

ENRIQUE F. SOMES, PLAINTIFF, VS. A. S. CROSSFIELD ET AL., DEFENDANTS.

G. R. No. 4052. August 02, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff, in an action brought by himself in the Court of First Instance of Manila, made a motion for a preliminary injunction restraining the defendants from selling certain property upon execution. After a hearing upon the motion, the court, after saying that the plaintiff was not entitled to the preliminary injunction, made the following order:

"Accordingly, the petition for a preliminary writ of prohibition is denied, and it is hereby further ordered that the proceeds of the sales under the executions already issued, and pending, either in this court or in the hands of the sheriff of the Province of Albay, be deposited in this court, subject to the further orders thereof, upon a bond of 10,000 pesos being filed by the plaintiff to answer for any loss resulting from the failure to apply said proceeds as ordered in the executions issued."

The plaintiff thereupon commenced this original action of certiorari in this court, claiming that the court below, in making the order in question, exceeded its jurisdiction. The defendants have demurred to the complaint, and the case is now before us for decision upon such demurrer.

It is not stated in the complaint in this action that the plaintiff gave the bond mentioned in the order of the court below. That part of the order, therefore, which relates to the deposit of the proceeds of the sale in the clerk's office never became operative. The order in effect, therefore, is one denying the motion for the preliminary injunction.

That the court below did not exceed its jurisdiction in making that order is free from doubt. (Rubert & Guamis vs. Sweeney, 4 Phil. Rep., 473.)

The demurrer is sustained, and the plaintiff is given five days from the date of this decision in which to amend the complaint. If no amended complaint is filed within that time, the clerk, without further order of this court, will enter a judgment in favor of the defendant and against the plaintiff, with costs. So ordered.

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

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