

MELENCIO SAYO AND JOAQUIN MOSTERO, PETITIONERS, VS. THE CHIEF OF POLICE, AND OFFICER IN CHARGE OF THE MUNICIPAL JAIL, BOTH OF THE CITY OF MANILA, RESPONDENTS.

G.R. No. L-2128. May 12, 1948

Ponente: FERIA, J.

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FERIA, J.:

Upon complaint of one Bernardino Malinao, charging the petitioners with having committed the crime of robbery, Benjamin Dumlao, a policeman of the City of Manila, arrested the petitioners on April 2, 1948, and presented a complaint against them with the Fiscal's Office of Manila. Until April 7, 1948, when the petition for habeas corpus filed with this Court was heard the petitioners were still detained or under arrest, and the City Fiscal had not yet released or filed against them an information with the proper courts of justice.

This case has not been decided before this time because there was not a sufficient number of Justices to form a quorum in Manila, and it had to be transferred to the Supreme Court acting in division here in Baguio for deliberation and decision. We have not until now an official information as to the action taken by the Office of the City Fiscal on the complaint filed by Dumlao against the petitioners. But whatever might have been the action taken by said office, if there was any, we have to decide this case in order to lay down a ruling on the question involved herein for the information and guidance in the future of the officers concerned.

The principal question to be determined in the present case in order to decide whether or not the petitioners are being illegally restrained of their liberty, is the following: Is the City Fiscal of Manila a judicial authority within the meaning of the provisions of article 125 of the Revised Penal Code?

Article 125 of the Revised Penal Code provides that "the penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of six hours."

Taking into consideration the history of the provisions of the above quoted article, the precept of our Constitution guaranteeing individual liberty, and the provisions of Rules of Court regarding arrest and habeas corpus, we are of the opinion that the word "judicial authority", as used in said article, means the courts of justices or judges of said courts vested with judicial power to order the temporary detention or confinement of a person charged with having committed a public offense, that is, "the Supreme Court and such inferior courts as may be established by law". (Sec. I, Article VIII of the Constitution).

Article 125 of the Revised Penal Code was substantially taken from article 202 of the old Penal Code formerly in force in these Islands, which penalized a public officer other than a judicial officer who, without warrant, "shall arrest a person upon a charge of crime and shall fail to deliver such person to the judicial authority within twenty four hours after his arrest." There was no doubt that the judicial authority therein referred to was the judge of a court of justice empowered by law, after a proper investigation, to order the temporary commitment or detention of the person arrested; and not the city fiscals or any other officers, are not authorized by law to do so. Because

article 204, which complements said Sec. 202, of the same Code provided that "the penalty of suspension in its minimum and medium degrees shall be imposed upon the following persons: 1. Any judicial officer who, within the period prescribed by the provisions of the law of criminal procedure in force, shall fail to release any prisoner under arrest or to commit such prisoner formally by written order containing a statement of the grounds upon which the same is based."

Although the above quoted provision of article 204 of the old Penal Code has not been incorporated in the Revised Penal Code the import of said words judicial authority or officer can not be construed as having been modified by the mere omission of said provision in the Revised Penal Code.

Besides, Sec. 1 (3) Article III, of our Constitution provides that "the right of the people to be secure in their persons * * * against unreasonable seizure shall not be violated, and no warrant [of arrest, detention or confinement] shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witness he may produce." Under this constitutional precept no person may be deprived of his liberty, except by warrant of arrest or commitment issued upon probable cause by a judge after examination of the complainant and his witness. And the judicial authority to whom a person arrested by a public officer must be surrendered can not be any other but a court or judge who alone is authorized to issue a warrant of commitment or provisional detention of the person arrested pending the trial of the case against the latter. Without such warrant of commitment, the detention of the person arrested for more than six hours would be illegal and in violation of our Constitution.

Our conclusion is confirmed by Sec. 17, Rule 109 of the Rules of Court, which, referring to the duty of an officer after arrest without warrant, provides that "a person making arrest for legal ground shall, without unnecessary delay, and within the time prescribed in the Revised Penal Code, take the person arrested to the proper court or judge for such action as they may deem proper to take;" and by Sec. 11 of Rule 108 which reads that "after the arrest by the defendant and his delivery to the Court, he shall be informed of the complaint or information filed against him. He shall also be informed of the substance of the testimony and evidence presented against him, and, if he desires to testify or to present witnesses or evidence in his favor, he may be allowed to do so. The testimony of the witnesses need not be reduced to writing but that of the defendant shall be taken in writing and subscribed by him."

And it is further corroborated by the provisions of Secs. 1 and 4, Rule 102 of the Rules of Court. According to the provisions of said sections, "a writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is illegally deprived of his liberty"; and "if it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge, or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render judgment, or make the order, the writ shall not be allowed." Which a contrario sensu means that, otherwise, the writ shall be allowed and the person detained shall be released.

The judicial authority mentioned in sec. 125 of the Revised Penal Code can not be construed to include the Fiscal of the City of Manila or any other city, because they cannot issue a warrant of arrest or of commitment or temporary confinement of a person surrendered to legalize the detention of a person arrested without warrant. (Sec. 7, Rule 108; Hashim vs. Boncan, 40 Off. Gaz. 13th Suppl., p. 13; Lino vs. Fugoso, L-1159, promulgated on January 30, 1947, 43 Off. Gaz., 1214). The investigation which the City Fiscal of Manila makes is not the preliminary investigation proper provided for in Sec. 11, Rule 108, above quoted, to which all persons charged with offenses cognizable by the Court of First Instance in provinces are entitled, but it is a mere investigation made by the City Fiscal for the purpose of filing the corresponding information against the defendant with the proper Municipal Court or Court of First Instance of Manila if the result of the investigation so warrants, in order

to obtain or secure from the Court a warrant of arrest of the defendant. It is provided by law as a substitute, in a certain sense, of the preliminary investigation proper to avoid or prevent a hasty or malicious prosecution, since defendants charged with offenses triable by the Courts in the City of Manila are not entitled to a proper preliminary investigation.

The only executive officers authorized by law to make a proper preliminary investigation in case of temporary absence of both the justice of the peace and the Auxiliary justice of the peace from the municipality, town or place, are the municipal mayors who are empowered in such case to issue a warrant of arrest of the accused. (Sec. 3, Rule 108, in connection with Sec. 6, Rule 108, and Sec. 2 of Rule 109). The preliminary investigation which a city fiscal may conduct under Sec. 2, Rule 108, is the investigation referred to the preceding paragraph.

Under the law, a complaint charging a person with the commission of an offense cognizable by the courts of Manila is not filed with the Municipal Court or the Court of First Instance of Manila, because as above stated, the latter do not make or conduct a preliminary investigation proper. The complaint must be made or filed with the City Fiscal of Manila who, personally or through one of his assistants, makes the investigation, not for the purpose of ordering the arrest of the accused, but of filing with the proper court the necessary information against the accused if the result of the investigation so warrants, and obtaining from the Court a warrant of arrest of the accused.

When a person is arrested without warrant in cases permitted by law, the officer or person making the arrest should, as above stated, without unnecessary delay take or surrender the person arrested, within the period of time prescribed in the Revised Penal Code, to the court or judge having jurisdiction to try or make a preliminary investigation of the offense (Sec. 17, Rule 109); and the Court, or judge shall try and decide the case if the court has original jurisdiction over the offense charged, or make the preliminary investigation if it is a justice of the peace court having no original jurisdiction, and then transfer the case to the proper Court of First Instance in accordance with the provisions of Sec. 13, Rule 108.

In the City of Manila, where complaints are not filed directly with the Municipal Court or the Court of First Instance, the officer or person making the arrest without warrant shall surrender or take the person arrested to the City Fiscal, and the latter shall make the investigation above mentioned and file, if proper, the corresponding information within the time prescribed by Sec. 125 of the Revised Penal Code, so that the Court may issue a warrant of commitment for the temporary detention of the accused. And the City Fiscal or his assistants shall make the investigation forthwith, unless it is materially impossible for them to do so, because the testimony of the person or officer making the arrest without warrant is in such cases was ready and available, and shall, immediately after the investigation, either release the person arrested or file the corresponding information. If the City Fiscal has any doubt as to the probability of the defendant having committed the offense charged, or is not ready to file the information on the strength of the testimony or evidence presented, he should release and not detain the person arrested for a longer period than that prescribed in the Penal Code, without prejudice to making or continuing the investigation and filing afterwards the proper information against him with the Court, in order to obtain or secure a warrant of his arrest. Of course, for the purpose of determining the criminal liability of an officer detaining a person for more than six hours prescribed by Revised Penal Code, the means of communication as well as the hour of arrest and other circumstances such as the time of surrender and the material possibility for the Fiscal to make the investigation and file in time the necessary information, must be taken into consideration.

To consider the City Fiscal as the judicial authority referred to in article 125 of the Revised Penal Code, would be to authorize the detention of a person arrested without warrant for a period longer than that permitted by law without any process issued by a court of competent jurisdiction. The City Fiscal, may not after due investigation,

find sufficient ground for filing an information or prosecuting the person arrested and release him after the latter had been illegally detained for days or weeks without any process issued by a court or judge.

A peace officer has no power or authority to arrest a person without a warrant upon complaint of the offended party or any other person, except in those cases expressly authorized by law. What he or the complainant may do in such case is to file a complaint with the City Fiscal of Manila, or directly with the justice of the peace courts in municipalities and other political subdivisions. If the City Fiscal has no authority, and he has not, to order the arrest of a person charged with having committed a public offense even if he finds, after due investigation, that there is a probability that a crime has been committed and the accused is guilty thereof, a fortiori a police officer has no authority to arrest and detain a person charged with an offense upon complaint of the offended party or other persons even though, after investigation, he becomes convinced that the accused is guilty of the offense charged.

In view of all the foregoing, without making any pronouncement as to the responsibility of the officers who intervened in the detention of the petitioners, for the policeman Dumlao may have acted in good faith, in the absence of a clear cut ruling on the matter, in believing that he had complied with the mandate of article 125 by delivering the petitioners within six hours to the office of the City Fiscal, and the latter might have ignored the fact that the petitioners were being actually detained when the said policeman filed a complaint against them with the City Fiscal, we hold that the petitioners are being illegally restrained of their liberty, and their release is hereby ordered unless they are now detained by virtue of a process issued by a competent court of justice.

So ordered.

Paras, Actg. C.J., Pablo, and Bengzon, JJ., concur.

CONCURRING

PERFECTO, J.:

Petitioners Melencio Sayo and Joaquin Mostero were apprehended at 11:30 in the morning of April 2, 1948, upon complaint of Bernardino Malinao, for the crime of alleged robbery.

The fact is alleged, expressly in respondents' answer, supported by the affidavit of Benjamin Dumlao (Exh. 1), the patrolman who made the arrest. Therein it is also alleged that petitioners were "finally" placed under arrest at 4:30 p.m. and 5:00 p.m., respectively, on the same day, April 2, 1948.

The distinction between the two arrests, the apprehension made at 11:30 a.m. and the "final arrest at 4:30 and 5:00 p.m., is purely academic or imaginary. There was but one arrest, effected at 11:30 a.m., April 2, 1948, and continued without interruption until the petition had been filed with us on April 6, 1948, at the hearing on the next day. Until the moment we are writing this opinion we have not heard that petitioners have been released at any time.

Respondents allege also that on April 3, 1948, at about 8:30 a.m., a criminal complaint was filed with the fiscal's office of Manila, and that by said filing their duty to deliver arrested persons, within six hours from their arrest, to a proper judicial authority has been duly complied with.

There is no dispute that no warrant of arrest has ever been issued for the apprehension of petitioners.

Petitioners pray for their immediate release, alleging that, as the six hours period provided in article 125 of the Revised Penal Code had expired, their continued detention is illegal.

Article 125 of the Revised Penal Code provides for the penalty of *arresto mayor* in its maximum period to *reclusion temporal*, or from 4 months and 11 days to 20 years imprisonment, for the crime of a public officer or employee who, after detaining a person, "shall fail to deliver such person to the proper judicial authorities within the period of six hours."

Both parties implying from the above provision that after six hours of said failure, petitioners shall be entitled to be released, discussed the question whether there is such failure or not.

Upon the very facts alleged by respondents and supported by documentary evidence accompanying it, there should not be any dispute that there is such failure:

(a) Respondents have not delivered the persons of petitioners to any authority, and much less to any judicial authority.

(b) Their filing of a complaint with the office of the Fiscal of Manila is not a delivery of the persons of petitioners. Said persons are not a complaint. A complaint, whether oral or written, can never be elevated to the category of a person. No one is crazy enough to confuse or identify a person with a complaint.

(c) Even in the false hypothesis that respondents, by filing the complaint, intended to make a delivery of the persons of petitioners, if not actually, constructively, the Fiscal's office is not a judicial authority,

(d) Under our Constitution and laws, judicial authorities comprehend only courts of justice, such as the Supreme Court and all other inferior courts, and justices and judges. The authority possessed and exercised by judicial authorities is judicial, and the Constitution (Sec. 1, Article VIII) vests the judicial power exclusively "in one Supreme Court and in such inferior courts as may be established by law."

Respondents' pretension is making the fiscal of Manila a judicial authority is absolutely groundless, upon the clear letter of the fundamental law. Counsel for respondents himself had to admit that said officer belongs to the administrative or executive department. Under the tripartite system of government established by the Constitution, it is extreme absurdity to make an administrative or executive officer, or any officer of the executive department or branch, a judicial authority. Such will make of separation of powers a madman's illusion.

That a fiscal is not a judicial authority has been unmistakably declared in the decision in *Lino vs. Fugoso*, L-1159. The statement made therein that there was yet no purpose of deciding whether a fiscal is a judicial authority or not, is just a rhetorical figure that should not deceive any one. All these who can read, will find that the decision has made the declaration. It is there stated in plain language that the fiscal is "unlike" a judicial authority.

"Unlike" means, as an elementary school student knows, not like, dissimilar, diverse, different.

No warrant of arrest having been issued by any competent tribunal for the apprehension of petitioners, said apprehension appears to be illegal.

At any rate, even under the hypothesis that it was legal and continued to be so for six hours, this time having expired several days ago, the continued detention and confinement of petitioners is clearly illegal, and not only illegal but criminal, involving an offense committed by public officers and heavily punished by the Revised Penal Code,

Regarding the question as to legality of the arrest, counsel for respondents has advanced the shocking theory that police officers may arrest any person just for questioning or investigation, without any warrant of arrest.

The theory is absolutely unconstitutional and could have been entertained only under the "Kempeï" system implanted by the brutal Japanese army of occupation. Such a theory represents an ideology incompatible with

human dignity. Reason revolts against it.

Respondents are ordered, upon notice of the decision, to immediately release the two petitioners and to report to this Court the time when the release shall have been effected.

Tuason, J., I dissent on the grounds stated in my dissent in Lino vs. Fugoso et al., Off. Gaz., 1214.

RESOLUTION

August 27, 1948

FERIA, J.;

This is a motion for reconsideration of our decision which holds that the phrase "judicial authority" used in article 125 of the Revised Penal Code, to whom a person arrested without warrant shall be delivered by the officer making the arrest within the period of six hours from the arrest, means a competent court or judge, and the City Fiscal is not such a judicial authority.

We have already held, in the *United States vs. Fortaleza*, 12 Phil., 472, 477-479, that the provisions of the Provisional Law for the application of the provisions of the Spanish Penal Code in the Philippines by Royal Decree of September 4, 1884, are in force in these Islands in so far as they have not been repealed or amended by implication by the enactment of the body of laws put in force in these Islands since the change from Spanish to American sovereignty. According to the ruling of this court in said case, a person may be arrested without warrant in the cases specified in Rules 27 and 28 of said provisional law and section 37 of Act No. 183 (Charter of Manila). The provisions of said Rules 27 and 28 are substantially the same as those contained in section 6 Rule 109 of the Rules of Court which superseded them; and the provisions of section 37 of Act No. 183 above referred to have been incorporated in section 2463 of the Revised Administrative Code. Both section 6 of Rule 109, and the pertinent provisions of said section 2463 of the Revised Administrative Code are now the laws in force on the subject.

Article 30 of said Provisional Law for the application of the Penal Law in the Philippines also provides:

"The executive authorities or the agents detaining a person shall release the same or else turn Kim over to the judicial authorities within twenty four hours after the arrest if made in the head town of the district, or within as brief a period as the distance and transportation facilities permit."

And the next article 31 of the same law reads as follows:

"Within twenty four hours after the person arrested has been surrendered to the competent judge of Court of First Instance, the latter shall order the commitment or release of the prisoner by a warrant containing the grounds on which it is based (auto motivado).

"If it is impossible to do so because of the complexity of the facts, the number of defendants or any other serious cause, which must be made of record, the time of detention may be extended to three days. Upon the expiration of that period of time the judge shall order the commitment or the release of the defendant. The warrant of commitment shall be ratified after the defendant has been heard within the period of sixty two hours from the time the defendant has been committed to prison."

Said Rule 30 has been modified by section 17, Rule 109, which provides that "Any person making arrest for legal ground shall, without unnecessary delay and within the time prescribed in the Revised Penal Code, take the person arrested to the proper court or judge for such action as they may deem proper to take," and by article 125 of the Revised Penal Code already quoted.

But the provisions of Rule 31 above quoted are still in force because they have not been repealed, either expressly or by implication, by any law or the present Rules of Court, except the last sentence, thereof which is no longer in force. The procedure of hearing the accused after he has been committed to prison referred to in said last sentence, is a sort of preliminary investigation by the judge or justice of the peace according to the present procedure. Persons arrested or accused in the City of Manila are not entitled to such investigation. In provinces the justice of the peace or judge shall, according to section 2 of Act No. 194, "make the preliminary investigation of the charge as speedily as may be consistent with the right and justice, but in any event he must make the investigation within three days of the time the accused was brought before him, unless the accused or complainant shall ask for delay in order that witnesses may be obtained, or for other good and sufficient reason, in which event a continuance for a reasonable time may be allowed." This provision of section 2 of Act No. 194 is still in force, because no law has been enacted amending or repealing it. (Marcos vs. Cruz [May 13, 1939] 1st Supp., 40, Off. Gaz., 174, 182.) The Rules of Court on Criminal Procedure do not undertake to dispose of all subjects of preliminary investigation, and repeal all laws on the subject not incorporated therein; specially those that, like the said provisions of section 2, Act No. 194, confer substantive rights upon defendants which can not be diminished, increased or modified by the Rules of Court (section 13, Article VIII, of the Constitution).

In view of the provisions of section 17, Rule 109, Rule 31 of the Provisional Law, article 204 of the old Penal Code, from which article 125 of the Revised Penal Code was taken, and section 1(3) Article III of the Constitution, there can be no doubt that the judicial authority within the meaning of article 125 of the Revised Penal Code must be a judge who has authority to issue a written warrant of commitment or release containing the ground on which it is based (*auto motivado*). Because said section 17 of Rule 109 expressly provides that the officer making the arrest without warrant shall, within the time prescribed in the Revised Penal Code, take the person arrested to a court or judge for such action as the latter may deem proper to take; Rule 31 expressly states that, within twenty four hours or at most three days after the person arrested has been delivered to the judge of Court of First Instance (and also the justice of the peace now), the latter shall order the commitment or release of the prisoner by a warrant containing the ground upon which the commitment or release is based (*auto motivado*); article 204 of the old Penal Code (not incorporated in the Revised Penal Code), penalize the judicial authority or judge who fails to comply with the provisions of said Rule 31; and section 1(3) Article III of the Constitution provides that no warrant shall issue but upon probable cause, to be determined by the judge after examination under oath or affidavit of the complainant and witnesses he may produce," in order to safeguard "the right of the people to be secured in their person * * * against unreasonable seizure" or detention for a longer period than that fixed or considered by law as reasonable (six hours according to section 125 of the Revised Penal Code).

It is obvious that the city fiscal is not a judge, and has no power to issue order of commitment or release by a written warrant containing the ground on which it is based. As a matter of fact the city fiscal has never exercised such power since that office was created. In justice to the city fiscal, we have to state that the latter did not and does not contend in his motion for reconsideration that it has the power to issue such a warrant, as contended in the dissenting opinion.

To consider a city fiscal as a judicial authority within the meaning of article 125 of the Revised Penal Code, would be to place a person arrested in provinces without warrant in a better position than those arrested in the City of Manila. Because, as there is no law requiring the city fiscal to act or file an information against such person within a limited period of time, after the arresting officer has taken the prisoner to the city fiscal within six hours, the prisoner may be held under detention without any warrant for days and weeks and possibly months until such time as the city fiscal may take action, either by releasing the prisoner without filing any information, or filing an information with the proper city court and obtain a warrant of commitment. While a person arrested outside of the City of Manila has to be delivered by the arresting person or peace officer to the competent judge within six hours

alter his arrest, and the latter shall have to investigate the charge and issue a warrant of release or commitment of the prisoner within the period of twenty four hours or at most three days prescribed in said article 31 of the Provisional Law.

It is obvious that the surrender or delivery to the judicial authority of a person arrested without warrant by a peace officer, does not consist in a physical delivery, but in making an accusation or charge or filing of an information against the person arrested with the corresponding court or judge, whereby the latter acquires jurisdiction to issue an order of release or of commitment of the prisoner, because the arresting officer can not transfer to the judge and the latter does not assume the physical custody of the person arrested. And in the City of Manila it does not consist in delivering physically the body of the prisoner to the city fiscal, for the latter will not assume the responsibility of being the custodian of the prisoner; nor in making or lodging a complaint against him with the said fiscal, because the latter has no power to order the commitment or release of the prisoner by a warrant containing the ground on which it is based (*auto motivado*). Such delivery is a legal one and consists in making a charge or filing a complaint against the prisoner with the proper justice of the peace or judge of Court of First Instance in provinces, and in filing by the city fiscal of an information with the corresponding city courts after an investigation if the evidence against said person so warrants. Upon the filing of such information will the prisoner be deemed delivered to a judicial authority in the City of Manila within the meaning of article 125 of the Revised Penal Code?

The city court or judge need not make an investigation of the facts alleged in the information, which the judge or justices of the peace in provinces have to make before issuing the proper warrant, because the law vest that power in the city fiscal, but said city judge shall determine only the legal question whether said facts constitute an offense or violation of ordinances, and issue a warrant of commitment if they do, or of release if they do not.

As a peace officer can not deliver directly the person arrested to the city courts, he shall deliver him to said court through the city fiscal, and if the latter does not take the prisoner in time to the latter so that the proper investigation may be made and information filed within six hours, he has to release the prisoner in order to avoid criminal liability for violation of article 125 of the Revised Penal Code. The city fiscal is not an agent of the arresting officer, but as prosecuting officer, he will be recreant to his duty if he does not do his best to make the investigation and file the corresponding information in time against the person arrested without warrant, in order to effect the delivery of the prisoner to the city courts within the period of six hours prescribed by law, and thus prevent his being released by the officer making the arrest. If the city fiscal does not file the information within said period of time and the arresting officer continues holding the prisoner beyond the six-hour period, the fiscal will not be responsible for violation of said article 125, because he is not the one who has arrested and illegally detained the person arrested, unless he has ordered or induced the arresting officer to hold and not release the prisoner after the expiration of said period.

Section 2460 of the Revised Administrative Code which specifies the powers and duties of chief of police of the City of Manila, authorizes the latter "to take good and sufficient bail for the appearance before the city court of any person arrested for violation of any city ordinance: Provided, however, That he shall not exercise this power in cases of violation of any penal law except when the fiscal of the city shall so recommend and fix the bail to be required of the person arrested." These provisions do not authorize, either expressly or by implication, the city fiscal to order the detention of the prisoner if bond is not given, not only because they refer to the powers of the chief of police of Manila and not of the city fiscal, but because the only incidental authority granted to the latter is to recommend the granting of the bail by the chief of police and to fix the amount of bail to be required of the person arrested for violation of any penal law in order that the chief of police may release the latter on bail. If no bail is given by the person arrested, neither the chief of police, who is only authorized to release on bail, has

power to detain the person arrested for more than six hours; nor the city fiscal, who is only empowered to fix and recommend the bail to the chief of police, has authority to order the detention of persons arrested for violation of a penal law.

The above-quoted provisions of section 2460 of the Revised Administrative Code refers evidently to persons, arrested without warrant, for accused arrested by "virtue of a warrant issued by the courts may be released on bail only by order of the court or judge that issued the warrant and has exclusive jurisdiction or control over the person arrested. The purpose of the law in empowering the chief of police of Manila to release the prisoner if he puts up a bail, is to relieve the officer making the arrest from the necessity of taking the prisoner to the city fiscal, and the latter from filing an information with the proper courts within the period of time prescribed by law.

The dissenting opinion calls a general principle of law an excerpt of the *Corpus Juris Secundum* quoted therein which says that "the officer however need not necessarily have personal knowledge of the facts constituting the offense in the sense of having seen or witnessed the offense himself, but he may if there are no circumstances known to him which materially impeach his information, acquire his knowledge from information imparted to him by reliable and credible third persons or by information together with other suspicious circumstances" (6 C. J. S., 599, 600), and after the quotation adds: "This is a common law rule implanted in the Philippines along with its present form of government, a rule which has been cited and applied by this Court In a number of cases (U. S. vs. Santos, 36 Phil., 85:5; U. S. vs. Batallones, 23 Phil., 46; U. S. vs. Samonte, 16 Phil., 516)."

The above-quoted excerpt is not a general principle of law or a common law rule implanted in the Philippines.

It is a summary of the ruling of several State courts based on statutory exceptions of the general rule. "It is the general rule, although there are statutory exceptions and variations, that a peace officer has no right to make an arrest without a warrant, upon a mere information of a third person" (5 C. J., p. 404), because "statutes sometime authorize peace officer to make arrest upon information" (4 Am. Jur., p. 17). In none of the cases cited in the dissenting opinion has this Court quoted and applied it. In U. S. vs. Fortaleza, 12 Phil., 472, this Court, after quoting Rules 27 and 28 of the "Provisional Law for the Application of the Penal Law" and section 37, Act No. 183, as the law in force in these Islands providing for cases in which a person may be arrested without a warrant, said:

"These provisions quite clearly set out the powers usually conferred by American and English law upon 'peace officers' including 'constables,' in making arrests without warrants; and since similar powers are clearly included in the powers conferred upon 'agents of authority' in the above cited articles, of the 'Provisional Law,' there can be no doubt that the Commission, in imposing the duty of maintaining order and preserving and protecting life and property within their respective barrios upon municipal councilors and their lieutenants of barrios, conferred upon such officials authority to make arrests without warrant not less extensive than that conferred upon peace officers in Manila in the above-cited provisions of the Manila Charter. (United States vs. Vallejo, No. 4367, decided by this court on September 3, 1908; also United States vs. Burgueta, 10 Phil., 188.)" (Italics ours.)

The case of U. S. vs. Samonte, 16 Phil., 516, one of the cases cited in the last paragraph of the dissenting opinion, does not contain anything about the implantation in these Islands of the so-called common law rule. In the case of U. S. vs. Battallones (not Ballesteros) 23 Phil., 46, cited also therein, this Court, following the ruling in U. S. vs. Fortaleza, said:

"In a former case we held that officials in these Islands, who, 'by direct provisions of law or by appointment of competent authority are charged with the maintenance of public order and the protection and security of life and property,' have authority to make arrests without- warrant substantially similar to the authority generally conferred upon 'peace officers' in the United States, and more especially that class of 'peace officers' known to

American and English law as constables; and that 'the provisions of section 37 of Act No. 183' (the Charter of Manila) 'quite clearly set forth the powers usually conferred by American and English law upon 'peace officers' including 'constables' in making arrests without warrants,' and provide that 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'." (U. S. vs. Fortaleza, 12 Phil., 472, 479.)

And in case of U. S. vs. Santos, 36 Phil., 853, this Supreme Court has reiterated the ruling in the previous cases and held:

"The powers of peace officers in the Philippines, generally stated, are the same as those conferred upon constables under the Anglo-American Common Law. The extent of their authority to make arrests without warrant and the limitations thereon, as held by the Supreme Court, are as stated in the language of the Legislature' in the Charter of the City of Manila. (U. S. vs. Fortaleza [1909], 12 Phil., 472). The Administrative Code (section 2204, edition of 1916; section 2258, edition of 1917) enjoins municipal policemen to 'exercise vigilance in the prevention of public offenses'."

The provisions above quoted of section 37 of Act No. 183 have been incorporated in section 2463 of the Revised Administrative Code and those of Rules 27 and 28 were substantially incorporated in section 6, Rule 109 of the Rules of Court. Section 2463 of the Revised Administrative' Code reads as follows:

"Sec. 2463. Police and other officers—Their powers and duties.— The mayor, the chief and assistant chief of police, the chief of the secret service, and all officers and members of the city police and detective force shall be peace officers. Such peace officers are authorized * * * to 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; to 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;"

And section 6 of Rule 109 provides:

"Sec. 6. Arrest without warrant—When lawful.—A peace officer or a private person may, without a warrant, arrest a person:

"(a) When the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence;

"(b) When an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it;

"(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another."

These are the only provisions of law in force in these Islands which enumerate the cases in which a peace officer may arrest a person without warrant, and the so called common law relating to other cases of arrest without warrant cited in the dissenting opinion has no application in this jurisdiction. Therefore, all the considerations set forth in the said opinion at out the disastrous consequences which this Court's interpretation of article 125 of the Revised Penal Code will bring to a law enforcement, because "the entire six hours might be consumed by the police in their investigation alone," or that "even if the city fiscal be given the chance to start his assigned task at the beginning of the six hours period, this time can not insure proper and just investigation in complicated cases and in cases where the persons arrested are numerous and witnesses are not at hand to testify," since "the police is

not authorized to round up the witnesses and take them along with the prisoner to the city fiscal," are without any foundation. Because they are premised on the wrong assumption that, under the laws in force in our jurisdiction, a peace officer need not have personal knowledge but may arrest a person without a warrant upon mere information from other person. "The right to make arrests without a warrant is usually regulated by express statute, and except as authorized by such statutes, an arrest without a warrant is illegal." (5 C. J., pp. 395, 396.) And statutory construction extending the right to make arrest without a warrant beyond the cases provided by law is derogatory of the right of the people to personal liberty (4 Am. Jur., p. 17).

The investigation which the city fiscal has to make before filing the corresponding information in cases of persons arrested without a warrant, does not require so much time as that made upon a complaint of the offended parties for the purpose of securing a warrant of arrest of the accused. In all cases above enumerated in which the law authorizes a peace officer to arrest without warrant, the officer making the arrest must have personal knowledge that the person arrested has committed, is actually committing, or is about to commit an offense in his presence or within his view, or of the time, place or circumstances which reasonably tend to show that such person has committed or is about to commit any crime or breach of the peace. And the testimony of such officer on the commission of the offense in his presence or within his view by the person arrested, or on the facts and circumstances that tend reasonably to show that said person has committed or is about to commit an offense, would be sufficient evidence or basis for the city fiscal to file an information without prejudice to his presenting of other evidence or witnesses, if any, during the trial to insure the conviction of the defendant. If the city fiscal does not believe the testimony of the officer making the arrest or consider it sufficient, or has any doubt as to the probability of the prisoner having committed the offense charged, and is not ready to file an information against him on the strength of the testimony or evidence presented, there would be no legal reason or ground for him to wait until further evidence may be secured before dismissing the case against the prisoner, or detaining the person arrested without warrant without violating the precept of article 125 of the Revised Penal Code.

After the release of the prisoner, the city fiscal may make or continue the investigation and file afterwards the proper information against him with the corresponding court, if the result of the investigation so warrants, in order to secure a warrant of arrest of the same. Of course, as we have said in our decision for the purpose of determining the criminal liability of a peace officer detaining a person for a longer period of time than the six hours prescribed by article 125 of the Revised Penal Code, "the means of communication as well as the hour of arrest and other circumstances such as the time of surrender and the material possibility for the fiscal to make the investigation and file in time the necessary information, must be taken into consideration." The period originally fixed by our Penal Code was twenty four (24) hours, and if the city fiscal believes that the period now prescribed by article 125 of the Revised Penal Code is short, and that the law must be amended so as to extend it, it would be proper for the interested parties to take the case to Congress, since it can not be done by judicial legislation.

Motion for reconsideration is denied.

Paras, Actg. C. J., Pablo, Bengzon, and Briones, JJ., concur.

PERFECTO, J.;

We agree with the above resolution except that which may be at variance with our concurring opinion in this case and with our written opinion in the case of Lino vs. Fugoso, L-1159, 43 Off. Gaz., 1214.

BRIONES, M., conforme:

Estoy enteramente conforme con la resolution. En la opinion concurrente que dicte en el asunto de Lino contra Fugoso y otros (43 Off. Gaz., 1235, 1244) donde se discutio por primera vez el importante punto legal debatido en

el presente asunto, dije lo siguiente y lo reafirmo en esta ocasion, a saber:

"Sin discutir la responsabilidad de la Fiscalia por la demora—si esta se puede o no justificar administrativamente es cuestión que no nos compete considerar ni resolver—vamos a limitarnos a comentar y discutir la fase jurídica legal. Esta en orden naturalmente el hacer la siguiente pregunta: es correcta, es acertada la aserción de que el 'Promotor Fiscal de Manila es un funcionario judicial (judicial officer),' y que, por tanto, la entrega al mismo de la persona de un detenido dentro del periodo de 6 horas equivale a la entrega a las autoridades judiciales correspondientes (proper judicial authorities) de que habla el artículo 125 del código penal revisado? Creemos que no: ni por su letra ni por su espíritu puede aplicarse por extensión la fraseología de ese artículo al Fiscal de la Ciudad de Manila o a cualquier otro Fiscal; ese artículo no puede referirse más que a un tribunal, a un juzgado, sea municipal, sea de primera instancia. Así que estoy de perfecto acuerdo con la ponencia cuando positivamente sienta la doctrina de que 'si bien un arresto puede hacerse sin orden cuando hay motivos razonables para ello (regla 109, artículo 6, reglamento de los tribunales), el detenido no puede ser recluso fuera del periodo prescrito por la ley, a menos que una orden de arresto se obtenga antes de un tribunal competente' (veanse las autoridades que se citan), y que 'en el presente caso el Fiscal de la Ciudad no tenía autoridad para expedir ordenes de arresto y carecía de facultad para convalidar tal detención ilegal con solo presentar las querellas, o con una orden de su propia cuenta, ora tácita, ora expresa' (veanse asimismo las autoridades que se citan).

"De lo dicho se sigue que cuando la policía entrega a la Fiscalia de la ciudad después del periodo de 6 horas prescrito por la ley los papeles sobre un detenido arrestado sin previa orden al efecto, no por ello se cura la ilegalidad del arresto y detención, sino que dicha ilegalidad continua y persiste hasta que el Fiscal presenta la querella y obtiene una orden de arresto del tribunal competente, o que, tratándose de delito, mediante la prestación de una fianza cuya cuantía se fijare y recomendar por dicho Fiscal, la policía soltara al detenido, a tenor de lo previsto en el artículo 2460 del código administrativo'.

"Puede ocurrir, sin embargo, que la policía entregue los papeles a la Fiscalia de la ciudad dentro del periodo de 6 horas, pero que la Fiscalia no solo deja pasar dicho periodo, sino que transcurren días, hasta semanas sin actuar sobre el caso en uno u otro sentido. La cuestión en orden naturalmente es la siguiente: ¿es legal o ilegal la detención del arrestado en tal caso? En otras palabras: ¿queda suspendido el periodo de 6 horas durante el tiempo que el Fiscal de la Ciudad tarda en actuar sobre el caso? La contestación tiene que ser necesariamente negativa. La rigidez, la inflexibilidad del periodo de 6 horas reza no solo para la policía, sino hasta para cualquier otra agencia o rama oficial, sin excluir a la Fiscalia de la ciudad de Manila. Si por cualquier motivo la Fiscalia dejare de actuar dentro de dicho periodo, el deber de la policía o del que tenga la custodia del detenido es soltarle, quiera o no quiera el Fiscal, lo recomiende o no lo recomiende. De otra manera, la restricción que estatuye la ley a favor de los detenidos sin previa orden de arresto— restricción que implementa las garantías de la libertad establecidas en la Constitución—resultaría un mito. La filosofía de la ley es, a saber: solamente se verifica un arresto sin previa orden cuando hay motivos razonables para ello, v. gr., cuando un individuo es cogido in fraganti cometiendo un delito. La ley presupone, por tanto, que el Estado tiene a mano todos los elementos necesarios para decidir que acción ha de tomar dentro del periodo de 6 horas, ya entregando la persona del detenido a las autoridades judiciales correspondientes mediante la querella procedente, a tenor del artículo 125 del Código Penal Revisado; ya poniéndole en libertad provisional bajo una fianza razonable, de acuerdo con el citado artículo 2460 del Código Administrativo; o ya poniéndole completamente en la calle por falta de méritos en el caso. Si ninguna de estas cosas puede hacer el Estado en 6 horas no puede ser más que por dos motivos: o por que se quiere cometer una arbitrariedad, o la maquinaria oficial se halla en un deplorable estado de confusión, ineptitud o impotencia.

"Se arguye con énfasis que bajo esta interpretación la prosecución del crimen sufriría un serio quebranto, sobre todo en la Ciudad de Manila; que materialmente la Fiscalia no puede actuar adecuadamente sobre algunos casos en el plazo perentorio de 6 horas. Si esto es verdad el remedio no es infringir la ley como cosa inevitable, rutinaria; el remedio sería—o recabar de la Legislatura que se reforme la ley en la forma que se estime

conveniente, o implementar y perfeccionar la maquinaria de la prosecution criminal, colocandola a la altura de las circunstancias. No hay nada mas anarquico, mas subversivo y fatal para el principio de la autoridad y del buen gobierno que el tener leyes que no se cumplen, leyes que se infringen hasta por los llamados a ponerlas en vigor. "To be or not to be, that is the question." O existe la ley y hay que cumplirla; o si la ley es mala o impracticable, hay que reformarla o derogarla. Lo que no se debe permitir es el disolvente espectaculo de la diaria inobservancia ie la ley."

Se me ocurre ahora añadir otras observaciones en refuerzo de las arriba transcritas. Creo que ni siquiera es necesario enmendar la ley en el sentido de alargar el periodo de 6 horas provisto en el articulo 125 delCodigo Penal Revisado. Creo que con un poco mas de esfuerzo y buena voluntad la presente ley se podria cumplir en la Ciudad de Manila. La Fiscalia de la Ciudad podria, por ejemplo, establecer turnos semanales o mensuales, segun como se estime conveniente, destinando fiscales que se hagan cargo exclusivamente de los casos de individuos detenidos sin previa orden de arresvo, para los efectos do presentar la correspondientc querella contra ellos, o de soltarlos si se viere que no existen meritos suficientes para la prosecucion, sin perjuicio desde luego de ulterioi'es procedimientos. Si para realizar satisfactoriamente este tiabajo fuesc necesario aumentar el personal de la Fiscalia, yo no creo que el gobierno escatimaria el dinero para una atencion tan importante.

Es increible que dentro de 6 horas—si hay voluntad de trabajar y sobre todo de hacer buena y efectiva la ley— la Fiscalia no pueda hacer su composicion de lugar en tales casos, bien para proseguir, bien para no proseguir, definitivamente o en el entrstanto. Hay que tener en cuenta que se trata de casos en que el individuo es detenido, ora porque ha sido sorprendido in fraganti cometiendo una infraccion o un delito, ora porque se le ha cogido"en lugares sospechosos o bajo cucunstancias sospechosas, que tiendan razonablemente a demostrar que el mismo ha cometido o esta para cometer cualquier crimen o atentado contra el orden y la paz" (E. U. contra Fortaleza, 12 Jur. Fil., 486). ¡QuQue es lo que necesita entonces la Fiscalia en tales casos? ¡No esta alii el testimonio del policia, cbnstabulario o agente del orden aprehensor? De modo que la cuestion, en ultimo resultado, es que la Fiscalia tenga o no fe en la integridad y veracidad del agente dc la ley. Si la tiene ique motivo hay para no formular inmediatamente la querella y obtener as,i del juzgado la correspondiente orden de arresto? Y si no la tiene ¿que razon hay para pisotear la libertad individual reteniendo la causa sin accion mas alia de las 6 horas y causando asi una innecesaria vejacion al ciudadano?

La cuestion se puede simplificar mas todavia. Todo.se reduce, en ultimo termino, a que la Fiscalia pueda contar con la ayuda de una policia., eficiente, Integra y honrada sobre todo, que persiga el crimen sin cuartel, pero que tenga el maximo respeto a los derechos del ciudadano. Si

la Fiscalia puede tener un modus vivendi con una policia de semejante tipo y de tales quilates, no hay miedo de que una rigida observancia del requerimiento legal de 6 horas facilite la inmunidad de los tulisanes, bandidos, gangsters y criminales del bajo mundo, y se ponga en grave peligro la eficaz prosecucion del crimen y la seguridad y sosiego del pueblo. Dentro de las 6 horas hay tiempo mas que suficiente para meter en cintura a toda la canalla . . . i Pero por Dios que no se violen ni pisoteen las garantias constitucionales por miedo a los gangsters!

Desde luego que se debe dar cierto margen de viabilidad a la ley. Por ejemplo, si se verifica una detention sin previa orden de arresto a medianoche, creo que la ley estaria cumplida si en las primeras horas de la mafiana siguiente se tomara enseguida action, aunqne olio rebasara un poquito el periodo de 6 horas.

Se deniega la motion de reconsideration.

DISSENTING

TUASON, J.,

I vote to grant the motion for reconsideration.

In my dissent from the decision of this Court I contented myself with citing my dissenting opinion in *Lino vs. Fugoso*, L-1197, 43 Off. Gaz., 1214, 1246, as grounds for my disagreement. As the present decision has gone farther than that decision and contains new statements and conclusions, I deem it convenient to enlarge on my dissent.

The term "judicial officers" has been denned to be, in its popular sense, officers of a court (*Hitt vs. State*, Miss. 181, So. 331) and in its strict sense, "judges and justices of all courts and all persons exercising judicial powers by virtue of their office." (*Settle vs. Van Evrea*, 49 N. Y., 280.) The city fiscal is a judicial officer in both senses. In the popular or larger sense, he is a judicial officer because he is a part of the legal machinery created for the administration of justice. A prosecuting attorney, charged with the administration of justice and invested with important discretionary power in a motion for a nolle prosequi, is a judicial officer. (*State ex rel. Freed vs. Circuit Court of*

Martin County, Ind., 14 N. E. 2d 910; *State vs. Ellis*, 112 ! N. E., 98, 100; 184 Ind., 307.) .

In the strict legal sense, the city fiscal is a judicial officer when making preliminary examination because he performs the function of a justice of the peace—assuming, as the majority seem to assume, that the conduct of preliminary examination is a judicial function. By express provision of section 2465 of the Revised Administrative Code, the city fiscal "shall cause to be investigated all charges of crimes, misdemeanors, and violations of ordinances, and have the necessary information or complaints prepared or made against the persons accused." In addition, section 2, Rule 108, of the Rules of Court states that "every justice of the peace, municipal judge or city fiscal shall have jurisdiction to conduct preliminary investigation of all offenses alleged to have been committed within his municipality or city, cognizable by the Court of First Instance."

The city fiscal is not any the less a judicial officer simply because he can not issue warrant of arrest. The power to issue warrant of arrest is not an essential ingredient of a judicial office. This is specially so when, as in cases like the present, the accused is already under arrest when the city fiscal intervenes and there is no need of issuing an order of arrest. As to power to commit a detained person to prison, if that be necessary, the majority are not exactly right when they affirm that the city fiscal is not clothed with it. I shall come to this later.

However that may be, the city fiscal is a "judicial authority" within the contemplation of article 125 of the Revised Penal Code. This is the inevitable result from the fact that in the City of Manila, the city fiscal under the existing scheme of government is the only officer to whom the person arrested without warrant may be presented. The majority opinion admits that the municipal court and the Court of First Instance of Manila "do not make or conduct a preliminary investigation proper," and criminal complaints are not filed with them but with the city fiscal. Reasoning from another angle, we reach the same conclusion. We are to presume that in using the generic term "judicial authorities"—and in plural—instead of the more specific word "justice," "judge," or "court", the lawmaker intended to include in the operation of the article under consideration all officers who are named to receive the prisoner from the arresting officer. We have to adopt this construction if we are to give effect to the law and the rule of court I have cited, and if we are to avoid what I might call, without meaning offense, an absurdity.

Under no canon of statutory construction is there justification for this Court's opinion that the police and the city

fiscal have to share the six hours fixed in article 125 of the Revised Penal Code. The language, the nature and the object of this provision unerringly point to the theory that the six hours mentioned in the Revised Penal Code are meant exclusively for the police officer who made the arrest. I can discern absolutely no indication of any intention to have the city fiscal squeeze in his action within this brief period, a period which, in many cases, is not even sufficient for the police. Read separately or in conjunction with the entire criminal procedure, article 125 does not furnish the slightest indication of legislative intent to place the city fiscal and the police under the same category. Article 125 of the Revised Penal Code was devised for one purpose ; section 2465 of the Revised Administrative Code and section 2, Rule 108, of the Rules of Court for another. Article 125 is a penal provision designed to prevent and ' punish police abuses for which the police are noted. The investigation by the city fiscal is strictly and essentially procedural. It is an integral part of the procedure for bringing the case to trial.

Little reflection will disclose the disastrous consequences which this Court's interpretation of article 125 of the Revised Penal Code will bring to law enforcement. It nullifies the role of the fiscal in the administration of criminal law. For sheer lack of time, the release of the prisoner arrested without warrant will, in a great number of cases, be inevitable, unless the city fiscal files charges without sufficient and adequate investigation. The alternative will be for the city fiscal to be on a 24-hour watch lest in his sleep the time for him to act might slip by.

But this is only a poor alternative. Regardless of any vigilance on his part the opportunity for the city fiscal to make the required investigation cannot always be assured. The law gives the police absolute power to detain a prisoner for six hours without incurring penal liability. There is no law which obliges the police to take the prisoner to the city fiscal before the expiration of six hours from the time of arrest. There can be cases where the entire six hours might be consumed by the police in their investigation alone, or just in the chasing, collection and transportation to the police station of law breakers. This can happen in tumultuous and other mob offenses in which many people are involved and there is necessity of screening the guilty ones.

Supposing then that the police should deliver the prisoner or prisoners to the city fiscal at the last minute of the six hours through negligence or by force of circumstances, what time is there for this functionary to comply with his duty? And even if the city fiscal be given the chance to start his assigned task at the beginning of the six hour period, can this time insure proper and just investigation in complicated cases and in cases where the persons arrested are numerous and witnesses are not on hand to testify? It is well to remember that the police are not authorized to round up witnesses and take them along with the prisoners to the city fiscal.

In the light of these consequences I can not imagine that the meaning which this Court attaches to article 125 of the Revised Penal Code so much as entered the thought of the legislature. No sound-minded legislature could have intended to create such a situation, which is easy to perceive unless we assume that the legislative purpose was to tie up the hands of the law and give lawlessness full sway; unless the legislature wanted to coddle and pamper lawless elements to a calamitous extreme. When the Court says that the prisoner, after being released at the end of six hours from the time of his arrest may be rearrested should the city fiscal find sufficient evidence and prefer charges against him, it takes for granted that underworld characters and hardened criminals are honorable men who would keep themselves ready and handy for a second arrest.

The Court says:

"To consider the city fiscal as the judicial authority referred to in article 125 of the Revised Penal Code, would be to authorize the detention of a person arrested without warrant for a period longer than that permitted by law without any process issued by a court of competent jurisdiction. The city fiscal may not, after due investigation, find sufficient ground for filing an information or prosecuting the person arrested and release him, after the latter had been illegally detained for days or weeks without any process issued by a court or judge."

What is that "proper process" referred to in the above-quoted portion of the decision? Whatever is meant by "proper process," we should note that there is no fundamental difference between the proceeding before a justice of the peace and the procedure followed by the city fiscal. There is nothing important the justice of the peace may do in the interest of the accused in the cases triable before the Court of First Instance which the city fiscal may not do. If the city fiscal can not issue an order of arrest, the justice of the peace himself does not do so to give the detention the stamp of legality. At least, I am aware of no law which tells him to take this step, and I can see no material advantage which an accused could derive from this ceremony. All the justice of the peace does which matters to the accused is admit him to bail, if the crime be bailable, and proceed to an investigation. '

But the city fiscal does just that; and if it be necessary to order the commitment of the prisoner pending ascertainment of his guilt, the city fiscal no less than "the justice of the peace or judge of first instance has that authority also, as I propose to show later. In actual practice, a person arrested without warrant in a regular municipality frequently suffers greater injustice and is subject to, and frequently goes through greater hardships than his counterpart in the City of Manila. We are witness to the common spectacle of cases being dismissed on motion of the provincial fiscal for want of sufficient evidence after the prisoner had been bound by the justice of the peace over to the Court of First Instance for trial and after he had languished in jail for months or years. Prisoner's detention in that case is not considered illegal.

This anomaly seldom takes place in cities where the preliminary investigation is entrusted to the city fiscal. Rarely in the City of Manila is a case dropped for insufficiency of evidence after it has been determined in a preliminary investigation that the prisoner should be held for trial. On the whole, the method by which the preliminary investigation is conducted by the prosecuting attorney is more conducive to efficiency, minimizes or eliminates conflicts of opinion in the existence of probable cause, and better insures prompt dispatch of criminal cases to the lasting benefit of the prisoner. Only physical impossibility, as I understand it, is in the way for the adoption of this method throughout the country.

It is a mistake, in my humble judgment, to confuse a prisoner's detention during the six-hour period fixed in article 125 of the Revised Penal Code and his continued detention after he is turned over to the city fiscal. As I have said, article 125 regulates the time within which a police officer may hold the prisoner under his responsibility, and it applies to the police alone. It will hardly be contended that this article, or any other law, or the constitution limits the period within which a prisoner may be detained after he is delivered to the justice of the peace. If that is so, and since the city fiscal acts in lieu of a justice of the peace, there is no sound basis, legal or practical, for denying to the former the same time and the same freedom of action that is enjoyed by the latter.

By the same token, there is no sound reason for denying to the proceeding by the city fiscal the same attributes which adhere to the proceeding before the justice of the peace. After the arresting officer produced the prisoner before the city fiscal, the law takes its course in the same manner that it does when the examining officer is the justice of the peace or judge of first instance. From that time the arresting officer ceases to have any control over the prisoner save to keep him in custody subject to the orders of the city fiscal. The police step out and the law steps in and extends to the prisoner the mantle of protection against inquisitory examination by the police. From that time on he enjoys the rights granted by law to all accused persons—the right to give bail and the right to testify freely uninfluenced by any fear of violence or other forms of maltreatment. The danger envisioned by article 125 of the Revised Penal Code is past.

The proceeding before the city fiscal does not lose its character of due process of law by its being conducted by the city fiscal instead of a judge. For one thing, preliminary investigation is not a trial. It is not a constitutional right. It is purely a matter of statutory regulation. (*Potenciana Dequito vs. Hugo O. Arellano et al.*, G. R. No. L-1336; 32 C. J. S., 456.) A judicial proceeding which lies within the power of the legislature to provide or

withhold without infringing the fundamental law may be placed in the hands of any officer other than a judge.

The jurisdiction to make a preliminary examination or investigation is not even considered judicial. Judges who perform this function do not do so as judicial officers. Municipal executives here and in the United States are conferred this power. "The power to examine and to commit persons charged with crime is not judicial, but is one of the duties of the conservators of the peace, and it may be, and usually is, vested in persons other than courts, as, for instance, justices of the peace or police magistrates, or persons exercising jurisdiction analogous to that exercised by justices of the peace, or who are ex officio justices of the peace, such as mayors, notaries public, or court commissioners. Power to hold preliminary examinations may be exercised by United States commissioners, and United States district judges who, while making the preliminary-examination, exercise the powers of commissioners only." (16 C. J., 319-320.)

There is no basis for the fear that "the city fiscal may not, after due investigation, find sufficient ground for filing an information or prosecuting the person arrested and release him, after the latter had been illegally detained for days or weeks without any process issued by a court or judge." This statement overlooks the consistent and general practice heretofore followed with clear, express statutory sanction. Section 2460 of the Revised Administrative Code authorizes the chief of police of the City of Manila "to take good and sufficient bail for the appearance before the city court of any person arrested for violation of any city ordinance," while in cases of violation of any penal law, according to the same article, the fiscal of the city may, and does, recommend and fix the bail to be required of the person arrested. Power to fix bail necessarily implies power to recommend or order the detention of the prisoner if bond is not given. This in its working is no more nor less than the power to commit an accused to prison pending investigation of this case, power which the majority erroneously say is not possessed by the city fiscal.

The constitutional and statutory provisions and rules cited by the majority are of general application which are good only in the absence of specific enactments. The controlling provisions in the case at bar are sections 2460 and 2465 of the Revised Administrative Code and section 2, Rule 108, of the Rules of Court.

The decision further says:

"A peace officer has no power or authority to arrest a person without a warrant upon complaint of the offended party or any other person, except in those cases expressly authorized by law. What he or the complainant may do in such case is to file a complaint with the city fiscal of Manila, or directly with the justice of the peace courts in municipalities and other political subdivisions. If the city fiscal has no authority, and he has not, to order the arrest of a person charged with having committed a public offense even if he finds, after due investigation, that there is a probability that a crime has been committed and the accused is guilty thereof, a fortiori a police officer has no authority to arrest and detain a person charged with an offense upon complaint of the offended party or other persons even though, after investigation, he becomes convinced that the accused is guilty of the offense charged."

I do not think the foregoing paragraph is relevant to the instant case. We are not dealing with the authority of a police officer to make arrest without warrant. There is no question raised against the legality of the petitioners' arrest. Our problem concerns the time in which the city fiscal may make his investigation and the scope of his power.

Assuming the above-quoted statement to be pertinent to the issues, the same can not, in my humble view, pass unchallenged. Under certain, well-defined circumstances, an officer may and constantly does make arrests without a court order, with or without complaint. An officer in good faith may arrest without warrant when he believes that a person is guilty of a crime, and his belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. (6 C. J. S., 596.) This practice is not derived from any

express authority but on the necessity of catching law violators before they disappear and hide. I have not come across any law naming specific offenses for committing which the offenders shall be arrested without court orders.

It is also a general principle of law that an officer need not necessarily have personal knowledge of the facts constituting the offense, in the sense of having seen or witnessed the offense himself, but he may, if there are no circumstances known to him which materially impeach his information, acquire his knowledge from information imparted to him by reliable and credible third persons, or by information together with other suspicious circumstances. (Id., pp. 599, 600.) This principle ought to serve as a qualification to the ruling laid down by this Court, that "a peace officer has no power to arrest a person without a warrant upon complaint of the offended party or any other person." Under the rule I have quoted, a police officer certainly may arrest a person pointed to him as having" committed a crime provided that the information or complaint comes from a reliable-source and under circumstances as to make an ordinarily reasonable man to believe it to be well-founded. When the victim of a robbery or aggression, for example, should subsequently spot the criminal and request an officer to arrest him, the officer would not have to seek or wait for a warrant of arrest before detaining the man, provided again that there was good ground to believe the truth of the accusation.

This is a common law rule implanted in the Philippines along with its present form of government, a rule which has been cited and applied by this Court in a number of cases. (U. S. vs. Santos, 35 Phil., 853; U. S. vs. Batallones, 23 Phil., 46; U. S. vs. Samonte, 16 Phil., 516.)

PADILLA, J.:

I concur in this dissent.

SUPPLEMENTARY

DISSENTING

TUASON, J.,

When I filed my dissent from the decision of the Court on the occasion of the denial of the motion for reconsideration, it was my understanding that there was going to be only a minute resolution. I make this remark not as a complaint but as my explanation for writing my dissent in advance of the reasoned resolution. Even then I would contend myself with resting my dissent on what I have already stated did not the resolution contain new propositions to be answered and disclose misunderstanding of some of my statements to be cleared. As this is in the nature of reply, topics will be treated without regard to continuity of thought.

The resolution says that article 30 of the Provisional Law for the Application of the Penal Code in the Philippines has been repealed by section 17 of Rule 109, but that section 31 is still in force except the last sentence. And so, according to the resolution, is section 2 of Act No. 194.

Without discussing the materiality of those laws, I disagree that they are still in effect. Like article 30, article 31 of the Provisional Law and section 2 of Act No. 194 deal with procedure in justice of the peace courts in general covered by the new Rules of Court. The Rules of Court, in the words of their introductory section, concern "pleading, practice and procedure in all courts of the Philippines, and the admission to practice law therein." These Rules are a complete revision and a complete re-enactment of the entire field of procedure, and there is every reason to believe that they were intended to replace, with some exceptions, all previous laws on the subject,

especially Spanish laws which had long been out of harmony with the new mode of pleading and practice. If the last sentence of article 31 is repealed, as the resolution says, I see no valid ground for not holding the other parts of that article repealed also. "Where a later act covers the whole subject of earlier acts, embraces new provisions, and plainly shows that it was intended, not only a substitute for the earlier acts, but to cover the whole subject then considered by the legislature, and to prescribe the only rules in respect thereto, it operates as a repeal of all former statutes relating to such subject matter. The rule applies not only where the former acts are inconsistent or in conflict with the new act, but also even where the former acts are not necessarily repugnant in express terms, or in all respects, to the new act." (59 C. J., 919-920.) "While, as a general rule, implied repeal of a former statute by a later act is not favored, yet 'if the later act covers the whole subject of the earlier act and is clearly intended as a substitute, it will operate similarly as a repeal of the earlier'." *Posadas vs. National City Bank of New York*, 296 U. S., 497; 80 Law ed., 351.)

As the Rules of Court took effect on July 1, 1940, the case of *Marcos vs. Cruz*, decided on May 30, 1939, and cited in the resolution, is no authority for the opinion that no law has been enacted amending or repealing section 2, of Act No. 192.

But this rule of implied repeal holds good only as regards laws of general application. Another well known rule of statutory construction tells us that preliminary investigations in Manila and other chartered cities are to be excluded from the operation of the Rules of Court. Such investigations are provided for by special enactments which, because of their special nature and limited application, must be excepted from and prevail over the general provisions. "When the provisions of a general law, applicable to the entire state, are repugnant to the provisions of a previously enacted special law, applicable in a particular locality only, the passage of such general law does not operate to repeal the special law, either in whole or in part, unless such repeal is provided for by express words, or arises by necessary implication. An intention to repeal local acts generally is not inferable from the fact that the general act specifically excludes one locality from its operation." (59 C. J., 934.) There is no apparent intention in the Rules of Court to repeal the laws under which preliminary investigations in Manila have to be conducted by the city fiscal. The contrary intention is evidenced by section 2 of Rule 108, which provides that "Every justice of the peace, municipal judge or city fiscal shall have jurisdiction to conduct preliminary investigation of all offenses alleged to have been committed within his municipality or city, cognizable by the Court of First Instance," (*Espiritu vs. De la Rosa* [July 31, 1947], L-1156, 45 Off. Gaz., 196; *Hashim vs. Boncan* [Nov. 22, 1941], 40 Off. Gaz., 13th Supp., p. 13.) In the first of these cases, Mr. Justice Padilla, speaking for the Court, categorically held that the "Rules of Court had not repealed and supplanted the provisions of the Revised Administrative Code regarding the power and authority of the City Fiscal to conduct preliminary investigation." And in *Hashim vs. Boncan*, the Court, through Mr. Justice Laurel, said:

"The framers of the Rules could not have intended to brush aside these lessons of experience and to tear down an institution recognized by law and decision and sanctioned by years of settled practice. They could not have failed to keep intact an effective machinery in the administration of criminal justice, as expeditious and simple as any reform they have infused into the new Rules."

The term "proper court or judge" in section 17, Rule 109, of the Rules of Court^[1] should be interpreted to mean, in the case of Manila, city fiscal, under the last mentioned canon of interpretation. In Manila, the city fiscal performs the duties devolving on justices of the peace in regular municipalities in the conduct of preliminary investigations, and all criminal charges by the police and offended parties are filed with him. And it is admitted that prisoners arrested without warrant in Manila may be taken only to the city fiscal by the arresting officer. Let it be noted also in this connection that section 17 of Rule 109 regulates the taking of persons arrested to the court or judge, not 1 the filing of complaint.

In view of these circumstances; in view of the fact that neither the judges of first instance nor the municipal judges of Manila are authorized to conduct preliminary hearings other than for the purpose of determining the amount of bail (section 2474 of the Revised Administrative Code), the result of applying section 17 of Rule 109 to Manila would be virtually to eliminate preliminary investigation in this city of persons arrested without a warrant. The decision creates a vacuum, a situation which this Court on another occasion refused to countenance in the forceful language above quoted in *Hashim vs. Boncan et. al.* Thtre, the Court continued:

To sustain, the theory of repeal is to wipe out these advantages. Not only this. If neither section 11 nor section 13 of Rule 108 is applicable to the preliminary investigation conducted by the City Fiscal, as we have above shown, and if existing legislation thereon is to be deemed repealed, then the matter would be left uncovered by rule or law. There would thus be a void crying for urgent reform. There would be no such void if the old and tried procedure is kept in being, untouched by the new Rules. Withal, our own knowledge of the history of this portion of the Rules here involved does not warrant an interpretation not contemplated when we drafted and deliberated upon these Rules. And while, perhaps, the language could have been clearer and the arrangement made more logical, consideration of expediency and the avowed purpose of preliminary investigation point to the already trodden path hereinabove indicated."

The resolution has interpreted article 125 of the Revised Penal Code with meticulous adherence, at best, to its letter, and in open disregard, at worst, of its spirit and of the pernicious results that follow from such interpretation. The construction which the majority give to the term "judicial authority" makes it impossible for the city fiscal to perform his assigned duties with the consequence that, for lack of time, malefactors will have to be turned loose before proper investigation is conducted, or prosecution filed on insufficient evidence, in many cases.

Nevertheless, I am not pleading, in this case, for a departure from the letter of the law. I merely submit that the city fiscal, as was emphasized in my dissent from the decision, is a judicial officer or judicial authority both in the popular and the legal sense of the term, and that it is unjust, unwarranted by any rule of interpretation, absolutely disastrous to the administration of criminal law, to identify the city fiscal with the police, forcing him to file an information or release the prisoner within the six hours intended for the arresting officer alone. I do not contend that the term "judicial authority" be expanded beyond its literal and legal meaning, although if necessary this might be done to carry out the obvious purpose of the law, but I take exception to the unjustified restriction and limitation placed on the meaning of "judicial authority" which not only does violence to the letter and spirit of article 125 of the Revised Penal Code but leads to an extremely anomalous, not to say impossible, situation. We do not have to look outside for the meaning of "judicial authority," as a simple reading of article 125 of the Revised Penal Code and section 2474 of the Revised Administrative Code yields the clear intent of the legislature. This intent, as manifested in laws that have been amended by section 2465 and section 2474 of the Revised Administrative Code, crystalized in a system and a practice that have received "the imprint of judicial approval" in various decisions of this Court. (*U. S. vs. McGoven*, 6 Phil. 261; *U. S. vs. Ocampo*, 18 Phil. 122; *U. S. vs. Grant and Kennedy*, 18 Phil. 122; *U. S. vs. Carlos*, 21 Phil. 553; *Hashim vs. Boncan*, ante; *Espiritu vs. De la Rosa*, ante.)

The resolution, as a solution to the quandary in which it places the city fiscal, would have him go to Congress. But, as I trust I have shown, the laws on the subject need no supplementation and implementation. They have no gaps to be filled or ambiguities to be cleared. The loopholes exist only as a direct result of this Court's new ruling. Section 2474 of the Revised Administrative Code and its predecessors have operated smoothly, without a hitch for nearly half a century. Not even when the arresting officer had 24 hours to take arrested persons to a judicial authority was it ever imagined, much less asserted, that the city fiscal had to borrow his time from the police.

The resolution in laying down the rule that the city fiscal has no power to issue warrant of arrest or "an order or

commitment of release by a written warrant containing the ground on which it is based," thinks it is necessary to advert, "in justice to the city fiscal," that this official does not pretend to possess such authority, since it is only in the dissenting opinion, it says, where the claim is made.

At the outset I deny that I attributed to the city fiscal power to issue warrant of arrest; and I did not say in an unqualified manner that he has power to issue commitment. On the first point, what I said was an implicit acknowledgment of the opposite. Let me quote from the second paragraph of page 2 of my dissenting opinion what I did say:

"The city fiscal is not any the less a judicial officer simply because he can not issue warrant of arrest. The power to issue warrant of arrest is not an essential ingredient of a judicial office."

On the power to commit prisoners, the same paragraph of my opinion shows what I said.

"As to the power to commit a detained person to prison, if that be necessary, the majority are not exactly right when they affirm that the city fiscal is not clothed with it. I shall come to this later."

And taking the matter up again on page 11, I said:

"Section 2460 of the Revised Administrative Code authorizes the chief of police of the City of Manila 'to take good and sufficient bail for the appearance before the city court of any person arrested for violation of any city ordinance,' while in cases of violation of any penal law, according to the same article, the fiscal of the city may, and does, recommend and fix the bail to be required of the person arrested. Power to fix bail necessarily implies power to recommend or order the detention of the prisoner if bond is not given. This in its working is no more nor less than the power to commit an accused to prison pending investigation of his case, power which the majority erroneously say is not possessed by the city fiscal."

There is nothing in this statement any outright affirmation that the city fiscal has power to issue commitment papers. There is, on the contrary, an implied admission that the power, as it is ordinarily exercised by a judge or court, does not exist. I merely submitted as my personal opinion and interpretation of section 2460 of the Revised Administrative Code, regardless of what the city fiscal thinks, that it confers upon the latter official a power which, performed in conjunction with the power of the chief of police, amounts in its practical operation to a power to commit a man to prison. And I said this in answer to the sweeping assertion (which apparently was made in the decision in complete oblivion of section 2460, *supra*), that to give the city fiscal unlimited time might result in injustice, since, the decision says,

"The city fiscal may not, after due investigation, find sufficient ground for filing an information or prosecuting the person arrested and release him, after the latter had been illegally detained for days or weeks without any process issued by a court or judge."

I intended to emphasize by citing section 2460 of the Revised Administrative Code, that a prisoner could secure his release, pending investigation of his case, in the same manner and with the same facilities that he could if the complaint or information, had been filed with a court. In citing and stating my interpretation of section 2460 of the Revised Administrative Code, I wished to show what I considered an erroneous ruling that

"If the city fiscal has any doubt as to the probability of the defendant having committed the offense charged, or is not ready to file the information on the strength of the testimony or evidence presented, he should release and not detain the person arrested for a longer period than that prescribed in the Penal Code."

The majority come back with the assertion that the provisions of section 2460 of the Revised Administrative Code [1]

"do not authorize, either expressly or by implication, the city fiscal to order the detention of the prisoner if

bond is not given, not only because they refer to the powers of the chief of police of Manila and not of the city fiscal, but because the only incidental authority granted to the latter is to recommend the granting of the bail by the chief of police and to fix the amount of bail to be required of the person arrested for violation of any penal law in order that the chief of police may release the latter on bail."

I disagree again. I do not believe that a provision is rendered nugatory by the mere fact that it is foreign to the subject of the main provision or to the title or caption of the section, if otherwise the language is clear. The title or caption is important only in determining the meaning of laws which are ambiguous and uncertain. The provision of section 2460 of the Revised Administrative Code quoted in the resolution does not suffer from such infirmity.

In truth, the proviso in section 2460 is not alien to the enacting clause. The proviso relates to the chief of police, conferring on him power of the same nature as does the enacting clause, with the only difference that, in cases of violations of a municipal ordinance the chief of police acts independently, on his own responsibility, while in cases of violations of a penal law, he acts with the advice of the city fiscal and the latter fixes the amount of bail. The intervention of the city fiscal was only inserted, in my opinion, in view of the gravity of the latter class of cases.

As to the other reason given in the resolution why, it says, continued detention of a prisoner beyond six hours is not authorized—namely, that the authority granted to the city fiscal to recommend the granting of bail by the chief of police and to fix the amount of bail to be required of the person arrested, is only incidental—my comment is that, whether the "power to take bail or release prisoners belongs to the city fiscal or the chief of police, is inconsequential. To my mind, the important point is that the accused, as the resolution admits, may be released on bond. From this power, irrespective of who possess it, is implied the power to keep the prisoner under detention if he does not file a bond.

When the resolution concludes that if no bond is given by the person arrested, "neither the chief of police, who is only authorized to release on bail, has power to detain the person arrested for more than six hours; nor the city fiscal, who is empowered to fix and recommend the bail to the chief of police has authority to release person arrested in violation of penal law," I can not follow. In a nutshell, the majority's reasoning, as I understand it, is that the law authorizes the city fiscal to recommend and fix the bail "in order that the chief of police may release the latter (prisoner) on bail," but that if the prisoner does not put up a bond he has to be set at large just the same. The filing of bail is not a meaningless gesture which may be taken advantage of by an accused at pleasure with the same effect. The privilege to put up a bond extended to an accused must be the price or condition of his temporary release. The law does not have to say in so many words that if he does not put a bond he would be kept in confinement in order that we may be warranted in reaching this result.

The resolution says that "the purpose of the law in empowering the chief of police of Manila to release the prisoner if he puts up a bail, is to relieve the officer making the arrest from the necessity of taking the prisoner to the city fiscal, and the latter from filing an information with the proper courts within the period of time prescribed by law."

I have reflected closely on the meaning of this statement to be sure that I did not misunderstand it. Unless I still fail to grasp the idea, I think the statement is self-annulling and self-contradictory. The filing of bail can not relieve the arresting officer from the necessity of taking the prisoner to the city fiscal for the simple reason that such bail, in cases of violations of penal laws, can be filed only on recommendation of, and its amount can be fixed by, the city fiscal. In other words, the prisoners necessarily has to be taken to the city fiscal before any bond can be executed. And it would be underestimating the intelligence of an accused to expect him to file a bond within six hours from the time of his arrest if he is aware that, if at the end of those hours the city fiscal had not preferred any charges against him and no order of commitment had been issued by the proper judge, he (accused)

had to be released. In the face of the latter theory, no prisoner would, even if he could, perfect a bond within six hours knowing that if he did not, he would be a free man, at least temporarily, within what remains of six hours, while if he did, the bond would enable the city fiscal to take his time to file a case against him in court.

The gravamen of the court's argument seems to be that a commitment by a court or judge is essential to validate detention beyond the time specified in the Revised Penal

Code. I do not share this opinion. Neither such commitment by a judge nor a formal complaint is required by the constitution in order that a person may lawfully be kept, in jail pending investigation of his case. An opportunity to file a bond in a reasonable amount satisfies the constitutional demands. Nor does the bail have to be fixed or granted by a court. Sheriffs and police officers have been authorized by statutory enactments in other jurisdictions to take bail. At least one court has gone so far as to uphold, "independently of statute, a practice of long standing on the part of the sheriff to take bail in criminal cases of prisoners committed for not filing bail, and release them from confinement." (*Dickinson vs. Kingsbury*, 2 Day [Com., 1.] Now then, under section 2460 of the Revised Administrative Code, the chief of police of Manila, as already shown, is allowed to take bail by himself in cases of violations of a municipal ordinance and with the intervention of the city fiscal in other cases. Under this provision and this practice, a detention prisoner arrested without warrant is not deprived of any privilege or benefit guaranteed by the constitution. The lack of a formal complaint does not in the least prejudice him or deprive him of any benefit enjoyed by his counterparts in the provinces. On its legal aspect, let it be observed that all the proceeding conducted by the city fiscal is a preliminary and summary inquiry which is purely a matter of statutory regulation. Preliminary investigation by the prosecuting attorney when authorized by law is due process no less than one conducted by a judge. It may be suppressed entirely, and if it may be suppressed, it may be entrusted to any officer, provided only the constitutional right to give bail is carefully safeguarded. As this Court has said in *Hashim vs. Eoncan*, *supra*, and *U. S. vs. Ocampo*, *supra*:

"The piosecutins? attorney for the city of Manila is presumed to be as competent to conduct a preliminary investigation as the average person designated by law to condpct a 'preliminary examination' under the provisions of General Orders No. 58. He is a sworn officer of the court, and the law imposes upon him the duty of making such investigations. For such purpose the legislature may designate whom it pleases within the judicial department."

The resolution has taken pain to cite and explain in detail what it says are the laws on arrests in the Philippines, and takes me to task for quoting from 6 *Corpus Juris Secundum*, 599-600 and citing the decisions of this Court. We are told in effect that the excerpts from my dissenting opinion, quoted on page 16 of the resolution, are without any foundation because, it is said,,

"they are premised on the wrong assumption that, under the laws in force in our jurisdiction, a peace officer need not have personal knowledge but may arrest a person without a warrant upon mere information from other person."

The resolution assumes that those excerpts are predicated on what I call the common law rule, on *Corpus Juris Secundum*, and on decisions of the Supreme Court.

I commend a reading of my dissenting opinion. It will be seen that I did not base on those laws, rules or decisions my statements, "The entire six hours might be consumed by the police in their investigation alone;" "Even if the city fiscal be given the chance to start his assigned task at the beginning of the six hour period, this time can not insure proper and just investigation in complicated cases and in cases where the persons arrested are numerous and witnesses are not on hand to testify," and "The police is not authorized to round up witnesses and take them along with the prisoner to the city fiscal." It will be seen that far from using as my premise those laws, rules and decisions, which I said contain in brief outlines the powers of police officers to make arrests, I said clearly on

page 12 of my dissenting opinion:

"I do not think the foregoing paragraph is relevant to the instant case. We are not dealing with the authority of the police officer to make arrest without warrant. There is no question raised against the legality of the prisoner's arrest. Our problem concerns the time and period within which the city fiscal may make his investigation, and the scope of his power."

It was the majority decision which brought the question of the authority of the police to make arrests into the discussion. I only met the decision on its own territory though I regarded that territory as outside the legitimate circle of the present dispute. I cited *Corpus Juris Secundum* and decisions of this Court, which I said are derived from common law, to refute the statement,

"a fortiori, a police officer has no authority to arrest and detain a person charged with an offense upon complaint of the offended party or other persons even though, after investigation, he becomes convinced that the accused is guilty of the offense charged."

I especially wanted to express my disagreement with the thesis in the decision that

"A peace officer has no power or authority to arrest a person without a warrant upon complaint of the offended party or any other person, except in those cases expressly authorized by law."

It was my humble opinion that the rules I cited and the rules on which the decisions of this Court are predicated, were general provisions of law applicable to varying and changed circumstances, and I wanted to deny the insinuation that there were, or there might be, arrests without warrant "expressly authorized by law"; so I countered that "I have not come across any law naming specific offenses for committing which the offenders shall be arrested without court orders." This is my concept of express provisions authorizing arrests without a warrant.

Section 6 of Rule 109, section 2463 of the Revised Administrative Code, and the Provisional Law on the subject of arrest, cited in the resolution in an attempt to show the error of my citations, can not be a source of comfort to the majority. Rather, I should think, they reinforce my position, for I believe that the rules and decisions I cited and the rules and laws called to our attention as the real thing, are in substantial agreement. My mistake was in not citing, myself, Rule 109, section 6, of the Rules of Court, section 2463 of the Revised Administrative Code, and the Provisional Law. I might have found and cited them had I thought the matter worthy of more than a passing notice.

Now that the resolution has gone into this subject at length, I shall devote a few more lines to it at the peril of tiring the reader on what I believe an impertinent topic.

My citation from *Corpus Juris* and my comment that "this is a common law rule implanted in the Philippines along with its present form of government, a rule which has been cited and applied by this Court in a number of cases," has met with derision. I am informed that my quotation is "not a general principle of law or common law rule implanted in the Philippines"; that "it is a summary of the ruling of several states courts based on statutory exceptions of the general rule."

I do not think I was wide off the mark when I said that the common law rule has been transplanted to this country along with the present form of government and that the rules and decisions I have quoted spring from the common law. And the majority are not closer to the mark when they affirm that my quotation from *Corpus Juris Secundum*, and section 2463 of the Revised Administrative Code are purely statutory creation.

There was common law before there were statutes. Common law in England and in the U. S. preceded statutes and constitutions. Statutes and constitutions in matters of arrest came afterward, restating, affirming, clarifying, restricting or modifying the common law.

"The English common law has been adopted as the basis of jurisprudence in all the states of the Union with the exception of Louisiana 'where the civil law prevails in civil matters.' (11 Am. Jur., 157.) And

"in England, under the common law, sheriffs, justices of the peace, coroners, constables and watchmen were entrusted with special powers as conservators of the peace, with authority to arrest felons and persons reasonably suspected of being felons. Whenever a charge of felony was brought to their notice, supported by reasonable grounds of suspicion, they were required to apprehend the offenders, or at least to raise hue and cry, under penalty of being indicted for neglect of duty."

See the footnote on pp. 2512-2513, Vol. 2, of Jones Blackstone and the numerous cases therein cited. It is a footnote appended to the statement of a common law principle which

is of the same tenor as that just noted. Treatises on arrest not infrequently start with a statement of the common law rule and speak of statutes and constitutions in the sense I have mentioned. Moran's Commentaries on the Rules of Court mention the common law (Vol. 2, p. 577) in connection with the power to make arrest without a warrant.

The doctrine taken from 5 C. J., 395-396 that "the right to make arrest without a warrant is usually regulated by express statute, and, except as authorized by such statutes, an arrest without a warrant is illegal"—is hot at war with the proposition that the authority of peace officers to make arrest originated at common law and that constitutions and statutes merely restated and denned that authority with greater precision, naming the officers who may make arrest, the grades of offenses for, and the circumstances under, which arrest may be effected, etc. Arrests made by officers not designated or under circumstances not coming within the terms of the statute or constitution are illegal.

Even then, broad constitutional or statutory inhibition against search and seizure of property or persons without a warrant has exceptions, as can be inferred from the two sentences preceding the above sentence quoted in the resolution. These exceptions are cases where the public security has demanded the search and seizure.

"Well established exceptions to this rule have been long recognized in cases of felony, and of breaches of the peace committed in the presence of the party making the arrest." (5 C. J., 395.)

Arrests under such circumstances are authorized in spite of statutes and constitutions. The power to make such arrest is deeply rooted in the unwritten or common law, which "includes those principles, usages and rules of action applicable to the government and security of person and property which do not rest for their authority on any express or positive declaration of the will of the legislature." Although acting at his perifcvthe powers to arrest on "probable cause of suspicion" even by a private person are "principles of the common law, essential to the welfare of society, and not intended to be altered or impaired by the Constitution." (Wakely vs. Hart, 6 Binn. [Pa.], 316.)

I have remarked that there is no fundamental difference between my citations, on the one hand, and section 6 of Rule 109 and section 2463 of the Revised Administrative Code, cited by the majority of the Court, on the other hand. There is only a difference in phraseology. The very case of U. S. vs. Fortaleza relied upon in the resolution speaks of barrio lieutenants' power to make arrest as not inferior to that usually conferred on peace officers known to American and English law as constables.

The resolution quotes this from 5 C. J., 404:

"It is a general rule, although there are statutory exceptions and variations, that a peace officer has no right to make an arrest without a warrant upon mere information of a third person."

This is only a part of the sentence. The omitted portion is more important from my point of view and contradicts

the point stressed by the majority. The complete sentence is

"It is a general rule, although there are exceptions and variations, that a peace officer has no right to make an arrest without a warrant, upon mere information of a third person or mere information of a third person or mere suspicion that a misdemeanor has been committed, that right being limited to arrests for offenses of the grade of felony, as elsewhere shown."

It will be noticed that the quoted portion relates to arrest for misdemeanor. For further proof, I invite attention to the title of the Section on page 401, paragraph (a), which leads: "For Misdemeanor—aa. In General." Let it be noted that the power to arrest for misdemeanor is different from, and more restricted than, the power to arrest for felony, as is further demonstrated by the last clause of the full sentence above quoted. This clause refers us back to section 30, p. 399, which says:

"At common law, (here again common law is mentioned), and subject to the provisions of any applicatory statute, a peace officer may arrest, without a warrant, one whom he has reasonable or probable grounds to suspect of having committed a felony, even though the person suspected is innocent, and, generally, although no felony has in fact been committed by any one, although, under some statutes, a felony must have been actually committed, in which case an officer may arrest, without a warrant, any person he has reasonable cause for believing to be the person who committed it."

As is elsewhere stated, section 6 of Rule 109 and section 2463 of the Revised Administrative Code, like the authorities I have cited, do not limit the power of a police officer to make arrest to those cases where he saw with his own eyes or heard with his own ears the commission of an offense. Section 6 of Rule 109 and section 2463 of the Revised Administrative Code are transcribed in full in the resolution, and I just suggest a careful reading thereof. Section 2463 of the Revised Administrative Code empowers police officers

"to 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,"

and section 6 of Rule 109 authorizes a peace officer or a private person to make arrest when

"an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it"

Rule 28 of the Provisional Law itself empowers judicial and administrative authorities "to detain, or cause to be detained person whom there is reasonable ground to believe guilty of some offense" or "when the authority or agent has reason to believe that unlawful act, amounting to a crime had been committed."

To make arrest on suspicion or on information is not new; it is an everyday practice absolutely necessary in the interest of public security and firmly enshrined in the jurisprudence of all civilized societies. The power to arrest on suspicion or on reasonable ground to believe that a crime has been committed is authority to arrest on information.

Information coming from reliable sources may be, and it often is, the basis of reasonable ground to believe that a crime has been committed or of reasonable ground of suspicion that a person is guilty thereof. Suspicion, reasonable ground and information are intertwined within the same concept.

"The necessary elements of the grounds of suspicion are that the officer acts upon the belief of the person's guilt, based either upon facts or circumstances within the officer's own knowledge, or upon information imparted by a reliable and credible third person provided there are no circumstances known to the officer sufficient to materially impeach the information received. It is not every idle and unreasonable charge which will justify an arrest. An arrest without a warrant is illegal when it is made upon mere suspicion or belief,

unsupported by facts, circumstances, or credible information calculated to produce such suspicion or belief."

Failure to take these principles into account has led to the belief that:

"The investigation which the city fiscal has to make before filing the corresponding information in cases of persons arrested without a warrant, does not require so much time as that made upon a complaint of the offended parties for the purpose of securing a warrant of arrest of the accused. In all cases above enumerated in which the law authorizes a peace officer to arrest without warrant, the officer making the arrest must have personal knowledge that the person arrested has committed, is actually committing, or is about to commit an offense in his presence or within his view, or of the time, place or circumstances which reasonably tend to show that such person has committed or is about to commit any crime or breach of the peace. And the testimony of such officer on the commission of the offense in his presence or within his view by the person arrested, or on the facts and circumstances that tend reasonably to show that said person has committed or is about to commit an offense, would be sufficient evidence or basis for the city fiscal to file an information without prejudice to his presenting of other evidence or witnesses, if any, during the trial to insure the conviction of the defendant." (Pp. 16-17 of the Resolution.)

Section 6 of Rule 109 of the Rules of Court and section 2463 of the Revised Administrative Code, as well as the authorities I have quoted, show the fallacy of the idea that the arresting officer knows, or should know, all the facts about the offense for the perpetration, or supposed perpetration, of which he has made the arrest. The resolution fails to realize that in the great majority of cases an officer makes arrest on information or suspicion; that "suspicion implies a belief or opinion as to the guilt based upon facts or circumstances which DO NOT AMOUNT TO PROOF;" and that information and suspicion by their nature require verification and examination of the informers and other persons and circumstances. While an officer may not act on unsubstantial appearances and unreasonable stories to justify an arrest without a warrant, obviously in the interest of security, an officer, who has to act on the spot and cannot afford to lose time, has to make arrest without satisfying himself beyond question that a crime has been committed or that the person suspected is guilty of such crime. A police officer can seldom make arrest with personal knowledge of the offense and of the identity of the person arrested sufficient in itself to convict. To require him to make an arrest only when the evidence he himself can furnish proves beyond reasonable doubt the guilt of the accused, would "endanger the safety of society." It would cripple the forces of the law to the point of enabling criminals, against whom there is only moral conviction or prima facie proof of guilt, to escape. Yet persons arrested on suspicion, on insufficient evidence or information are not necessarily innocent so that the prosecuting attorney should release them. Further and closer investigation not infrequently confirm the / suspicion or information.

The majority of arrests are not as simple as a police officer catching a thief slipping his hand into another's pocket or snatching someone else's bag, or surprising a merchant selling above the ceiling price, or seizing a person carrying concealed weapons. Cases of frequent occurrence which confront the police and the prosecution in a populous and crime-ridden city are a great deal more complicated. They are cases in which the needed evidence can only be supplied by witnesses, witnesses whom the arresting officer or private persons has not the authority or the time to round up and take to the city fiscal for examination within what remains, if any, of six hours. Let me give two examples.

- A murder with robbery is reported to the police. An alarm is broadcasted giving a description of the murderer. Later a police officer is told that the wanted man is in a store. He proceeds to the store and, besides believing in the good faith of his informant, detects in the man's physical appearance some resemblance to the description given in the alarm. All this occurs at the holy hours of night.

Should the officer refrain from making an arrest because he is not certain beyond reasonable doubt of the identity

of the suspected murderer? Should the city fiscal order the release of the prisoner because of insufficiency of evidence and because the six hours are expiring, or should he prefer formal charges (if that can be done at midnight) on the strength of evidence which, as likely as not, may be due to a mistaken identity? Should not the prosecuting attorney be given, as the law clearly intends, adequate time to summon those who witnessed the crime and who can tell whether the prisoner was the fugitive?, allowing the prisoner to give bail, if he can.

- A police officer is attracted by screams from a house where a robbery has been committed. The officer rushes to the place, finds a man slain, is told that the murderers have fled. The officer runs in the direction indicated and finds men with arms who, from appearances, seem to be the perpetrators of the crime. The people who saw the criminals run off are not sure those are the men they saw.

The night was dark, for criminals like to ply their trade under cover of darkness.

The officer does not, under these circumstances, have to seek an arrest warrant or wait for one before detaining the suspected persons. To prevent their escape he brings them to the police station. On the other hand, would the fiscal be justified in filing an information against such persons on the sole testimony of the police officer? Is it not

his duty to wait for more proofs on their probable connection with the crime? Should the city fiscal file an information on insufficient evidence, or should he, as the only alternative, order the release of the prisoners? Does either course subserve the interest of justice and the interest of the public? If the arrested persons are innocent, as they may be, is their interest best served by hasty filing of information against them, or would they rather have a more thorough investigation of the case?

Cases like these with varying details can be multiplied ad infinitum. They form the bulk of underworld activities with which the forces of law have to cope and with which the general public is vitally concerned. The public would not be secure in their homes and in the pursuit of their occupations if this Court, through unreasoning worship of formalism, throws down a method, practice and procedure that have been used here and elsewhere from time immemorial to the end of service and in the interest of public security. The public is not much interested in such minor offenses as pick-pocketing, fist fights and misdemeanors or violations of municipal ordinances for which arrests can be made by police officers only when committed in their presence or within their hearing.

The decision of this Court leaves the city fiscal no alternative between releasing prisoners for insufficiency of evidence due to lack of time to secure more, and filing information against persons who may be innocent of the crime charged. The latter course, to which the city fiscal is driven to play safe, defeats directly the very aims of preliminary investigation. The oft-repeated purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from open and public accusation of crime, and from the trouble, expense, anxiety of a public trial, and also to protect the State from useless and expensive prosecutions. (Hashim vs. Boncan, No. 47777, January 13, 1941; 40 Off. Gaz., 13th Supp. p. 13; U. S. vs. Mendez, 4 Phil.; 124; U. S. vs. Grant and Kennedy, 11 Phil. 122; U. S. vs. Marfori, 35 Phil. 666; People vs. Colon, 47 Phil. 443.) Even more deplorable would be the acquittal of guilty accused due to lack of proofs which the prosecution, if it had been afforded sufficient time, could have gathered.

The foregoing goes, too, for the concurring opinion. There is only one more point to which we wish to address ourselves briefly. The concurring opinion contains this passage:

"Dentro de las 6 horas hay tiempo mas que suficiente para meter en cuenta a toda la canalla * * * Pero; por Dios que no se violen ni pisoteen las garantias constitucionales por miedo a los gangsters!"

No one can disagree with this thought—as an abstract proposition. The only trouble is that the opinion does not cite any concrete constitutional provision or guaranty that is infringed by our dissent. I take the suggestion in the resolution—that "it would be proper for the interested parties to take the case to Congress, since it can not be done by judicial legislation"—to be a tacit recognition that the matter is purely one of statute and that no constitutional impediment is in the way of changing the law and enlarging the power of the city fiscal in the premises. And let it be said that the objection in the concurring opinion to this suggestion is rested, not on constitutional grounds but on the supposition that the law is good enough to be left alone. All of which tempts us to paraphrase the famous apostrophe of that equally famous woman in French history, and exclaim, "Oh Constitution! what grievous mistakes are committed in thy name!"

The concurring opinion is in error when it sees shadows of fear of gangster in our dissent. Society no less than a natural person has the right to protect itself, and the arrest and punishment of transgressors of its laws is one of its legitimate means of self-protection and self-preservation. As far as the insinuation of fear may reflect on those who are duty bound to have a part in such arrest

and punishment, the application of criminal laws without quarters to the end which they are intended to serve, is not in strict logic a sign of apprehension. Such course, rather than tolerance, leniency or indifference towards crimes and appeasement of lawless and other elements and groups who wield the power of physical and verbal retaliations, calls for exactly the opposite quality of fright.

[1] Any person making arrest for legal ground shall, without unnecessary delay and within the time prescribed in the Revised Penal Code, take the person arrested to the proper court or judge for such action as they may deem proper to take.

[1] There shall be a chief of police who * * * may take good and sufficient bail for the appearance before the city court of any person arrested for violation of any city ordinance: Provided, however, That he shall not exercise this power in cases of violations of any penal law, except when the fiscal of the city shall so recommend and fix the bail to be required of the person arrested; * * *.

PADILLA, J.:

I concur.

Motion denied.

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