

PEDRO AMANTE, PETITIONER AND APPELLANT, VS. SERAFIN P. HILADO, SOLICITOR-GENERAL OF THE PHILIPPINES, RESPONDENT AND APPELLEE.*G.R. No. 45536. April 14, 1939*

Ponente: MORAN, J.

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On July 27, 1936, appellant in his capacity as private citizen petitioned the Court of First Instance of Manila for a writ of mandamus seeking to compel the Solicitor-General to institute quo warranto proceedings for the dissolution of "Colegio de San Jose" as a corporation sole and the forfeiture of its corporate franchise. The petition alleges violation of the Corporation Law for failure to file certified copy of its by-laws notwithstanding request to such effect by the Bureau of Commerce and Industry. The Solicitor-General demurred to this petition on the ground that the discretion vested upon him by law cannot be controlled by a writ of mandamus, and, therefore, the petition does not state facts sufficient to constitute a cause of action. The demurrer was sustained, and, on failure of plaintiff to amend his complaint, judgment was rendered sentencing him to recover nothing.

Section 199 of the Code of Civil Procedure provides:

"The Attorney-General of the Islands or the fiscal of any province, when directed by the Chief Executive of the Islands, must commence any such action; and when, upon complaint or otherwise, he has good reason to believe that any case specified in the two preceding sections can be established by proof he must commence such action."

Under this provision, it is evident that the duty enjoined upon the Solicitor-General to institute quo warranto proceedings involves the exercise of discretion. This is so, because the institution of the action is expressly made to depend upon whether he has good reason to believe that he can establish by proof that the case is one of those specified in sections 197 and 198 of the Code of Civil Procedure. And it is a well settled rule that a writ of mandamus will not issue to control or review the discretion exercised by an officer and vested upon him by law. (Lamb vs. Phipps, 22 Phil., 456; Olsen and Beaumont vs. Fressel & Co. and Del Rosario, 37 Phil., 121; Dy Cay vs. Crossfield and O'Brien, 38 Phil., 521; Gonzalez vs. Director of Lands, 43 Phil., 277; Abueva vs. Wood, 45 Phil., 612; Blanco, vs. Board of Medical Examiners, 46 Phil., 190; Board of Election Inspectors of Bongabon vs. Sison, 55 Phil., 914.) While mandamus may be invoked to compel the exercise of discretion, it cannot compel such discretion to be exercised in a particular way. (Merchant vs. Del Rosario, 4 Phil., 316; Lamb vs. Phipps, supra; Dy Cay vs. Crossfield and O'Brien, supra.)

The rule may be departed from only in cases of manifest abuse of discretion, as where the acts complained of are whimsical, capricious or arbitrary (38 C. J., 599). But the facts of the present case do not warrant such departure.

Order is affirmed, with costs against appellant.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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