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[G.R. No. 2503. March 15, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. F. ALEXANDER, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

On the 22d day of November, 1904, the complaining witness, Asuncion Zamora de Paterno, was standing in the door of her house, No. 162 Calle San Sebastian, in the city of Manila. While standing there the defendant seized her by the wrist, dragged her from the doorway into the street, along the street for 40 or 50 feet, and, with the assistance of a third person, placed her in a public *carromata*. The complaining witness made such resistance as she could to these acts of the defendant.

Such acts constitute the crime of *coaccion*, unless the defendant was justified in what he did. His justification is as follows:

He was, at the time, a policeman of the city of Manila and was stationed upon the day in question in Calle San Sebastian. The complaining witness is the wife of Dr. Paterno, a member of the advisory board for Quiapo, and the house in which they lived is situated, as has been said, in Calle San Sebastian. The principal story of the house projects over the sidewalk, the sidewalk at that place being 9 feet and 4 inches wide. At about 11 o'clock on the day in question two boys, servants of the Paternos, were engaged in cleaning and brushing the wall of the house and the part projecting over the sidewalk. For this purpose they had two benches or stepladders. Dr. Paterno gives the dimensions of these benches as follows: "The large stepladder was 9 feet 2 inches in height, 3 feet 4 inches in width at the bottom, and 1 foot 10 inches at the top. The smaller ladder was 4 feet 6 inches in height, 2 feet wide at the bottom, and 1 foot 7 inches wide at the top." At the time in question one of these stepladders was near the wall of the house and the other was against one of the supporting columns of the arcade.

As to what took place on this occasion the defendant testified as follows:

> "As I drew near the box I noticed a couple of scaffolds standing on the sidewalk and a number of people on the opposite side staring up at the *muchachos* working overhead and noticed it was an obstruction to the sidewalk and that it was an impossibility for the people to get by without the whole, or part at least of that obstruction, being removed. I hurried and got there and ordered the smaller one of the boys with the small scaffold to move it away and accompanied him toward the door, and, as I was going along, I told him to call the owner of the house as I wanted to speak to him, and then walked back toward the larger of the two scaffolds and the one still remaining on the sidewalk, and I called to the boy still working overhead and asked him if he was going to paint the house and he smiled and said, *'Si, señor.'*
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> * * * * *
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> "In a very short time, I can not state exactly minutes or seconds, this native woman came down and out on the sidewalk and up to the foot of the scaffold where I was standing and I said to her in 'pigeon Spanish,' 'Have you a permit for obstructing the street in this manner?' and she answered me, *'No, señor, porque?, porque?, porque?,'* in a very overbearing manner, as though she had been imposed upon in some manner or form; I do not know why, but possibly by having been compelled to put in appearance on the street by a policeman; I do not know what else it could have been, and as I understood her she made a remark to this effect, in Spanish, 'It is coming to a pretty pass if we can not clean our house without being interfered with by American police,' uttered in a very overbearing manner. I was about to place her under arrest for obstructing the street and when I turned and tapped her lightly on the shoulder, saying *'arresto,'* as I understand that meant that she was placed under arrest, and immediately after that, in fact in almost the same breath, I began to say, *'Señora,* if you want to get a mantilla or anything to put on your head——' I didn't get any further because she interrupted me and looked back to measure the distance to the door and then said, 'Why do you put your hands on my person?' I realized that she was going to try and escape and I wanted to avoid trouble and took one or two quick steps and caught her by the wrist, just as she was at the door, or you might say in the door, and she dragged and dragged me forward and I held on to her and said,

> *'Dispensame, dispensame, Señora,'* meaning, 'Excuse me, excuse me,' and she kept pulling and dragging and I told her to let up, that she would have to go to the police station with me, to go to the *cuartel* with me, and she yelled 'No, no, no,' and I do not know what else she did say, she talked so rapidly—I guess she said about everything a person could say—and then I just simply had no more to say. I held on to her wrist as loosely as possible; I did not want to handly her roughly and leave the marks of gripping her too tightly and worked away from the door and down the sidewalk, and I looked around and saw a number of firemen there looking on and I asked Captain Stewart to take hold by the opposite side, and I looked up and noticed a *carromata* pulled in alongside the curb and I asked him to assist me to the *carromata* with her, and he took ahold of her and the moment he took hold she moved along without any resistance, and when we drew near the *carromata* we let loose and she got into the *carromata* of her own accord, of her own free will, and without assistance from either of us, and I got into the *carromata* and sat down alongside of her * * *."

At the station house the defendant caused three charges to be entered against the complaining witness, one for resisting an officer, one for disorderly conduct, and the third for obstructing the street in violation of the ordinance. The brother-in-law of the complaining witness having arrived, he gave bail for her appearance and she was allowed to depart. The next day the amount of money deposited as bail was returned and the charges dropped.

As to the details of the arrest, the complaining witness testified as follows:

> "Q. What kind of a dress did you have on when you had the trouble with that policeman that morning?
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> "A. Just a working dress.
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> * * * * *
>
> "Q. Was that dress you had on that day such a dress as you customarily put on to go down into the street?
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> "A. It was not proper for people in our position.

* * * * *

"Q. I exhibit to you these articles of clothing and ask you if you recognize them?

"A. Yes, sir; that is the *camisa* I had on.

"Q. I see it is torn in two pieces; how did that occur?

"A. I do not understand myself how he did that, but from so much dragging of me the sleeves parted, the sleeves did not fall off altogether, because he had hold of them in his hand.

"Q. In what condition was this *camisa* when you were taken to the station through the streets?

"A. I had to cover my shoulder with the sleeve which was torn off.

"Q. Show us.

"A. I had the larger half over my shoulders and the other half with the sleeve to cover my other shoulder so the public would not see it.

"Q. Did you wear a handkerchief?

"A. I did not wear a handkerchief, nor *tapis*, apron, or slippers.

* * * * *

"Q. And for what reason did you ask the policeman to allow you to put on a handkerchief, *tapis*, and slippers?

"A. I wished to dress because I was not properly dressed to go into the streets, and the *camisa* I was wearing was torn, and that did not seem proper to me, and I wished to dress properly because I did not want people to see me in that way in the street."

There is a conflict in the evidence as to the obstruction of the street caused by these stepladders or benches. The evidence for the Government indicates that they did not prevent people passing along the sidewalk. The evidence for the defense indicates that one

would have to pass between the benches and the wall of the house, with the risk of soiling the clothes, or step into the street. The servants had been at work on this occasion from 11 o'clock until about a quarter past 12.

That the obstruction, such as it was, was merely temporary admits of no doubt and the only question to be decided is whether such obstruction constituted a violation of section 27 of Ordinance No. 11 of the city of Manila.[1] That section is as follows:

> "It shall be unlawful to place or erect any post, fence, stand, building, or other obstruction, in whole or in part, upon a street, sidewalk, or public way, or to obstruct any street, drain, or gutter, without first obtaining a permit from the department of streets, parks, fire, and sanitation."

In the case of Hexamer *vs*. Webb (101 N. Y., 377) the court said at page 386:

> "The claim that the ladder was suspended in violation of the city ordinance is not well founded. The ordinance referred to prohibits the hanging of any goods, wares, or merchandise, or any other thing, in front of any building at a greater distance than one foot. It was aimed against the obstruction of the streets. It is not apparent that the ladder overhung the street, but even if such were the case, it was a mere temporary structure, erected for the purpose of repairing the building, and not an obstruction within the meaning and spirit of the ordinance, which, it is manifest, was directed against goods, etc., which were exposed for sale, or for the purpose of attracting public attention thereto. The construction contended for would prevent the use of scaffolds in the reparation of buildings, which never could have been intended."

We do not think the ordinance in question in this case was ever intended to apply to the use of the sidewalk for the temporary purpose for which it was used in this case. To hold that every time that cleanliness required that the wall of the house or the ceiling of the arcade be cleaned of dust and cobwebs, it was necessary to secure a permit from the department of public works would be to give the ordinance an unreasonable construction.

The Charter of the city of Manila, Act No. 183, speaking of the powers of police officers, provides in section 37 as follows:[2]

> "And within the same territory they may pursue and arrest, without warrant, any person found in suspicious places or under suspicious circumstances, reasonably tending to show that such person has committed, or is about to commit, any crime or breach of the peace; may arrest, or cause to be arrested, without warrant, any offender, when the offense is committed in the presence of a peace officer or within his view."

In the case at bar the prosecuting witness had committed no offense, nor was she found in a suspicious place or under suspicious circumstances reasonably tending to show that she had committed, or was about to commit, any offense. The defendant, therefore, had no right to arrest her; the arrest was wrongful and illegal and furnishes no justification for the act which he committed. If he had any doubt as to whether the act committed was an offense or not, he could have easily protected himself by procuring a warrant for her arrest. The facts in this case are in some respects similar to those in the case of the United States *vs*. Ventosa,[1] No. 2550, just decided.

No offense having been committed by placing the stepladders on the sidewalk, it is not necessary to inquire whether, if such a placing were a violation of the ordinance, the defendant would have had a right to arrest the complaining witness who was not using the stepladders in his presence and who had, in fact, done nothing in his presence which amounted to a violation of the law. The question whether the complaining witness or the servants using the ladders were the persons to be arrested, if there had been any violation of the ordinance, is a question which we do not consider.

In conclusion we may say that the impression, formed by us by reading the evidence, is that the defendant did not arrest the complaining witness because these ladders were on the sidewalk. One of them had already been taken into the house pursuant to his orders before the arrest had been made, and we are inclined to think that the real cause of the detention was the conversation had between the defendant and the complaining witness when the latter came to the door in response to the summons of the defendant.

The aggravating circumstance, No. 11 of article 10 of the Penal Code, namely, that the defendant took advantage of the public office which he held in committing the crime, should be taken into consideration. The judgment of the court below is modified by changing the penalty from two months and one day to four months and one day. In all other respects it is affirmed, with the costs of both instances against the defendant.

After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

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

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[1] Series of 1901.

[2] I Pub. Laws, 336.

[1] 6 Phil. Rep., 385.

CONCURRING

TRACEY, J.:

On reading the decision already signed by a majority of the court I find myself unable to accept the reasons therein stated for our judgment.

It appears unnecessary to determine on the conflicting evidence in this case whether the obstruction to traffic in the street was in character reasonable or unreasonable. According to the testimony of the accused himself, that obstruction had ceased by reason of the removal of one of the scaffoldings by a workman before the owner of the property appeared on the scene and only thereafter was she arrested. In the first place, therefore, the arrest was subsequent to the offense and in the second place it was made upon extrinsic evidence, the policeman not relying only upon what he had seen, for he could not have seen the prisoner in any manner committing the offense when she was not present, but rather in reliance upon her after statement of ownership. This much is quite plain from his testimony.

The right to arrest without warrant for a violation of a municipal ordinance is given by statute to an officer in order that he may prevent a threatened breach of the peace or a crime. It is a necessary part of the machinery for the preservation of public order but is not to be extended by implication. It can be exercised only on probable proof and an appearance of guilt patent to the officer’s own senses and not on extrinsic evidence, whether the

narrative of a third person or admissions of the individual to be detained, nor may it be resorted to after the violation of the ordinance has ceased. In such cases the officer must seek the protection of a warrant. The accused, whether his judgment as to the character of the obstruction was right or wrong, exceeded his statutory power in arresting a person not the apparent offender, and in so doing acted without jurisdiction, and is therefore liable. His act, the unauthorized and violent compulsion of a person, is brought within the definition of *coaccion* under article 497 of the Penal Code, not on account of his order to remove the scaffolding from the sidewalk, but by reason of his forcible detention of the person. Nor was the arrest justified by reason of the resistance of the prisoner; inasmuch as the arrest was illegal she had the right to resist it.

The rule prevailing in the State of Massachusetts, that an officer is not criminally liable for an illegal arrest made in good faith on reasonable ground to believe that a misdemeanor has been committed by the person detained, can not serve this defendant. His real mistake was not one of fact or one of judgment as to the character of the obstruction to the traffic in the street, but arose rather from a misconception of his own powers under the statute. This was an error of law on his part, as to which there can be no excuse.

For these reasons I concur in the result.

DISSENTING

CARSON, J.:

I dissent.

I think that the complaining witness violated the provisions of Ordinance No. 11 of the city of Manila by obstructing the side path in front of her house for an unreasonable length of time, and at an unreasonable hour of the day, and by neglecting and tacitly refusing to remove the obstruction when directed to do so by the accused in the performance of his duty as a police officer.

The pertinent sections of Ordinance No. 11 are as follows:

> "SECTION 1. The streets and public ways of the city shall be kept free and clear

> for the use of the public, and the sidewalks and crossings for the use of pedestrians, and the same shall only be used or occupied for other purposes as provided by ordinance."
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> "SEC. 26. It shall be unlawful to use any portion of any street, sidewalk, wharf, landing, or other public place for the purpose of storing material for the erection or repair of any building, or to store thereon material of any kind, or to use the same for any private purpose without first obtaining a permit from the department of streets, parks, fire, and sanitation.
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> "SEC. 27. It shall be unlawful to place or erect any post, fence, stand, building, or other obstruction, in whole or in part, upon a street, sidewalk, or public way, or to obstruct any street, drain, or gutter, without first obtaining a permit from the department of streets, parks, fire, and sanitation."
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> "SEC. 39. Whenever any street or public way of the city is temporarily obstructed from any cause, the police, or any officer of the department of streets, parks, fire, and sanitation, may issue such directions in regard to the removal of such obstruction as may be required for public convenience and safety.
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> "SEC. 40. It shall be the duty of the police to see that any use of the public streets, requiring a permit, is properly authorized, and report, and, if necessary, arrest all persons refusing or neglecting to comply with the ordinances and regulations concerning the use of streets or the rights of the public therein."

An obstruction of a street or highway is anything set in the way, whether it totally closes the passage or only hinders and retards progress, and it has been held that "to obstruct a highway, it is not necessary that it shall be rendered impassable." (Patterson *vs*. Vail, 43 Iowa, 145; Com. *vs*. Erie, etc., Ry. Co., 27 Pa. St., 355.) From 11 o'clock until some time after the noon hour of the 22d of November, 1904, two boys, servants of the complaining witness, were engaged in cleaning and brushing the wall of her house and the part projecting over the sidewalk; for this purpose they made use of two large "scaffolds" in the shape of stepladders, one of which was 9 feet 2 inches high, 3 feet 4 inches in width at the bottom, and 1 foot 10 inches at the top, and the other, 4 feet 6 inches high, 2 feet wide at the bottom, and 1 foot wide at the top. These cumbersome appliances were left for more than an hour on the narrow sidewalk on Calle San Sebastian, a much frequented street in the city of Manila, and were only removed at the order of the accused. The time was midday,

when large numbers of passers-by were returning from their work to dinner, and the weight of the evidence clearly establishes that such pedestrians were compelled to step off the sidewalk and out into the street, and stoop or crowd over by the wall at the risk of soiling their clothes, in order to get by the place where the servants of the complaining witness were at work. Even without such testimony it would seem manifest that such cumbersome contrivances could not be placed on a sidewalk in a large city, under the circumstances above stated, without obstructing the free use thereof.

To me it seems clear that the sidewalk was not "kept free and clear" for the use of the pedestrians while these "stepladders and benches" were standing on it; that it "was being used or occupied for other purposes" than those provided by ordinance, and therefore, in violation of section 1, cited above; that it was being used for a "private purpose without first obtaining a permit from the department of streets," and therefore in violation of section 26, above cited; and that these stepladders were an "obstruction" placed on the sidewalk "without obtaining a permit," and therefore in violation of section 27, above cited.

But it is said that the obstruction, such as it was, was merely a temporary one, and that the ordinance could not have been intended to apply to obstructions of this kind. I find nothing in sections 1, 26, or 27 of the ordinance just cited which justifies the inference that they were intended to apply only to permanent and not to temporary obstructions. On the contrary, the provisions requiring a permit for the use of the streets for the purpose of "storing materials to be used in the repair of any building" or for other "private purposes" clearly contemplates those temporary obstructions which property owners may at times find it convenient and necessary to place on the streets and sidewalks of the city; and sections 26 and 27 prescribe the conditions under which such temporary obstructions may lawfully be placed there.

But admitting that the cumbersome "scaffolds" in the shape of stepladders, placed in front of her house by the complaining witness, were merely "temporary obstructions" not contemplated by the provisions of sections 26 and 27 of the ordinance, nevertheless I think that the provisions of section 39, above cited, were clearly violated. Section 39 expressly authorizes members of the police, when any street or public way of the city is *temporarily obstructed from any cause* to issue such directions in regard to the removal of such obstructions as may be required for public convenience and safety. This section implicitly carries with it the authority of a police officer to enforce proper directions given in pursuance of its provisions; and the succeeding section, No. 40, makes it the *duty* of the police to report, and, if necessary, *arrest* all persons refusing or neglecting to comply with

the ordinances and regulations concerning the use of the streets. The accused was a member of the city police force; he directed the removal of the obstruction; and it will hardly be doubted that these were lawful directions, and justified by the requirements of public convenience. I think the evidence clearly establishes that at the time the arrest was made the complaining witness was tacitly refusing and neglecting to obey the directions of the accused as to the removal of the obstructions placed by her on the sidewalk, and that the arrest was, therefore, expressly authorized by the ordinance. It has been suggested that, under the circumstances, the accused should have contented himself with making a "report" or that he should have secured a warrant before attempting to make the arrest; but the reasons of public convenience and safety which justify the clothing of the police with authority to give directions as to the removal of temporary obstructions require that they should also be clothed with authority to secure the immediate enforcement of such directions, and the only lawful method whereby a policeman can secure immediate enforcement of such commands is by the prompt arrest of those who disobey them.

What has been said would seem to be sufficient to establish the fact that the complaining witness was unquestionably violating the letter of the ordinance when she was arrested, and that the arrest was lawful and made in the performance of a duty imposed upon the accused by the provisions of section 39 of the ordinance. But it is contended that the ordinance could not have been intended to mean that a householder in the city of Manila can not *at will* make use of the streets of the city for the purpose and in the manner in which they were used by the complaining witness. In other words, that the ordinance is invalid in so far as it prohibits or attempts to prohibit such use.

The primary use to which streets and sidewalks are dedicated is for the free passage of the public, and individuals have no authority to obstruct such use. (State *vs*. Mobile, 5 Port., Ala., 279; Columbus *vs*. Jaques, 31 Ga., 506; Com. *vs*. Smyth, 14 Gray, Mass., 33.) The power to prevent the obstruction of streets is usually and properly conferred upon municipalities. (Shinkle *vs*. Covington, 83 Ky., 420; par. (*t*), sec. 17, Act No. 183, Philippine Commission [Manila Charter.]) But it is a well-established doctrine that owners of abutting lots can not be absolutely deprived by ordinance of the reasonable use of the streets for certain other purposes, such as the removal of merchandise or other property to and from buildings, or the temporary deposit of material used in the repair and construction of buildings; and this although such use may partially obstruct the free passage of the public. This right of the partial use of the streets in the construction or repair of buildings evidently arises from necessity, for without it the erection and conservation of buildings in cities would be impossible. (O'Linda *vs*. Lothrop, 21 Pick., Mass., 297.) Therefore abutting owners

can make only a reasonable use of the streets, for such purposes and such use is always subordinate to the general rights of the public (Wilson *vs*. West, etc., Mill Co., 28 Wash., 312; Raymond *vs*. Keseberg, 84 Wis., 302), and the municipality has the right to prescribe reasonable terms and conditions upon which it is to be exercised. (McCarthy *vs*. Chicago, 53 Ill., 38; Lowen *vs*. Simpson, 10 Allen, Mass., 88; Naylor *vs*. Glasier, 5 Duer, N. Y., 161.)

I agree with the majority opinion that "to hold that every time that cleanliness required that the walls of the house or the ceiling of the arcade be cleaned of dust and cobwebs it was necessary to secure a permit from the department of public works, would be to give the ordinance an unreasonable construction," but I think that when these operations are undertaken on such an extensive scale as to necessitate the blockading of a sidewalk with cumbersome "scaffolding," for one or more hours in the middle of the day, it is not unreasonable to require the persons engaged therein to secure permits, and to satisfy the proper authority that the time selected and the method adopted are such as will least inconvenience the public, while not unreasonably restricting the householder in the enjoyment of his property. Waiving the question of the necessity of a permit, I think that the mere relation of the admitted facts is sufficient to maintain a finding that, because of the time and manner in which the work was undertaken, the complaining witness was not making a reasonable use of her right to keep her house clean and in good repair. If it was necessary for her to cumber the sidewalk in the way she did, it certainly was not necessary that she should elect to do so at the noon hour of the day. A reasonable consideration for the convenience of the public would suggest that the early hours of the morning would be more suitable for such work, and that blockading the side path, and brushing the dust and cobwebs from the walls and ceilings of an arcade extending over the street, at a time when it was most in use by the public, was not a reasonable use of the street, nor such a use as was necessary and justifiable under all the circumstances.

Whether the use of the street was or was not reasonable and necessary under all the circumstances of this case is a question of fact, and I can understand that on such a question fair-minded men may well differ; but it may not be improper to point out that in examining this question *as it is submitted in this case*, all reasonable doubt should be decided in favor of the accused. An examination of the opinion of the trial court, as well as the opinion of the majority of this court, compels me to believe that this rule has not been kept in mind or rather that it has been misapplied against the accused, by requiring proof beyond a reasonable doubt as to the infraction of the ordinance.

But the question as to whether the facts in this case are sufficiently conclusive to sustain a

finding that the ordinance in question was violated by the complaining witness is of but minor importance by comparison with the question involved in the statement of the doctrine as to the responsibility of a police officer making an arrest without a warrant.

The majority opinion holds (adopting the language of the syllabus prepared by the writer of the opinion) “that a policeman who, without a warrant, arrests for a misdemeanor a person who has not committed any misdemeanor commits the crime of *coaccion* (coercion).”

I contend that in those cases where the law expressly authorizes a policeman to make an arrest without a warrant for certain offenses committed in his presence, he can not be held *criminally* responsible if, while acting in good faith, he arrests a person apparently committing such an offense in his presence under circumstances which would justify a reasonable man in believing that the arrested person was in fact committing the offense, even though it should afterwards appear that such person was not guilty of the offense with which he was charged. To hold otherwise would be to impose an intolerable burden upon the guardians of the peace, who can not fairly be expected to constitute themselves infallible judges of the guilt or innocence of persons whom they charge with the commission of an offense, nor of the validity of the laws and ordinances defining those offenses; nor of the degree of criminal responsibility of those apparently committing such offenses or violating such ordinances.

The authority of police officers in the city of Manila, to make arrests without warrants, is found in the city Charter and in the ordinances adopted in pursuance of the authority conferred therein. The Charter of Manila was enacted by the Philippine Commission, and is largely modeled upon American precedent and example; it was prepared under the direction of American lawyers of the Commission, and is written in English; and in construing its provisions, and especially those touching police and police powers, we should look to American precedents and authority, in accordance with the uniform rule adopted by this court in construing such laws.

The powers and duties of peace officers, including members of the police force of the city of Manila, are found in section 37 of Act No. 183, which provides that within the jurisdictional limits of the city “they may pursue and arrest without warrant, any person found in suspicious places or under suspicious circumstances reasonably tending to show that such person has committed, or is about to commit, any crime or breach of the peace; may arrest or cause to be arrested, without warrant, any offender when the offense is committed in the presence of a peace officer or within his view.”

It would appear that at common law an officer could make arrests without a warrant only in cases of felonies and breaches of the peace committed in his view, or for felonies not committed in his presence where there was a *bona fide* suspicion that the arrested person committed a felony, and probable cause for this suspicion. But this authority has been extended in most States by statute so as to include the right to arrest without warrant for certain misdemeanors other than breaches of the peace, and there is no question of the legality of such statutes.

Examining the above-cited quotation from the law of the Commission, it will be seen that the common law authority to arrest without warrant is extended by authority of such arrests in cases of *breaches of the peace*, as well as *crimes* (felonies) committed *beyond the view* of the officer, and by authorizing arrests without warrant of "any offender, when the *offense* is committed in the presence of the officer or within his view."

It will be noted that the words "offender" and "offense" are used in this connection in striking contradistinction to the phrase "one who has committed or is about to commit a *crime or a breach of the peace*." The word "offense" is the broader and more comprehensive term, and its use leaves no room for doubt that arrests without warrant for misdemeanors committed in the presence of peace officers, including violations of city ordinances, are expressly authorized by the statute. (Dilger *vs*. Com., 88 Ky., 550.) That it was the intention of the lawmaker to authorize the arrest, without a warrant, of persons violating the city ordinances in the presence of a police officer might further be demonstrated by a critical examination of the nature and extent of the general duties and powers imposed and conferred upon the municipal authorities of the city of Manila; but since the majority opinion does not expressly challenge the existence of this right, it is not necessary at this time to pursue this line of inquiry any further.

The books are full of cases holding that where a police officer, acting in good faith, arrests without a warrant one whom he has reasonable grounds to suspect of having committed a felony, such officer can not be held criminally or even civilly responsible for the arrest, should it afterwards develop either that the arrested person was not guilty of the crime with which he was charged or that the crime was not in fact committed. The reasons for the rule are so obvious that it does not seem to require argument in its support. No peace officer could be expected to make arrests, without warrant, of persons suspected of being guilty of committing felonies or breaches of the peace, no matter how vehement the suspicion nor how imminent might be the danger of escape, if in the event that he makes a mistake he exposes himself to the risk of criminal prosecution and the degradation of imprisonment.

Experience has taught us that to err is human, and even the most conscientious, painstaking, and careful officer must at times be deceived; and the more vigorous and efficient he be in the performance of his duties, the more certain it is that some time or other, in perfect good faith, and upon grounds which all reasonable men will admit are sufficient, he will arrest some one whose innocence will afterwards be made clear in the light of fuller knowledge and against whom it will not be possible to produce sufficient testimony to establish the charge on which he was arrested. If, under such circumstances, the faithful officer who made the arrest in the performance of his duties as a sworn guardian of the peace, and perhaps at the risk of his life or his person, is himself thrown into a felon's cell, it would be absurd to expect that other police officers would venture to make arrests without warrant, no matter how well-founded the suspicion of guilt might be nor how imminent the danger of the escape of the criminal.

But it is said that this rule does not apply, where the police officer, acting in good faith, arrests without warrant one whom he *sees* committing an act which he has reasonable grounds to believe is an offense against the law, if it afterwards develops that such act was not, in fact, a technical offense, or that the accused is able to justify himself in the eye of the law for his participation therein. My attention has not been directed to a single instance where such a doctrine has been announced heretofore, and though tens of thousands of arrests are made every year without warrants in the United States and England for alleged offenses committed in the view of peace officers, I have been unable to discover a single case where a police officer has been held criminally responsible for such an arrest, if he had reasonable ground to believe that the arrested person was in fact committing an offense. Can it be that in all these years during which the law reporters have kept record of criminal cases, no police officer has ever made a mistake of this kind which has come under judicial notice, or is it, perhaps, that to-day for the first time this doctrine is propounded?

The authority of the police of the city of Manila to arrest a desperate murderer captured *in flagrante*, with the bloody knife in his hand, is conveyed in exactly the same language as the authority to arrest a drunken or disorderly vagabond, a street brawler, or any other violator of the city's ordinances, in the view of the peace officer, and if the majority opinion correctly states the law as to the criminal responsibility of police officers of the city of Manila for mistakes in making arrests for violation of ordinances committed in their presence, the same rule must be applied in case of mistake in making arrests without warrant for the commission of any other alleged offense. No reason has been, or can be, suggested for distinguishing one case from the other. If then a police officer sees one citizen shoot another dead on the streets of Manila, and attempt to escape, he may not arrest him unless he can

there and then determine that such person has no good defense on a charge of murder; or if the arrest is made, it is made at the officer's peril, and if the arrested person is afterwards able to prove that he killed his opponent in self-defense, severe penalties, including a long term of imprisonment, may be imposed upon the officer for unlawfully arresting an innocent person without a warrant. So if a policeman intervenes in a street brawl, where knives are drawn, and clubs brandished in the air, he is a faithful servant of the public if he happens to arrest one of those who were responsible for the breach of the peace, but if he happens to arrest one of those who, on full judicial inquiry and investigation, can establish that he was set upon and attacked by others, he is a felon and will be compelled to wear stripes with those who were responsible for the disturbance. So if he arrests one who seems to him to be endangering the lives of the people on the streets of the city of Manila by reckless and fast driving, he will himself be liable to arrest unless he is fortunate enough to be able to find witnesses to aid him in substantiating his charge of a violation of a city ordinance, or unless he is able to prove to the satisfaction of the court that the person arrested was in fact driving at slightly more, rather than slightly less, than 5 miles an hour. So if he sees a heavy wagon blockading the Escolta, and in the exercise of his best judgment, compels the driver to move on, he will be guilty of *coaccion* should he be unable to prove that the wagon was in fact responsible for the blockade, even if he should be able to prove that he was acting in the best of good faith, and on appearances which would justify the most prudent and reasonable man in believing that the particular wagon rather than some other vehicle was responsible; and should the driver of such wagon positively refuse to drive on, and obey his order to give way on the street, the police officer will be criminally responsible for arresting the contumacious one.

If this be a sound interpretation of the law as it stands, then the law should be changed, for no man can afford to perform the onerous duties of a police officer under such circumstances. Either the law which imposes the duty of making arrest without warrant should be repealed, or the police officer should be protected in the faithful discharge of his duty.

In the case at bar the accused policeman did not know the arrested person. At the time of the arrest he was serving his first tour of duty in the section of the city where she lived. Whether the placing of the "scaffolding," in the shape of stepladders on the sidewalk in his beat, was or was not an infraction of a lawful ordinance, it will not be denied that under all the circumstances he was acting in the performance of his duty when he ordered the obstruction to be removed. There is no suggestion of malice or ill-will in his action in this regard. After the servant, in obedience to his orders, had removed the smaller of the two

stepladders, and before any move had been made to take away the larger one, the complaining witness appeared on the scene. I think that she there and then assumed the responsibility for placing the obstruction in the street, and that the policeman was justified in believing that she was responsible. Indeed, she has not since denied her responsibility, and her counsel in the trial of this case tacitly admits it. While the policeman was talking with her, the principal obstruction still continued in its place on the sidewalk, and I think the evidence clearly discloses that, while the boy on the smaller stepladder promptly obeyed the officer's directions to take it away, the attitude of the complaining witness, when she appeared on the scene, was far otherwise. While perhaps she would not have offered physical resistance had the policeman undertaken to move the incumbrance himself, it is quite clear that she felt that her rights were being infringed; that she made no effort to see that the policeman's directions were obeyed; and that she was "neglecting" and tacitly "refusing" to have the large stepladder removed, when the policeman finally put her under arrest. The servant on the ladder was evidently awaiting her orders to carry it into the house, but, as she evidently did not propose to lower her dignity by giving such orders, instead, she gave the policeman very plainly to understand that she did not feel that he had any authority whatever to meddle with her affairs.

I find nothing in the record to sustain the intimation thrown out in the concluding part of the majority opinion, that the accused did not make the arrest because of the violation of the ordinance. This is a criminal case, and the findings of fact should be proved by competent evidence, and beyond a reasonable doubt. Mere "impressions" or surmises as to the motives actuating the accused should not be made the basis of conviction of a crime, when all the facts point with at least equal force to the possibility that the arrest was made because of the police officer's belief that the law had been violated. That he may have been vexed and angered by the complaining witness's conversation and conduct is highly probable, but it will not be contended that the *validity* of the arrest was affected thereby. It may be that the conduct of the accused would justify the exercise of disciplinary correction by his superiors, because of a failure to exercise sound judgment and wise discretion in the manner in which he made the arrest; but I am convinced, nevertheless, that the arrest itself was lawful, and that it was made under the authority of the laws of the Philippine Commission and the ordinances of the Municipal Board.

After an extended discussion of the law and the facts in this case, the majority of the court are not unanimous as to the precise grounds on which a conviction can be sustained; an examination of the books discloses that wide differences of opinion have existed in many courts as to the validity of such ordinances as the one under discussion; and able and

conscientious jurists have been unable to agree as to the meaning which should be given to city ordinances limiting the right of a private citizen to make use of the streets and sidewalks for private purposes. Therefore, granted that the accused police officer did make a mistake in thinking that the clumsy scaffolding and stepladders which he found on the sidewalk of an important street of the city of Manila were “obstructions” as defined by the ordinances he has sworn to uphold; granted that he was mistaken in thinking that those ordinances were valid and lawful; granted that the complaining witness could not be convicted of an “offense,” in that she placed these alleged obstructions on the sidewalk, and neglected to remove them promptly when directed so to do; nevertheless, I can not give my assent to a judgment which condemns him to a prison cell for a mistake made in the performance of his duty, under circumstances which gave him no opportunity for the calm deliberation and judicial investigation which have proved insufficient to secure uniformity of opinion in like cases submitted to learned jurists sitting on many of the courts of last resort in England and in the United States.

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