

4 Phil. 316

[ G.R. No. 2104. March 23, 1905 ]

**EDWARD B. MERCHANT, PETITIONER, VS. SIMPLICIO DEL ROSARIO, JUDGE OF THE COURT OF LAND REGISTRATION, RESPONDENT.**

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

**WILLARD, J.:**

This is an original action in this court for the purpose of compelling the judge of the Court of Land Registration to enter a default under section 35 of Act No. 496 in a proceeding pending before him for the registration of a land title.

The notice provided for by section 31 of the act required the persons named therein to appear on July 7, 1904. On July 14, 1904, the plaintiff in this case, the petitioner in the court below, made a motion in said court that a default be entered against such persons named in the notice and served therewith as had not appeared. The judge refused to enter such defaults.

Section 35 provides that a default may be entered, no reason to the contrary appearing. Whether such reason appears or not is for the court below to decide upon all that appears in the case. The plaintiff does not ask that we compel the court below to pass upon his motion and decide it one way or the other, but he asks us to compel that court to decide it in his favor. The writ of mandamus can not be used to control the discretion of a judge or to compel him to decide a case or a motion pending before him in a particular way under such circumstances as appear in this case.

From the manner in which the case is presented to us we conclude that the parties have submitted it for final decision on the merits.

The temporary injunction heretofore granted in this court is vacated, and final judgment will be entered in favor of the defendant and against the plaintiff, with costs against the latter. So ordered.

*Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.*

---

Date created: April 24, 2014