

**In re SUSPENSION OF MARIANO JESUS CUENCO, ATTORNEY.***. August 06, 1920*

Ponente: AVANCEÑA, J.

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This is a proceeding relating to the suspension of the lawyer Mariano J. Cuenco from the practice of his profession. It is remitted to this court from the Court of First Instance of the Province of Leyte for our final resolution. On June 23 of this year, while the Honorable Nicolas Capistrano was acting as vacation judge at Tacloban, Leyte, he issued an order in which, after specifying certain charges against Mr. Cuenco for acts executed by the latter in relation to certain cases and for his conduct towards the court, he was ordered to appear in the Court of First Instance at Borongan, Samar, at 8 o'clock a. m. on the 28th of said month to show cause, if any, why he should not be punished for contempt. On the same day in execution of this order the following proceedings were taken by the clerk of that court; a summons was sent to Mr. Cuenco in order that he might within forty days appear in court at Borongan, Samar, to answer the charge; another summons was sent to Mr. Cuenco in order that he might appear at Borongan, Samar, on the 28th of that month of June; a telegram was sent to the sheriff of the Province of Cebu in order to compel Mr. Cuenco to appear on the same date before the vacation judge, the Honorable Nicolas Capistrano at Borongan, Samar, in order that he might show cause why he should not be punished for contempt. It was also stated in the telegram that the papers dealing with the matter have been sent by mail. About the 25th or 26th of that month of June Mr. Cuenco was notified by the sheriff of Cebu of the telegram which he had received from the clerk of the court of Leyte and in the afternoon of the 28th Mr. Cuenco received the summons mentioned.

In the morning of the same date, the 28th, the Honorable Nicolas Capistrano, at that time holding session at Borongan, Samar, called for trial the case for contempt against Mr. Cuenco and the latter not having appeared, the court entered an order suspending him from the practice of his profession, from the date of the notification of the order until the final disposition of the case by the Supreme Court. It was also ordered that the original records of the proceedings should be sent to this court.

Upon receipt of the papers in the office of the clerk of this court they were endorsed to the office of the Attorney-General for investigation and report, and the Attorney-General after taking the declaration of Mr. Cuenco, submitted on the 29th of the month of July his report, recommending that the order against Mr. Cuenco suspending him from the practice of his profession be vacated, that the record be returned to the Court of First Instance of Leyte with the instruction that Mr. Cuenco should be given the opportunity to defend himself against the charges presented against him for contempt and that he also be given the same, opportunity to defend himself in all the proceedings that may be taken against him for his suspension from the practice of the legal profession.

Although on the 26th of June when Mr. Cuenco received the telegraphic order directed to the sheriff of Cebu he was notified that the papers were to be sent to him by mail, and notwithstanding the fact that he had not received them, nevertheless he tried to obey the order and looked for a boat in order to go to Borongan, but because of the lack of regular trips from Cebu to that port, he did not find any vessel which could take him there on time to

appear on the day his appearance was required. But laying aside the fact that Mr. Cuenco had no opportunity to appear at Borongan on account of the lack of transportation facilities since the 26th of June, and even ignoring the fact that when he received the papers relating to the order for his appearance it was already late as the period fixed therefor had already expired, it appears that he was never notified that his suspension from the practice of his profession was to be taken up by the Honorable Judge Nicolas Capistrano. The notification that was made to him to appear at Borongan and show cause why he should not be sentenced for contempt cannot be considered as a notification to show cause why he should not be suspended from the practice of his profession. These things are different; they have distinct objects and for each of them a different procedure is established. A lawyer cannot be suspended from the practice of his profession without giving him an opportunity to defend himself and be heard after reasonable notice to him. (Section 25 of the Code of Civil Procedure.)

We do not think it proper to make any pronouncement with respect to the case for contempt. It appears that the papers were remitted to this court for the suspension of Mr. Cuenco from the practice of his profession. There is a procedure established for transmitting to this court the resolutions of the Courts of First Instance relating to contempt and this procedure has not been followed in this case.

In conformity with the recommendation of the Attorney-General, we vacate the order of suspension from the practice of his profession entered against the lawyer Mr. Mariano J. Cuenco. Let the records together with the accompanying documents be returned to the Court of First Instance of Leyte in order that, if there are reasons for ordering the suspension of Mr. Mariano J. Cuenco from the practice of his profession, the procedure prescribed by law may be followed, that Mr. Cuenco be notified of the charges against him, and that he be given the opportunity to defend himself in said proceedings. So ordered.

Mapa, C. J., Johnson, Carson, Araullo, Malcolm, Moir and Villamor, JJ., concur.

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