

8 Phil. 146

[G.R. No. 3593. March 23, 1907]

**THE UNITED STATES, PLAINTIFF, VS. C. W. NEY AND JUAN GARCIA BOSQUE,
DEFENDANTS.**

D E C I S I O N

TRACEY, J.:

This proceeding is to punish the defendants for contempt.

In the year 1902 this court decided that the defendant, J. Garcia Bosque, was not entitled to admission to practice law in the Philippine Islands, upon the ground that after the change of sovereignty he had elected to remain a Spanish subject and as such was not qualified for admission to the bar (*In re Bosque*, 1 Phil. Rep., 88), and an order was entered accordingly.

In the year 1904 he made an arrangement with the defendant Ney, a practicing attorney, to carry on business together, sending out a circular signed "Ney & Bosque," stating that they had established an office for the general practice of law in all the courts of the Islands and that Bosque would devote himself especially to consultation and office work relating to Spanish law. The paper was headed "Law Office—Ney & Bosque. Juan G. Bosque, *jurisconsulto español*—C. W. Ney, *abogado americano*."

Since that time the defendant Bosque has not personally appeared in the courts, and with one exception, occurring through an inadvertance, papers from the office were signed not with the firm name alone nor with any designation of the firm as attorneys, but with the words "Ney & Bosque—C. W. Ney, *abogado*."

On two occasions, one on May 1, 1905, and the other on September 15, 1906, this court refused to consider petitions so signed with the names of the defendants and the practice being repeated, on the 2d day of October, 1906, ordered the papers sent to the Attorney-General to take appropriate action thereon, and he thereupon instituted this proceeding.

The defendants disclaim any intentional contempt, and defend their acts as being within the law.

Section 102 of the Code of Civil Procedure, providing that every pleading must be subscribed by the party or his attorney, does not permit, and by implication prohibits, a subscription of the names of any other persons, whether agents or otherwise; therefore a signature containing the name of one neither a party nor an attorney was not a compliance with this section, nor was it aided by the too obvious subterfuge of the addition of the individual name of a licensed attorney. The illegality in this instance was aggravated by the fact that one of the agents so named was a person residing in these Islands to whom this court had expressly denied admission to the bar. The papers in question were irregular and were properly rejected. We refuse to recognize as a practice any signature of names appended to pleadings or other papers in an action other than those specified in the statute. A signature by agents amounts to a signing by nonqualified attorneys, the office of attorney being originally one of agency. (*In re Cooper*, 22 N. Y., 67.) We do not, however, mean to discountenance the use of a suitable firm designation by partners, all of whom have been duly admitted to practice.

It is to be noted that we are not now considering an application for the suspension or removal of the defendant Ney from his office as attorney. The defendant Bosque, not being an officer of the court, could not be proceeded against in that way, and probably for that reason the Attorney-General instituted this form of proceeding.

Should either of these defendants be thus punished for contempt?

Section 232 of the Code of Civil Procedure describes contempt as follows:

“1. Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge;

“2. Misbehavior of an officer of the court in the performance of his official duties or in his official transactions.”

Where the law defines contempt, the power of the courts is restricted to punishment for acts so defined. (*Ex parte Robinson*, 86 U. S., 505.)

As to the first subdivision of this section, no direct order or command of this court has been

disobeyed or resisted by the defendant Ney. The only order that the defendant Bosque can have disobeyed is the one denying him the right to practice law. This order, however, was directly binding upon him, notwithstanding proceedings taken for its review, and any hope on his part of ultimately reversing it furnished no excuse for its violation. Even had he been entitled under the statute to practice law without any license from the court and without an application to it, yet having voluntarily invoked its action, he was bound by its order made on his own petition. A mandate of the court, while in force, must be obeyed. The irregular signature to papers, though affixed by his associate, had his authorization and constitutes a substantial attempt to engage in practice. Moreover the firm circular in setting forth the establishment of an office for the general practice of law in all the courts of the Islands, amounted to an assertion of his right and purpose, not effectively qualified by the addition that he would devote himself to consultation and office work relating to Spanish law. Spanish law plays an important part in the equipment of a lawyer in the Archipelago, standing on a different footing from the law of other foreign countries, in regard to which a skilled person might as a calling, advise without practicing law. The fact stated on the circular that he was a Spanish lawyer did not amount to a disclaimer of his professional character in the Islands. Independent of statutory provisions, a foreigner is not by reason of his status disqualified from practicing law. One of the most eminent American advocates was an alien barrister admitted to the bar after a contest in the court of New York State. (*In re Thomas Addis Emmett*, 2 Cain's Cases, 386.) Consequently the conduct of the defendant Bosque amounts to disobedience of an order made in a proceeding to which he was a party.

Under the second subdivision of the section cited, Bosque is obviously not answerable, inasmuch as he was not an officer of the court. On the other hand, under this subdivision, the defendant Ney, as an admitted attorney, is liable if his conduct amounted to misbehavior. We are of the opinion that it did. In the offense of Bosque in holding himself out as a general practitioner Ney participated, and for the improper signature of the pleadings he was chiefly and personally responsible. It is impossible to say that the signature itself was a violation of the law, and yet hold guiltless the man who repeatedly wrote it. Moreover we regret to add that his persistent and rash disregard of the rulings of the court has not commended him to our indulgence, while the offensive character of certain papers recently filed by him forbids us from presuming on the hope of his voluntarily conforming to the customary standard of members of the bar.

The judgment of the court is that each of the defendants is fined in the sum of 200 pesos, to be paid into the office of the clerk of this court within ten days, with the costs *de officio*. So ordered.

Arellano, C. J., Torres, Mapa, and Willard, JJ., concur.
Johnson, J., does not concur in the result.

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