

**MIGUEL R. CORNEJO, PETITIONER, VS. ANDRES GABRIEL,
PROVINCIAL GOVERNOR OF RIZAL, AND THE PROVINCIAL BOARD
OF RIZAL, COMPOSED OF ANDRES GABRIEL, PEDRO MAGSALIN AND
CATALINO S. CR...**

G. R. No. 16887. November 17, 1920

Ponente: MALCOLM, J.

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MALCOLM, J.:

The petitioner in this case, the suspended municipal president of Pasay, Rizal, seeks By these proceedings in mandamus to have the provincial governor and the provincial board of the Province of Rizal temporarily restrained from going ahead with investigation of the charges filed against him pending resolution of the case, and to have an order issue directed to the provincial governor commanding him to return the petitioner to his position as municipal president of Pasay. The members of the provincial board have interposed a demurrer based on the ground that this court has no right to keep them from complying with the provisions of the law. The provincial governor has filed an answer to the petition, in which he alleges as a special defense that numerous complaints have been received by him against the conduct Miguel R. Cornejo, municipal president of Pasay; that these complaints were investigated by him; that he came to the conclusion that agreeable to the powers conferred upon provincial governors, the municipal president should be temporarily suspended, and that an investigation is now being conducted by the provincial board.

Counsel for petitioner has argued, with much eloquence, that his client has been deprived of an office, to which he was elected by popular vote, without having an opportunity to be heard in his own defense. The respondents reply that all that the provincial governor and the provincial board have done in this case is to comply with the requirements of the law which they are sworn to enforce. Obviously, therefore, we should first have before us the applicable provisions of the Philippine law bearing on the subject of suspension of public officers.

Under the title of "Provincial supervision over municipal officers," Article IV of Chapter 57 of the Administrative Code, provides:

"The provincial governor shall receive and investigate complaints against municipal officers for neglect of duty, oppression, corruption, or other form of maladministration in office. For minor delinquency he may reprimand the offender; and if a more severe punishment seems to be desirable, he shall submit written charges touching the matter to the provincial board, and he may in such case suspend the officer (not being the municipal treasurer) pending action by the board, if in his opinion the charge be one affecting the official integrity of the officer in question. Where suspension is thus effected, the written charges against the officer shall be filed with the board within ten days."

"Trial of municipal officer by provincial board.-When written charges are preferred by a provincial governor against a municipal officer, the provincial board shall, at its next meeting, regular or special, furnish a copy of said charges to the accused official, with a notification of the time and place of hearing thereon; and at the time and place appointed, the board shall proceed to hear and investigate the truth or falsity of said charges, giving

the accused official full opportunity to be heard. The hearing shall occur as soon as may be practicable, and in case suspension has been effected, not later than fifteen days from the date the accused is furnished a copy of the charges, unless the suspended official shall, on sufficient grounds, request an extension of time to prepare his defense.

"Action by provincial board.-If, upon due consideration, the provincial board shall adjudge that the charges are not sustained, the proceedings shall be dismissed; if it shall adjudge that the accused has been guilty of misconduct which would be sufficiently punished by reprimand, or further reprimand, it shall direct the provincial governor to deliver such reprimand in pursuance of its judgment; and in either case the official, if previously suspended, shall be reinstated.

"If in the opinion of the board the case is one requiring more severe discipline, it shall without unnecessary delay forward to the Chief, of the Executive Bureau certified copies of the record in the case, including the charges, the evidence, and the findings of the board, to which shall be added the recommendation of the board as to whether the official ought to be suspended, further suspended, or finally dismissed from office; and in such case the board may exercise its discretion to reinstate the official, if already suspended, or to suspend him or continue his suspension pending final action.

"The trial of a suspended municipal official and the proceedings incident thereto shall be given preference over the current and routine business of the board.

"Action by Chief of Executive Bureau.-Upon receiving the papers in any such proceeding the Chief of the Executive Bureau shall review the case without unnecessary delay and shall make such order for the reinstatement, dismissal, suspension, or further suspension of the official, as the facts shall warrant. Disciplinary suspension made upon order of the Chief of the Executive-Bureau shall be without pay and in duration shall not exceed two months. No final dismissal hereinunder shall take effect until recommended by the Department Head and approved by the Governor-General."

With the foregoing legal provisions in mind, certain aspects of the case can be disposed of without difficulty. Thus it cannot be seriously contended that the courts should interfere with an orderly investigation which is about to be conducted by the provincial board. Nor can there be any doubt as to the meaning of the law. A very minute and extensive procedure is provided by the Legislature for central and provincial supervision of municipal officers. The provincial governor, in receiving and investigating complaints against such officers, may take three courses. For a minor delinquency he may reprimand the offender; but if the maladministration in office is more serious he may temporarily suspend the officer, and thereafter may file written charges against the officer with the provincial board. The procedure followed before the provincial board and later on appeal to the Chief of the Executive Bureau, while interesting, does not concern us. The important fact is that the law, in permitting a provincial governor temporarily to suspend a municipal officer, makes no mention of a formal hearing of the charges.

In the exercise of this disciplinary power by the provincial governor, all that he can do before the presentation of formal charges is either to reprimand the officer or to suspend him temporarily from office. In the latter case the provincial governor's action is not a finality. The law is especially careful to guard the rights of officers charged with maladministration in office. But the point is made that, notwithstanding the provisions of the law and notwithstanding long official practice, the temporary suspension of a municipal officer, without an opportunity to be heard in his own defense, is in contravention of the provisions of the Philippine Bill of Rights concerning due process of law.

So much has been written on the subject of due process of law that it would be futile to enter into its intricate mazes. It is self-evident, however, that, in ordinary cases, to condemn without a hearing violates the due process of law clause of the American Constitution and of the Philippine Bill of Rights. It is for this reason that we can

well understand the logic of those who cling to this thought and to whom a contemplated violation of the Constitution is most repugnant. It is but fair, in ordinary cases, that a public official should not be removed or suspended without notice, charges, a trial, and an opportunity for explanation. But not permitting our judgment to be unduly swayed by sympathy for the petitioner's brave fight, and recalling again that the courts have ordinarily to give effect to legislative purposes, it is further only fair to mention certain exceptions to the due process of law rule, which would seem to include the instant case.

The fact should not be lost sight of that we are dealing with an administrative proceeding and not with a judicial proceeding. As Judge Cooley, the leading American writer on Constitutional Law, has well said, due process of law is not necessarily judicial process; much of the process by means of which the Government is carried on, and the order of society maintained, is purely executive or administrative, which is as much due process of law, as is judicial process. While a day in court is a matter of right in judicial proceedings, in administrative proceedings it is otherwise since they rest upon different principles. (Weimer vs. Bunbury [1874], 30 Mich., 201; Den. vs. Hoboken Land and Improvement Co. [1856], 18 How., 272, followed in Forbes vs. Chuoco Tiaco [1910], 16 Phil., 534; Tan Te vs. Bell [1914], 27 Phil., 354; U. S. vs. Gomez Jesus [1915], 31 Phil., 218 and other Philippine cases.) In certain proceedings, therefore, of an administrative character, it may be stated, without fear of contradiction, that the right to a notice and hearing are not essential to due process of law. Examples of special or summary proceedings affecting the life, liberty or property of the individual without any hearing can easily be recalled. Among these are the arrest of an offender pending the filing of charges; the restraint of property in tax cases; the granting of preliminary injunctions ex parte; and the suspension of officers or employees by the Governor-General or a Chief of a Bureau pending an investigation. (See Weimer vs. Bunbury, supra; 12 C. J., 1224; Administrative Code, sec. 694.)

Again, for this petition to come under the due process of law prohibition, it would be necessary to consider an office as "property." It is, however, well settled in the United States, that a public office is not property within the sense of the constitutional guaranties of due process of law, but is a public trust or agency. In the case of Taylor vs. Beckham ([1899], 178 U. S., 548), Mr. Chief Justice Fuller said that: "Decisions are numerous to the effect that public offices are mere agencies or trusts, and not property as such." The basic idea of government in the Philippine Islands, as in the United States, is that of a popular representative government, the officers being mere agents and not rulers of the people, one where no one man or set of men has a proprietary or contractual right to an office, but where every officer accepts office pursuant to the provisions of the law and holds the office as a trust for the people whom he represents.

Coming now to the more specific consideration of the issue in this case, we turn to the article by Prof. Frank J. Goodnow, generally considered the leading authority in the United States on the subject of Administration Law, in Vol. 29, Cyclopedia of Law and Procedure, and find the rule as to suspension of public officers laid down very concisely as follows: "Power to suspend may be exercised without notice to the person suspended. (P. 1405.) The citation by Professor Goodnow to support his conclusion is State of Florida, ex rel. Attorney-General vs. Johnson ([1892], 30 Fla., 433; 18 L. R. A., 410). It was here held by the Supreme Court of Florida that the governor could, under section 15 of the executive article of the Constitution, suspend an officer for neglect of duty in office without giving previous notice to the officer of the charge made against him.

A later compilation of the pertinent authorities is to be found in 22 Ruling Case Law, pp. 564, 565. On the subject suspension of public officers it is here said:

"The suspension of an officer pending his trial for misconduct, so as to tie his hands for the time being, seems to be universally accepted as fair, and often necessary. * * * Notice and hearing are not prerequisites to suspension unless required by statute and therefore suspension without such notice does not deprive the officer

of property without due process of law. Nor is a suspension wanting in due process of law or a denial of the equal protection of the laws because the evidence against the officer is not produced and he is not given an opportunity to confront his accusers and cross-examine the witnesses."

The case to support the first sentence in the above enunciation of the rule is *State vs. Megaarden* (85 Minn., 41), which in turn is predicated on *State vs. Peterson* ([1892], 50 Minn., 239). In a discussion of the subject more general than specific, it was said:

"The safety of the state, which is the highest law, imperatively requires the suspension, pending his trial, of a public officer especially a custodian of public funds, charged with malfeasance or nonfeasance in office. Suspension does not remove the officer, but merely prevents him, for the time being, from performing the functions of his office: and from the very necessities of the case must precede a trial or hearing. Such temporary suspension without previous hearing is fully in accordance with the analogies of the law. It is a constitutional principle that no person shall be deprived of his liberty or property except by due process of law, which includes notice and a hearing, yet it was never claimed that in criminal procedure a person could not be arrested and deprived of his liberty until a trial could reasonably be had, or that in civil actions *ex parte* and temporary injunctions might not be issued and retained in proper cases, until a trial could be had, and the rights of the parties determined. We have no doubt, therefore, of the authority of the legislature to vest the governor with power to temporarily suspend a county treasurer pending the investigation of the charges against him, of official misconduct."

The case cited by the editors of *Ruling Case Law* as authority for their second sentence is that of *Griner vs. Thomas* ([1907], 101 Texas, 36; 16 Ann. Cas., 944). The holding of the court here was that it is within the power of the legislature to authorize the temporary suspension of a public officer during the pendency of valid proceedings to remove such officer and as an incident to such proceedings, notwithstanding the fact that the constitution has given power to remove such officer only for cause and after a hearing. Notice and hearing are not prerequisites to the suspension of a public officer under a statute which does not provide for such notice and hearing.

The third case cited by *Ruling Case Law* comes from the United States Supreme Court. (*Wilson vs. North Carolina* [1897], 169 U. S., 586.) An examination of the decision, however, shows that while it tends to substantiate the rule, the facts are not exactly on all fours with those before us. Without, therefore, stopping to set forth the facts, only the following from the body of the decision need be noted, viz.:

"In speaking of the statute and the purpose of this particular provision the Supreme Court of the State said: 'The duty of suspension was imposed upon the Governor from the highest motives of public policy to prevent the danger to the public interests which might arise from leaving such great powers and responsibilities in the hands of men legally disqualified. To leave them in full charge of their office until the next biennial session of the legislature, or pending litigation which might be continued for years, would destroy the very object of the law. As the Governor was, therefore, by the very letter and spirit of the law, required to act and act promptly, necessarily upon his own findings of fact, we are compelled to hold that such official action was, under the circumstances, due process of law. Even if it were proper, the Governor would have no power to direct an issue like a chancellor.'

"The highest court of the State has held that this statute was not a violation of the constitution of the State; that the hearing before the Governor was sufficient; that the office was substantially an administrative one, although the commission was designated by a statute subsequent to that which created it, a court of record; that the officer taking office under the statute was bound to take it on the terms provided for therein; that he was lawfully suspended from office; and that he was not entitled to a trial by jury upon the hearing of this case in the trial court. As a result the court held that the defendant had not been deprived of his property without due process of law, nor had he been denied the equal protection of the laws.

* * * * *

"We are of opinion the plaintiff in error was not deprived of any right guaranteed to him by the Federal Constitution, by reason of the proceedings before the Governor under the statute above mentioned, and resulting in his suspension from office.

"The procedure was in accordance with the constitution and laws of the State. It was taken under a valid statute creating a state office in a constitutional manner, as the state court has held. What kind and how much of a hearing the officer should have before suspension by the Governor was a matter for the state legislature to determine, having regard to the constitution of the State." (There can also be cited as supporting authority *State ex rel. Wendling vs. Board of Police and Fire Commissioners* [1915], 159 Wis., 295; *Sumpter vs. State* [1906], 81 Ark., 60; *Gray vs. McLendon* [1910], 134 Ga., 224; *State vs. Police Commissioners*, 16 Mo. App., 947; *Preston vs. City of Chicago* [1910], 246 Ill., 26; and *People vs. Draper* [1910], 124 N. Y. S., 758, where it was held that the legislature has the right to authorize an officer to remove an appointive or elective officer without notice or hearing.)

Certain intimations have been made that under the procedure prescribed by the law an injustice might be done municipal officers. Such suppositions are not unusual even as to cases before the courts, but in this as in all other instances, the presumption always is that the law will be followed and that the investigation and the hearing will be impartial. In the language of Justice Trent in *Severino vs. Governor-General* ([1910], 16 Phil., 366, 402), "the presumption is just as conclusive in favor of executive action, as to its correctness and justness, as it is in favor of judicial action." We entertain no doubt that the provincial governor, fully conscious of the trust reposed in him by the law, will act only in cases where strong reasons exist for exercising the power of suspension and upon a high consideration of his duty.

The suggestion that an unfriendly governor might unduly delay the hearing is also without much force. The same might be said of any administrative officer, or in fact of any judicial officer. The presumption, again, is that every officer will do his duty promptly, and if he does not, certainly a remedy can be found to make him do so. Not only this, but the law before us expedites the proceedings by fixing a short period of ten days within which the provincial governor must lay the charges before the provincial board, which must be heard by the latter body within fifteen days. Of more compelling force is the suggestion from the other side that the public interest might suffer detriment by postponing the temporary suspension until after the hearing.

Our holding, after most thoughtful consideration, is that the provisions of section 2188 of the Administrative Code are clear and that they do not offend the due process of law clause of the Philippine Bill of Rights. Accordingly, it is our duty to apply the law without fear or favor.

Petition denied with costs. So ordered.

Mapa, C. J., Street, Avanceña and Villamor, JJ., concur.

DISSENTING

JOHNSON, J.,

This is an original action for the writ of mandamus to require the respondents to reinstate the petitioner to his office as president of the municipality of Pasay, Province of Rizal.

The facts upon which the petition is based are not in dispute. They are not only admitted by the demurrer of the respondent Andres Gabriel but were expressly admitted by him in open court. They are:

(1) That the petitioner was duly elected by the people of the municipality of Pasay as president for the period of three years from the 16th day of October, 1919;

(2) That the petitioner was suspended from said office on the 13th day of September, 1920, by the respondent Andres Gabriel, without notice, without a hearing, and without an opportunity to present any proof whatsoever in his defense.

The facts having been admitted, we have only a question of law to decide, to wit: Is the governor of a province authorized under the law to suspend a municipal president from his office, to which he has been legally elected for a period fixed by the law, without notice, without a hearing, and without an opportunity to present proof in his defense?

Section 3 (first paragraph) of the Jones Law provides "that no law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the law."

Section 2188 of Act No. 2711 provides:

"SEC. 2188. Supervisory authority of provincial governor over municipal officers.-The provincial governor shall receive and investigate complaints against municipal officers for neglect of duty, oppression, corruption, or other form of maladministration in office. For minor delinquency he may reprimand the offender; and if a more severe punishment seems to be desirable, he shall submit written charges touching the matter to the provincial board, and he may in such case suspend the officer (not being the municipal treasurer) pending action by the board, if in his opinion the charge be one affecting the official integrity of the officer in question. Where suspension is thus effected, the written charges against the officer shall be filed with the board within ten days."

It will be noted that while section 2188 provides for a suspension, it makes no provision for the procedure in such cases. In the absence of a procedure, prescribed by the statute, we are of the opinion that the procedure marked by the Constitution (Jones Law) must be followed, to wit: That no person shall be deprived of his life, liberty, or property without due process of law. "Due process of law" has been defined many, many times, and simply means that before a man can be deprived of his life, liberty or property, he must be given an opportunity to defend himself.

The right to hold, occupy and exercise an office is as much a species of property within the protection of the law, as any other thing capable of possession; and, to wrongfully deprive one of it or unjustly withhold it, is an injury which the law can redress in as ample a manner as any other wrong. And that right is regarded as a right within the protection of the Fourteenth Amendment to the Constitution of the United States, which says: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law." (Pennoyer vs. Neff, 95 U. S. 714; Dent vs. West Virginia, 129 U. S., 114, 124; Huling vs. Kaw, etc. Ry. Co., 130 U. S., 559; Scott vs. Neal, 154 U. S., 34; New Orleans Waterworks vs. New Orleans, 164 U. S., 471, 480; Twining vs. New Jersey, 211 U. S., 78, 110; Haddock vs. Haddock, 201 U. S., 562, 567; Michigan Trust Co. vs. Ferry, 175 Fed., 667; Bunton vs. Lyford, 37 N. H., 512 [75 Am. Dec, 144]; Foster vs. Kansas, 112 U. S., 201.)

The power to remove an officer who has been duly elected for a specified period can be exercised only, and for just cause, after the officer has had an opportunity for defense.

In the absence of express power, given in express words, the presumption must be, in view of the provisions of the Jones Law above quoted, that the legislature intended that every officer duly elected for a fixed period should be entitled to hold his office until the expiration of such period, unless removed therefrom for cause, after a fair

and impartial investigation in which he has been given an opportunity to defend himself. (1 Dillon, Mun. Corporations, sec. 250; Field vs. Commonwealth, 32 Pa., 478; Stadler vs. Detroit, 13 Mich., 346; State vs. Bryce, 7 Ohio St., 2; Bagg's Case, 11 Coke, 93; Hoboken vs. Gear, 27 N. J. L., 265; Dullan vs. Wilson, 53 Mich., 392; People vs. Therrien, 80 Mich., 187; Robinson vs. Miner, 68 Mich., 549.)

It seems to me that if the hero of the Filipino people, Jose Rizal, could read the decision of the majority of this court and thereby learn that one of the citizens of the Philippine Islands has been deprived of his property and rights, without a hearing, he would turn over in his grave and, with a wailing cry, exclaim: "A social cancer of a new type is again in my beloved land!"

The question presented is not a new one. It has been discussed since long before the English people, in mass, met upon the fields of Runnymede and demanded and obtained from an unwilling king the Magna Charta, which has constituted the chief stone in the political edifice of all the civilized nations since that time (year 1215). In creating the constitution for the Filipino people, the United States Government expressly provided that no person, no Filipino, no citizen of the Philippine Islands, shall be deprived of his life or property without "due process of law."

The question has been presented to the courts many, many times, and without exception the said provision of the constitution has been sustained, except where the same constitution contains other provisions authorizing the suspension of officers without a hearing. In the Philippine Islands there is no authority in the constitution (the Jones Law) authorizing or justifying the statute in question. Not only is such a statute not authorized but it is absolutely prohibited by the provisions of the Jones Law quoted above. The Jones Law provides that no law shall be enacted, etc.

In a discussion of the subject before us we must bear in mind the distinction between an appointive and an elected officer. There are a few cases which hold that in case of an appointive officer, where the appointment is at the pleasure of the appointing power, his suspension or removal is exercisable at the mere discretion of the appointing power. (State vs. St. Louis, 90 Mo., 19; Field vs. Commonwealth, 32 Pa. St., 478; State vs. Johnson, 18 L. R. A., 410.)

Where a person is appointed to an office and is a mere employee, whose position does not have the dignity of an office, and, by virtue of his appointment, may be removed or suspended at the will of the appointing power, then, of course, the rule is different. Such persons are not officers but mere employees. (Thorpp vs. Langdon, 40 Mich., 673; People vs. McDill, 15 Mich., 182; Portman vs. State Board, etc., 50 Mich., 258; Attorney-General vs. Cain, 84 Mich., 223.)

On the other hand the authorities are practically unanimous, where the appointment or election is made for a definite term, and the removal is to be for cause, that the power of removal or suspension cannot be exercised without due notice and hearing. (Mechem on Public Officers, sec. 454; Dullan vs. Wilson, 53 Mich., 392 [51 Am. Rep., 128] ; Bagg's Case, 11 Coke, 99; King vs. Gaskin, 8 Term Rep., 209; Ramshay's Case, Ad. & E. [N. S.], 190; Williams vs. Bagot, 3 B. & C., 786; Queen vs. Archbishop, 1 Ell. & EL, 545; Page vs. Hardin, 8 B. Mon. [Ky.], 672; Willard's Appeal, 4 R. I., 601; Field vs. Commonwealth, 32 Pa. St., 478; State vs. Bryce, 7 Ohio, 82; Foster vs. Kansas, 112 U. S., 201; Kenard vs. Louisiana, 92 U. S., 480.)

The constitution and laws of the Philippine Islands having created the office of president of the different municipalities and having fixed definitely the tenure of said office, the legislature, by virtue of the provisions of the Jones Law, is prohibited from enacting any law which would justify any individual in the state in removing him from office without first presenting charges against him and giving him an opportunity to be heard. (Removal of Public Officer, 25 Am. Law Rev., 201; State vs. Commonwealth, 3 Metcalf [Ky.], 237; Page vs. Hardin

[supra]; Brown vs. Grover, 6 Bush [Ky.], 1; Commonwealth vs. Gamble, 62 Pa., 342; State vs. Draper, 50 Mo., 353; State vs. Thoman, 10 Kansas, 191; State vs. McMeely, 24 La. Ann., 19; Cooley, Const. Lim., 6th ed., p. 78; People vs. Draper, 15 N. Y., 532; State vs. Williams, 5 Wis., 308; State vs. Baker, 38 Wis., 71; State vs. Hewitt, 16 L. R. A., 413.)

In the case of State vs. Hewitt (16 L. R. A., 413) the attorney-general of the State of South Dakota admitted in open court "that it is true, as contended by the relator, that the preponderance of authorities is against the removal of the officer for cause, whose term of office is fixed by law, without formal charges and a hearing thereon on timely notice."

Mr. Justice Bailey of the English Court, in the case of Williams vs. Bagot (3 Barn and C, 785), said: "It is contrary to common sense of justice that any party could be deprived of his rights and be concluded unheard."

Every officer in the Philippine Government who has been legally elected for a fixed period has a right to be heard under the provisions of the Jones Law before he can be deprived of his rights. He has a right to be heard and to explain.

In the absence of express constitutional authority, the Philippine Legislature is prohibited from enacting a law by which any officer elected by the people for a definite period may be suspended or removed from his office without first having been given an opportunity to be heard and to present whatever defense he may have. (Jones Law, sec. 3; Dullan vs. Wilson, 51 Mich., 128; Hallgren vs. Campbell, 82 Mich., 255; Jacques vs. Little, 51 Kansas, 300.)

In the case of Dullan vs. Wilson (53 Mich., 392) the Supreme Court of the State of Michigan, with whom Mr. Justice Cooley agreed, said: "We have examined carefully the authorities cited upon the brief of the learned counsel for relator in support of the position that no notice is required to be given, and that the action of the Executive is final and conclusive. It is sufficient to say, without commenting specially upon them, that the reasoning of those cases does not commend itself to our judgment. They appear to us to be opposed, not only to the decided weight of authority, but also to the fundamental principles of justice."

In the case of Hallgren vs. Campbell (82 Mich., 255), the Supreme Court of the State of Michigan said: "We have not found any case where an officer who is appointed for a fixed term has been held to be removable except for cause, and, wherever cause must be assigned for the removal of the officer, he is entitled to notice and a chance to defend himself."

In the case of Han vs. Boston (142 Mass., 90) it was held that no power to remove or suspend an officer could be exercised until after notice and an opportunity by the official in question to be heard in his own defense.

In the case of State vs. St. Louis (90 Mo., 19) the Supreme Court said: "When the removal is not discretionary, but must be for a cause, * * * and nothing is said as to the procedure, a specification of the charges, notice, and an opportunity to be heard are essential."

Mr. Dillon, in his valuable work on Municipal Corporations (sec. 250) says: "Where the right of removal or suspension is confined to specific causes, such power cannot be exercised until there have been formulated charges against the officer, notice thereof, and an opportunity for defense." (Biggs vs. McBride, 17 Ore., 640; State vs. Hawkins, 44 Ohio St., 98.)

In the case of State vs. Hastings (16 L. R. A., 791, 797) the Supreme Court of Nebraska, after citing and commenting not only upon the cases cited above but also upon other cases, said: "It seems plain to us that the doctrine of these cases is in accord with the weight of authority and is supported by the soundest reasons."

It is true that a few cases can be found which hold that an officer may be suspended under a statute, without notice and without a hearing. But it is believed that an examination of each of such cases will show that such statutes are authorized by the constitution of the particular state. (Grines vs. District Judge, 101 Tex., 36; Poe vs. State, 72 Tex., 625; State vs. Johnson, 18 L. R. A., 410.)

All that has been said above relates only to the petition for mandamus against the respondent the provincial governor of Rizal. I am fully convinced that a great preponderance of the jurisprudence upon the question which I have here discussed shows clearly that the petitioner herein was suspended in a manner not authorized by law, and that the writ of mandamus prayed for should be issued, directing the reinstatement of the petitioner.

With reference to the respondent provincial board, the record shows that it was not a party to the acts complained of in the petition in the present case. The petition, therefore, as against the provincial board should be denied.

DISSENTING

ARAULLO, J.,

Section 2188 of the Administrative Code which empowers the provincial governor to investigate complaints against municipal officers for neglect of duty, corruption or other form of maladministration in office does not, as may be seen from the text itself of said section, empower the provincial governor to suspend the officer against whom the complaint may be presented pending the investigation. There is even no word whatever in said section from which such power may be inferred.

The suspension of the officer against whom the complaint may have been presented (when he is not a municipal treasurer) may, according to said section, be ordered by the provincial governor when written charges are submitted by the latter to the provincial board after the investigation has been made, if he thinks it desirable to impose a more severe punishment, or if, in his opinion, the charge is one affecting the official integrity of the officer in question; and, in this case, that is, when the suspension is effected after the investigation is held, such written charge against said official must be presented by the governor to the provincial board within the period of ten days. Therefore, it is clear and evident, according to the text of said section, that during the investigation that the provincial governor may hold, in view of a charge presented against a municipal officer, the latter cannot be suspended from his office for the simple reason that such investigation may end in a reprimand of the officer, which is the only punishment that the provincial governor may impose in such case upon the municipal officer, and the law does not empower the governor to order said suspension at that time, except only when a complaint is presented against the municipal officer to the provincial board.

If as has been said, the investigation which the provincial governor may hold against a municipal officer may end either in the imposition of a punishment, such as a reprimand of the officer or in a complaint against the municipal officer which the provincial governor may submit to the provincial board,-in the latter case suspending said municipal officer from that time, that is, from the time the complaint is made and submitted to the board within the period of ten days, a period determined and fixed, which the law grants for said purpose,-it is evident that the municipal officer should be notified of the complaint and therefore should be heard in said investigation; otherwise, in holding the investigation without the presence of the officer against whom the complaint may have been presented, and, in holding, at most, a summary trial against him without first hearing him or giving him an opportunity to defend himself, the reprimand imposed upon him, as the result of the investigation in the first case to which said article 2188 refers, would be a penalty imposed upon the officer without due process of law.

If this is true, it is also true that the officer subjected to investigation should be notified of the complaint and should be heard in said investigation for, if such investigation should end in a charge which the provincial governor may consider proper to present against him to the provincial board, such investigation would be the basis of the charge against the officer and the provincial board should take cognizance of such investigation in the corresponding proceeding. If the most vulgar criminal is notified of the complaint presented against him before a justice of the peace and is heard in the preliminary investigation which this judicial officer must hold before the corresponding information is filed by the fiscal in a court of first instance, and if in that investigation he is given the opportunity to plead guilty or not guilty as well as to defend himself in order that the justice of peace holding the investigation may consider the merits of the complaint and the result thereof, so that he may determine whether or not reasonable motives exist for him to believe that the accused is guilty and also to determine, as a consequence, whether sufficient motives exist to present against the accused the corresponding information in the Court of First Instance these being facts which the fiscal in turn should consider before filing the corresponding information it is unreasonable, unjust and illegal that, in a preliminary investigation such as that held by the provincial governor in the second case referred to in section 2188 by virtue of the complaint presented to him against a municipal officer, such municipal officer should not be notified of the complaint or heard or given the opportunity to defend himself in order that the provincial governor may duly determine whether it is proper to impose upon said officer a more severe punishment or whether the abuse or neglect of duty imputed to him is among those that affect the official integrity of said officer.

"When a complaint charging the commission of a delito (felony) is laid before a magistrate, the accused is entitled as of right to a preliminary investigation as to 'probable cause' before being committed to stand trial for the crime charged therein." (U. S. vs. M'Govern, 6 Phil., 621.)

"When a preliminary examination, under the provisions of General Orders, No. 58, is conducted by a judge or by a justice of the peace in this jurisdiction, either within or without the city of Manila, the accused has a right to be present and to be heard by himself and by counsel and to present witnesses in his behalf." * * * (U. S. vs. Grant and Kennedy, 18 Phil., 122.)

"The object of a preliminary investigation, or a previous inquiry of some kind, before an accused person is placed upon trial, is to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from an open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions." (U. S. vs. Grant and Kennedy, 18 Phil., 122.)

The doctrine established by this court in the cases above mentioned, and in many others that need not be cited, is applicable also to the case where an investigation is held, according to said section 2188 of the Administrative Code, by the provincial governor by virtue of a complaint presented against a municipal officer, because without an investigation held in legal form, that is, by hearing the person accused of a crime in a judicial complaint or the municipal officer accused in a complaint presented to the provincial governor, and giving him the opportunity to defend himself, the information against the accused in the first case, can not be filed in the Court of First Instance and, in the second case, the complaint against the municipal officer, which may result in his discharge, can not be presented to the provincial board; and as the right to be present at the investigation, and be heard by himself or through an attorney and present witnesses in his favor, which are what constitute due process of law, is an essential right of the accused in either case, then, if in the investigation by the provincial governor of Rizal, of the complaint received by him against Miguel Cornejo, municipal president of Pasay, and referred to in his answer, said governor, without previously notifying the accused municipal president of said charges, held a preliminary investigation in his absence, without hearing him and without giving him an opportunity to defend himself, the complaint against said municipal officer filed by said provincial governor of Rizal with the provincial board is

without foundation and is illegal for want of due process of law in said investigation. Therefore, the administrative proceeding instituted against said municipal officer by virtue of that complaint is for that reason affected with a radical vice and it is evident that the provincial governor has not acted in accordance with the clear and conclusive provisions of the section of the Administrative Code already cited and that he has acted in excess of his powers, not only in ordering the suspension of the municipal president, petitioner herein, but also in presenting to the provincial board, as a result of said investigation, the complaint against him. Hence the proceeding instituted before said provincial board by virtue of said complaint, is illegal and void.

For the reasons above stated, in dissenting from the respectable opinion of the majority, I am of the opinion that the petition presented by Miguel Cornejo, municipal president of Pasay, against Andres Gabriel, provincial governor of Rizal as well as against the provincial board of Rizal, composed of Andres Gabriel, Pedro Magsalin, and Catalino S. Cruz, is well taken, and the respondents should be, as they now are, ordered to pay the costs.

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