

**MARIANO NARCIDA, RAFAEL SANTOS, NORBERTO PENISIN AND
CALIXTO MACARAIG, PETITIONERS AND APPELLEES, VS. BURTON E.
BOWEN, CHIEF OF POLICE, MUNICIPALITY OF ZAMBOANGA,
RESPONDENT AND...**

G.R. No. 6694. March 26, 1912

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal by the fiscal of the Moro Province, representing the chief of police of the municipality of Zamboanga, from a judgment of the Court of First Instance of that province, ordering the release from confinement of the petitioners, Mariano Narcida, Rafael Santos, Norberto Penisin, and Calixto Macaraig, who were confined by virtue of an order of commitment issued by the justice of the peace of the said municipality.

The petitioners were subpoenaed to appear before the justice of the peace to testify in a certain investigation or case pending in his court. They disobeyed this order or citation, and the justice of the peace, after giving them a hearing, found them guilty of contempt, and sentenced each to pay a fine of P3 and to subsidiary imprisonment in case of insolvency or failure to pay these fines. The fines not being paid, the justice of the peace directed that the petitioners be confined in the municipal jail for a period of twenty-four hours. Immediately upon their being placed in confinement, they filed a petition in the Court of First Instance alleging that they were illegally deprived of their liberty, and requesting that they be released on a writ of habeas corpus. The writ was duly issued and the case tried by the Court of First Instance before the expiration of the twenty-four hours. Judgment was rendered in these habeas corpus proceedings declaring that the petitioners were illegally confined and ordering their release forthwith. The lower court was of the opinion that under the provisions of section 65 of Act No. 190 as amended by section 12 of Act No. 1627, a justice of the peace has no authority or power to thus impose upon a person a fine or imprisonment for disobeying a subpoena issued by him.

The office of justice of the peace is one both ancient and honorable, and came to America from the common law. The duties imposed upon this officer by the common law and by statute were of a varied and complex nature. While in America the name and the office have been retained, his duties are by no means as numerous as they were in England. In America his jurisdiction is fixed by the constitution and the statutes of his state. He is there recognized as an officer clothed with limited judicial powers, and such powers cannot be extended by construction. His functions and duties being defined and limited by the constitution and statutes, the powers thereby conferred must be strictly construed. These same rules are applicable in the Philippine Islands, as the powers and duties of a justice of the peace in this country are defined by statute. These statutes clothe that officer with judicial powers, but such powers are limited. In the Organic Act, No. 136, his jurisdiction was fixed. His civil jurisdiction as fixed by section 68 of said Act has been extended by subsequent legislation, until he now has jurisdiction to adjudicate title to real estate where the value of the property does not exceed a certain amount, and also to issue, under certain circumstances, preliminary injunctions (Act No. 2041). His criminal jurisdiction remains about the same. By thus extending his jurisdiction, the justice of the peace has become an important

judicial officer. Yet, the power to fine or imprison for contempt for willfully disobeying a subpoena is not inherent in the court of a justice of the peace. If this court has such power, it must be conferred upon it by a statute. The first inquiry is whether the justice of the peace had the power, under the statutes, to adjudge the contempt, and make the order of commitment. It will be remembered that they had the power to issue the subpoenas and that the petitioners willfully disobeyed this process with which they were served. The justice of the peace was a judicial officer, acting in the discharge of his official duties, and, as such, a contempt of his authority or orders, within the scope of his powers, was punishable. It was the duty of the petitioners to obey the mandate which they received. In refusing this obedience, they defied the law and were in contempt of its authority. They could not determine for themselves whether or not they should appear as directed, and thus set at defiance the proceedings and orders of the justice of the peace. Now, what were the powers of the justice of the peace in the premises?

In the Organic Act (No. 136) nothing whatever is said in reference to the power of a justice of the peace to punish for contempt. We will examine the various provisions of the Code of Civil Procedure (Act No. 190) for the purpose of ascertaining what powers in reference to contempt have been conferred upon justices, of the peace. "Incidental powers of courts: Every court shall have power (and this includes courts of justices of the peace) to preserve and enforce order in its immediate presence; * * * to compel obedience to its judgments, orders, and process." (Sec. 11.) Process, as here used, include subpoenas. Chapter 15 provides the manner of summoning a defendant in a civil action. This part of that chapter applies to the justice of the peace courts. (Sec. 51.) After the commencement of an action, a justice of the peace may issue a subpoena directed to any witness whose testimony may be desired, requiring his attendance at a time and place specified therein. (Sec. 68.) He is also authorized to take depositions (sec. 361), and for this purpose may issue subpoenas and compel the attendance of witnesses (secs. 403 and 410).

Contempt:

"A justice of the peace may summarily impose a fine not exceeding ten pesos, or sentence to imprisonment for a period not exceeding one day, or impose both of such punishments; upon a person guilty of misbehavior in the presence of or so near the justice of the peace as to obstruct him in the performance of his judicial duties." (Sec. 65.)

Sections 231 to 240, inclusive, deal with the power of Courts of First Instance and judges of such courts in reference to contempts. These provisions do not apply to courts of justices of the peace. Under section 65 (supra), a justice of the peace was given power to summarily fine or imprison (and this means without a hearing) any person guilty of misbehavior in his presence or so near as to obstruct him in the performance of his judicial duties. The power herein conferred was confined strictly to disturbances or misconduct in or near the place where the justice of the peace was performing his duties as such, and did not extend to the acts or conduct of parties not in the presence of or near the justice of the peace.

"If the witness fails to appear at the time and place specified in the subpoena, the justice may issue a warrant upon which he may be seized and brought before the justice and compelled to testify, and the costs of such warrant and seizure of the witness shall be paid by the witness if the justice shall determine that his failure to answer the subpoena was willful or without just excuse." (Sec. 68.)

Contempt in the presence of or so near the justice of the peace as to obstruct him in the performance of his judicial duties and the compelling of witnesses to attend and testify are herein treated as two subjects and by different sections. The willful disobedience on the part of a witness of a lawful subpoena issued by a justice of the peace is a contempt of this officer's authority and of the law. The punishment for this contempt is fixed in section 68 by charging him with the costs of his arrest; but before he can be thus punished he is entitled to a hearing, but not to

an appeal. The provisions of section 68 are only applicable in cases wherein there is an action either civil or criminal pending before the justice, and do not apply when this judicial officer is performing other judicial duties. When he is performing other judicial duties, such as taking depositions or testimony, his power to arrest and compel attendance of witnesses is found in section 410, which power is the same as that conferred by section 68. Section 408 confers the power upon justices of the peace to punish as a contempt a witness who disobeys a subpoena, refuses to be sworn, to answer questions, or to subscribe to an affidavit or deposition. This applies when the justice is performing the duty of taking testimony or depositions and not to the trial of cases. The power conferred upon justices of the peace by said section 408 is limited by the provisions of the last part of the last paragraph of section 403. That is, such power must be exercised in the same manner as if the witness had been directed to appear before the justice in an action pending in his court. The result so far is that the justice of the peace was empowered by these provisions to carry on his judicial duties in an orderly manner, to punish by fine, or imprisonment any person who misbehaved in or near his presence so as to obstruct the performance of such judicial duties, to compel the attendance of witnesses, and to punish them for the willful disobedience of his subpoenas by charging them with the costs of their arrest. As to whether or not a justice of the peace could fine or commit under the power conferred upon him by section 65, a person who willfully refused to testify, to answer questions, or to obey the lawful verbal orders given by the justice himself, is not specifically stated in terms. Again, it was thought that a person adjudged guilty of contempt by a justice of the peace and punished as provided in section 65 should be entitled to an appeal, as such punishment could be imposed summarily without a hearing. Therefore, section 65 was amended by section 12 of Act No. 1627 so as to read as follows:

"A justice of the peace may summarily impose a fine of not more than ten pesos or a term of imprisonment not exceeding one day, or both, upon any one guilty of misconduct in the presence of the justice or so near as to interrupt the proceedings of his court or in open defiance of his authority; but the party adjudged in contempt may appeal from such sentence and the same shall be stayed as in ordinary criminal cases."

In the section as thus amended, the words "misconduct" and "interrupt the proceedings of his court" have been substituted in lieu of "misbehavior" and "obstruct him in the performance of his judicial duties." There has also been added the phrase "or in open defiance of his authority," and the right to appeal. The mere substitution of the word "misconduct" for "misbehavior" cannot operate to change in effect the former section. The phrase "interrupt the proceedings of his court" as used in the amended section must be given the same meaning as the phrase "obstruct him in the performance of his judicial duties;" otherwise, we might have a justice of the peace with full power while actually engaged in the performance of his judicial duties as judge of his court to punish for misconduct committed in or near his court, and without that power when he was performing other duties, such as the taking of depositions. Sections 68 and 410 remain unchanged.

In respect to Courts of First Instance and the judges thereof, the Code of Civil Procedure recognizes two kinds or classes of contempt, viz, direct and constructive. The first is treated of in section 231, and the second in section 232 et seq. Where the contempt is direct—that is, in the presence of or so near the court or judge as to obstruct the administration of justice—summary punishment may be inflicted, without a complaint or order to show cause or other process. Formal entry showing the judgment constitutes the full record. From such a judgment no appeal will lie. In the proceedings to punish for constructive contempts—that is, contempts committed out of the presence of the court—a charge in writing must be filed with the clerk and an opportunity given the accused to be heard. (Sec. 233.) From a judgment thus entered, the convicted person is entitled to appeal to the Supreme Court. If the witness, after having been duly cited, willfully disobeys a subpoena issued out of the Court of First Instance, such witness may be arrested and brought before the court, and if he fails to give a satisfactory excuse for his conduct, he may be taxed with the costs of such arrest, but this does not take away the power of the court to punish him for constructive contempt. Section 65 only confers upon justices of the peace power to punish for direct contempts,

that is, misbehavior committed in the presence of or so near the justice of the peace as to obstruct him in the performance of his judicial duties. This same power is retained in the section as amended. Under either form of the section, the justice could summarily impose the penalty, that is, without a hearing. The adding of the clause "or in open defiance of his authority" in the section as amended can not be construed to include constructive contempts for the reason that for a violation of this provision the punishment may be summarily imposed, whereas, if said provision included constructive contempts, the person accused of violating the same would necessarily be entitled to a hearing before conviction. But we can not say that this provision was added without a purpose. The purpose was to complete the power of the justice of the peace to punish for all cases of direct contempts such as the refusal of a witness to be sworn, to answer questions, etc.

The judgment appealed from is affirmed, without costs.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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