

**NICOLAS RAFOLS, PETITIONER, VS. GUILLERMO F. PABLO,
AUXILIARY JUDGE OF FIRST INSTANCE OF THE TWENTIETH
JUDICIAL DISTRICT, RESPONDENT.***G.R. No. 30167. November 14, 1928*

Ponente: STREET, J.

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This is an original petition, addressed to this court, for a writ of prohibition to restrain the respondent, Guillermo F. Pablo, as Auxiliary Judge of the Court of First Instance of Cebu (Twentieth Judicial District), from trying criminal case No. 9743 of said court; and the cause is now before us for determination upon petition and answer.

The case raises a single question of law, which is, Whether the Secretary of Justice may lawfully authorize, or direct, an Auxiliary Judge of First Instance to take cognizance of, and try a case that has already been regularly assigned to another judge presiding in one of two salas of which the particular court is composed? The facts out of which the case arises are briefly these: On March 10, 1927, the Secretary of Justice promulgated Administrative Order No. 23, prescribing the method for distributing the business of the Court of First Instance of the Twentieth Judicial District among the three judges pertaining to said court, consisting of two Judges of First Instance and the Auxiliary Judge of First Instance. Pursuant to this order, criminal case No. 9743 was assigned first, to Judge J. C. Vickers, presiding in the First Sala, but the case was subsequently transferred to the Second Sala, where Judge Jose de la Rama presides. No question is made as to the regularity of this transfer. While the case was thus resting in the court of Judge De la Rama, the Honorable Luis P. Torres, Acting Secretary of Justice, requested Honorable Guillermo F. Pablo, Auxiliary Judge of First Instance of said court, to take charge of the trial or disposition of said case, in view of the fact that it had remained untried on the docket of the court for a long time.

Pursuant to this request, the aforesaid judge assumed cognizance of the case, and it is admitted by the petitioner herein that Judge Pablo now has the case before him, it being alleged that he had made orders in the case and set the same for trial before him. From a copy of an order of August 18, 1928, made by Judge De la Rama—which may or may not be properly before us—we gather that in the latter part of June, 1928, Judge De la Rama, before whom the case had been pending, made an order transferring case No. 9743 to Judge Pablo, the Auxiliary Judge, but said order having been lost, the order of August 18, 1928, was made by Judge De la Rama confirming and ratifying said lost order. Whether or not any such order of transfer was actually made by Judge De la Rama we consider of no moment, since if the Secretary of Justice had authority to direct the transfer of the case to the Auxiliary Judge, and the latter has in fact assumed cognizance of the case, even without the participation of Judge De la Rama, no order of transfer by Judge De la Rama would be necessary. The assumption of jurisdiction over the case by Judge Pablo, in response to the request of the Secretary of Justice, is equivalent to a transfer by direction of the Secretary. The question therefore remains, as before, whether or not the Secretary of Justice, in the exercise of his supervision over the work of the courts, has authority to transfer a case from one of the salas to the court of the Auxiliary Judge.

Upon examining the pertinent provisions of law, we discover no reason to doubt that the Secretary of Justice has lawfully exercised his administrative authority in requesting Judge Pablo to assume charge of criminal case No. 9743, with the result that the case is now lawfully pending before said judge. In the first place, the supervision over Courts of First Instance, in the administrative sense, is vested by law in the Department of Justice, which is presided over by the Secretary of Justice (Adm. Code, secs. 84, 76); and among the specific administrative powers conferred upon a department head is that of giving instructions, not contrary to law, necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department (Adm. Code, sec. 79 [B], as amended by sec. 2, Act No. 2803). In the second place, by another provision of the Code, it is declared that the Auxiliary Judges of First Instance shall, at the direction of the Secretary of Justice, assist any District Judge (Adm. Code, sec. 157, as amended by sec. 1, Act No. 3107). But the Courts of First Instance are chiefly occupied with the hearing and determination of causes; and it is obvious that the assistance to be rendered by Auxiliary Judges of First Instance must consist mainly in the work of hearing and determining causes. The Secretary of Justice, under the provisions above cited, consequently has the power to authorize or direct the Auxiliary Judge to assume cognizance of, and try any particular case pending before a Judge of First Instance, when, in the opinion of the Secretary, such step is required for the "harmonious and efficient administration" of the work of the court. Whether or not such a condition exists, with respect to a particular case, as to "require the exercise of this power, is a matter exclusively for the determination of the Secretary.

But it is insisted that the power of the Secretary of Justice to give particular direction in the matter now under consideration has been taken away by reason of the fact that he has, in Administrative Order No. 23, of March 10, 1927, prescribed a general method to be followed in the distribution of judicial business among the three judges attached to the Court of First Instance of the Twentieth Judicial District. In this connection reliance is placed upon the closing words in the last paragraph of section 154 of the Administrative Code, as amended by section 1 of Act No. 3107, wherein it is declared that in case of disagreement between the judges as to the method of distribution of the work, the Secretary of Justice shall decide, and said Secretary "shall be empowered to promulgate rules for the purpose of preventing conflicts between the several branches." It will be noted, however, that this provision, authorizing the Secretary of Justice to promulgate rules for the distribution of business among the different branches of the court deals with the general method for the distribution of business, and the exercise of the power of making such regulations does not interfere with the more particular power conferred upon the Secretary of Justice by other provisions of law which we have already cited. In other words the two powers are concurrent, and the exercise of one does not interfere with the exercise of the other.

From what has been said, it is obvious that the authority of the Administrative Head in the matter now in question has been properly exercised.

The petition must therefore be denied, and it is so ordered, with costs.

Johnson, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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