

**R. F. WILKS**, Petitioner in Certiorari, v. **H. A. PAGE**, Judge of the Circuit Court for the Second Judicial Circuit and **THOMAS W. HILL**, Respondents.

ARGUED JUNE 6, 1913. DECIDED JUNE 13, 1913.

Dossen, C. J., McCants-Stewart and Johnson, JJ.

1. The record must show that an action in the name of a township was brought by authority of the township.
2. A writ of execution, against a corporate body such as a township does not run against the body of its chairman.
3. Semble, a judge, who was counsel, before his elevation to the bench, in a matter out of which an action arises should not hear and determine an issue in such case where his decision would commit a party to jail who is contending with an adversary for whom the judge had acted as counsel.

Mr. Justice McCants-Stewart delivered the opinion of the court:

Execution—Commitment for Failure to Satisfy. The facts in this case, which are necessary to be recited, are as follows : In October, 1911, Thomas W. Hill was elected chairman of the Township of Harlandsville. He, thereafter, retained H. A. Page, then a practicing lawyer and now judge and one of the respondents in this case, to borrow for the use of the township a certain sum of money, which he did and for which service he was paid a fee by said chairman. Complaint was made that said Thomas W. Hill did not deposit the money, which was borrowed, in the township treasury, nor was it used for the benefit of the township. A township meeting was held and said Thomas W. Hill was removed from office, and one Isaac H. Payne was elected chairman *pro tem*.

A petition was presented to the judge of the Circuit Court for the second judicial circuit praying for an order to show cause why a writ of injunction should not issue against the defendants named in said petition restraining them from exercising the powers as officers of said township. The petition bore this title, "The Township of Harlandsville, plaintiff, versus Thomas L.

Hill," (and others who were named) and it was signed, "The Township of Harlandsville by counsellor Philip J. L. Brumskine." There is no certificate of authorization and no verification to said petition. It begins and ends as stated above. An order to show cause was granted by Judge H. A. Page, one of the respondents herein. On the return day, the petitioner for the writ of injunction failed to appear, and the petition was dismissed with costs.

It is not necessary to give a detailed history of the pursuit of the costs. It is sufficient to say that after two writs of execution had been issued, one against Thomas W. Hill, said Thomas W. Hill, who had been removed from the office of chairman of said township, requested in writing the clerk of the Circuit Court to issue a writ of execution for costs in said injunction proceedings against Thomas L. Hill who was the Acting Treasurer of the Township of Harlandsville; and a writ was issued, not against said Hill, but against the Township of Harlandsville, directing the sheriff to seize and sell its goods until execution was satisfied, and if he could find no goods to arrest the representatives of the township, unless they paid said costs. The sheriff was unable to collect any costs, and he was unable to decide whose body he should arrest. Therefore, said Judge H. A. Page held a chamber's session on the 15th day of October, 1912, for the purpose of deciding who should be held for the said costs, and the township officers were summoned to appear. After an exhaustive hearing in the course of which the judge took evidence, he decided that the chairman of the township is responsible for costs, and if he should fail to pay the same, he is to be taken under execution, unless he will show property to seize belonging to the corporation of Harlandsville.

Now, at this hearing which afforded the first opportunity for the officers of the said township to appear in court, as the petition for an injunction was dismissed on account of the non-appearance of the petitioner, a sworn statement was offered alleging that no authority whatever had been given any one to bring said in-junction action for the Township of Harlandsville or in its name. This petition was offered to resist the effort to have execution issued against said township or its officers. Objection to receiving it was raised by counsel for said Thomas W. Hill, and was sustained. Exception was taken and allowed, and said petition is a part of the record returned herein.

Upon the decision of the judge that execution should run against the Township of Harlandsville and if no collection of costs should be made, that it should run

against the body of the chairman of the township, the petitioner in certiorari Robert F. Wilks, who was elected chairman of said township in October, 1912, was arrested and put in jail, and he was there when he applied to this court for this writ of certiorari.

The legal questions involved in this controversy are very plain and simple. The record must show that an action in the name of a township was brought by the authority of the township. In this case throughout the controversy about the costs, Thomas W. Hill contended that he brought the action in question, when the record shows that it was brought by Philip J. L. Brumskine. There is nothing whatever in the record to show that counsel had the slightest authority for involving the township in a legal controversy. There was no township regulation shown from which his authority could be drawn or implied; there was no vote of the board of officers, nor any vote of the duly qualified electors of the township. Each township is a corporate body and as such has the right to bring suits and to defend them. But unless the method of bringing an action is regulated by statute, or a corporate rule legally made, all actions and legal proceedings must be instituted by proper authority, usually by a majority vote of the managing body. This principle is so elementary that no authority need be cited.

As there was no authority for bringing the action for an injunction in the name of the township no writ of execution could be issued against the township. But even where a writ of execution can be issued against a corporate body, such as a township, it does not run against the body of its chairman (2 Wait's Actions and Defenses 305). This authority is based upon the principle that at common law officers of a corporation are not personally liable for its debts. Such liability arises only when created by statute and exists only as provided by such statute when they make provision for that purpose (21 Amer. & Eng. Enc. Law, 882 [2]).

Petitioner in certiorari alleged and on the argument contended, that if the action for an injunction had come on for trial an issue would have been raised as to the qualification of Judge Page to hear it, as his acts as a lawyer in connection with the subject matter out of which the application for an injunction arose was the foundation of the suit. It is to be regretted that Judge Page took jurisdiction in the matter, even in the collection of costs, as it seems that a judge who was counsel before his elevation to the bench in a matter out

of which an action arises should not hear and determine an issue in such case where his decision would commit a party to jail, who is contending with an adversary for whom the judge had acted as counsel.

The action for an injunction was neither authorized nor properly brought, and the decision, that execution should run against the body of the chairman of the Township of Harlandsville was an error and should be reversed and the writ of execution issued thereupon should be vacated and set aside, with costs against Thomas W. Hill one of the respondents herein; and it is so ordered.

*J. H. Green, and T. W. Haynes, for petitioner.*

*P. J. L. Brumskine, for respondents.*