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court has no jurisdiction to issue the order or decision which is the subject matter of the remedy."

WHEREFORE, the petition is DISMISSED for lack of merit. The preliminary injunction by the Court on June 7, 1970 is hereby lifted. Costs against petitioner.

This decision is immediately executory.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and *Sarmiento, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-34344. February 29, 1988]

RICARDO AGUIRRE, FELIXBERTO VALDEZ, ESTEBAN RIVERA and ZAMBALES COLLEGES, INC., *petitioners, vs.* **JOSE DUMLAO and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; OFFICIAL ILLEGALLY OUSTED FROM OFFICE ENTITLED TO DAMAGES.**— The lone issue is whether or not damages may be recovered by the private respondents as a result of his removal from office — an act adjudged to be illegal by the Court of Appeals. That decision having attained finality, it is a proper basis of a damage suit, it should be observed that the Court of Appeals (in the *quo warranto* case) dismissed the private respondent's petition not by reason of the fact that his removal was lawful — on the contrary, it declared in no uncertain terms that it was illegal — but because the term of the office he claims to have been usurped had expired. As the respondent Court (in the damages

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case) would indeed put it: "The case was dismissed but because it had become moot." But while the dismissal bars the private respondent's reinstatement in office, it is no impediment to a recourse to damages. Under Section 15 of Rule 66, of the Rules of Court, "[t]he person adjudged entitled to the office may also bring action against such defendant to recover the damages sustained by such person by reason of the usurpation."

2. ID.; ID.; ID.; FINAL DECISION THEREOF, LAW OF THE CASE BETWEEN THE PARTIES. — To rule, therefore, on the legality or illegality of the private respondent's removal, as the petitioners would now urge us, is to resurrect a dead issue. The Court of Appeals' decision declaring that it was illegal is the law of the case between the parties. This Court admits that the question, under the provisions of the old Corporation Law of whether or not a director may be removed without cause had been a controversial one, but as we stated, it is not the issue presented for our resolution herein.

APPEARANCES OF COUNSEL

Ross, Salcedo & Mariano M. Lozada for petitioners.

D E C I S I O N

SARMIENTO, *J.*:

The Court disposes of this three-decade old case, one of the older ones pending herein. The facts, as found by the respondent Court of Appeals, are not controverted. We quote:

The plaintiff, Jose Dumlao, bought five shares of stock in Zambales Colleges in 1931. In July 1950 the plaintiff was elected as a member of the Board of Trustees of the Zambales Academy, Inc., now Zambales Colleges, Inc. for a term of one (1) year or until his successor shall have been elected and qualified.

On October 7, 1950, the stockholders of Zambales Colleges, Inc., at a special meeting called for the purpose, reduced the number of trustees from seven to five; removed all the seven members of the school's board of trustees, and thereafter elected the five members

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of the new board. Jose Dumlao was not elected as a member of the new Board of Trustees.

Jose Dumlao and others instituted *a quo warranto* proceeding against the school and its officials contesting the legality of the meeting held by the stockholders and their election of a new board of five trustees, docketed as Civil Case No. 1374 of the Court of First Instance of Zambales. The *quo warranto* proceeding was dismissed. The petitioners appealed to the Court of Appeals where the case was docketed as CA-G.R. No. 8305-R.

In a decision promulgated on August 7, 1954, the Court of Appeals ruled:

> If it is correct, as we believe it to be correct, that on May 13, 1951, new members of the Board of Trustees were properly elected, and it is presumed that in due time they assumed their duties, appellants who had been elected on July 15, 1950, for a tenure of one year have lost their right to a restoration.
>
> The question is, therefore, a moot one, and the instant case should be dismissed, as it is hereby dismissed. The decision appealed from is so modified; without further costs.
>
> (Exh. C)

On March 7, 1955, Jose Dumlao commenced in the Court of First Instance of Zambales against Ricardo Aguirre, Felixberto Valdes, Esteban Rivera, and Zambales Colleges, Inc. the present action for recovery of damages and attorney's fees based on the plaintiff's ouster as a member of the board of trustees and his prosecution for *estafa* by the defendants.

The defendants did not deny the material allegations of the second amended complaint regarding the removal of Jose Dumlao as member of the Board of Trustees of the Zambales Colleges Inc. and his prosecution for estafa. They contended, however, that the plaintiff has no right to damages because he was replaced as member of the board of trustees legally in accordance with the Corporation Law and there was no malice in his prosecution for estafa.

The trial court rendered on February 8, 1965 its decision the dispositive part of which reads:

WHEREFORE, by an overwhelming preponderance of

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evidence, and in accordance with law, the Court renders judgment in the first cause of action by:

Ordering the defendant Zambales Colleges, Incorporated, to pay the plaintiff in the first cause of action:

(a) The amount of ₱360.00 as actual damages;

(b) The amount of ₱1,000.00 as moral damages;

(c) The amount of ₱1,000.00 as nominal damages.

(d) And to pay the costs.

The second cause of action is hereby dismissed for lack of evidence.

SO ORDERED.

Iba, Zambales, February 8, 1965.

(Sgd). PEDRO D. CENZON
Judge

(Record on Appeal, pp. 161-162)

The defendants appealed to this Court assigning the following errors:

I THE LOWER COURT ERRED IN HOLDING THAT THE REMOVAL OF APPELLEE AS A MEMBER OF THE BOARD OF TRUSTEES OF APPELLANT CORPORATION IS ILLEGAL.

II THE LOWER COURT ERRED IN AWARDING DAMAGES TO THE APPELLEE.

(Appellant's brief, pp. a-b)[1]

xxx xxx xxx

The respondent Court then rendered judgment holding as follows:

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the defendant-appellant.

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[1] *Rollo*, 11-14.

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SO ORDERED.[2]

The petitioners, the defendants-appellants below, urge a lone assignment of error:

THE COURT OF APPEALS COMMITTED A MISTAKE IN HOLDING THAT A DIRECTOR OR TRUSTEE OF A CORPORATION CANNOT BE REMOVED FROM OFFICE BEFORE HIS TERM EXPIRES UNLESS FOR MISFEASANCE.[3]

It should be noted that the incident involved two suits commenced by the private respondent against the petitioners, Civil Case No. 1374 of the then Court of First Instance of Zambales, in the nature of an action for *quo warranto* (later elevated to the Court of Appeals as CR-G.R. No. 8305 thereof), and Civil Case No. 1714, a subsequent damage suit (subject of the appeal to the respondent Court) following the *quo warranto* ruling. In the *quo warranto* case, the lower court rendered a dismissal, a disposition modified on appeal:

If it is correct, as we believe it to be correct, that on May 13, 1951, new members of the Board of Trustees were properly elected, and it is presumed that in due time they assumed their duties, appellants who had been elected on July 15, 1950, for a tenure of one year have lost their right to a restoration.

The question is, therefore, a moot one, and the instant case should be dismissed, as it is hereby dismissed. The decision appealed from is so modified; without further costs.[4]

xxx xxx xxx

Furthermore, it held:

xxx xxx xxx

The by-laws of the corporation do not provide whether any special election of the members of the board of trustees may be had at any

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[2] *Id.*, 16; Fernandez, Ramon, *J.*, Concepcion, Jr., Hermogenes and Muñoz-Palma, Cecilia, *JJ., Concurring.*

[3] Brief of the Petitioners, 5; *rollo, id.*, 35.

[4] *Id.*, 12.

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time at the will of the stockholders. We believe that after a member of the Board of Trustees has been selected in an annual election, he is to continue in office until his successor is chosen and duly qualified after the succeeding election. Undoubtedly, he can be ousted for misfeasance but certainly not through the election of another to take his place. The corporation's by-laws, in our opinion, do not authorize special election as a means to depose any member, nor, indeed, could have contemplated it or the conduct of its affairs would be seriously jeopardized.[5]

xxx xxx xxx

The private respondent, as a consequence of such a holding, and the case having become final and executory, sought to recover damages for his unlawful ouster from office. The sole issue then is whether or not the petitioners are liable for damages on account of such an unlawful removal.

We hold against the petitioners. As we said, the lone issue is whether or not damages may be recovered by the private respondents as a result of his removal from office — an act adjudged to be illegal by the Court of Appeals. That decision having attained finality, it is a proper basis of a damage suit, it should be observed that the Court of Appeals (in the *quo warranto* case) dismissed the private respondent's petition not by reason of the fact that his removal was lawful — on the contrary, it declared in no uncertain terms that it was illegal — but because the term of the office he claims to have been usurped had expired. As the respondent Court (in the damages case) would indeed put it: "The case was dismissed but because it had become moot."[6] But while the dismissal bars the private respondent's reinstatement in office, it is no impediment to a recourse to damages. Under Section 15 of Rule 66, of the Rules of Court, "[t]he person adjudged entitled to the office may also bring action against such defendant to recover the damages sustained by such person by reason of the usurpation."

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[5] *Id.*, 14-15.

[6] *Id.*, 15.

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To rule, therefore, on the legality or illegality of the private respondent's removal, as the petitioners would now urge us, is to resurrect a dead issue. The Court of Appeals' decision declaring that it was illegal is the law of the case between the parties. This Court admits that the question, under the provisions of the old Corporation Law[7] of whether or not a director may be removed without cause had been a controversial one,[8] but as we stated, it is not the issue presented for our resolution herein.

WHEREFORE, the petition is DISMISSED. Costs against the petitioners.

This Decision is IMMEDIATELY EXECUTORY.

SO ORDERED.

Yap (Chairman), Melencio-Herrera, Paras and Padilla, JJ., concur.

THIRD DIVISION

[G.R. No. L-35512. February 29, 1988]

REPUBLIC OF THE PHILIPPINES and THE DIRECTOR OF LANDS, *petitioners, vs.* **HON. NUMERIANO G. ESTENZO, as Judge of the Court of First Instance of Leyte, Branch V, Ormoc City, FELIPE ADOLFO and FRANCISCA PADILLA, spouses,** *respondents.*

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[7] Act No. 1459, sec. 34.

[8] See *Government v. Agoncillo*, 50 Phil. 348 (1927). Under Section 28 of the Corporation Code, a director may be removed without cause.