shall be the extent of the loss or injury sustained by the party by reason of the misconduct for which the contempt was prosecuted, and the cost of the proceedings. Then if the statute provides that the damages in an action upon a bond for appearance simply shall be measured by the loss or injury sustained, certainly a bond conditioned that if a final judgment, be rendered against the defendant he will abide and perform the order or judgment, should be sufficiently large to cover the losses which the plaintiff would suffer in case he failed to comply with the conditions of said bond.

We are of the opinion, therefore, and so hold :

First. That the judge below has authority to fix the amount of the bond; and

Second. That the amount of the bond should be sufficient to protect the plaintiff from loss.

In view of the foregoing considerations, we hereby hold that this court has no jurisdiction to consider the bill of exceptions in the contempt case here presented until after final judgment in the action in the court below and until the cause has regularly passed to this court by a bill of exceptions.

The application for mandamus to compel the defendant herein to sign the bill of exceptions accompanying the said application is. hereby denied, and inasmuch as the statute provides that the judge below shall

fix the amount of the bond in such cases we hereby refuse to direct the court below to accept a bond in an amount not exceeding \$5,000 gold. And it is so ordered.

Arellano, C. J., Torres, Mapa, and McDonough, JJ.,

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CONCURRING

We concur in the foregoing decision in so far as it holds as we do hereby hold "that this court has no jurisdiction to consider the bill of exceptions in the contempt case here presented until after final judgment in the action in the court below and until the case has regularly passed to this court by a bill of exceptions" and that "the application for a mandamus to compel the defendant herein to sign the bill of exceptions accompanying the said application should be denied."

We dissent, however, from that part of the decision wherein it is declared that the bond to be given by the defendant in the contempt proceedings should be necessarily in an amount equal to that involved in the main suit as required by the order of the court below for the violation of which the plaintiff herein was held to be in contempt, particularly when, as in the present case, the plaintiff has alleged, without being contradicted by the defendant, that plaintiff's claim has been sufficiently secured by an attachment and a bond covering the amount involved. It thus appears that for the purpose of securing a single claim two different securities have been required, the second bond being clearly excessive. This, however, may be remedied by a proper action of this court.

We dissent from that part of the decision refusing to direct the court below to accept a bond in an amount not to exceed \$5,000, gold, and expressly order the Court of First Instance to accept a bond in an amount not to exceed \$5,000, gold, and to this effect the necessary orders shall issue. So ordered.

*Petition denied.*

Date created: January 04, 2019