

**CADWALLADER-GIBSON LUMBER COMPANY, PLAINTIFF, VS.
SIMPLICIO DEL ROSARIO, JUDGE OF THE COURT OF FIRST
INSTANCE OF MANILA, JOSE MCMICKING, SHERIFF, AND JUAN
LIWANAG, DEFENDANTS.**

G.R. No. 7936. November 28, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action of prohibition. It is directed against the Court of First Instance of the city of Manila and its purpose is to prevent that court from executing an order made in an action entitled Juan Liwanag vs. Cadwallader-Gibson Lumber Company, pending in that court.

It is alleged in the complaint that on the 2d day of April, 1912, Juan Liwanag instituted a suit for damages against the Cadwallader-Gibson Lumber Company in which the plaintiff alleged that on the 26th of October, 1911, being a laborer in the employ of the Cadwallader-Gibson Lumber Company, and while rendering services to said company as such employee, he was, through the negligence of the company, injured by certain cars belonging to the company to such an extent as to require the amputation of his left arm. After the beginning of such action, on the 16th day of April, 1912, the said Juan Liwanag made a motion in the Court of First Instance of the city of Manila which is as follows:

"Wherefore, plaintiff prays the honorable court to order the defendant company to give the plaintiff a monthly pension of P30 during the pendency of this case or to take him back in his former position prior to the filing of his suit."

What occurred upon the motion is best stated by the judge who heard it, who in his answer to the complaint in prohibition states: "That after hearing the arguments of both parties presented on the motion made by Juan Liwanag relative to maintenance, none of the parties having offered any evidence for the reason that the question was simply one of the interpretation of Act No. 1874 of the Philippine Legislature, the court resolved the motion in the following terms;"

Then follows the opinion of the court, terminating with the following order, to wit: "It is hereby ordered that the Cadwallader-Gibson Lumber Company during the pendency of the present action pay monthly in advance and during one of the first five days of each month beginning with the date of this order a pension of P30 to said Juan Liwanag. Said company shall, at its option, have the privilege of employing said Juan Liwanag at the same wages at which it formerly employed him instead of paying the monthly pension hereby ordered."

The complaint further alleges that said order was illegal and that the court had no jurisdiction to issue the same; that there was no adequate remedy by appeal or otherwise and that great damage would result to the plaintiff in this action if the order was executed.

The plaintiff in this court bases his argument upon the unconstitutionality of the statute under which the order in

question was issued, alleging that, as interpreted by the court, it deprived the plaintiff of its property without due process of law, in that it ordered it to pay a sum of money monthly without the court having first ascertained and determined, after a hearing and upon evidence, the liability of the plaintiff to the defendant.

Counsel also attacks the interpretation placed upon the law by the trial court in its resolution of the motion, asserting that under the terms of the statute, the pension should continue only so long as the injured person should require medical attendance, and not during the pendency of the action or while he was incapacitated.

So far as appears from the allegations of the complaint and the record as it is made up, there was no question raised as to the constitutionality of the law in the court below; nor was objection there made either, to the form of the motion, to the form or nature of the hearing on the same, or to the fact that no trial was held to determine, upon the evidence adduced, the liability of the plaintiff. It does not even appear except by inference that the plaintiff objected to the order or took exception thereto. Everything in connection therewith seems to have been done with the acquiescence of all the parties concerned. The first time that an objection was interposed was when this action for prohibition was commenced in this court. It seems to us that, even if a constitutional question is involved, as plaintiff alleges, some foundation must be laid for its presentation to this court. The failure of due process of law may be cured by the consent or acquiescence of the party injured. To raise in this court the question of failure of due process of law in such a way as to make it the basis of an appeal or of an action of prohibition, proper objections must be opportunely made in the court below and exceptions taken by the party who feels himself aggrieved.

In connection with the interpretation of the law made by the court relative to the time during which the pension should be paid, it may be said that the mere misconstruction of the statute in this case raises no constitutional question, nor does it raise a question going to the jurisdiction of the court. If anything, it is a mere error, to be corrected in the regular way.

For these reasons the action is not maintainable.

Arellano, C. J., and Torres, J., concur.

Johnson, J., dissents.

CARSON, J., concurring:

I agree with the disposition of this case in the majority opinion.

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