

**JOHN R. SCHULTZ, MANAGER OF THE CALAWANG HACIENDA,
PETITIONER, VS. PEDRO CONCEPCION, JUDGE OF FIRST INSTANCE
OF LAGUNA, ET AL., RESPONDENTS.**

G. R. No. 10628. October 19, 1915

Ponente: TORRES, J.

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TORRES, J.:

Whereas the present special proceedings were commenced in this court by John R. Schultz, manager of the Calawang Hacienda, against the Honorable Pedro Concepcion, judge of first instance of Laguna, and Numeriano Mercado, praying that a writ of mandamus issue;

It appears that counsel for the petitioner, on the 11th of February last, filed a petition praying that after the necessary formalities a writ of mandamus issue to the said judge, enjoining him upon its receipt to finally dismiss the appeal entered by the defendant Numeriano Mercado in case No. 52 of the justice of the peace court of Alaminos, Laguna, because of noncompliance with the requirements of the law; to declare the said appeal to have been improperly admitted, and to direct that the record in the case be returned to the justice of the peace court for execution of judgment, with costs. Said counsel alleged that, on or about June 13, 1914, proceedings were commenced against the defendant Mercado in the said justice of the peace court for forcible entry and detainer with respect to a parcel of land which he had seized, and which formed part of the said hacienda; that notwithstanding the demands made upon the trespasser, Mercado, to abandon and vacate the said land, he had refused so to do and persisted in detaining it; that counsel therefore prayed the justice of the peace to render judgment ordering the restitution to plaintiff of the possession of the land described in the complaint, with the costs against defendant; that, after a hearing of the case, the justice of the peace in a judgment of July 18, 1914, ordered that defendant vacate the land in question and pay the costs, without allowing damages; that, on the 31st of the same month, defendant appealed from this judgment; that on the same date the justice of the peace issued an order allowing the appeal to the Court of First Instance; that, on the 14th of August following, counsel for plaintiff filed a motion in the court of Laguna to dismiss defendant's appeal on the ground that the judgment had already become final for the reason that the appeal was not entered until thirteen days after the expiration of the period of five days prescribed by Act No. 1778; that said motion was denied by the judge of the Court of First Instance in his order of January 30 of the present year on the ground that the proceedings were brought under the provisions of section 80 of Act No. 190, as amended by Act No. 1778, and that, at all events, the judgment therein rendered was dictated pursuant to another provision of law, wherefore, in accordance with the said Acts, the appeal did not have to be filed within the said five days; and that, as the judge of the Court of First Instance of Laguna had failed to comply with the duty which is coincident with his powers by dismissing the appeal entered after the legal period therefor had elapsed; and as there was no other more effective, expeditious and appropriate remedy for securing the execution of the judgment rendered by the justice of the peace and the restoration of petitioner to the possession of the land, the respondent judge should be ordered to declare the said appeal to have been improperly admitted;

Whereas after overruling the demurrer filed to the complaint by defendants, one of them, Numeriano Mercado, denied in his written answer all the allegations of the complaint and, as a special defense, alleged that the proceedings to which the special remedy sought by plaintiff refers was heard in the justice of the peace court in accordance with the provisions of section 3 of Act No. 2041 of the Philippine Legislature, as evidenced by the facts proven at the trial, considered by the justice of the peace and used as grounds for not dismissing the appeal filed by defendant; and that the judge of First Instance did not in turn answer the complaint;

Whereas the complaint for forcible entry and detainer was filed in accordance with the provisions of section 80 of Act No. 190, as amended by Act No. 1778, and the justice of the peace in deciding the case rendered a final judgment whereby he ordered the trespasser to vacate the land the possession of which was the object of the proceedings, setting forth, as a ground for his judgment, that it had been duly and conclusively proven that defendant, without plaintiff's knowledge or consent, had entered upon the property and had tilled a part of the land comprising the Calawang Hacienda;

Whereas the act of depriving a person of possession of real property, by means of strategy, stealth, or fraud, is provided for in the aforementioned section 80, as amended by Act No. 1778; and if defendant did not usurp the property by violence and intimidation, but entered upon the land of the Galawang Hacienda without the knowledge or consent of the manager thereof, as held to have been proven in the judgment of the justice of the peace appealed from, it is unquestionable that defendant performed such act of dispossession by stealth, strategy or fraud, which is one of the cases specified in the said section and its amendment: Whereas, under this hypothesis, the period allowed with in which an appeal may be taken from a judgment rendered in an action brought for forcible entry and detainer is that of five days, pursuant to the provisions of section 88 of Act No. 190 and section 2 of Act No. 1778, and there fore the appeal filed by defendant from the judgment rendered by the justice of the peace on July 18, 1914, thirteen days after the expiration of the said period can not be allowed;

Whereas, considering the terms of the complaint filed by the manager of the Calawang Hacienda against Numeriano Mercado in the justice of the peace court, and those of the judgment rendered by the said court, it cannot be sustained as the defendant Mercado does sustain, that the case was tried in accordance with the provisions of section 3 of Act No. 2041, which Act in the part thereof which relates to the jurisdiction of justices of the peace in matters involving property titles, was held, in the decision rendered on August 8, 1915, in the case of Barrameda vs. Moir (25 Phil. Rep., 44) to be null, void and unconstitutional, and as being in conflict with the provisions of section 9 of the Philippine Bill which ratifies and confirms section 56 of Act No. 136;

Therefore, for the foregoing reasons it is held that the special remedy of mandamus prayed for should be allowed.

The judge of the Court of First Instance of Laguna is therefore ordered to dismiss the appeal taken by the defendant Numeriano Mercado from the judgment of the justice of the peace of Alaminos and to declare it to have been improperly allowed. The record will be returned to the said justice of the peace for execution of judgment; with the costs against the appellant Mercado. So ordered.

Arellano, C. J., Trent and Araullo, JJ., concur.

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