

5 Phil. 185

[G.R. No. 2945. October 28, 1905]

B. H. MACKE ET AL., PLAINTIFFS, VS. JOSE CAMPS, DEFENDANT.

D E C I S I O N

CARSON, J.:

This is in effect an application for an injunction to restrain the Hon. John C. Sweeney, judge of the Court of First Instance of Manila, and the sheriff of the said city from taking any further steps to enforce the execution of a judgment rendered in said court in the case of B. H. Macke et al. vs. Jose Camps.

The only question submitted at this time is the prayer for preliminary injunction, which we are of opinion must be denied.

Passing over certain defects of form in the application, it is sufficient cause for denial of the preliminary injunction that it does not appear from the facts set up in the complaint that the principal relief prayed for should be granted. It appears from the allegations contained in the complaint that judgment has heretofore been rendered in the above-mentioned cause in favor of the plaintiff, and that the defendant, who is the applicant in these proceedings, has given notice of appeal, and is actually engaged in the preparation of his bill of exceptions. It appears further, that execution has issued on the judgment by special order of the court; and the purpose of these proceedings is to prevent the levy of that execution, pending appeal.

Section 144 of the Code of Civil Procedure provides that—

“Except by special order of the court, no execution

shall issue upon a final judgment rendered in the Court of First Instance until after the period for perfecting a bill of exceptions has expired.”

Thus the legislator has placed the issuance of the order complained of in the discretion of the trial court, and this court will not interfere to modify, control, or inquire into the exercise of this discretion, which is thus conferred by statute, unless it be alleged and proven that there has been an abuse or excess of authority on the part of the trial judge, or unless it appears that since the issuance of the order conditions have so far changed as to necessitate the intervention of the appellate court to protect the interests of the parties against contingencies which were not contemplated by the trial judge at the time of the issuance of the order (Jerome vs. McCarter, 21 Wallace, U. S., 17^[1] Calvo 5 Phil. 185. Gutierrez et al.,^[2] 4 Off. Gaz., 193.)

It does not appear from the complaint in this case that any of these reasons exist as a basis for relief, and therefore the prayer for preliminary injunction should be denied. So ordered.

Arellano, C.J., Torres, Mapa, and Johnson, JJ., concur.
Willard, J., concurs in the result.

^[1] 88 U.S., 17.

^[2] 4 Phil. Rep., 203.
