

3 Phil. 690

[ G.R. No. 1688. April 15, 1904 ]

**FINDLAY & CO., PETITIONERS, VS. BYRON S. AMBLER, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.**

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

**COOPER, J.:**

This is an original suit for mandamus brought under section 515 of the Code of Civil Procedure by the plaintiffs, Findlay & Co., against the Hon. B.S. Ambler, judge of the Court of First Instance, to compel him to issue an execution on a certain judgment rendered by him as judge of the Court of First Instance in the city of Manila, in favor of the plaintiffs, Findlay & Co., against Fulgencio Tan Tonco, on the 27th day of January, 1903, for the sum of \$7,070.19, Mexican currency, with legal interest from the date of the filing of the complaint in said case, and also the costs of suit.

This suit is of the same character as that of Eugenio Bonaplata vs. Byron R Ambler (1 Off. Gaz., 607<sup>[1]</sup>), decided by this court August 1, 1903. In that case the validity of the appointment of Antonio Torres as receiver of the estate of Tan Tonco in the cause of Sergia Reyes vs. Tan Tonco was involved, and it was there held that the court in appointing Antonio Torres as receiver of the estate of Tan Tonco acted in excess of its jurisdiction.

The same question has also arisen in other cases growing out of the appointment of receiver in the said case of Sergia Reyes vs. Tan Tonco, among them the recent case of Encarnacion vs. Ambler, decided on the 8th day of April, 1904.<sup>[2]</sup>

We adhere to the views expressed in these cases, and under their authority a mandamus will be granted.

The defendant, the Hon. B. S. Ambler, judge of the Court of First Instance, is hereby directed to make an order directing the clerk of the Court of First Instance of the city of

Manila to issue an execution in favor of the plaintiff and against Fulgencio Tan Tonco on said judgment rendered on the 27th day of January, 1903, in said Court of First Instance, in said cause of Findlay & Co. vs. Fulgencio Tan Tonco.

The cost of the suit is adjudged against the defendant.

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

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<sup>[1]</sup> 2 Phil. Rep., 392.

<sup>[2]</sup> Page 623, supra.

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