

**CONSTANCIO JOAQUIN, PLAINTIFF, VS. ALBERTO BARRETTO ET AL.,
DEFENDANTS.***G.R. No. 8991. December 12, 1913*

Ponente: MORELAND, J.

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This is a motion asking the court to clarify and render unambiguous an order issued in an action of mandamus, directed to Alberto Barretto as judge of the Court of First Instance of the Province of Rizal, ordering him, as such judge, to go forward with the trial of an action then pending before him.

There is now, and was when said order was made pending in the Court of First Instance of the Province of Rizal, an action to compel the authorities of one of the municipalities of the Province of Rizal to issue to the plaintiff a license to operate a cockpit. The action duly came on for trial before Judge Barretto, then judge of the Court of First Instance of that province, when, upon the suggestion of the defendants, the judge voluntarily disqualified himself and refused to proceed with the trial of the case. Mandamus was brought in this court by the plaintiff in that action against the judge and others in which the plaintiff asked that the judge be compelled to proceed with the trial of the cause, he not being disqualified upon legal grounds. That action having taken its course in this court, we held that Judge Barretto was not disqualified and that he should proceed with the trial of the case. The final paragraph in our decision contained these words:

"As a consequence, we set aside the order (of disqualification) and require the judge to proceed with the trial *
* *."

An order was issued in pursuance of that decision requiring the judge to go forward with the cause and was duly served upon him.

The judge of the Court of First Instance of the Province of Rizal at the time of our decision was, as we have said, the Honorable Alberto Barretto. At the time this case was regularly called for trial in the Court of First Instance of Rizal, on November 20, 1913, Judge Barretto had been temporarily relieved from duty in the Province of Rizal and the Honorable Jose C. Abreu had been named by the Secretary of Finance and Justice to hold court in that province in his place, and especially to hold a term of court at Pasig, Rizal, beginning on November 20, 1913. The cause having been regularly brought on for trial at the term presided over by Judge Abreu, the attorneys for the plaintiff made the objection that, under the order of this court issued in the mandamus action, no judge other than Judge Barretto could lawfully hear and determine the cause. It was claimed that the order of this court having been directed to Alberto Barretto, he is the only judge who can hear and determine the cause.

Our action is invoked by a motion to clarify and render unambiguous the dispositive part of our decision and the order which we issued thereon. It is claimed that the ambiguity lies in the inability of the parties to determine whether or not the trial of the cause by any other judge than Alberto Barretto would be a violation of the terms thereof.

We are of the opinion that the motion must be denied. There is no ambiguity in the decision or the order. It was directed to Alberto Barretto as Judge of the Court of First Instance of the Province of Rizal. While it was not directed to him personally but to him as a judge, its operation was confined entirely to him by reason of the nature of the action in which the order was issued. The issues framed in that action relate solely to the qualifications of Judge Barretto in his relation with the action then pending in his court. The defendants denied the existence of qualifications necessary to make the judge competent to sit, while the plaintiff asserted that the judge was qualified. We held with the plaintiff and ordered the judge to proceed with the trial of the action.

The action of mandamus in the Supreme Court, being one which affected Judge Barretto and him alone, would necessarily be subject to the possibility of having its whole purpose defeated and the decision deprived of force, or effect by the permanent removal of Judge Barretto from that province or by the substitution of another judge to perform his duties therein temporarily. The order we issued was the result of an action touching the qualifications of Judge Barretto in a particular action pending before him in the Province of Rizal. The inevitable and necessary condition upon which the action was founded and upon which the order therein was issued by this court was that Judge Barretto should remain judge in that province. If he did not remain judge of that province, the action could produce no effect and any judgment therein would be vain and useless. Whether he did so remain judge in that province or not was entirely beyond the control of this court and involved matters wholly outside its sphere of activity. If, after the issuance of our order, competent authority removed Judge Barretto from that province, whether permanently or temporarily, and substituted another judge in his place, as was actually done, the action to compel him to proceed was in vain, and this court, with all others, was robbed of power to enforce the decree therein entered.

It is a necessary conclusion, therefore, that the action referred to in this motion is cognizable by any judge who sits as judge of the Court of First Instance of the Province of Rizal, whether it be Judge Barretto or another.

While we deny the motion upon the ground that there is no ambiguity in the decision or order and no reason for a verbal modification of either, nevertheless, following the rule adopted in several cases, we have expressed an advisory opinion upon the question presented and argued in order that time may be saved and expense avoided, should the parties see fit to be guided by our conclusions.

The motion is denied.

Arellano, C. J., Torres, Carson, and Trent, JJ., concur,

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