

3 Phil. 358

[G.R. No. 1705. February 23, 1904]

TOMAS BLANCO, PETITIONER, VS. BYRON S. AMBLER, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

D E C I S I O N

WILLARD, J.:

This is an original action of certiorari in this court, brought under the provisions of sections 514 and 217 et seq. of the Code of Civil Procedure. Upon the filing of the complaint a temporary injunction was issued on January 12, 1904, under the provisions of section 517. On January 13 this court made an order that the defendant appear within seven days and show cause why a writ of certiorari should not be granted. The defendant appeared and showed cause by means only of a demurrer to the complaint.

The matter sought to be reviewed in this case is the order of the defendant appointing a receiver of the property of Tan-Tongco in the case of *Sergia Reyes vs. Tan-Tongco*.

In the case of *Bonaplata vs. Ambler* (1 Off. Gaz., 607),^[1] which involved the same order, this court held that the defendant had no power to appoint the receiver, and that in making such appointment he was acting in excess of his jurisdiction. It necessarily followed that the order was void. The only thing left undecided in that case was the effect of this void order upon those creditors who had assented to it.

The rights of the plaintiff would be the same whether the order appointing the receiver were made before or after the plaintiff commenced his action; it was therefore not necessary to allege in the

complaint when it was commenced.

The defendant's demurrer was based (1) upon a misjoinder of parties; (2) upon the ground that the complaint did not state facts sufficient to constitute a cause of action for five specified reasons, and (3) because the complaint was vague and unintelligible. What has been said covers the five reasons specified under the second ground. The plaintiff, admitting that the demurrer was well taken on the first ground, has asked leave to present, and the defendant has agreed that he may present, an amended complaint in which the defendant McMicking is eliminated as a defendant.

The third ground, that the. complaint is unintelligible, is not well taken.

The court has adopted a different practice in cases of certiorari from that adopted in cases of mandate and prohibition. The latter take the form of an ordinary action. In the former an order to show cause is issued and upon its return, if no sufficient cause is shown, the order provided for by section 217 is issued. In the present case we hold that the cause shown is insufficient and the order provided for in the last-named section must issue.

It is therefore ordered that the proposed amended complaint filed on the 8th day of February, 1904, stand as the complaint in this action, that the defendant, Byron S. Ambler, as judge of the Court of First Instance of Manila, cause to be certified to this court within ten days from this date a transcript of the record and proceedings which in any way relate to the appointment or action of the receiver had or taken in the case of *Sergia Reyes vs. Tan-Tongco*, No. 1451, in the Court of First Instance of Manila, that the same may be reviewed by this court, and in the meantime to desist from any further proceedings in the matter to be reviewed until the further order of this court.

Arellano, C. J., Torres, Cooper, Mapa, McDonough, and Johnson, JJ., concur.

^[1] 2 Phil. Rep., 392.

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