

5 Phil. 209

[ G.R. No. 1078. November 07, 1905 ]

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

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

**WILLARD, J.:**

A decision overruling a demurrer to the complaint in this action is reported in 1 Philippine Reports, 551. The nature of the case is therein stated. The demurrer was overruled on the allegation in the complaint that the salary of the plaintiff had been paid to the defendant, to be by him paid to the plaintiff, and on the assumption that the money was in the defendant's hands at the time the action was commenced. After the demurrer was overruled the defendant answered, denying that he had the money at the time the suit was commenced. The parties entered into a written agreement concerning the facts in the case, in which agreement it is stated:

“That by direction of the Auditor of the Philippine Islands the respondent, previous to the service of process upon him in this action, had covered all of said funds appropriated for the payment of the salary of the deputy (assistant) chief of the fire department of the city of Manila for the months of July, August, September, October, and \$16.67 for part of November, 1902, withheld, applied, and credited as aforesaid, into the Insular Treasury.”

It therefore now appears that at the time this suit was commenced the defendant, as disbursing officer, had no money in his hands to which the plaintiff had any claim. There could therefore be no duty resting upon him to pay any money to the plaintiff. The case is in the

same condition as it would have been had the money appropriated for the payment of this salary never been paid to the defendant. It is too clear for argument that mandamus would not lie in such a case to compel the defendant as disbursing officer to pay money which he had never received. What the law would be had the defendant had in his possession as disbursing officer this money at the time the action was commenced, and had afterwards disposed of it, it is not necessary to inquire. No such case is here presented. Final judgment should be entered in favor of defendant, with costs. So ordered.

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

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