

1 Phil. 395

[ G.R. No. 1061. October 10, 1902 ]

**JURADO & CO., PLAINTIFFS, VS. HONGKONG AND SHANGHAI BANKING CORPORATION, DEFENDANTS.**

**D E C I S I O N**

**WILLARD, J.:**

At the hearing on October 8, 1902, of the motion of Jurado & Co., dated September 11, 1902, the attorney for the Hongkong and Shanghai Banking Corporation challenged the competency of one of the judges of this court to sit in the case, for having acted as fiscal.

The application of article 8 of the Code of Civil Procedure, now in force, to a challenge directed to the competency of a judge of the Court of First Instance is free from doubt. But when the challenge is to the competency of the judge of this court the article may admit of two constructions. Under one construction the magistrate decides for himself the question of his competency; his decision is conclusive, and the other members of the court have no voice in it. Under the other construction the magistrate challenged sits with the court and the question is decided by it as a body.

We adopt this second construction as the proper one. We can not admit as possible a third construction under which the court would decide the question, excluding from the consideration of it the members challenged. This construction would, if adopted, put it in the power of a party to stop all proceedings in the cause by challenging three of the justices. The court has examined the original documents referred to at the argument, and we find nothing in them to support the challenge or which expresses an opinion on the merits of the case. Inasmuch as the complaint of the fiscal had for its purpose the compelling of the judge to comply with the law, and as this officer had failed to send up the report which he had been directed to make in accordance with the complaint of the fiscal, now a Justice of this court, the latter simply made a written request that the judge be directed to send in this report—a mere matter of procedure.

In accordance with article 8 of the Code of Civil Procedure in force the challenge should have been made in writing, but it appears to the court more convenient to settle the question on the merits, and for the reasons stated the challenge is not allowed and the hearing of the motion will be continued on Monday next.

*Torres, Cooper, Mapa, and Ladd, JJ., concur.*

*Arellano, C. J., withdrew from this case.*

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