

[G. R. No. 17925. March 28, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
EVARISTO ABAYA, DEFENDANT AND APPELLANT.**

D E C I S I O N

OSTRAND, J.:

The evidence in the present case shows that at the time hereinafter mentioned, the defendant was the chief clerk in the office of the district engineer of Ilocos Sur, On July 16, 1921, he was cited subpoena to appear before the district auditor of the same province to testify in an investigation of certain items in the accounts of the district engineer. It appears that the investigation was within the jurisdiction of the auditor's office and that the officials conducting the investigation were legally authorized to take the testimony and administer oaths in connection with the matter.

The defendant appeared in obedience to the subpoena but declined to make oath as a witness or to testify without the permission of his immediate superior, the district engineer, who was absent at that time. The district auditor reported the incident to the Court of First Instance for contempt proceedings in accordance with the last paragraph of section 580 of the Administrative Code, and the provincial fiscal thereupon filed the following complaint against the defendant:

“That on the 16th day of July, 1921, the acting district auditor of Ilocos Sur, Felipe Jimenez, issued a subpoena addressed to Evaristo Abaya, a resident of the municipality of Vigan, Ilocos Sur, commanding him to appear before the said acting auditor on the said 16th day of July, 1921, at 11 o'clock in the morning, to testify in a matter to be investigated in his office; that the aforesaid Evaristo Abaya did appear in the office of the auditor in the place, and on the date and hour stated in the subpoena, but willfully, unlawfully, and maliciously refused to testify when lawfully required to do so, thereby rendering it impossible for the

said auditor to proceed with the investigation he was under obligation to make of certain matters that were awaiting investigation in his office.

“All contrary to section 580 of the Administrative Code in connection with sections 231 and 232 of the Code of Civil Procedure.”

The court, upon hearing, found the defendant guilty as charged and sentenced him to pay a fine of ₱25 and the costs. The case is now before this court upon appeal from that sentence.

We do not think an appeal to this court lies in the present case. Section 580 of the Administrative Code reads:

“When authority to take testimony or evidence is conferred upon an administrative officer or upon any non-judicial person, committee, or other body, such authority shall be understood to comprehend the right to administer oaths and summon witnesses and shall include authority to require the production of documents under a subpoena *duces tecum* or otherwise, subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character.

“Any one who, without lawful excuse, fails to appear upon summons issued under the authority of the preceding paragraph or who, appearing before any individual or body exercising the power therein defined, refuses to make oath, give testimony, or produce documents for inspection, when thereunto lawfully required, shall be subject to discipline as in case of contempt of court and upon application of the individual or body exercising the power in question shall be dealt with by the judge of first instance having jurisdiction of the case in the manner provided by law.”

As will be seen, refusal to make oath or to testify before an administrative officer or body is dealt with as if such refusal had taken place before the court itself. If so, this proceeding falls under section 231 of the Code of Civil Procedure, which reads as follows:

“A Court of First Instance or a judge of such court at chambers, may punish summarily, by fine not exceeding two hundred pesos, or by imprisonment not

exceeding ten days, or both, a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice, including the refusal of a person present in court to be sworn as a witness or to answer as a witness when lawfully required.”

The only provision for the revision by the Supreme Court of contempt proceedings in the Court of First Instance is found in section 240 of the Code of Civil Procedure, which reads:

“The judgment and orders of a Court of First Instance, made in cases of contempt, except in cases arising under section two hundred and thirty-one, may be reviewed by the Supreme Court; but execution of the judgment and orders shall not be suspended until there is filed by the person in contempt, in the court rendering the judgment or making the order, an obligation with sureties to the acceptance of the judge, in an amount to be by him fixed, and conditioned that if the judgment be against him he will abide and perform the order or judgment. But such review shall be had only after final judgment in the action in the Court of First Instance, and when the cause has regularly passed to the Supreme Court by bill of exceptions, as in this Act provided.”

It will be noted that cases of contempt arising under section 231, such as the present, are expressly excepted from the operation of the section last quoted. Such cases are punished summarily and it was clearly not the intention of the legislators that they should be appealable. The fact that in the trial of the present case the court below may have observed greater formality than that ordinarily required in summary proceedings does not, of course, alter the character of the offense charged or affect the question of the appealability of the judgment.

The appeal is therefore dismissed with the costs against the appellant. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

