

3 Phil. 623

[ G.R. No. 1673. April 08, 1904 ]

**PETRONILA ENCARNACION, PETITIONER, VS. B.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 prohibition brought under section 516 of the Code of Civil Procedure, by which the Supreme Court is given concurrent jurisdiction with the Court of First Instance over inferior tribunals, and is brought against the Hon. B. S. Ambler, judge of the Court of First Instance, to prohibit him from taking any further action in a certain case now pending in the Court of First Instance entitled *Sergia Reyes vs. Tan-Tonco*.

It is alleged in the complaint that the plaintiff, in February, 1903, instituted an action before Don Pedro Ricafort, justice of the peace of the city of Manila, for the recovery of the possession of certain real estate situated in the city of Manila; that the 9th day of February was fixed for the trial of said cause; that on the said 9th day of February, before the said trial was commenced, the Hon. B. S. Ambler, judge of the Court of First Instance, issued an order in the case of *Sergia Reyes vs. Tan-Tonco*, on the application of the receiver appointed in said case, prohibiting the said justice of the peace from proceeding further in the trial of the suit then pending before him and requiring him to suspend all further proceedings in said action and cited the plaintiff to appear before the Court of First Instance on the 14th day of February to show cause why the plaintiff and the said justice of the peace should not be punished for contempt. It is further alleged in the complaint that the plaintiff was not a party in said suit of *Sergia Reyes vs. Fulgencio Tan-Tonco*; that the court acted in excess of its jurisdiction in appointing the receiver in said case, and in making the said order prohibiting the plaintiff from prosecuting her action in said justice's court.

In the case of Eugenio Bonaplata vs. Byron S. Ambler et al. (1 Off. Gaz., 6071), which involved the validity of the appointment of Antonio Torres as receiver of the estate of Tan-Tonco in the said cause of Sergia Reyes vs. Fulgencio Tan-Tonco, it was held by this court that section 174 of the Code of Civil Procedure, under which the appointment of the receiver was made, did not authorize the appointment; that no property belonging to Fulgencio Tan-Tonco was the subject of litigation in the case of Sergia Reyes vs. Tan-Tonco; nor did the case fall within either of the other subdivisions of section 174; that the placing of the property of the defendant in said cause in the hands of the receiver for the purpose, after paying fees and expense of distributing the property among the creditors, was practically a bankruptcy proceeding; that there are no bankruptcy laws in force in these Islands; that bankruptcy proceedings have been expressly forbidden by section 524 of the Code of Procedure in Civil Actions until a law shall be enacted; and that consequently the Court of First Instance acted in excess of its jurisdiction in appointing Antonio Torres receiver in said action.

We adhere to the views expressed in the decision of this court in the said case of Eugenio Bonaplata vs. Byron S. Amber et al.

We think the plaintiff is entitled to the relief prayed for in this suit, and in accordance with the prayer contained in the petition, the defendant, the Hon. B. S. Ambler, judge of the Court of First Instance, is hereby prohibited from making any further orders in the said case of Sergia Reyes vs. Fulgencio Tan-Tonco, the effect of which will in any manner interfere with the plaintiff in the prosecution of her suit before said justice of the peace or with the Hon. Pedro Ricafort as justice of the peace in proceeding to the final determination of said cause and entering a proper judgment therein. And the defendant is also prohibited from interfering with the plaintiff in any manner in the enforcement of her claim by reason of the appointment of said Antonio Torres as receiver of said estate in said case of Sergia Reyes vs. Fulgencio Tan-Tonco.

The cost of the proceedings is adjudged against the defendant.

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

*Torres, J., did not sit in this case.*

