

8 Phil. 205

[G. R. No. 3556. July 13, 1907]

**H. J. BLACK, PLAINTIFF, M CARL T. NYGBEN, ACTING PROVINCIAL TREASURER
OF THE PROVINCE OF PAMPANGA, DEFENDANT.**

D E C I S I O N

JOHNSON, J.:

From the record the following facts appear:

(1) That on the 28th day of January, 1905, the acting provincial treasurer of the Province of Pampanga issued to one S. S. McVey, a certificate of tax sale for certain land sold at a tax sale in said Province of Pampanga.

(2) On the 10th day of August, 1906, the said S. S. McVey, assigned the said certificate of tax sale to the plaintiff herein.

(3) On the 13th day of September, 1906, the plaintiff herein filed a petition in this court, praying that a writ of mandamus be issued against the defendant herein, as treasurer of said Province of Pampanga, to compel him to issue to the plaintiff a tax deed to the lands described in said certificate of tax sale.

(4) On the 30th day of October, 1906, the Attorney-General of the Philippine Islands, representing the said treasurer, filed a demurrer to said petition for mandamus, upon the ground that the complaint did not state facts sufficient to constitute a cause of action, specifically stating the reasons therefor. Said demurrer was heard by this court on the 12th day of November, 1906.

The question presented is whether or not the plaintiff is entitled to a writ of mandamus under the provisions of law in force in the Philippine Islands. It is the general rule that a

writ of mandamus will not lie against a corporation, board, or officer to compel him or them to perform any specific duty unless, such duty is clearly defined by the law or by virtue of an official duty or relation.

Section 80 of the Municipal Code (Act No. 82) provides: "In case the taxpayer shall not redeem the land sold as above provided within one year from the date of sale, the provincial treasurer, or his deputy, in the name of such treasurer, shall, as grantor, execute a deed in form and effect sufficient under the laws of the Islands to convey to the *purchaser* so much of the land against which the taxes have been assessed as has been sold, free from alliens of any kind whatsoever, and the deeds shall succinctly recite all the proceedings upon which the validity of the sale depends."

It will be noted from the above provision of the said Municipal Code, that the treasurer or his deputy shall execute the deed, under the provisions of said Municipal Code, to the *purchaser*. The plaintiff herein is the assignee of the purchaser. The law gave to the purchaser at the tax sale alone, the right to have the deed executed to him. The law made no provision to have the said tax deed issued to the assignee of the purchaser. This provision of the said Municipal Code seems to have been taken from section 489 of the Statutes of the State of Vermont, and the courts of that State have held, together with nearly all the States of the Union, that every statute which provides a method by which a person may be divested of his property under a special authority, must be construed strictly.

In the case of *Thatcher vs. Powell* (6 Wheaton, 119,123) the Supreme Court of the United States said:

"That no individual or public officer can sell and convey a good title to the land of another, unless authorized so to do by express law, is one of those self-evident propositions to which the mind assents without hesitation; and that the person invested with such a power must pursue with precision the course prescribed by law, or 7m act is invalid is a principal which has been repeatedly recognized in this court."

And again in the case of *Alexander vs. Savage* (90 Ala.,383) the Supreme Court of Alabama held:

“A tax deed made to one *substituted for the purchaser*, or to any grantee other than the one *sanctioned by the statute*, is void. The, statutory authority to convey must be strictly pursued and the deed made only to those to whom he is authorized by law to execute it; (Keen vs. Houghton, 19 Maine, 368.)”

The law in the present case required the defendant to execute the deed to the purchaser under the tax sale. The demurrer is therefore hereby sustained and the plaintiff is hereby given ten days from the notice of this decision within which to amend his complaint, or otherwise the case will be dismissed with costs to the plaintiff. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.
