

**SO CHU AND ANGELES LIMPANGCO, PLAINTIFFS, VS. V.
NEPOMUCENO, JUDGE OF FIRST INSTANCE OF MANILA, AND JULIUS
REIS, RECEIVER, RESPONDENTS.**

G.R. No. 9956. January 07, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This appears to be a complaint in an action for a writ of prohibition.

It is alleged that on the 13th day of May, 1914, the plaintiffs in this action began an action in the Court of First Instance of the city of Manila against a number of defendants, in which they obtained the appointment of a receiver, one Dy Aoco; that he duly qualified and entered upon the discharge of the duties of his office; and "that Julius Reis defendant herein as receiver in case No. 11820, is interfering with and molesting said receiver Dy Aoco in the possession of said property and in the discharge of his duties as receiver."

The plaintiffs further allege "that on May 16, 1914, without any hearing or notice whatsoever, defendant herein, V. Nepomuceno, issued the order attached hereto and made a part hereof and marked 'Exhibit D/ in excess of his jurisdiction, not having the action or any part thereof before the court for procedure, and that the plaintiffs herein duly excepted to said order and gave notice of appeal, and have appealed therefrom for review to the Supreme Court of the Philippine Islands."

Exhibit D appears to be an order issued by Judge Nepomuceno, presiding over the Court of First Instance of the city of Manila, dissolving the receivership hereinabove referred to. Exhibit C is an affidavit of Dy Aoco in which he declares that he received no notice of the dissolution of said receivership or of any motion to dissolve the same.

Upon the foregoing allegations plaintiffs pray "that a writ of prohibition issue from this court restraining the defendants from further proceedings, under said order Exhibit D, and from in any way interfering with the receiver Dy Aoco in the performance of his duties as such in accordance with the order Exhibit B, until the further order of this court, and to such other and further relief as to the court may seem just and equitable and costs."

To this complaint a demurrer was filed, one of the grounds alleged being that the complaint did not state facts sufficient to constitute a cause of action in prohibition. We are of the opinion that the demurrer must be sustained.

The sole basis for an action of prohibition is lack or excess of jurisdiction.

Section 226 of the Code of Civil Procedure provides:

"When the complaint in any action pending in any Court of First Instance alleges that the proceedings of any inferior tribunal, corporation, board, or person, whether exercising functions judicial or ministerial, were without or in excess of the jurisdiction of such tribunal, corporation, board, or person, and the court, on trial, shall find that the allegations of the complaint are true, and that the plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of law, its shall render a judgment in favor of the plaintiff, including an order commanding the defendant absolutely to desist or refrain from further proceedings in the action or matter

specified therein."

In order to maintain the action it is incumbent on the plaintiffs to allege and prove facts showing that the trial court, in dissolving the receivership, acted without or in excess of its jurisdiction. The only allegation of fact in the complaint on which is based the charge that the court acted "in excess of its jurisdiction" is "that on May 16, 1914, without any hearing or notice whatsoever, defendant herein, V. Nepomuceno, issued the order attached hereto," namely, the order dissolving the receivership. To support the allegation respecting lack of notice the plaintiffs attached to their complaint the affidavit of Dy Aoco, the receiver, in which he declares that he received no notice of the dissolution of such receivership or of any motion to dissolve the same. The complaint as to notice seems, therefore, to go to the fact that the receiver did not have notice of the motion to dissolve rather than that the plaintiffs did not have notice.

Notice to the receiver of a motion to dissolve the receivership is not a jurisdictional requirement. The action in which the receiver is appointed, as well as the receiver himself, together with all the parties therein, are within and under the jurisdiction of the court, as is also the subject matter of the action in which the receiver was appointed and the property which the receiver has in his possession. After a court has obtained jurisdiction over the parties and the subject matter of the action, the failure to give notice of a subsequent step in the proceedings does not deprive the court of jurisdiction. If substantial injury results from failure of notice and complaint is duly made thereof, the act of the court may be held to be erroneous and will be corrected in the proper proceeding; but it is not an act without or in excess of jurisdiction and is not void.

There is a great difference in the results which follow the failure to give the notice which is necessary to confer on the court jurisdiction over the person and the subject matter of the action, and that which follows a failure to give notice of a step taken after the court has obtained such jurisdiction and is proceeding with the action. Failure to give notice of the action by the service of a summons, for example, is a jurisdictional defect and the court acquires no jurisdiction over the person of the defendant. In the same way, failure to give notice in a proceeding to declare a person an incompetent or a spendthrift is jurisdictional and deprives the court of any power to enter a valid judgment in the premises. When, however, the court, by the service of proper notice, has obtained jurisdiction of the person and of the subject matter, then the failure to give notice of a subsequent step in the action or proceeding is not jurisdictional and does not render an order made without notice void.

Therefore, even though there were an allegation that the plaintiffs received no notice of the application to dissolve the receivership, the defect would not be jurisdictional and the remedy of the plaintiffs would not be prohibition. As we have seen, the complaint alleges "that the plaintiffs herein duly excepted to said order and gave notice of appeal, and have appealed therefrom for review to the Supreme Court of the Philippine Islands." That is the proper remedy and not the one demanded in this action.

The demurrer is sustained and the complaint dismissed unless the plaintiffs within five days file an amended complaint. So ordered.

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

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