

5 Phil. 157

[ G.R. No. 2536. October 23, 1905 ]

**SILVINA LEGASPI, PETITIONER, VS. JOHN C. SWEENEY, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.**

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

**CARSON, J.:**

Defendant demurs to the complaint filed in this case on the ground that it does not set out facts sufficient to constitute a cause of action.

The complaint is an application for a writ of mandamus to compel the defendant, the Hon. John C. Sweeney, judge of the Court of First Instance of Manila, to allow an appeal from a judgment and sentence of said court in a criminal case which was heard therein, on appeal from the municipal court of the city of Manila.

This court has held in the case of the United States vs. Bian Jeng<sup>[1]</sup> (1 Off. Gaz., 433) that the judgment of the Court of First Instance of Manila in a criminal case appealed to that court from the municipal court of the city of Manila is final unless the validity or constitutionality of a statute or ordinance is drawn in question.

The application does not allege that the validity or constitutionality of any statute or ordinance is drawn in question in this case, and we are therefore of opinion that the demurrer should be sustained.

The plaintiff is allowed ten days from the date of this order in which to serve and file an amended complaint previously notifying the other party, and if no amended complaint is filed within that time, the

clerk, without further order, will enter a final judgment in accordance herewith. So ordered.

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

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<sup>[1]</sup> 2 Phil. Rep., 179.

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Date created: April 28, 2014