

BEHN, MEYER & CO., LTD., PLAINTIFF, VS. THE COURT OF FIRST INSTANCE OF MANILA ET AL., DEFENDANTS.*G.R. No. 5144. March 09, 1909*

Ponente: WILLARD, J.

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This is an original action of mandamus brought in this court to compel the Court of First Instance of the city of Manila and its clerk to issue a writ of execution in the case of Behn, Meyer & Co. vs. El Banco Español-Filipino,[1] reported in 6 Off. Gaz., 4453. The defendants answered the complaint and the plaintiff has amended its complaint so as to admit various allegations in the answer and has moved for judgment upon the pleadings. From the facts admitted it appears that, after the final judgment was rendered in the case of Behn, Meyer & Co. vs. El Banco Español-Filipino, an action was commenced in the Court of First Instance of the city of Manila by the defendants in this case, Siu Liong & Co, against Behn, Meyer & Co. et. al. In that case a preliminary injunction was issued, restraining the plaintiff, Behn, Meyer & Co., from taking any action for the purpose of collecting the judgment in the bank case either by means of a writ of execution or in any other way. The defendant, Behn, Meyer & Co., in that case, the plaintiff in this case, moved the court to dissolve the preliminary injunction, which motion was denied and the preliminary injunction is still in full force and effect.

To compel the Court of First Instance now to issue a writ of execution would be to authorize the plaintiff in this case to violate the injunction which has been issued against it in the court below. But it is claimed by the plaintiff that it is under no obligation to obey that injunction because the court had no jurisdiction to issue it. Without deciding whether it is not, even in that case, bound to obey it, it is sufficient to say that in our opinion the court below had jurisdiction of the case in which the injunction was granted.

The Court of First Instance is a court of general jurisdiction. In this case it had jurisdiction of the parties and subject-matter of the action. Whether in the action a temporary injunction should issue, was a question addressed to the judgment of that court. If, in deciding that question, it committed an error, such error could be corrected only upon an appeal taken in that action, and this order can not be reviewed in an indirect way by commencing an original action of mandamus in this court. (Rubert & Guamis vs. Sweeney, 4 Phil. Rep., 473.) Whether or not the court did commit error in issuing a temporary injunction, we do not, of course, now decide. We simply say that that question can not be presented in this manner. In the case of Behn, Meyer & Co. vs. McMicking¹ (6 Off. Gaz., 1536), cited by the plaintiff, a temporary injunction was issued under circumstances similar to those which appear in this case, but the defendant in that case, instead of attempting to have reviewed the order granting the injunction by commencing an original action in this court, appeared in the proceeding in that court and litigated the question therein, and the injunction having been dissolved by that court, and the plaintiff having appealed, this court confirmed the decision of the lower court dissolving the injunction, upon the ground that, upon the facts of the case, the injunction should not have been issued, and not upon the ground that the court had no power to grant such injunction.

The present action can not be maintained, and judgment is ordered for the defendants, acquitting them of the

complaint, with costs. So ordered.

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

[1] 11 Phil. Rep., 253.

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