

1 Phil. 551

[ G.R. No. 1078. December 15, 1902 ]

**JOHN W. HOEY, PETITIONER, VS. R. S. BALDWIN, RESPONDENT.**

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

**WILLARD, J.:**

The petition in this case alleges that the plaintiff is and has been since July 1, 1902, assistant chief of the Fire Department of Manila with a salary of \$150 per month, United States currency; that the defendant during that time was and now is the disbursing officer of said city; that the Commission on July 14, 1902, appropriated a sufficient sum of money to pay the salary of the plaintiff during the year commencing with July 1, 1902; that such sum of money had been duly placed in the possession of the defendant as disbursing officer; that the plaintiff had duly performed his duties as such assistant chief during the months of July, August, and September, 1902, as appeared by certificates duly filed with the defendant; that he had tendered to the defendant proper receipts and that the defendant had refused to pay him any part of his salary for said three months.

The prayer of the petition was that a writ of mandamus issue to compel the defendant to pay this salary.

A summons was issued and served. The defendant appeared and demurred on the grounds that the court had no jurisdiction of the defendant, nor of the subject-matter of the action; that the petition did not state facts sufficient to constitute a cause of action, and that the plaintiff had another remedy, which was plain, speedy, and adequate.

The case was heard upon this demurrer.

1. It is suggested by the plaintiff that a demurrer is not proper in a proceeding of this character.

Original jurisdiction in mandamus proceedings is given to this court by article 515 of the Code of Civil Procedure. By that same article it is required to follow the procedure prescribed for Courts of First Instance in like cases. The only articles which declare what that procedure, prior to the judgment, shall be are articles 222, 229, and 230. Article 222 is as follows:

*“Mandate.—When the complaint in an action in a Court of First Instance alleges that any inferior tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes the plaintiff from the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person, and the court, on trial, finds the allegations of the complaint to be true, it may, if there is no other plain, speedy, and adequate remedy in the ordinary courts of law, render a judgment granting a peremptory order against the defendant, commanding him, immediately after the receipt of such order, or at some other specified time, to do the act required to be done to protect the rights of the plaintiff.”*

The part of the article which relates to the procedure may be reduced to this: “When the complaint in an action in a Court of First Instance alleges \* \* \* and the court on trial finds the allegations of the complaint to be true, it may \* \* \* render a judgment granting a peremptory order.”

From this language it must be inferred that proceedings in mandamus constitute a civil action in which there is a complaint.

In view of the fact that this is a civil action; that article 222 says nothing more about the procedure than that there is to be a trial and a judgment and thus fails to point out any different procedure, it necessarily follows that the procedure leading up to such trial and judgment must be the procedure marked out by the Code for ordinary civil actions. We have accordingly adopted the practice of requiring a summons to be issued upon the filing of the complaint, in accordance with article 390 and the case to be proceeded with in the ordinary way like any other civil action.

The fact that this practice is radically different from that known in the United States is of no

importance. The statutes there speak of writs of mandamus, of alternative and peremptory writs, of petitions and affidavits, of orders to show cause. None of these words and phrases occur in our Code. The Commission had these statutes before them when the Code was written. If they had intended to adopt that practice it would have been very easy to have said so.

The objections that our construction of this remedial process deprives it of its summary character is without weight in view of article 230, which authorizes the court to expedite the proceedings. Article 229 also secures the right to a preliminary injunction upon the filing of the complaint.

The defendant had a right to demur.

2. In order to determine the sufficiency of the complaint it is necessary to examine the statutory provisions relating to the payment of Government employees.

The money to pay this particular salary for this particular period was appropriated by Act No. 430.

Articles 18 and 19 of Act 183, the Charter of the city of Manila, are as follows:

“ART. 18. *Insular Auditor to audit accounts of city.*—The Auditor for the Philippine Archipelago shall receive and audit all accounts of the city of Manila, in accordance with the provisions of Act No. 90.

“ART. 19. *Insular Treasurer to receive and keep moneys of city.*—The Treasurer of the Philippine Archipelago shall receive and safely keep all moneys arising from the revenues of the city of Manila, in accordance with the provisions of Act No. 90, and shall expend the same upon warrants drawn in accordance with the provisions of said act. Requisitions for such warrants, in favor of the disbursing officer of the Board, shall be made by the head of the department of the city government to which the business relates, subject to the approval of the Civil Governor.”

Article 25 of said charter provides as follows:

“*Powers and duties of heads of departments.*—Each head of department of the

city government shall be in control of such department, under the direction and supervision of the Board, and shall possess such powers as may be prescribed herein or by ordinance. He shall make requisition in duplicate for all funds required for the use of his department during the ensuing month. All warrants drawn in accordance with such requisitions shall be in favor of the disbursing officer of the Board, and shall be disbursed pursuant to appropriations. The correctness of all pay rolls and vouchers covering the payment of money shall be certified to by each head of department before payment, except as herein otherwise expressly provided."

These provisions indicate that it was the duty of the Chief of the Department of Fires and Building Inspection to make requisition on the Treasurer of the Archipelago for the money appropriated to pay the salaries of his employees.

Act No. 90, rule 5, as amended, provides: "No warrants shall be drawn for the advance of moneys except upon requisition therefor made by the proper officer approved by the Civil Governor and allowed by the Auditor in conformity to appropriations made."

Rules 25 and 26 of said Act 90 are as follows :

"RULE 25. Requisitions for advances from funds in the hands of the Treasurer for paying necessary and proper expenses chargeable to the revenues of the Islands shall be made monthly by the respective officers or agents authorized to disburse the same, in such form as may be prescribed, pursuant to appropriations made, and shall be accompanied by itemized estimates of the amounts required for disbursement during the month, and no accountable warrant shall be drawn for an amount exceeding the requirements for one month.

"RULE 26. Each requisition shall particularly state the items of appropriation under which the money is to be disbursed, and shall be forwarded to the Auditor, who shall cause to be indorsed thereon the balance due to or from the officer or agent making the requisition, as shown by the books of the Auditor's office, and the amount of credits shown by any unsettled accounts of such officer or agent remaining in the Auditor's office. Thereupon such requisition shall be transmitted to the Military Governor for his approval, and when his approval shall be indorsed thereon the requisition shall be returned to the Auditor for allowance,

and when allowed by him and so indorsed upon the requisition, over his official signature, the proper warrant shall be issued for the amount allowed, to which the requisition shall be attached.”

That the approval by the Governor and the allowance by the Auditor of a requisition are necessary before an accountable warrant can be paid is also stated in rules 55 and 68.

It is claimed by the defendant that this approval of the Auditor should have been alleged in the complaint. It is alleged that the money to pay this salary “was *as provided by law* placed under the control of said defendant as such disbursing officer.” It could not in conformity with the law have been placed under his control unless all the steps marked out by the statute had been taken including the approval of the Auditor. We do not think that it was necessary to allege in the complaint all these proceedings. It was sufficient to state the ultimate fact, namely, that the money was in the hands of the defendant as provided by law. (State vs. Ames, 31 Minn., 440, 444.)

3. It is also claimed by the defendant that rule 72 of said Act No. 90 debars the plaintiff from this relief. That rule provides that “any person aggrieved by the action or decision of the Auditor in the *settlement of his account* or claim” may appeal. Under the statutory provisions before cited it is difficult to see how the plaintiff could have any account with the Auditor or how that official could settle it. Disbursing officers after paying employees must settle with the Auditor. If aggrieved by his decision they are the ones to appeal. But until the money is paid there is no account to settle. Our attention has not been called to any law which would allow this plaintiff to present his claim directly to the Auditor for his decision thereon. Moreover, the Auditor has not yet made any decision against the plaintiff. That official’s approval of the estimate was favorable to him.
4. It is further claimed by the defendant that the plaintiff is not entitled to relief because he can maintain an action against the city to recover his salary, or one upon the bond of the defendant, and therefore has another plain, speedy, and adequate remedy.

Article 222 does not allow the court to grant a peremptory order if there is such a remedy. Its existence goes to the foundation of the plaintiff’s right to the relief and we can not agree with the defendant’s claim that this objection can not be taken by the demurrer. We think that it falls under No. 5, article 91, of the Code of Civil Procedure.

Assuming that such an action could be maintained by the plaintiff we find no provision in

the Charter of Manila relating to the payment of judgments which may be obtained against the city. The city has no control over its revenue. All of it, as fast as it is received, is paid to the Insular Treasurer. Before the city can use any of its money for the purpose of paying judgments against it or for any other purpose the Commission must pass a law specifically appropriating the money. After the money has been appropriated it can not be withdrawn without the consent of the Civil Governor and the Insular Auditor.

Should the plaintiff recover a judgment against the city he would have to procure the enactment by the Commission of a law appropriating money to pay it. He then would have to get the head of the Department of Fires and Building Inspection to make a requisition for this sum, the Civil Governor to approve it, the Insular Auditor to allow it, and the disbursing officer of the city to pay it. He might be met with a refusal at each of these steps, and after they had all been taken he might find himself where he is today by the refusal of the last-named officer to pay him the money. It is not necessary to consider authorities from the United States. It is enough to say that such a remedy is certainly not a speedy one and there is difficulty in calling it a plain one.

The fact that the defendant by article 1 of Act 145 is required to give a bond to the Insular Government for the faithful performance of his duties is not a bar to this action. (Fremont vs. Grippin, 10 Cal., 212.)

5. Article 6 of the Charter is as follows:

*“Duties of disbursing officer of Board.—The Board shall appoint a disbursing officer, who shall be charged with the duty of disbursing all moneys drawn from the Insular Treasury pursuant to appropriations made by the Commission. He shall discharge his duties in accordance with the provisions of Act No. 145, prescribing the duties of disbursing clerks, and shall render his accounts in such manner as the Auditor for the Philippine Archipelago may prescribe.”*

Article 1 of Act No. 145 provides as follows:

*“Each head of a civil department, bureau, or office is hereby authorized to appoint, in accordance with law, a disbursing clerk, whose duties shall be to disburse, in accordance with law, and upon approval of the head of the department, bureau, or office to which his duties relate, all moneys appropriated*

for said department, bureau, or office.”

The complaint alleges that proper certificates showing that he was entitled to receive his salary had been filed with the defendant.

The only duty which the defendant had to perform in this case was to pay the money to the plaintiff. This was a duty purely ministerial, “which the law specially enjoins as a duty resulting from” his office.

The Minnesota and California statutes contain the same words as article 222, though they are differently arranged. The decisions in those States allow this remedy in cases like the present.

The petition states a cause of action.

The demurrer is overruled. The defendant may answer within ten days after notice of this decision.

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

*Torres, J., did not sit in this case.*