

1 Phil. 535

[G.R. No. 1120. December 08, 1902]

DY CHUAN LENG ET AL,, PETITIONERS, VS. BYRON S. AMBLER, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

D E C I S I O N

WILLARD, J.:

An action was regularly brought in the Court of First Instance by Ang Ban Ka against Dy Chuan Leng and Lee Gu.

The object of the action was to dissolve a partnership alleged by the plaintiff to exist between the plaintiff and defendants.

There was a prayer in the complaint for a preliminary injunction and the appointment of a receiver. A preliminary injunction was granted *ex parte* and a motion to dissolve it denied.

The defendants demurred to the complaint. This demurrer is still pending decision. The court below has notified the defendants that he intends to appoint a receiver.

The said defendants have now filed in this court a complaint under article 516, Code of Civil Procedure, asking that the judge of Part 3, in which the said action is pending, be prohibited from continuing the preliminary injunction, and from appointing a receiver. The petitioners ask also for an injunction in accordance with article 518.

We can not grant an injunction under this section unless there is a compliance with articles 164 and 166.

It must appear from the complaint that the plaintiff is entitled to recover in the action. If the complaint states no cause of action no preliminary injunction can be issued. The complaint filed in this court is defective in this respect. It shows upon its face that the petitioners are not entitled to an order of prohibition against the court below. That court had jurisdiction of

the action to dissolve the partnership. In that action it had the power to grant a preliminary injunction (article 164), and to appoint a receiver (article 174). Having those powers, if in the exercise of them any errors were committed, they could be corrected only on appeal from the final judgment. The facts as alleged, that the complaint was ambiguous; that the judge believed that the plaintiff below was a partner when the defendants denied it; that he fixed the bond at \$1,000 instead of \$30,000, as requested by the defendants; that no mention of the bond was made in the writ of injunction; that he refused to hear the defendants' witnesses; that he refused to dissolve the injunction upon a bond which the defendants offered to give, all of these do not show that the court was acting outside of its jurisdiction. They simply show, if they are true, that the court has committed certain errors in exercising its jurisdiction, errors which must be corrected by appeal. (*Re Prautch*, February 14, 1902.)

In the case of *Yangco vs, Rohde*, October 13, 1902, we denied a writ of prohibition on the ground that in no case, where the fact of marriage was denied did the Court of First Instance have any jurisdiction to grant temporary alimony. That case differs radically from this one.

It is of course apparent that in passing upon this preliminary motion, we have virtually decided the case upon the present complaint. We see, however, no escape from that result.

The motion for a preliminary injunction is denied.

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