

**ESTANISLAO MAYUGA AND SIMEON SAN AGUSTIN, PETITIONERS,
VS. QUIRICO ABETO, AUXILIARY JUDGE OF FIRST INSTANCE OF
ZAMBOANGA, RESPONDENT.***G.R. No. 17573, August 25, 1921*

Ponente: STREET, J.

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This is an original petition for the writ of certiorari with a view to quashing an execution which the Judge of the Court of First Instance at Zamboanga has ordered to be issued against the petitioners, Estanislao Mayuga and Simeon San Agustin, in a criminal cause pending in the respondent's court, wherein one Jose Byron Santos has been convicted of the offense of practicing medicine without license, these petitioners being the sureties on his appearance bond. The respondent judge having answered, the cause is now before us for the resolution of the questions presented upon petition and answer.

It appears that in the criminal proceeding against Jose B. Santos, already mentioned, the petitioners obligated themselves, as contemplated in section 67 of General Orders No. 58, to the effect that the accused should, among other, things, appear and answer the charge against him. The cause was set for hearing on July 8, 1920, upon which date neither the accused nor his bondsmen appeared. Thereafter on October 16, 1920, upon the motion of the fiscal, the presiding judge, as was proper, declared the bond forfeited and fixed the period of thirty days within which the bondsmen should produce their principal or explain the reasons why he had not appeared at the date set for the hearing of the cause. In response to this order, the bondsmen, on November 2, 1920, filed an affidavit in the trial court, stating that upon the date set for the hearing of the cause against Jose B. Santos, the latter was sick and could not for that reason appear. On December 4, thereafter, Judge A. Horrilleno, then presiding, without expressly passing on the sufficiency of the facts stated in the affidavit to constitute a just ground for relieving the bondsmen, declared that said affidavit was insufficient for the reason that, in his opinion, it was necessary that the bondsmen should appear personally before him. He accordingly conceded to them another period of thirty days within which they might appear personally and show cause why execution should not issue.

In this connection it appears that said bondsmen are residents of Paranaque in the Province of Rizal, and as the proceedings in question were held in the Court of First Instance of Zamboanga, it would have involved considerable hardship on them to be required to appear personally in that court, even if they had received timely notice. But it is not pretended they were personally served with notice of that order, though it does appear that on December 8, 1920, a copy of the order was served on Mr. Vicente Bautista, of Zamboanga, who was attorney for the accused Jose B. Santos in the criminal cause pending in that court.

On January 10, 1921, neither the principal nor his bondsmen having appeared, Judge Quirico Abeto', the Auxiliary Judge then presiding in the Court of First Instance of Zamboanga, entered an order, upon the motion of the fiscal, to the effect that execution should issue against the bondsmen; whereupon the present petition was filed in this court. In a subsequent writing in the form of a motion, but which has been allowed by this court as an

amendment to the petition, the petitioners show that on January 26, 1921, Jose B. Santos personally appeared in the Court of First Instance of Zamboanga, pleaded guilty to the charge of practicing medicine without license, was fined accordingly, and paid the fine *instante*.

We are of the opinion that the issuance of the execution against the bondsmen under the circumstances stated was irregular and beyond the competency of the court. In this connection it will suffice to fix the attention upon the order of December 4, 1920, whereby Judge Horrilleno conceded to the petitioners thirty days within which they might appear personally and show cause why their principal had not appeared up to that date to answer the charge against him in the Court of First Instance of Zamboanga. The suggestion contained in that order to the effect that it was necessary for the bondsmen to appear in person was of course mistaken; but having made the order in those terms it was incumbent on the court to give notice to the bondsmen either personally or by service on an attorney of record representing them in that court. Admittedly no personal notice of that order was given to them; and the service of a copy of the order upon the attorney then representing Jose B. Santos was not in our opinion sufficient.

It is undoubtedly true that the proceedings incident to the forfeiture of the bond given for the appearance of an accused person in a criminal case are connected with such case, for the giving of the bond is an incident therein. Nevertheless the personal liability of the bondsmen is a matter wholly independent of the question at issue in the criminal proceeding; and it cannot be taken as a matter of law that the attorney representing the accused in a criminal case is authorized to accept or receive notice of an order requiring the personal appearance of the bondsmen.

It results that the execution issued pursuant to the order of January 10, 1921, should be withdrawn, if already in the hands of the sheriff, and quashed; and the petitioners, without further order of the Court of First Instance, are hereby allowed thirty days from the date of service of notice of this decision upon their attorney of record in this court, within which they may appear in said Court of First Instance, either in person or by attorney, and show cause, if any there be, why judgment upon the bond should not be executed. No costs will be awarded. So ordered.

Johnson, Araullo, Avancena, and Villamor, JJ., concur.

Writ granted.

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