

**MARIA CONCEJO BACAR AND PASCUAL MAGBANUA, PETITIONERS,
VS. NICOLAS TORDECILLAS, AS JUSTICE OF THE PEACE OF THE
MUNICIPALITY OF SIBALOM, PROVINCE OF ANTIQUE, RESPONDENT.**

G.R. No. 14486. November 19, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original action commenced in the Supreme Court for the writ of prohibition. The petitioners allege that on or about the 9th day of April, 1918, Juan Dominguez presented a claim against them in the court of the justice of the peace of the municipality of San Jose accusing them of the crime of adultery; that they were duly arrested; that a preliminary examination was held before said justice of the peace on the 29th day of April, 1918; and that at the conclusion of same the justice of the peace, finding that the evidence was insufficient to support the charge in said complaint, dismissed the same; that later, on the 14th day of May, 1918, the said Juan Dominguez presented in the court of the justice of the peace of the municipality of Sibalom against said petitioners another complaint accusing them of the crime of adultery; that upon said complaint the petitioners were arrested and taken before the justice of the peace of the said municipality (Sibalom) on the 18th day of May, 1918, for a preliminary examination; that upon being informed of said complaint and before pleading thereto, they objected to the jurisdiction of the said justice of the peace upon the ground that the alleged crime had not been committed within the municipality of Sibalom; that the said justice of the peace, Nicolas Tordecillas, overruled said objection on the 24th day of May, 1918, and set down said case for hearing on the 28th day of the same month.

In answering the foregoing allegations, the respondent alleged that he had jurisdiction to conduct said preliminary examination by virtue of the following order signed by the Honorable Norberto Romualdez, judge:

"The justice of the peace of Sibalom, Antique, is hereby authorized to make the preliminary investigation of the accusation brought before him by Francisco Dominguez against Pascual Magbanua and Maria Concejo Bacar for the crime of adultery.

"Issued at Bacolod, Occidental Negros, for Antique, on May 6, 1918.

(Sgd.) "NORBERTO ROMUALDEZ,
"Judge of the Twenty-second District,
"On duty in the Seventeenth Judicial District."

The respondent alleges that by virtue of said order and by virtue of section 211 of the Administrative Code of 1917, he had authority and jurisdiction to conduct said preliminary examination.

It is true, that under certain conditions, the judge of the district shall designate a justice of the peace of one municipality to act as justice of the peace in another. Those conditions are, that both the justice of the peace and the auxiliary justice shall be disqualified or unable to perform the regular duties of their office. If the office of the justice of the peace is vacant or the justice of the peace is absent or is disabled or disqualified, or resigns or is

dead, then the auxiliary justice of the peace may act. And in case there is no auxiliary justice of the peace who is qualified to act, then, in that case, the judge of the district may designate the nearest justice of the peace of the province to act as justice of the peace in such municipality, etc., and when so appointed, shall have jurisdiction of the cases in said municipality, etc.

Under said section (211), the judge of the district is not authorized to appoint a justice of the peace of another municipality to act until the above conditions are made to appear.

Inasmuch, therefore, as there is nothing in the record which shows that the regular justice of the peace of the municipality of San Jose, nor the auxiliary justice of the peace, were disqualified or unable to act for some reason or other, the judge of the district was without authority to appoint the justice of the peace of another municipality to act in their stead. The record not only shows that the justice of the peace was not disqualified to act, but that he was qualified to act and had acted in the premises.

From the foregoing it is clear that the respondent was without jurisdiction to hear and determine the question presented in the complaint before him.

Therefore, let the writ prayed for be issued, with costs. So ordered.

Torres, Araullo, Street, Malcolm, and Avanceña, JJ., concur.

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