

4 Phil. 364

[G.R. No. 1375. April 01, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PACIFICO GONZAGA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The defendant in this case and the defendant in the case of the United States vs. Pacifico Gonzaga^[1]

(2 Off. Gaz.,383) is the same person, and this proceeding grows out of an interlocutory order made by the defendant in the case there under discussion. The defendant, acting as municipal president, had taken jurisdiction of a criminal proceeding against Ruperto Gimarino, a justice of the peace, for *prevaricacion*, and had issued an order of arrest on the 7th day of July, 1903, fixing the bail of the justice of the peace in the sum of 2,000 pesos. Afterwards, and on the 25th day of July, 1903, the defendant made an order increasing the amount of the bail from 2,000 pesos to 32,000 pesos, and directed two policemen to arrest Gimarino. The latter was brought to the municipal building, and the order increasing the amount of the bail was read to him. He stated that he could not furnish it, and he was not allowed by the defendant to depart from the municipal building until about 5 o'clock in the afternoon, when the defendant made another order, vacating his former order increasing the amount of bail, and verbally told the justice of the peace that he might go. He was detained for about nine hours. The court below convicted the defendant in this case of a violation of article 200 of the Penal Code.

In view of the fact that in the other case against this defendant we held that he could not be convicted for usurping judicial functions in

taking and for a time retaining jurisdiction of this case, we do not see how he could be convicted for making interlocutory orders in the same proceeding. Moreover, in no event can he be convicted of a violation of said article 200, for that article is limited to the case of a public officer who makes an arrest not on account of the commission of some crime but for other reasons. In the case before us it appears that the justice of the peace had been charged with a criminal offense; that he had been arrested by reason of that charge, and that his subsequent detention on the 25th of July was on account of the same offense charged against him. The case therefore does not fall within article 200.

We held in the former case that the defendant apparently acted in good faith. In this case it was proved that in making the order increasing the amount of the bond he acted in bad faith. We can not see how this fact can change the result.

The judgment of the court below is reversed and the defendant acquitted, with the costs of both instances *de officio*.

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

^[1] Phil. Rep., 135.
