

TEODORO M. BEECH, PETITIONER, VS. A. S. CROSSFIELD, JUDGE OF FIRST INSTANCE, ET AL, RESPONDENTS.*G.R. No. 5101. January 21, 1909*

Ponente: WILLARD, J.

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This is an action, of certiorari brought originally in this court. In answer to an order to that effect, the defendants have appeared and showed cause why the writ should not be issued and the question to be decided now is, whether an order should be made directing that the record be remitted to this court by the court below.

In the case of Teodoro M. Beech vs. A. S. Crossfield et al.,[1] No. 4690, the decision of this court was filed and announced on the 10th day of December, 1908. This decision annulled a part of the judgment entered by the Court of First Instance of the city of Manila in the case numbered 5816 of that court between Teodoro M. Beech and Juana Jimenez and another. The part of the judgment thus annulled provided that the defendants, or either of them, might repurchase the real estate involved upon paying to the plaintiff, or into court, the sum of P6,000 and P50 per month, beginning with the month of June, 1907, up to the time of payment, and in case of such repurchase that the note of consolidation entered in the registry by the plaintiff should be annulled. On the 14th day of May, 1908, Juana Jimenez deposited in court in the said action of Beech vs. Juana Jimenez, the amount of P6,600 in payment of the debt and interest according to the final judgment entered on the 31st day of March by said Court of First Instance, subject to the disposition of the plaintiff, and P70 in payment of the costs. It appeared that this amount of money had been tendered to the plaintiff for the repurchase of the property, which offer the plaintiff Beech had refused.

On the 16th day of December, 1908, and after the decision of this court had been announced in case No. 4690, the judge of the court below made an order, at the request of Juana Jimenez, directing the payment by the clerk of the court to Bibiano Bañez of P1,500, part of the money thus deposited, and to Juana Luis y Hernandez of P5,170, the balance of such sum. These payments were made by the clerk of the court pursuant to such order to the parties therein mentioned. No final judgment was entered in this court in case No. 4690 until the 22d day of December, 1908.

The plaintiff commenced this action of certiorari on the 17th of December, 1908, alleging that the defendant judge, in making the order for the payments aforesaid, exceeded his jurisdiction. This claim is based upon the fact that on the 16th day of November, 1908, this court, in case No. 4690, had issued a preliminary injunction prohibiting the court below from taking any further proceedings in said action No. 5816 until the further order of the court.

There are several questions presented by the plaintiff in this action. One is, whether an act otherwise within the jurisdiction of the court below falls outside of his jurisdiction when he has been restrained by injunction from performing it? Another is, whether Bibiano Bañez and Juana Luis y Hernandez were entitled to appear and take part in the proceedings in case No. 5816? A third is, whether the plaintiff was entitled to notice of the application

made by those persons for the payment to them of the money deposited into court by Juana Jimenez? Another is, whether the money so deposited belonged to Juana Jimenez or belonged to these two persons from whom she alleged she had borrowed it?

Before undertaking to decide these or other questions presented by the case, it is necessary to consider what interest the plaintiff has in their resolution.

The question litigated in the court below in case No. 5816 was whether or not the defendant Juana Jimenez had the right to repurchase the property in question. The plaintiff Beech claimed that she had no such right, the time for the repurchase thereof having expired. The court held that she did have such right and that she might exercise it by paying the amount due for the repurchase before the 15th day of May, 1908. For the purpose of securing that right, she made the offer of repurchase, and this offer not being accepted by the plaintiff, she deposited the money in court. This money in no sense belonged to the plaintiff. He had a right to accept it, but on condition that he reconvey the property. If he did not see fit to accept it, he had no right thereto. It appears clearly from the terms of the notice given to the plaintiff by the defendant Juana Jimenez at the time she made the deposit that she deposited it for the purpose of making the repurchase and not for the payment of rent which might be due for the use of the property. We, therefore, hold that the plaintiff had no claim or lien of any kind upon the money in question.

It was said, however, in the argument by the plaintiff that, if the money had remained there until final judgment had been entered in case No. 5816 in favor of the plaintiff Beech, he could have levied his execution, which would have been in part for the payment of money, upon this fund at the moment when it was turned over by the clerk to Juana Jimenez. This contention can not be sustained because it appears from the record that on the 14th day of December, 1908, and prior to the making of the order of payment of the 16th day of December, and prior to the time when the plaintiff had or could have secured any judgment against Juana Jimenez, she had assigned and transferred to Bibiano Bañez and Juana Luis y Hernandez all her interest in this fund. The reason for that assignment was the fact that she had borrowed the money from them. It thus appears that the plaintiff, on the 16th of December, when the order complained of was made, had no interest in this money and could acquire none. Whether it remained in court or was paid to Juana Jimenez or to other persons was a matter of indifference to him. That order did not, and could not in any way affect his rights and he was in no way prejudiced thereby. The decision of the questions presented by him upon the hearing in this case in this court, whether decided one way or the other, will be of no interest to him, except as they may settle some mooted points. That a court will not sit for the purpose of trying moot cases and spend its time in deciding questions the resolution of which can not in any way affect the rights of the person or persons presenting them is well settled.

It was suggested at the argument that some of the defendants in this case had made no proper answer to the order to show cause. We had directed that the defendants should appear and state their reasons why a writ of certiorari should not be granted. Some of them appeared and presented what they called a demurrer to the complaint and the plaintiff says that a demurrer in such cases is improper. That is true, but the document they presented was improperly called by them a demurrer. If they saw fit to answer the order to show cause by saying that they admitted all the facts stated in the complaint, but that even on such admission the plaintiff was not entitled to relief, they had a right to do so. That is, in effect, what they did. The document which they called a demurrer was, in effect, their answer to the order to show cause. If we had held that that answer was insufficient, we should have ordered a writ of certiorari to issue and should not have allowed them to withdraw their so-called demurrer and present another answer.

In the complaint in this case the plaintiff asks that the defendant judge and clerk be punished for contempt for violating the injunction above referred to. A proceeding for the punishment of a person for contempt can not be joined with an action in certiorari.

We hold that the answers given by the defendants are sufficient and this case is dismissed, with costs against the plaintiff.

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

[1] Beech vs. Jimenez and Crossfield, page 212, *supra*.

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