

M. A. CLARKE, PLAINTIFF AND APPELLANT, VS. MANILA CANDY COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 8314. March 25, 1914

Ponente: CARSON, J.

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CARSON, J.:

The record in this case discloses that the trial in the court below was presided over by the Honorable Frank B. Ingersoll, who appears to have been selected by counsel to act as a special judge.

Jurisdiction to hear and determine actions pending in Courts of First Instance as a special judge selected by counsel can only be acquired under authority of and in strict conformity with the provisions of section 378 of the Code of Civil Procedure. That section is as follows:

"Special judge by agreement of parties when judge disqualified.—If the judge of a Court of First Instance should be disqualified, as in this Code provided, to sit in any action, the parties may, in writing, to be filed with the clerk, select some member of the bar as a special judge, and thereupon the judge shall retire from the bench for the time, after directing an entry of the substitution upon the docket, and the special judge so selected shall take his place and hear and determine the action, and make all necessary orders, decrees and judgments therein, as if he had been the regular judge; and the records, minutes, and proceedings shall be, and appear in all respects, as if the cause had been heard and determined before the judge."

No order directing the entry of the substitution of a special judge having been included in the record in this case as originally submitted to us, the parties were given an opportunity to perfect the record in this regard. There-after a writing, purporting to be a nunc pro tunc order was filed with the record in this court, of which the following is a copy:

"Whereas the defendant in the above-entitled action has challenged the competency of the judge presiding in this branch of the Court of First Instance of the city of Manila in that said judge has presided in the case of the United States vs. D. M. Stewart et al., involving the subject matter of the above-entitled action, and has rendered a ruling and decision therein which is the subject of review in the above-entitled cause; and

"Whereas the plaintiff in the above-entitled action has caused it to appear to the satisfaction of this court that the counsel chosen to represent said plaintiff in the above-entitled action is persona non grata in the remaining civil branch of this Court of First Instance of the city of Manila; and

"Whereas the respective parties in the above-entitled cause have mutually stipulated and agreed in writing that the said judges of the Court of First Instance of the city of Manila are and of them is disqualified to sit in said action, and have selected and named Frank B. Ingersoll, esq., a duly qualified member of the bar of this court, as a special judge to take the place of said judges in said cause, and to hear and determine said action, and to make all necessary orders, decrees, and judgments therein, to prepare and certify all bills of exception for appeal therefrom, as if he had been the regular judge of said court, all in accordance with section 378 of the Code of Civil Procedure;

"Now, therefore, good cause appearing therefor, it is hereby ordered and decreed that there be entered upon the

docket of this court the substitution of said Frank B. Ingersoll, esq., in place and instead of the undersigned judge of said court, and in accordance therewith the undersigned judge does hereby temporarily retire from the bench of said court for the time that the above-entitled cause may be on trial and hearing.

"Given and made at Manila, P. I., this 4th day of December, 1913, as and for the 1st day of August, 1912.

"A. S. CROSSFIELD,

"Judge of the Court of First Instance of
the city of Manila."

But even if the omission of the filing of an order directing the entry of substitution before the special judge assumed jurisdiction could be cured by the entry of a nunc pro tune order, a point which we do not now consider, it is manifest that the alleged disqualifications of the judges of the Court of First Instance of Manila were not such as to justify the selection of a special judge under the provisions of section 378 of the Code. Under that section it is only where the regular judge is disqualified "as in this Code provided," (that is to say, as provided in the Code of Civil Procedure) that the selection of a special judge is authorized. The cases of disqualification of judges expressly provided in the Code are set forth in section 8 thereof. The alleged disqualification of the judges of the Court of First Instance of Manila, as set forth in the above-cited order, is not included in the cases of disqualification mentioned in that section, and it manifestly follows, that the selection and substitution of a special judge in this case was without authority of law and conferred no jurisdiction upon him to hear and determine the action.

The judgment entered in the court below should therefore be reversed, without costs to either party, and the record remanded for a new trial. So ordered.

Arellano, C. J., Moreland, Trent, and Araullo, JJ., concur.

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