

THE PROVINCE OF TARLAC, GREGORIO ROMULO, AND JOSE TOPACIO, PLAINTIFFS, VS. HERBERT D. GALE, DEFENDANT.

G.R. No. 7928. December 27, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

The question before this court arises upon an answer to an order to show cause issued in a petition for a writ of certiorari to the Court of First Instance of the Province of Tarlac, it being contended that said answer is insufficient in law.

The answer consists of a general denial together with facts setting forth what is deemed by the pleader to be a special and complete defense to the proceeding.

In the written argument on the hearing of the demurrer the petitioners say:

"The answer filed by defendant in the above-entitled cause, although traversing some of the circumstantial allegations of the complaint, admits the acts of defendant sought to be reviewed herein, and is accompanied by the records referred to in the complaint. Plaintiffs believe that the issues of fact presented by the answer are not material and that the orders complained of are without authority of law and beyond the judicial powers of the defendant, even upon the facts as stated in the answer. It is therefore sought to have the case disposed of on the present demurrer without the necessity of a trial upon the facts, and both parties are especially desirous that the case be disposed of in this way because it is hoped to secure a decree which may serve as a guide and precedent in any controversy of a similar nature, rather than a mere determination of the rights and wrongs under the particular circumstances of the present case."

The facts admitted to be true by the so-called demurrer are set forth fully in the answer of the defendant-judge, which, so far as material, is as follows:

"That some years prior to the dates mentioned in the complaint the Province of Tarlac erected at its capital a provincial building, on the second floor of which was situated a sala, or court room, for the Court of First Instance, of the dimensions of about 18 by 35 feet, together with a room reserved as an office of chamber for the judge of said court, and with another room intended for the clerk's office of said court; that the court room so provided and situated was and is not adequate to the needs of said court during its session, and that said clerk's office was not and is not adequate to the needs of the clerk of the court.

"That for some years the court room and chambers continued to be occupied by the court and judge until the latter part of 1910, or early part of 1911, when the complainants herein, without in any wise consulting with the presiding judge of said court, and without notice to him, and during his absence, removed the effects of the presiding judge from the chamber theretofore occupied by him and gave and assigned said room to the occupancy of the district internal revenue agent, which said agent has occupied said room to the exclusion of the presiding judge until about the date mentioned in the complaint, when he was ejected therefrom by the respondent herein.

"That at the same time the complainants herein caused to be erected transversely across the court room a louver

partition some nine feet in height, which cut off from the use of the court more than one-third of the former court room, occupying the room so formed with the clerks and typewriters of the provincial governor. That the talking of these clerks and their visitors, and the operation of typewriting machines, made such noise and confusion as to render it impossible for the court to hear the witnesses testifying, or to hear counsel when addressing the court. That by reason of the reduction of the size of the court room by this partition there was no place left in the court room for the accommodation of litigants and witnesses, who were required to stand in the corridors and sit on the stairs of the building, causing noise and confusion and rendering it impossible for the court to transact its business and perform its functions.

"That before issuing the orders for the removal of the partition in question and of the occupants of that part of the court room, and the ejectment of the internal-revenue agent occupying the judge's chambers, respondent requested the complainants to remove such partition and eject the persons occupying said court room and chambers, or failing in this to provide other and proper quarters for the Court of First Instance, which request was refused, the complainant Topacio stating in reply thereto, and in the presence of the complainant provincial governor, that the Province of Tarlac and its provincial board was under no obligation to furnish quarters for the Court of First Instance, and that it permitted the court to use a part of the provincial building only by courtesy.

"That for several years the provincial board of Tarlac, and particularly as now composed, has refused to furnish, upon the requisition of the clerk of the court, the stationery, books, furniture, and other supplies necessary to conduct the business of the court, making necessary the borrowing from Insular and provincial officials of typewriter paper, stenographers' notebooks, and other stationery and supplies in ordinary use in the courts.

"That the complainant provincial board has refused to furnish to the clerk of the court a typewriter, which is absolutely necessary for the proper transaction of business in said clerk's office, and upon one occasion, after the clerk of the court had made several requisitions, the provincial treasurer furnished a machine which had been in use some three years in the office of the provincial treasurer and was entirely worn out and unserviceable, at the same time refusing to furnish a new machine on the ground that the work of the court was of such slight importance as to render the use of a typewriter unnecessary.

"That during the entire period prior to the dates mentioned in the complaint herein, the complainant Topacio, as acting, treasurer of the Province of Tarlac, has refused to furnish to the clerk of the court upon his requisition stamps or postage necessary to carry on the letter and telegraphic correspondence of the clerk and judge, but has required the presiding judge and clerk to submit for his, the acting treasurer's, approval all correspondence and telegrams sent by the court and clerk on official business, and only ceased this practice when ordered by the respondent to furnish to the clerk instant the requisite supplies of postage.

"That at the time the respondent judge issued the orders to complainants to provide the stationery, books, furniture, and supplies as set out in the complaint, the only furniture contained in the court room was an old unsightly kitchen table provided for the judge's bench, a broken swivel chair for the use of the judge, a slightly larger table of the same class and condition for the attorneys, stenographer, and clerk, five broken bentwood chairs, and three unpainted wooden benches. That at said time the judge had no desk, chairs, or books. That there was no stationery on hand for the use of the judge, clerk, and stenographer.

"That because of the failure of the complainants to perform the duties enjoined upon them by law in providing suitable quarters and supplies for the court and court officers, it has been and is impossible for the Court of First Instance of the Province of Tarlac to properly conduct its business, and because of the conditions created by such failure the Court and judge of First Instance of said province has to a great degree lost the respect and confidence of the people of said province.

"That during the period in which the Court of First Instance has suffered for want of proper supplies and equipment the complainants herein have appropriated and expended large sums of public moneys in

unnecessary and nonessential enterprises, as, for instance, the parking and terracing of the grounds about the provincial building, the placing therein of concrete fountains and benches, concrete curbing and walls, expending in this one enterprise, as respondent is informed and believes, the sum of more than P15,000.

"That at the time respondent issued the order requiring the provincial board to supply and equip the court there was on hand in the provincial treasury of said province, to its credit in the Insular Treasury, large sums of money not expended and not necessary to meet obligations actually incurred by the province.

"That at the time of the issuance by respondent of the various orders of which complaint is made, and for a long period prior thereto, the complainants had failed and refused to perform the duty enjoined upon them by law in properly housing and equipping the Court of First Instance for the Province of Tarlac, and in consequence thereof there resulted serious obstruction and interference with the administration of justice by said court, and that respondent in issuing the orders complained of for the proper housing and equipping of his court acted well within the scope of his statutory and inherent powers."

These are the orders issued by the court upon the facts and conditions set out in the answer just quoted, and herein complained of, to wit:

On the 12th of March, 1912:

"TO MARCOS PALENCIA,

"Sheriff of the Court of First Instance, Tarlac, Tarlac.

"You, as sheriff of this court, are hereby ordered instantly to expel from the court room all persons now occupying the same, together with all desks and typewriters; and to remove the partition which now divides the court room into two parts; and to furnish chairs and benches necessary to accommodate the litigants and witnesses who are now occupying the corridors and clerk's office of this court. In order not to interfere with the session of the court you will remove the partition between the hours 12 and 2 p. m. to-day.

"The expense incurred in carrying out this order will be a charge to be included in the estimates of the Bureau of Justice."

On the 17th of April:

"TO MARCOS PALENCIA, and to his successor, as Sheriff of the Court of First Instance of Tarlac, Tarlac:

"You are hereby appointed special custodian of the court room, the office of the judge, and the office of the clerk of this court, with the following instructions:

"You shall not permit any official or person, outside of the officials and employees of the court, to occupy or use the court room, judge's office, or office of the clerk of this court, with these exceptions: (1) The court room, clerk's office, and judge's office, may be used for fiestas and public meetings, and the court room for the sessions of the provincial board during the absence of the judge; (2) The office of the judge may be used by the agent of internal revenue, but with the understanding that he will vacate it whenever required by the judge.

"In no case shall you permit the construction of a partition or other contrivance which serves to diminish the size of the court room or in any way to obstruct it.

"You shall not depart from these instructions without an order in writing from the court of this district or the judge acting for him.

"In view of what has passed relative to the court room, you will use all force necessary to repel any invasion of these instructions to the extent of appealing to the Insular police."

On the 14th of March, 1912, directed to the provincial board of the Province of Tarlac and to Gregorio Romulo,

provincial governor, and Jose Topacio, provincial treasurer, composing said board:

"In view of the fact that the Court of First Instance of the Province of Tarlac has not furniture or writing materials sufficient to carry on its business in the proper form by reason of your refusal to fulfill your duties, you are hereby ordered to furnish to this court on or before the 23d day of March, 1912, at 8 o'clock a. m., the furniture, writing materials, and so forth which appears in a list attached hereto. Failure to comply with this order will be regarded as contempt of court and penalty will be imposed accordingly."

In response to this order the provincial board passed a resolution which the court regarded as offensive in tone. Whereupon the court issued an order declaring the members of said board guilty of contempt of court and imposing a fine of P200 on each member thereof. The persons thus fined having subsequently made an explanation satisfactory to the court the latter, on the 28th of March, 1912, entered an order remitting the fines. On the same day the court issued an order to Gregorio Romulo, provincial governor, and to Jose Topacio, provincial treasurer, composing the provincial board of Tarlac, as follows:

"In view of your failure to fulfill the order of this court made on the 14th day of March, 1912, relative to the furnishing of furniture, writing materials, and so forth, you are hereby ordered to appear before this court on Monday, the 1st day of April, 1912, at 8 o'clock a. m., to show cause, if any you have, why the court should not punish you for contempt for refusing to obey its order."

We regard this later order as vacating that part of the order of March 14 which threatened to punish for contempt without giving a hearing, and that that part of said order is not before us.

The judiciary is one of the coordinate branches of the Government. (Forbes vs. Chuoco Tiaco, 16 Phil. Rep., 534; United States vs. Bull, 15 Phil. Rep., 7.) Its preservation in its integrity and effectiveness is necessary to the present form of Government. This is true of the other departments also. One branch is, largely speaking, as necessary and important as the other. The three departments are not only coordinate; they are coequal and coimportant. While interdependent, in the sense that each is unable to perform its functions fully and adequately without the other, they are, nevertheless, in many senses independent of each other. That is to say, one department may not control or even interfere with another in the exercise of its particular functions. This, of course, is fundamental. That the court may declare a law passed by the legislature unconstitutional and void, or an act of the executive unauthorized and illegal; or that the legislature may curtail within limits the jurisdiction and power of the courts, or restrict, in a measure, the scope of executive action; or that the executive may, by his veto, render null and ineffective the acts of the legislature and thus effectually thwart the purposes of the majority, does not affect that independence. These are merely the checks and balances made by the people through the constitution inherent in the form of government for its preservation as an effective institution. In spite of these checks and balances, if not by reason of them, the fundamental departments of the government are independent of each other in the true sense of the word. The quality of government consists in their remaining so.

It is clear, therefore, that each department is bound to preserve its own existence if it live up to the duty imposed upon it as one of the coordinate branches of the government. Whatever a person or entity ought to do or must do in law, it has the power to do. This being true, the judiciary has the power to maintain its existence; and whatever is reasonably necessary to that end, courts may do or order done. But the right to live, if that is all there is of it, is a very small matter. The mere right to breathe does not satisfy ambition or produce results. Therefore, courts have not only the power to maintain their life, but they have also the power to make that existence effective for the purpose for which the judiciary was created. They can, by appropriate means, do all things necessary to preserve and maintain every quality needful to make the judiciary an effective institution of Government. Courts have, therefore, inherent power to preserve their integrity, maintain their dignity and to insure effectiveness in the administration of justice. This is clear; for, if the judiciary may be deprived of any one of its essential attributes,

or if any one of them may be seriously weakened by the act of any person or official, then independence disappears and subordination begins. The power to interfere is the power to control, and the power to control is the power to abrogate. The sovereign power has given life to the judiciary and nothing less than the sovereign power can take it away or render it useless. The power to withhold from the courts anything really essential for the administration of justice is the power to control and ultimately to destroy the efficiency of the judiciary. 'Courts cannot, under their duty to their creator, the sovereign power, permit themselves to be subordinated to any person or official to which their creator did not itself subordinate them.

The courts cannot permit any official to take or withhold from them anything which is vital to their functions, nor can an official, by the exercise of any judgment or discretion of his own, escape an obligation which he is under to the courts. The courts alone can, while the obligation continues, release him therefrom. If, therefore, the officials of a province are under an obligation to the Court of First Instance of that province to furnish shelter, furniture, fixtures, supplies, equipment, etc, when, in the serious and deliberate judgment of the court, they, or any of them, are necessary for the administration of justice, they cannot escape that obligation except by permission of the court.

Section 13 of Act No. 83 reads in part as follows :

"It shall be the duty of the provincial board :

"(b) To provide by construction or purchase or renting suitable offices for the provincial officers, and a court house containing a room or rooms suitable for the holding of court and for offices for the court officers and a provincial jail in the municipality fixed by law as the capital of the province."

Section 10 of the same Act provides that it shall be the duty of the provincial supervisor to purchase and furnish "all stationery and office supplies of every character for the use of the provincial officers, the Court of First Instance and its officers."

Section 1 of Act No. 152 reads as follows:

"SECTION 1. The governor of each province, or, in case the governor has failed to qualify as officer of the court "by giving a bond, and a sheriff of the province has been appointed, in accordance with section twenty-four of Act Numbered One hundred and thirty-six, providing for the organization of courts, then the sheriff of the province, shall be the legal custodian of the court-house and the public property therein, except the books, records, and papers appertaining to the offices of the clerk, in his province.

"In the city of Manila the sheriff of the city shall be the legal custodian of the buildings occupied by the Supreme Court, Court of First instance, municipal courts, and court of justices of the peace, and the public property therein, except the books, records, and papers appertaining to the offices of the clerks of the courts, and shall be responsible for the preservation and care of such buildings and property. All expenses incident to the repair, alteration, and custody of court buildings in the provinces, and to the purchase of equipment and supplies, including necessary books and stationery, shall be borne by the several provincial treasuries. All expenses of the character last mentioned incurred in the city of Manila shall be paid for from the city treasury; but no expenses for either purpose shall be incurred without the prior authority of the provincial board in the province, or of the municipal board in the city of Manila, as the case may be. The necessary estimates for repairs, furniture, and equipment of the courthouses in the provinces shall be made by the governors or sheriffs, as the case may be; and for the city of Manila, by the sheriff thereof.

"The estimates for the purchase of necessary stationery and books for the use of the courts and clerks shall be made by the clerks of the several courts, respectively."

Section 13 is mandatory and imposes upon the provincial board or provincial officials, as the case may be, a duty

which cannot be evaded at their pleasure. While the provincial board may exercise certain discretion in regulating the size of the courtroom, or the cost of the same, or the material of which it is constructed, and the kind and quantity of furniture which is placed therein, nevertheless, the courtroom and offices, and the furniture and fixtures therein must be of such a character as to permit the court to exercise its functions in a reasonably effective manner, and must not be such as to impede in a material degree the administration of justice. While the officials have discretion in these particulars, that discretion is limited and subordinate. When it comes in conflict with the judgment of the court it must yield, the court being the only official which, in the last analysis, may determine, under the law quoted, what is necessary for its efficiency. If provincial officers furnish to a court a room which, in the judgment of the court, is clearly inadequate for the purpose, and the use of which would seriously interfere with the orderly and dignified administration of justice, the court may refuse to accept it; and, on the refusal of the provincial board to furnish accommodations which the court considers adequate, the court has power to procure them, either directly by renting, or by issuing an order to the officials whose duty it is under the law to furnish them. The power lies with the judge, and with him alone, to determine ultimately what is really essential for the administration of justice.

Section 10, as is seen, requires the provincial officers to furnish to the court such furniture, fixtures and supplies as may be necessary for the proper administration of justice. The duty here specified is mandatory and cannot be evaded. While a certain discretion lies with the official who furnishes the articles referred to, such as deals with color, form, style, quantity, etc., that discretion is always subject to the paramount authority of the court which, as in the case of quarters, is always the final authority determining what is necessary and essential for the proper administration of justice. Here again, if, after reasonable notice, the articles are not furnished in sufficient quantity and at the proper time by the officials whose duty it is to furnish them, the court has power either to purchase those things directly or, by proper proceedings, to compel the officials to perform the duty imposed upon them by law. In either case the purchase price of the articles thus found necessary would be a legal charge on the province.

Section 1 of Act No. 152, providing that no such expenses "shall be incurred without the prior authority of the provincial board" does not alter the principles herein laid down relative to the power of the courts to obtain, one way or another, the things necessary to permit the court properly to discharge its duties. It deals, rather, with the persons or bodies who are under the duty to furnish the things named and the procedure necessary to obtain them. Nor does this provision, nor any other provision of said section, sustain the argument of petitioner based thereon, namely:

"As in the matter of providing courthouses, the equipment of courts as to furniture, books, and the like must be lavish or meager according to the financial capacity of the province, and no one so well as the provincial board can determine what the province is able to afford. Some one must be vested with the power to decide what is proper and possible to be furnished, and the legislature has seen fit to intrust this duty to the provincial board. It may be urged that the legislature has acted unwisely, and that the courts should have some power to supply themselves in cases where the provincial board neglects or refuses to perform its duty. But this is an argument to be addressed to the legislature. The courts charged with applying the law cannot usurp the functions of the legislature and contravene existing law, even if they consider it unwise."

Considering this argument, it should be noted, in the first place, that no question of the usurpation of the functions of the legislature can arise. In the case before us the legislature has already acted—has performed its functions. It has expressly laid upon certain provincial officials the duty to furnish equipment for the court. Wherever there is a duty there is a corresponding right; and whenever a duty is laid upon an official there is another official or person who has the right to enforce the performance of the duty. The duty having been laid upon the provincial officials to furnish equipment for the Courts of First Instance, the court has, as matter of construction, and without using its extraordinary powers, the right to enforce the performance of that duty. The demand of the court that that duty be

performed is not a usurpation of legislative functions; it is a confirmation of legislative functions already exercised. Nor is it an abrogation or modification of a legislative act. It is a demand that the legislative will be respected by obedience. The courts have not, and are not now, making any complaint against the act of the legislature referred to. They see no reason for objecting to it. The act is wise legislation. Far from criticizing it, the Court of First Instance of Tarlac has been, and is now, trying to have it enforced.

The only controversy in this case arises from the interpretation put upon the act by the petitioners in this case. Real interpretation never usurps legislative functions nor abrogates or modifies legislative enactments. It ascertains the real intention of the legislature and respects that intention by requiring obedience to it. The gist of the controversy is the interpretation of the petitioners by which they make the statute say that the provincial officials are the only officials who have anything whatever to say as to the kind of quarters the court shall have and what shall be its equipment, and when they shall be furnished; that the judgment of those officials is, under the law, final as to what is essential for the proper administration of justice and when it must be furnished; that the judge, who, under his oath, is responsible for the administration of justice in the province, who alone can suffer personally by reason of failure to discharge his duties properly, who is the one man among all the men in the province really competent to determine what is necessary for the discharge of his duty, who is the one man who really administers justice in the province, that he shall have nothing to say as to the kind, nature, quantity or quality of the instruments with which he works or the time when they shall be furnished; that the provincial officials, none of whom need be judges, or even lawyers, all of whom may be farmers or merchants, who may never have attended a session of court in their lives, who may not have the slightest conception of what is necessary for the proper administration of justice; that these men are the ones who have sole authority to control the administration of justice in the trial courts of the Philippine Islands. It is an interpretation which produces such results to which the Court of First Instance of Tarlac objects and which brings this case to this court.

Is not the bare statement of the contention a sufficient reply thereto? It should be observed that the statute nowhere confers such right in express terms on the provincial officials. As we have seen, the statute says: "It shall be the duty" of certain officials to furnish a courthouse "containing a room or rooms suitable for the holding of court;" and that it shall be the duty of certain officials to purchase and furnish "all stationery and office supplies of every character for the use of * * * the Court of First Instance and its officers." That contention is based on an inference from an interpretation of the statute. The defendant judge denies that such interpretation is warranted. We repeat, Is not the bare statement of the contention sufficient to condemn it? Is it not reasonable to say that the surgeon who operates should have the right to judge as to the kind of room in which he will operate, what instruments he will use, and when he will have them? Can it be conceived that the legislator would give to a person absolutely ignorant of medicine or surgery, wholly untaught in the necessities of a proper operating room, and the instruments and equipment necessary thereto, the sole and exclusive authority to determine the kind of room in which the operation should occur, the equipment thereof, the instruments to be used, and the time when they should be furnished? In the same way, although perhaps for less reason, can it be conceived that the Legislature would intend to place with the provincial board the exclusive right to determine what the Court of First Instance needs in the administration of justice and when it shall have it?

On the other hand, the defendant asserts that it is the judge who has the right to determine what he needs and when he shall have it; that under the circumstances, no one is in so good a position to decide that question as he; that, as matter of fact, no one is competent to determine, or really capable of determining it except the judge; that it should be presumed that it was the intention of the Legislature to leave the decision of a question to the person most competent to decide it; that it should be decided on the basis of knowledge and not ignorance; competency and not incompetence efficiency and not inefficiency; that the man who has the most to do should have the most to say; that the one who has the responsibility should have the privilege; that the one who manufactures should

pick his materials; that the one who paints should select his colors, and the one who sculptures should choose his chisel. To hold a judge responsible for his work, to require him to meet the difficult standards of justice, and at the same time leave him to the mercy of others in almost every element which goes to make success, is to reverse the judgment of common sense.

As we have already said, it is clear that, under the statute, it is the duty of the provincial officers to furnish such quarters and equipment as are necessary for the proper discharge of the business of the court. This is a duty owing directly to the court itself. The officials named are, to the extent of that duty, officers or servants of the court. They are, in the performance of that duty, subject to its orders and commands. The duty having been laid upon them, they cannot substitute their judgment or discretion for the judgment and discretion of the court. A court in enforcing the performance of a duty acts directly. It is not under the necessity of having a proceeding, such as mandamus, brought by one of the officers to compel performance of such duty. It acts directly by order upon the party who owes the duty. It is the court alone who determines what that duty is, its nature, extent and the time of performance. All the facts and circumstances necessary to determine these things are necessarily within the knowledge of the court, and it is, therefore, idle to bring a proceeding the sole object of which would be to develop those very facts and circumstances. The only proper proceeding, therefore, necessary to the enforcement of a duty owed by the provincial officials to a Court of First Instance of a given province is that proceeding which acts directly upon the officials who owe the duty and which compels them to act, an order of the court requiring them to perform or to show cause why they should not. No action for a writ of mandamus need be brought by the judge, or by any other person in the court's behalf, to compel the fulfillment of such a duty. It is sufficient that an order be directed to the officials to furnish within a reasonable time those things which the court deems necessary. If the officials fail to comply with the order, the court may take such proceedings as shall be necessary to compel compliance and to punish for willful disobedience. As we have already said, the court, instead of proceeding to the fullest extent with this method, may, after reasonable demand on the officials to perform, itself procure the things necessary, and the expenses incurred will be a charge on the province.

The argument based on the proposition that "as in the matter of providing courthouses, the equipment of courts as to furniture, books, and the like must be lavish or meager according to the financial capacity of the province, and no one so well as the provincial board can determine what the province is able to afford," is not sound. The Legislature having created a court in a particular province, the presumption is that that province is able to support that court and to furnish it everything necessary for the proper administration of justice. Otherwise a court would not have been instituted in that province. Moreover, no man worthy to hold the office of judge would ever require the furnishing of anything "lavish" no matter how rich the province might be. If the provincial officials voluntarily furnish a court room, furniture, and equipment beyond actual needs, that is a matter of their own, but a court ought not, under any circumstances, to require anything more than is reasonably necessary for the due administration of justice. Certainly the court did no more than it ought to have done in the case before us, and we are not to presume that it would do more than that in any other case. At the very least, or at the very most, there would be no more danger that the court would require more than the province could afford than that the provincial officials would furnish less than the court actually needed.

Moreover, it may well be doubted, even if we permitted ourselves to be drawn so far in meeting this argument, whether a provincial board is, in true sense, more representative of the province than the court. It would seem, for obvious reasons, that no one is presumed to be so well qualified as a representative of the people of the province in things judicial as the judge of the Court of First Instance; and it is apparent that there is a relation more or less intimate between the financial condition of a province and the quantity, or even quality, of judicial business.

It is further argued by counsel that "defendant will hardly contend that the determination of what proportion of the

provincial building shall be assigned to the court lies entirely with the judge." This is true. There is no such contention. But counsel is wrong when he says that "the contention of defendant must be that the action of the provincial board in designating rooms for the court is irrevocable, and that space once assigned to the court cannot be retaken by the provincial board for other purposes." No such contention is made. The contention, which is twofold, is that (1) when the provincial board furnishes a courthouse or court room which, in the judgment of the court, is clearly inadequate for its needs, the court may refuse to accept it and require the board to perform its statutory duty to furnish a courthouse or court room reasonably adequate for the needs of the court; and, on failure to obtain it in this manner, the court may rent one suitable for court purposes; and that (2) when an adequate court room has once been furnished and is in the possession of the court, the court has power to prevent its occupation, in whole or in part, by other persons to the serious detriment of the court business. It is not asserted that the provincial board cannot assign a particular room or rooms to a Court of First Instance; nor is it claimed that an assignment of such room or rooms having once been made is irrevocable. The provincial board may change the court from one room to another, when such change is reasonably necessary, provided the new rooms are reasonably adequate for all the purposes of the court. Whether they are so or not is for the judge alone to determine. The court may refuse to be dispossessed of his old rooms until he has been furnished with others reasonably fit and proper for the due administration of justice.

In determining whether or not rooms and equipment are reasonably adequate, the court may consider whether they are adequate to secure its own freedom of action, and to carry on its necessary business with dignity, decorum, order, due dispatch, and convenience. Not only may the court consider these things, but it is its duty to do so.

We have already, to a large extent, disposed of counsel's contention that the Court of First Instance exceeded its jurisdiction in issuing the orders referred to. He says: "The usual method of requiring the performance of a statutory duty by a provincial board would be by proceedings in mandamus, but the order in the present case can certainly not be justified as a writ of mandamus, being issued by the court independent of any regular proceeding, without a hearing, without parties, and without anything in the semblance of due process of law." As we have already intimated, where the duty to be performed is owing to the court itself, and where, therefore, the court itself is the party interested above all others, and where as a necessary result, the conditions upon which the duty must be performed are fixed, an action brought for the sole purpose of informing the court relative to those matters is a vain and useless thing. In a proceeding to require officials to furnish office and equipment without which the court could not properly exercise its functions, the only question to be determined is the necessity. That there is no money in the treasury at the moment with which to purchase the articles required, that the provincial officials consider them unnecessary, that some other judge has done without them, that the provincial officials think that the work of the court is unimportant, are considerations of no importance in the face of the fact that the articles required are an absolute necessity. Such considerations, or part of them, would have weight where the question was merely one of the convenience or physical comfort of the court, or the proceeding was one to compel the officials to perform their duty or one to punish for contempt. They have no weight whatever where the proper administration of justice requires the things demanded. Developing further a theme already discussed, let us put the question, "Would the fact that there was no money in the provincial treasury be a sufficient answer by the provincial officials to the demand of the court that it be furnished a court room wherein it could give to one man or twenty men, illegally imprisoned, the benefits of the writ of habeas corpus?" Can the provincial officials, under the guise of exercising their judgment and discretion, suspend the writ of habeas corpus? Can they thereby deprive the province of justice? Can they, by refusing the things absolutely necessary to the administration of justice on the ground that there is no money, or that the work of the court is unimportant, or upon any ground whatever, absolutely or in effect, banish the court from the province? We are not permitted to assume that the Legislature

intended any such result; and if it did it would be unavailing because the Legislature has no power to enact any law which will destroy the courts or seriously impair their functions.

The claim that the writ of mandamus would prevent such a result has no merit. In the first place, being an ordinary action, it would be too slow to be of value. In the second place, the writ would not lie. The writ of mandamus never issues when the official to whom the writ is to be directed has the right to exercise judgment and discretion in the performance of that duty. Therefore, as counsel claims, if the provincial officials may exercise judgment or discretion as to whether they shall furnish or not and as to the time when they shall furnish, the writ would be unavailing.

But in any event, whatever questions there are could be disposed of as well in proceedings initiated by an order to show cause as in an action of mandamus; in fact, better. Courts, as we have said, act directly upon parties who owe them duties. Duties are always legal things, the nature, extent, necessity, and performance of which are usually questions of law. The court does not, as a rule, have to be informed of them; and, if he does, it is of such a nature that the information can better be obtained by the direct proceeding by the court than by the roundabout method of an action of mandamus. Besides, as a rule, officials upon whom are imposed duties and obligations in favor of the court become thereby to that extent servants of the court, to whom the court can issue its orders and commands substantially as to other servants and officials.

From these obligations it is clear that the court, in the case before us, had power to remove the partition placed in the court room during the absence of the presiding judge and to exclude all persons therefrom who were in any way interfering with the administration of justice. It had power, likewise, to expel from the private offices of the court and of the clerk such persons as were interlopers therein. Having the right of expulsion, the court had the right to continue the exclusion and prevent the reoccupation of the court room by the persons who had been expelled. One of the most evident powers of the court, and one the exercise of which is most patently necessary, is that of preserving order in and about the court room and of preventing such noises or other interruptions as interfere with court procedure. The presence of the persons on the other side of the partition, with the noises which they produced and the disorder which accompanied their work was, under the facts before us, intolerable. It is not only the right but it is the duty of the court to suppress all disorders and prevent all interruptions which menace the administration of the law.

It is also clear that the erection of the partition cutting off substantially one-third of the space formerly allotted to the court, thereby reducing the space of the court room to limitations which prevented the proper discharge of the duties of the court, was an illegal invasion of the precincts of the court, entirely indefensible, and the reoccupation of the court and the measures adopted to that end were within its authority and jurisdiction.

From the reasons heretofore given it is also clear that the other orders of the Court of First Instance which are before us in the proceeding were within the power of the court to make. The refusal of the officials to furnish the materials and equipment ordered by the court, and there is no claim here that they were not reasonably necessary or convenient, was properly made the basis of a proceeding by the court to determine whether there was sufficient justification for such refusal, and to enforce the order if there was none. The court had a right to make the order and, as a necessary result, the consequent right to enforce it, as reasonable discretion and judgment determined necessary, following the procedure established by law and custom.

The petition for the writ is denied.

Arellano, C. J., Torres', Johnson, and Carson, JJ., concur.

DISSENTING

TRENT, J.,

The plaintiffs in their petition allege:

"That on the 11th day of March, 1912, there was occupied by the Court of First Instance of the Province of Tarlac space in the provincial building of said province suitable and adequate for the due conduct of the business of the court; that immediately adjoining the court room, and separated therefrom by a partition, was a room occupied by the recorder of the province and the clerical force of the provincial governor and the provincial board, hereinafter referred to as the recorder's room; that the court room and the recorder's room above referred to had been duly assigned to their said respective uses by the provincial board of Tarlac more than a year prior to the said 11th day of March, 1912, and had been devoted to their respective uses during such period; that on the said 11th day of March, 1912, defendant required in writing of the provincial governor of Tarlac that the room hereinbefore referred to as the recorder's room be forthwith vacated and delivered to defendant for the use of the court; that the provincial governor, on the 12th day of March, 1912, by authority and direction of the provincial board, replied to the aforesaid request of defendant, refusing to comply therewith; that thereafter, and on the 12th day of March, defendant prepared, signed, and delivered to the sheriff of the Province of Tarlac the order a copy of which, marked Exhibit A, is hereto attached and made a part of this complaint; that the partition, or 'biombo,' referred to in said Exhibit A was, in fact, the partition separating the court room from the recorder's room; that thereafter, in compliance with the aforesaid order Exhibit A, the sheriff, at midday on the 12th day of March, 1912, against the protest and objections of plaintiffs, removed the aforesaid partition or 'biombo,' and removed from the aforesaid recorder's room the equipment and personnel which had theretofore occupied it, and thereby included in the court room the space formerly occupied by the recorder's room; that plaintiffs have at no time been given or offered a hearing in the matters above set forth, and that all action taken therein by defendant has been ex parte and of his own motion; that plaintiffs are restrained by threats and force from reestablishing the aforesaid partition and from exercising their authority over so much of the provincial building of Tarlac as defendant chooses to consider necessary or convenient for court purposes, and that defendant, on the 17th day of April, 1912, has signed and issued the order a copy of which is hereto attached, marked Exhibit B, and made a part hereof, and that defendant intends and has threatened to enforce his aforesaid orders by means of contempt proceedings against the plaintiffs Romulo and Topacio, and by other means, unless said orders are annulled by this honorable court.

"That defendant, on the 14th day of March, 1912, ex parte and on his own motion, signed, issued, and delivered to plaintiffs the order a copy of which, marked Exhibit C, is hereto attached and made a part of this complaint; that the provincial board of Tarlac, at the time of the aforesaid order, was without appropriable funds available for the supply of books and equipment to the Court of First Instance except in the sum of P1.64, and that there was available, of funds already appropriated and applicable under the law to supplying equipment for the Court of First Instance, only the sum of P278.60; that the articles required by defendant in his aforesaid order Exhibit C are of the aggregate value of more than P1,000; that plaintiffs, even if they had funds available for the purpose, could not in any event have supplied the articles referred to in Exhibit C within the time therein fixed, that is to say, on or before the 23d day of March, 1912; that plaintiffs, on the 16th day of March, 1912, by an appropriate resolution of the provincial board, replied to defendant that it was impossible to comply with his order Exhibit C, a copy of which resolution, marked Exhibit D, is hereto attached and made a part of this complaint; that plaintiffs thereupon, and by appropriate resolution, expressed to defendant their lack of intention to threaten or commit contempt, whereupon defendant signed and issued the order a copy of which, marked Exhibit E, is hereto attached and made a part of this complaint; that plaintiffs have furnished to defendant some of the articles referred to in Exhibit C, and have not furnished the balance nor have they been able to do so; that defendant, on the 28th day of March, 1912, signed and issued the order a copy of which is hereto attached, marked Exhibit G, and hereby made a part of this complaint; that defendant intends and has threatened to punish the individual plaintiffs by the imposition of penalties for contempt of court upon the

termination of these proceedings before the Supreme Court, unless defendant's orders herein referred to are annulled or defendant is forbidden by this court so to proceed."

The defendant's answer is set out in full in the majority opinion. On November 20, 1912, the plaintiffs appeared and filed the following demurrer to the answer: "The plaintiffs appear and interpose a demurrer against the answer presented by the defendant upon the following ground, to wit: That said answer does not set forth facts sufficient to constitute a defense or counterclaim."

On March 3, 1913, the following stipulation was filed:

"The parties to the above entitled cause, by their respective undersigned attorneys, hereby stipulate that, with the consent of the court, the demurrer interposed by plaintiffs to the answer of the defendant shall be heard on Monday, March 10, 1913, at 9 o'clock a. m., or as soon thereafter as the court may be able to hear counsel."

The court says: "The question before this court arises upon an answer to an order to show cause * * * In the written argument on the hearing of the demurrer * * * The facts admitted to be true by the so-called demurrer are set forth fully in the answer of the defendant * * *."

But later the court appears to hold that the demurrer admits that the allegations in the answer are true not only for the purpose of determining whether or not such allegations constitute a valid defense but also for the purpose of finally disposing of the case.

The plaintiffs allege that the provincial board of Tarlac, at the time the order of March 14 was issued, was without appropriable funds available for the supply of books and equipment to the Court of First Instance except in the sum of P1.64, and that there was available of funds already appropriated and applicable under the law to supplying equipment for the Court of First Instance only the sum of P278.60 and that the articles called for in said order were of the aggregate value of more than P1,000. The defendant in his answer says that at the time he issued the order requiring the board to supply and equip the court there was on hand in the provincial treasury large sums of money not expended and not necessary to meet obligations actually incurred by the province. Notwithstanding the fact that neither party presented any testimony in support of these allegations the court has accepted those of the defendant as true.

Again, the defendant alleges in his answer that for several years the provincial board of Tarlac, and particularly these plaintiffs, have refused to furnish upon the requisition of the clerk of the court the supplies necessary to conduct the business of the court; that the provincial treasurer furnished the court with an old secondhand typewriter which had been used about three years and refused to furnish a good machine on the ground that the work of the court was of such slight importance as to render the use of the typewriter unnecessary; that said treasurer has refused to furnish stamps necessary to the carrying on of the correspondence of the clerk and judge; that during the time the court has suffered from want of proper supplies the plaintiffs have appropriated and expended large sums of public moneys unnecessarily; and that the plaintiffs have failed and refused to perform the duty enjoined upon them by law. These are very serious allegations against the plaintiffs. They have not had an opportunity to deny these charges, nor to prove the contrary. They can truthfully say that they have never had a hearing in this court or in the court below.

I consider that the principal question in this case is whether or not the respondent judge exceeded his power or jurisdiction in issuing the order of March 14, 1912, and in proceeding to punish the parties by fine and imprisonment for a failure to obey said order.

The court says: "These are the orders issued by the court upon the facts and conditions set out in the answer just quoted, and herein complained of, to wit:"

The court then sets out the orders of March 12, March 14, March 17, and March 28, and says: "We regard this latter (that of March 28) as vacating that part of the order of March 14 which threatened to punish for contempt without giving a hearing, and that that part of said order is not before us."

Again the court says: "The refusal of the officials to furnish the materials and equipment ordered by the court, and there is no claim here that they were not reasonably necessary or convenient, was properly made the basis of a proceeding by the court to determine whether there was sufficient justification for such refusal, and to enforce the order if there was none."

And again the court says: "Such considerations (that there was no money in the treasury to pay for the articles) or a part of them, would have weight where the question was one of the convenience or the physical comfort of the court or the proceeding was one to compel the officials to perform their duty or one to punish for contempt. They have no weight whatever where the proper administration of justice requires the things demanded."

The court admits that the order of March 14 is one of those complained of and holds that the respondent judge did not exceed his jurisdiction in issuing that order. The court also admits that the fact that the plaintiffs had no money with which to buy the materials and supplies would have great weight where the proceeding was one to compel the officials to perform their duty or one to punish for contempt. The proceedings instituted by the order of March 28 is certainly one to punish the plaintiffs for contempt. The order itself establishes beyond question this fact. The contempt proceedings were suspended because this action was instituted in the Supreme Court. But the plaintiffs allege that the defendant intends and has threatened to punish the individual plaintiffs by the imposition of penalties for contempt of court upon the termination of these proceedings before the Supreme Court, unless defendant's orders herein referred to are annulled or defendant is forbidden by this court so to proceed. As this court has denied the writ the plaintiffs are in the same position as they were before instituting this action and are now subject according to their allegations, and these allegations are not denied, to be punished for failure to obey the order of March 14.

This court has, as I have indicated, accepted as true the allegations set forth in the defendant's answer. This has been done on a hearing upon a demurrer to the answer. There can be no question about this proposition as the court says: "These are the orders issued by the court upon the fact and conditions set out in the answer just quoted." This is the first case upon record where this procedure has been followed.

The court has held and announced as the law in this jurisdiction: (1) That judges of the Courts of First Instance have the power to peremptorily order provincial boards to furnish just such materials and supplies as the judge may consider necessary for the proper dispatch of the business of the court, and to punish by fine and imprisonment for the failure to comply with such an order, notwithstanding the fact that the board is without funds to pay for such materials and supplies; and (2) that provincial boards are not competent to determine the needs of the Courts of First Instance, the judge being the only person who can determine this question. It will be noted that there is not a single authority cited in the majority opinion in support of these propositions.

To the answer of the board that it had no money it has been said that the board could have purchased the materials on credit. With the general proposition that the provincial board is required to furnish the court with equipment and supplies necessary for the proper conduct of its business I agree, but the issuance of the order of March 14 and the punishment for contempt should be preceded by request upon the provincial board to meet the court's requirements in the manner provided by law.

Section 1 of Act No. 152, quoted in the majority opinion, is explicit in requiring that estimates of what a court deems necessary for the proper conduct of its business be submitted to the provincial board by the sheriff or clerk as the case may be. Such estimates are easily and quickly prepared, and aside from the controlling¹ fact that the

law plainly requires such procedure it is no more than fair to the board. Even from the allegations in the answer of the respondent judge the necessity of the court does not appear to have been so pressing as to justify an absolute disregard of the procedure established by law for securing supplies. The holding, as set forth in the majority opinion, to the effect that the board is not competent to determine the needs of the court is not justified by the law. The equipment and the supplies needed by the court are of precisely the same nature as those required for the use of provincial officials. The board is in charge of the provincial funds and is best capable of knowing the amount which should be allowed for the maintenance of the different offices. From absolute necessities to what may be desired by individual officers is a long step. To assert, as this court has done, that each judge who comes along has access to the provincial funds to the extent of fitting up his office to suit his individual taste, is going too far. The board should be allowed to fulfill its duty imposed by law of providing and fitting up the court's apartments as in its judgment the needs of the service require and the funds of the province will stand. Even were the requirements of the court in the way of equipment and supplies of so intricate and complicated a nature that they were beyond the ken of the provincial board, that fact alone would not necessarily make the court the last authority on what was necessary as distinguished from what might be convenient. That there is room for friction between provincial boards and the various courts upon this subject is very true, yet the whole history of American jurisprudence, as well as our own comparatively limited experience, demonstrates that the executive officials have always been intrusted with the duty of providing the judicial department with equipment and supplies and have discharged this duty satisfactorily except in a very few cases. To say in the face of this fact that what a court deems necessary must be furnished, is going farther than necessary. That a court is not infallible upon these matters may be inferred from a few reported cases where the judge overstepped his authority in these matters. (Los Angeles Co. vs. Superior Ct., 93 Cal., 380; County of San Joaquin vs. Budd, 96 Cal., 47; Barnett vs. Ashmore, 5 Wash., 163; State ex rel. vs. Smith, 82 Mo., 51; Board vs. Gwin, 136 Ind., 562.)

The majority opinion lays down the rule that instead of proceeding against the provincial board for contempt, the court "may, after reasonable demand on the officials to perform, itself procure the thing necessary and the expense incurred will be a charge on the province." But the law says, and it is quoted in the majority opinion, that, "no expense for either purpose shall be incurred without the prior authority of the provincial board * * *." This plain and mandatory provision of law has been disregarded by this court and judges of first instance are now authorized, not by the legislature, but by the Supreme Court of the Philippine Islands, to enter a field heretofore solely and exclusively occupied by the provincial board.

In a case where the law was practically the same as that which must govern the present case, in that the county commissioners were alone intrusted with the expenditure of county funds and with the property of the county, its repair, equipment, and the furnishing of office supplies, and the county court purchased a strip of matting for the floor of the court room, which it was agreed "was indispensable to the comfort and convenience of those having business to transact in said court," the appellate court held (*Commrs. of Neosho Co. vs. Stoddart*, 13 Kan., 157):

"Indeed, every law upon the statute book that has any reference to the subject would seem to indicate that the county board has exclusive control, within the law, of all county expenditures; and there is no law upon the statute book that authorizes either the district court, or the sheriff, or both together, to contract for the county, or to create any indebtedness against the county, in any case similar to the one now under consideration. The county commissioners alone possess such power, and they alone can create such indebtedness. It is the duty of the county commissioners, and their duty alone, to furnish a suitable court room for their county; but if they do not do so, then some other remedy than the one resorted to in this case must be invoked."

As said in the case last cited and applying¹ the principle to the case under consideration every law that has any reference to the expenditure of provincial funds shows that provincial boards have exclusive control of all provincial expenditures; and there is no law that even indicates that Courts of First Instance have any control

whatever over the public moneys or can force an expenditure which is not authorized by the board. It is true that it is the duty of the board to furnish the necessary materials and supplies for the courts, but what is necessary should be left, in the first instance, to the judgment of the board as the members thereof are in a position to know the needs of officials and the financial condition of the province; but if the board refused to furnish the court with the necessary supplies after the proper estimate has been submitted and they have been given an opportunity to act thereon, it would seem that it would be more appropriate and orderly to compel the board to act by means of a mandamus than to peremptorily order the expenditure of funds without giving the board an opportunity to be heard or for the judge to purchase the supplies himself and charge the same to the province. There is never any danger to the public service in following the course marked out by the law in these matters.

In the majority opinion the court says: "The judiciary is one of the coordinate branches of the Government. Its preservation in its integrity and effectiveness is necessary to the present form of Government. This is true of the other departments also. * * * Each department is bound to preserve its own existence if it live up to the duty imposed upon it as one of the coordinate branches of the Government * * *. Courts cannot, under their duty to their creator, the sovereign power, permit themselves to be subordinated to any person or official to which their creator did not itself subordinate them."

With these propositions I fully agree. But the creator has said that "no expense for either purpose shall be incurred without the prior authority of the provincial board in the province, * * *." The respondent judge without authority from the provincial board or without even giving the provincial board an opportunity to grant the necessary authority ordered the expenditure of over P1,000 of the public funds and this court has said that he was acting within his power. In so doing, has the court maintained the principle that the judiciary and the executive departments are coequal? It seems to me that the executive department has been peremptorily subordinated to the judiciary. The door has been thrown wide open for friction and confusion between the judiciary and the executive department, and that harmony and orderly procedure which has so long existed between the two may now cease to exist.

The court asks these questions: "Can the provincial officials, under the guise of exercising their judgment and discretion, suspend the writ of habeas corpus? Can they thereby deprive the province of justice? Can they, by refusing the things absolutely necessary to the administration of justice on the ground that there is no money, or that the work of the court is unimportant, or upon any ground whatever, absolutely or in effect, banish the court from the province?"

In answer to these questions it is sufficient to say that the plaintiffs have never thought of suspending the writ of habeas corpus, nor depriving the province of justice, nor banishing the court from the province. The only thing that the plaintiffs asked is a hearing. They contend that if they can get a hearing in this court they can satisfactorily explain their conduct. They can show that they have at all times been ready and willing to furnish the court upon a proper requisition, with all the necessary materials and supplies, and that they never have contended that the work of the court is unimportant or that they have expended large sums of money unnecessarily or that they have failed to perform the duties imposed upon them by Jaw. If it be true as the court says that the fact that the province had no funds with which to buy the supplies mentioned in the order of March 14 has "no weight whatever where the proper administration of justice requires the things demanded," I think that in view of the positive provision of law that no funds can be expended except upon the approval of the provincial board the plaintiffs should have at least been given a hearing upon the matter. These plaintiffs have been adjudged to have been incompetent, to have expended large sums of money unnecessarily, and to have failed to perform their duties, but this adjudication has been made upon the mere allegations in the answer of the defendant, and the plaintiffs, as I have said, have had no opportunity to be heard. To such procedure I cannot agree.

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