

RAMON SOTELO, PETITIONER, VS. ARSENIO P. DIZON, JUDGE OF FIRST INSTANCE OF MANILA, L. PASICOLAN, SHERIFF OF THE CITY OF MANILA, AND HARRIE S. EVERETT, RESPONDENTS.*G.R. No. 46492. April 26, 1939*

Ponente: IMPERIAL, J.

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This petition for certiorari assails the legality of the order issued by the respondent judge on January 5, 1939, directing" the sheriff or any of his agents to execute the order of the 3d of said month appointing R. Marino Corpus receiver, by placing him in possession of the cinematograph business established in the Savoy Theatre, together with its equipment and existing funds.

On July 22, 1938, the respondent Harrie S. Everett brought civil case No. 53411 in the Court of First Instance of Manila against Lazarus Joseph, to recover the ownership and possession of the cinematograph business established in the Fox and Savoy theatres, with its equipment and existing funds. The respondent asked in his complaint that a writ of preliminary injunction be issued. As the then defendant alleged that the cinematograph business had been transferred by him to the partnership Joseph Brothers, the respondent Everett amended his complaint by including as defendants the said partnership and its partners, John Joseph and George Joseph. Everett dropped out his prayer for preliminary injunction and in his amended complaint asked that R. Marino Corpus be appointed receiver to take charge of the properties in litigation during the pendency of the case. On December 16, 1938 the court appointed R. Marino Corpus receiver of the cinematograph business known as Savoy as well as all its equipment and existing funds, ordering him to take possession thereof and administer them in accordance with law after having qualified and filed a bond for P2,000. When the receiver tried to take possession of the properties entrusted to him, he was met by the petitioner's allegation that he is the owner thereof by purchase from Joseph Brothers on December 15, 1938. In view of this and of the fact that the petitioner had refused to deliver the properties, Everett filed a supplementary complaint on December 23, 1938 including the petitioner as defendant and asking that the order of December 16th appointing a receiver be confirmed. On January 3, 1939 the respondent judge issued an order allowing the supplementary complaint and at the same time reiterating the order of December 16, 1938 appointing a receiver. On the 4th of the same month the receiver looked for the petitioner to require him to give up the properties under receivership, but he was unable to locate him either in his office or in his house as he was informed that the petitioner was sick in the province. On the same date, January 4, 1939, Everett filed a motion asking that the court order the sheriff or his agent to place the receiver in possession of the properties. On the 5th of the said month, the court favorably acted upon the motion, and on the following day, January 6th, the deputy sheriff went to the Savoy Theatre to make delivery thereof to the receiver, but the petitioner refused to make delivery and forthwith filed this petition. The petitioner was served with the supplementary complaint in the morning of January 6, 1939 and when he filed the petition for certiorari in this case he had already been duly summoned. In the same morning of January 6, 1939 and before his petition for certiorari was filed, the petitioner was likewise notified of the order of the respondent judge issued on the 5th

of the said month directing the sheriff to place the properties in the receiver's possession.

The petitioner contends that the order of January 5, 1939⁷ providing for the execution of the other order of the 3d of the same month and for the placing of the properties in the possession of the receiver, is illegal because on said date there was yet no pending action against him and because he was not duly served with the supplementary complaint, citing in his support sections 173 and 389 of the Code of Civil Procedure reading as follows:

"Sec. 173. Receivers, who may appoint.—A judge of the Supreme Court, or a judge of the Court of First Instance in which the action is pending, may appoint one or more receivers of the property, real, personal, or mixed, which is the subject of the action, in the manner and under the conditions hereinafter provided."

"Sec. 389. Commencement of actions.—Civil actions must be commenced by filing a complaint with the clerk of the court in which the action is to be instituted. The date of the filing of the complaint upon which process is issued and duly served shall be deemed to be the true time of the commencement of the action."

The first contention is not justified by the facts because it appears that the supplementary complaint had been admitted by the court on January 3, 1939, hence, when the order of the 5th of said month was issued directing the sheriff to place the receiver in possession of the properties, there was already an action in court against the petitioner.

As to the second legal question before us, the petitioner argues that he was not yet duly served with the supplementary complaint when the order of January 5, 1939 was issued, because the summons only took place on the 6th of the said month, and under section 389 no action in court was yet pending against him. We find no merit in this contention. Under section 389, a civil action is deemed legally commenced from the date of the filing and docketing of the complaint with the clerk of Court of First Instance, without taking into account the issuance and service of the summons. Section 389 of the Code of Civil Procedure is taken from section 405 of the California Code of Civil Procedure, and the Supreme Court of said State has so interpreted it in *Tinn vs. United States District Attorney* (148 Cal., 773); *Dowling vs. Comerford* (99 Cal., 204); *Ex parte Fil Ki* (79 Cal., 584) ; and *Nash vs. El Dorado County* (24 Fed. 252; 1 C. J., sec. 403, pp. 1155, 1156).

Under the facts the respondent judge had jurisdiction to issue the orders of January 3 and 5, 1939, and he did not exceed the same or the discretion conferred upon him by law in such cases. From the same facts it follows that the preliminary injunction obtained by the petitioner in these proceedings was issued without just cause, wherefore, the petitioner is answerable for damages which he might have caused the respondent Everett. We reserve to the latter the right to claim and substantiate said damages in the Court of First Instance where the principal cause is pending, upon petition which he may present for that purpose.

For the foregoing reasons, the remedy prayed for is denied, with the costs to the petitioner. The preliminary injunction issued in this case is set aside. So ordered.

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

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