

IN THE MATTER OF A. K. JONES, CLERK OF THE COURT OF LAND REGISTRATION.

G.R. No. 3895. December 14, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

On the 5th day of January, 1907, the presiding judge of the Court of Land Registration made the following order:

"It has been noticed that, in the recommendations made by the clerk of this court for appointment of the personnel serving in this court, preference is not given to the filling of such positions as are of more urgent necessity for the good and easy progress of business herein.

"In order that such an anomaly may not in the future be repeated to the prejudice of the interests of this institution, the clerk hereof, A. K. Jones, is hereby ordered henceforth to submit to the undersigned judge any recommendation which he may intend to make, not only with respect to the appointment of a new employee, stating the duties to which he will be assigned, and the need of his services, but with regard to the promotion of existing employees, on the understanding that no proposals shall be made without the written approval of the judge of this court."

This order was served upon the appellant, who was clerk of that court. It having come to the knowledge of the judge that his directions had not been complied with, on the 29th day of January, 1907, he made an order requiring the appellant to appear and show cause why he should not be punished for contempt. The appellant appeared and answered, stating among other things the following:

"2. The accused admits that on the 29th day of January, 1907, he addressed an official communication to the Acting Director of Civil Service of the Philippine Islands recommending the promotion of Percy G. Dwyre, one of the employees in the Office of the clerk of this court, from class 7 to class 6, with the corresponding increase in salary; he further admits that on the same date, in an official letter, he requested authority from the said Acting Director of Civil Service for the temporary employment of Enrique Elzingre in said office as stenographer, at a monthly salary of \$60; he further admits that, prior to addressing the Acting Director of Civil Service in connection with the aforesaid recommendations, he had not applied for authority or approval, written or otherwise, from the Hon. Simplicio del Rosario, as he was directed to do under the order issued by the said judge on the 5th of January, 1907."

The matter was duly heard and a judgment was entered, sentencing the appellant to one month's imprisonment and to pay a fine of P150. The appellant moved for a new trial in the court below, which was denied, and having excepted to the judgment and to the order denying his motion for a new trial, he has brought the case here for review.

I. In his brief in this court the appellant claims that in the exercise of the power to appoint subordinate employees of his office he is not subject in any respect to the control of the presiding judge, or any other of the judges of the Court of Land Registration.

If this claim is well founded, it would result that a stenographer who worked for the judge in the preparation of his decisions, and who was known by the judge to be incompetent for that work, might be recommended for promotion by the clerk, not only against the wishes of the judge but against his express commands. It would also result that where the judge knew that there was no necessity for the employment of another stenographer, the clerk might recommend and procure the employment of one without the knowledge or consent of the judge. In such cases the judge, in order to exercise any control over the business of his court, would be compelled to enter into an unseemly controversy with his own clerk, before other officers of the Government, to the great detriment of the prestige of his office. This claim of the appellant is an extreme one and we can not give our consent to it unless we are compelled so to do by the plain and unequivocal language of the law governing these officers.

An examination, however, of such law satisfies us that there is no foundation for the claim. Section 11 of the Code of Civil Procedure provides as follows:

"Every court shall have power:

* * * * *

"4. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto."

This section by its terms gives the judge of the Court of Land Registration control over the conduct of his clerk; that is, in whatever the clerk is required to do by law, the judge can exercise control over him. This section alone furnishes a sufficient answer to the appellant's contention, unless it is in some way limited or modified by other provisions of the law. We not only do not find any such limitations, but on the contrary find its provisions practically repeated in section 8 of the act creating the Court of Land Registration (No. 496). That section is as follows:

"The clerk shall be under the direction of the court, shall have the custody and control of all papers and documents filed with him under the provisions of this act, and shall carefully number and index the same. Said papers and documents shall be kept in the city of Manila, in an office to be called the 'Land Registration Office,' which shall be in the same building as the Court of Land Registration or near to it. Clerks shall have authority, subject to the provisions of the Civil Service Law, to employ such deputies, assistants, translators, stenographers, typewriters, and messengers as may be necessary the number and salaries of such employees to be fixed with the approval of the Attorney-General."

It will be seen that this section directs (1) that the clerk shall have the custody and control of the papers; and (2) that he shall have authority to employ assistants. If he acts under the direction of the court as to the custody and control of the papers, he also acts under the direction of the court as to the employment of assistants. There is nothing whatever in this section to indicate that the court may control him as to one of the duties imposed upon him by this section and not control him as to the other. It can not for a moment be claimed that as to the custody and control of the papers he is not subject to the direction of the judge. It would be impossible to transact the business of the court if the judge did not have power to say how the work in connection with the papers and documents filed therein should be done.

By Act No. 1648, approved May 16, 1907, the law relating to the Court of Land Registration was amended in several particulars, among others, with reference to the clerk and his duties. That act, of course, is not applicable to this case, because it was enacted after this appeal was taken, but it may throw some light upon the interpretation which ought to be given to section 8 of the original law. In the amendatory act, the matter in that section is divided and found in two different sections. Section 3 of said Act No. 1648 provides:

"Except as otherwise herein provided, the clerk shall have the custody and control, under the general direction

of the senior judge of the court, of all papers and documents * * *."

Section 2 of the act provides, among other things, as follows:

"* * * The clerk and assistant clerk shall perform their duties under the control and supervision of the senior judge of the court and may be removed from office for cause by said senior judge.

"The clerk shall have authority, subject to the provisions of the Civil Service Law and with the approval of the Attorney-General, to appoint and employ the necessary deputies, assistants, clerks, translators, stenographers, typewriters, messengers, and other subordinate employees which may be authorized by law."

It will be seen that this clause relating to the employment of assistants is practically the same as that found in section 8 of the original law. That by the new law the judge can control the clerk in this matter is entirely free from doubt. It declares that the clerk shall perform his duties under the control and supervision of the senior judge. One of his duties is the employment of assistants and in such employment he is undoubtedly subject to such control and supervision.

The only difference between the amended act and the original act is that in the amended act it is said that the clerk shall perform his duties under the control and supervision of the judge, while in the original act it says that the clerk shall be under the direction of the court. There can be no wide difference between these two provisions. If the clerk performs his duties under the direction of the judge, the judge necessarily has control and supervision over him.

It is said in the brief of the appellant that the legislature could not have intended to give the judge any control over the clerk with reference to the employees because section 11 of Act No. 496 provides that the clerk may require bonds of indemnity from his deputies, assistants, and employees, showing thereby that it was the intention of the law to make him responsible for the acts of his subordinates. It is to be observed, however, that this same section 11 still stands in the law without amendment, and in connection with the new section in Act No. 1648, which act, as we have said, clearly gives the judge control over this matter, notwithstanding the fact that the clerk may be responsible for the acts of his subordinates.

Moreover, while section 8 said that the clerk should have authority to employ deputies, yet his authority in that respect was very limited. The Attorney-General had the power to fix the number and salaries of the employees. The Director of Civil Service had the power to designate the persons from whom the appointment should be made, so that in effect the only power which the clerk had, if the Attorney-General saw fit to declare the necessity for the appointment, was to select one from among the three persons designated by the Civil Service Bureau.

This contention of the appellant as to the jurisdiction of the judge to make the order of the 5th of January can not be sustained.

II. It is also claimed by the appellant that the order punishing him for contempt is void because it was not made in any judicial proceeding then pending before the court. It is true that in several of the sections from 232 to 240 of the Code of Civil Procedure relating to contempt there are provisions which are applicable to a judicial proceeding but that those sections are applicable to cases not connected with judicial proceedings is conclusively shown by paragraph 2 of section 232. That section is as follows:

"A person guilty of any of the following acts may be punished as for contempt:

"2. Misbehavior of an officer of the court in the performance of his official duties, or in his official transactions."

There is nothing in this paragraph which in any way indicates that this misbehavior must be committed in

connection with a judicial proceeding then pending before the court.

The judgment of the court below is modified by changing the penalty imposed thereby—namely, a fine of P150 and one month of imprisonment—to a fine of P200. In all other respects it is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, and Tracey, JJ., concur.

DISSENTING

JOHNSON, J., with whom concurs CARSON, J.:

We can not agree with the conclusion of our associates in the present case.

It would seem from a reading of the record that there is something which brought about the present action which does not appear in the record. The facts in the present case are as follows:

First. The respondent, Jones, was clerk of the Court of Land Registration.

Second. He had been accustomed, subject to the provisions of section 8 of Act No. 496, to employ such deputies, assistants, translators, etc., as were necessary, subject to the provisions of the Civil Service Law and the approval of the Attorney-General of the Philippine Islands with reference to the salaries of the same, during all the time while he was acting as clerk, up to and including the time when the present difficulty arose.

Third. On the 5th day of January, 1907, the judge of the Court of Land Registration directed a letter to the clerk in substance requiring the clerk to submit all propositions concerning the employment of deputies, translators, assistants, etc., which he deemed to be necessary, to said judge before such persons should be employed.

Fourth. The clerk believing that the law conferred upon him the power to employ these persons, subject to the provisions of the law, without the advice or consent of the judge, disregarded the order of the said judge.

Fifth. Whereupon the said judge cited the respondent (the clerk) to appear before him and show why he should not be punished for violating his (the judge's) order.

Sixth. On the day mentioned in the said citation the clerk appeared and attempted to justify his acts by calling to the attention of the court the provisions of said section 8 of Act No. 496.

Upon these facts the judge found the respondent guilty of contempt and sentenced him to be imprisoned for a period of one month and to pay a fine of P150. From this sentence the respondent appealed to this court.

Said section 8 provides among other things that the clerk—

"Shall have authority, subject to the provisions of the Civil Service Law, to employ such deputies, assistants, translators, stenographers, typewriters, and messengers as may be necessary, the number and salaries of such employees to be fixed with the approval of the Attorney-General."

It will be noticed that this provision of law does not make the clerk subject in any way, in the employment of his assistants, etc., to the judge.

We are not of the opinion that the law justifies the action of the Court of Land Registration in sentencing the respondent for contempt. Evidently the legislative department of the Government was of the same opinion, for the reason that it, almost immediately after the lower court took the action complained of by the appellant herein, amended the law so as to conform with the view of the said court, without waiting for the decision of the Supreme

Court, thereby admitting that the original law was not sufficient in its provisions to fully justify such action, for had it been, no amendment would have been necessary.

We have no complaint to make about the provisions of the new law. We are of the opinion that the clerk should be subject to the direction of the judge and that the judge of a court should have something to say about who should be employed to assist him in the ministerial and clerical work of the court. Our contention is simply that the original law did not confer upon the judge this authority.

Contempt of court in general must be some act or conduct which tends to interfere with the business of the court, by a refusal to obey some lawful order of the court, or some act of disrespect to the dignity of the court which in some way tends to interfere with or hamper the orderly proceedings of the court and thus to lessen the general efficiency of the same. A court, no more than an individual, has a right to go outside its functions and make orders beyond its powers and then punish persons' for disobedience of such orders.

The courts have no right to punish an individual for contempt for doing something which the law expressly authorized such individual to do. Courts have no authority to decide cases upon the theory of what the law ought to be, when there is an express provision of the law covering the particular question. When they do they are assuming functions of the legislature and not acting within the functions of a court, and thus the doctrine of prescribed laws is made a nullity.

In the present case the lower court had no right or authority to decide either as to the number or character of the employees in the office of the clerk. That question was absolutely left to the Attorney-General. (Sec. 8, Act No. 496.) When that question was decided by the Attorney-General then the clerk had authority to "employ such deputies, assistants," etc., as had been determined to be necessary, subject only to the rules of the Civil Service Board. (Sec. 8, Act No. 496.)

In the present case the clerk followed strictly the law and should not be punished for doing his duty. Ordinarily men are commended, and not punished, for doing their duty. The majority opinion reverses this rule.

The sentence of the lower court should be reversed.

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