

6 Phil. 426

[ G.R. No. 3463. September 05, 1906 ]

**JUANA FAJARDO, PETITIONER, VS. JULIO LLORENTE, JUDGE OF THE COURT OF FIRST INSTANCE OF NUEVA ECIJA, ET AL., RESPONDENTS.**

**D E C I S I O N**

**TORRES, J.:**

Attorneys Buencamino and Diokno presented to this court in behalf of Juana Fajardo a petition for a writ of mandamus to compel the judge of the Court of First Instance of Nueva Ecija, Julio Llorente, to admit a complaint filed by the petitioner in the said court against Emiliano Soriano for the crime of seduction, and to hold the necessary preliminary investigation, taxing the costs against the said Soriano. The petition alleges that the complaint in question was duly filed and that on the 11th of June of this year the respondent judge made an order dismissing the same, with costs against the complaining witness, on the ground that the penalty prescribed for the crime of seduction being that of *arresto mayor*, the complaint should be presented to the justice of the peace of the town of Aliaga, where the crime was committed.

The complaining witness insisted in her claim, alleging new reasons why her complaint should be allowed, but the judge denied her petition in view of the provisions of section 56, paragraph 6, of Act No. 136, known as the Organic Act, which fixes the jurisdiction of the Courts of First Instance of these Islands, the indemnification for which a person guilty of this offense could be held liable, being civil in character.

The petition alleges that there is no other speedy or adequate remedy for the protection of her rights and asks this court for the issuance of a writ of mandamus.

The respondent judge demurred to the petition and asked that the same be dismissed with costs.

Section 515 of the Code of Civil Procedure provides that the Supreme Court shall have jurisdiction in all cases where an inferior tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specially enjoins as a duty resulting from an office of trust or station, or unlawfully excludes the plaintiff from the use and enjoyment of a right or office to which he is entitled, and from which he has been dispossessed by said inferior tribunal, etc.

Section 222 of the same code provides in part as follows, if "the court, on trial, finds the allegations of the complaint to be true, it may, if there is no other plain, speedy, and adequate remedy in the ordinary courts of law, render a judgment granting a peremptory order against the defendant," etc.

So that if there is any other plain, speedy, and adequate remedy against the order of the inferior tribunal, the writ of mandamus prayed for should not issue; From the order of the Court of First Instance dismissing the complaint filed by Juana Fajardo with costs on the ground that the justice of the peace was the proper authority to take cognizance of the crime of seduction, punishable only with the penalty of *arresto mayor* an appeal could have been taken under the provisions of section 107, in connection with sections 1 and 44 of General Orders, No. 58. Consequently the petitioner has no right to pray for a writ of mandamus against the judge who dismissed her complaint on the ground that the same should be filed with the justice of the peace who had competent jurisdiction over the crime charged.

The demurrer of the respondent to the petition is hereby sustained and the application of Juana Fajardo for a writ of mandamus is denied, the petitioner to pay the costs.

After the expiration of ten days let judgment be entered in accordance herewith. So ordered.

*Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.*