

**MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, PLAINTIFF,
VS. SIMPLICIO DEL ROSARIO, JUDGE OF THE COURT OF FIRST
INSTANCE OF MANILA, AND DOROTEO JOSE, DEFENDANTS.***G.R. No. 7688. March 29, 1912*

Ponente: CARSON, J.

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One Doroteo Jose, a resident of the city of Manila, had a contract with the Manila Electric Railroad and Light Company, by virtue of which Jose received, and the Light Company furnished electricity for lighting purposes for several years. The Light Company suspected Jose of unlawfully appropriating electric current, by the use of a device whereby the meter installed in Jose's residence failed to register all the current used by him. A criminal complaint charging Jose with this offense, was dismissed, and Jose" acquitted of the offense with which he was charged. Thereafter the Light Company presented a bill to Jose" for the amount which it claimed he was indebted to it on account of the electricity which it alleged in the criminal complaint had been unlawfully appropriated by him, and upon Jose's refusal to pay the bill, the company cut the wire connecting Jose's residence with its power house, and refused thereafter to furnish electric current to Jose, unless and until its claim for current which it alleges was unlawfully appropriated by him is paid.

Thereupon Jose filed a complaint in the Court of First Instance of Manila, praying for a writ of mandamus to compel the Light Company to furnish him with electricity under his contract with the company; and under the rules, regulations, ordinances and laws under and by virtue of which the Light Company is operating in the city of Manila; and procured, ex parte, the issuance of a preliminary mandatory injunction directing the Light Company to continue furnishing electricity to Jose upon the terms and conditions set forth in the complaint, pending the final determination of the mandamus proceedings.

The Light Company is now before us, praying that a writ of certiorari issue to the judge of the court below who granted the preliminary mandatory injunction, on the ground that in doing so he exceeded his jurisdiction, or rather that he was without jurisdiction to issue an injunction of this nature.

Counsel for the Light Company bases his contentions in this court strictly on his proposition that the Courts of First Instance in these Islands are wholly without jurisdiction to issue preliminary mandatory injunctions under any circumstances whatever; and in open court he waived all objections based on other alleged defects and informalities in the proceedings had in the court below.

Counsel's contention appears to be that the provisions of the Code of Civil Procedure touching the issue of preliminary injunctions do not contemplate the granting of preliminary mandatory injunctions, and that in the absence of express statutory authority the courts of these Islands have no jurisdiction to issue such injunctions.

This contention cannot be maintained. Modeled as are our courts and indeed our whole judicial system upon Anglo-American precedents, we are of opinion that the power to grant preliminary injunctions, both preventative and mandatory, is a logical and necessary incident of the general powers conferred upon Courts of First Instance

in these Islands as courts of record of general and unlimited original jurisdiction both legal and equitable. to secure the rights of the litigants in actions pending in these courts it may, and often does become necessary to preserve the status quo of the parties or of the subject matter in litigation. To this end the power to grant preliminary injunctions, where no other adequate remedy is provided in the ordinary course of law, is an important and, if complete justice is to be done between the parties, a necessary incident of the general jurisdiction conferred upon these courts. Of course, in so far as the statute limits or prescribes the exercise of this power it must be followed; but beyond this, and in cases not covered or contemplated by the statute, our courts must exercise their jurisdiction in the issuance of preliminary injunctions upon sound principles applicable to the circumstances of each particular case, having in mind the nature of the remedy, and the doctrine established in the courts upon which our judicial system is based,

Section 55 of Act No. 136, in express terms confers upon Courts of First Instance the jurisdiction to grant writs of injunction generally, but prescribes that they shall be issued in the "manner" provided in the Code of Civil Procedure. The "method" of obtaining preliminary injunctions generally is set forth in section 166 of Act No. 190, the Code of Civil Procedure; and while there is ground for the contention that the legislator in prescribing that method had in mind the granting of preliminary preventative injunctions only, we think that it provides at the same time the "manner" in which preliminary mandatory injunctions should be obtained. As we have said already, the power to issue injunctions generally, including, as we hold, mandatory as well as preventative injunctions, is not only a logical and essential incident of the general and unlimited equitable and legal jurisdiction conferred upon Courts of First Instance, but is expressly conferred upon them under the provisions of section 55 of Act No. 136, with the single proviso, that this jurisdiction is to be exercised in the manner provided in the Code of Civil Procedure. It follows that whether or not the code in express terms provides the manner for the issuance of a particular class of injunctions, jurisdiction to issue such injunctions must be maintained, if the manner in which such injunctions may be issued can fairly be inferred from the general provisions of the code, or from its provisions for the issuance of injunctions generally.

It may be admitted that since an injunction mandatory in its nature usually tends to do more than to maintain the status quo, it is generally improper to issue such an injunction prior to the final hearing; but on the other hand, in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation, we hold that the jurisdiction to grant such injunctions undoubtedly exists; and while caution must be exercised in their issuance, the writ should not be denied the complainant when he makes out a clear case, free from doubt and dispute.

We agree with counsel for petitioner that a mandatory preliminary injunction should not issue where mandamus proceedings in themselves furnish an adequate remedy; or indeed in any case where adequate relief for the threatened injury will be furnished by an action at law or where adequate means of redress are in the hands of the complainant without the need for its issuance. But cases do and will arise wherein no adequate remedy exists other than the issuance of a preliminary mandatory injunction, and we think the case at bar furnishes an excellent illustration of a considerable class of such cases.

Where a public service corporation which has acquired a substantial monopoly of the supply of light, power, water, transportation or the like, undertakes arbitrarily, and in manifest defiance and violation of the laws, ordinances and regulations under and by virtue of which it operates, to discriminate against one of those dependent upon it for the supply of such necessities, and without just cause or excuse, arbitrarily and in manifest

violation of a continuing duty imposed upon it by law and its own contracts, ceases to furnish such necessities under such conditions that a mandamus will lie to compel it to do so, we think there can be no doubt that pending the final determination of the mandamus proceedings the court wherein such proceedings are pending has jurisdiction to issue a temporary mandatory injunction in a case where the injury complained of is a continuing one and where the invasion of the rights of the complainant during the pendency of the proceedings would work a serious injury for which there is no other adequate remedy in the ordinary course of the law.

The undisputed facts in the case at bar clearly disclose that the Light Company has no valid claim against Jose on account of electricity furnished or received by him; that its action in refusing to continue to furnish electricity to his residence constitutes an arbitrary invasion of his rights, in open violation of the laws, regulations and ordinances under which the company operates; that the continued refusal to furnish electricity pending the mandamus proceedings instituted in the court below would result in serious injury to Jose for which he has no other adequate remedy than a preliminary mandatory injunction; and that the court below had therefore jurisdiction to issue the preliminary injunction complained of.

The petition in this case should be and is therefore dismissed, with the costs against the petitioner.

Torres, Mapa, Johnson, and Moreland, JJ., concur.

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