

7 Phil. 385

[ G.R. No. 3776. January 23, 1907 ]

**PASTOR DIOKNO, PETITIONER, VS. ANICETO REYES ET AL., RESPONDENTS.**

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

**JOHNSON, J.:**

The petitioner presents a petition, *ex parte*, for a preliminary injunction. Section 163 of the Code of Procedure in Civil Actions provides that a preliminary injunction may be granted by any judge of the Supreme Court in an action pending in the Supreme Court, etc., etc. The petitioner alleges in his petition that there is an action pending on appeal between these same parties in this court. An examination of the files of this court discloses the fact that on the 15th day of January, 1907, the petitioner herein filed with the clerk of this court a bill of exceptions in an appeal from a decision of the Court of First Instance of the Province of Batangas, in a cause theretofore pending in said court between these same parties. An examination of this alleged bill of exceptions discloses the fact that upon the 3d day of January, 1907, the petitioner herein presented a petition in that court, praying for a preliminary injunction to prohibit the said respondents from doing certain things described in the complaint filed in that cause and praying that a perpetual injunction be granted *despues de los tramites legales y la vista del juicio*.

On the same day the Court of First Instance denied the petition of the plaintiff in the following words, giving his reason therefor:

“El interdicto prohibitorio solicitado por el recurrente es por la *presente* denegado.”

Upon the 12th day of January, 1907, the petitioner having received notice of the above order of the court, excepted thereto and announced his intention of appealing therefrom, and on the 14th day of the same month presented his bill of exceptions, which was duly certified to

by the judge of the said court.

It will be noted that at no time were the defendants in the court below cited to appear.

The preliminary injunction prayed for is in aid of the remedy which the plaintiff seeks by means of his said appeal.

Was the order of the lower court, from which the plaintiff attempts to appeal, a final order which, under the Code of Procedure in Civil Actions (sec. 123), gave the plaintiff the right to appeal? The petition presented for a preliminary injunction fails to allege the character of the order made by the lower court. An examination of the bill of exceptions brought to this court must therefore be made for the purpose of determining the nature of the order of the lower court. The bill of exceptions discloses that (a) the plaintiff presented a petition praying for a temporary injunction against the defendants; and (b) finally, after an examination of the facts on the part of the court, that a perpetual injunction be granted against the defendants. From this it appears that the only question presented to that court on the 3d of January, 1907, was the right of the plaintiff to a preliminary injunction. We can not presume that the court passed upon a question not presented to it. The plaintiff in his prayer for relief in the petition filed in the lower court in substance asked the said court to take proof, examine into the facts, and then grant a perpetual injunction against the defendants. Of course the court could not comply with this latter request of the plaintiff without having the defendants present during such examination. Our conclusion is therefore that the order of the lower court only related to the question presented to the court at that time, to wit, the right of the plaintiff to a preliminary injunction.

This court has repeatedly held that an order granting or denying a preliminary injunction is not an appealable order, and that appeals based upon such orders would be denied by this court. (*Go-Quico vs. The City of Manila*, 1 Phil. Rep., 502; *Dy Chuan Leng et al. vs. Ambler*, 1 Phil. Rep., 535; *Compañía General de Tabacos vs. Tupiño et al.*, 2 Phil. Rep., 142.)

For these reasons the prayer of the petitioner for a preliminary injunction is denied. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.*

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