

[ADMINISTRATIVE ORDER NO. 148, October 26, 1955]

SUSPENDING MR. RESTITUTO M. DURAN FROM OFFICE AS JUSTICE OF THE PEACE OF BASEY, SAMAR.

This refers to two administrative cases against Justice of the Peace Restituto M. Duran of Basey, Samar, which were investigated by a District Judge of Samar.

In Administrative Case No. 232, respondent is charged with having convicted complainant Valeriano C. Yancha in Criminal Case No. 2368 of violation of Municipal Ordinance No. 14, s. 1946, of the municipality of Basey, solely for reasons of "personal hate, vengeance and revenge," said ordinance having been disapproved by the Provincial Board of Samar in 1947. He is also charged with having insulted complainant in the presence of many people during the trial by stating that complainant although a lawyer, refused to pay a P48 debt to the municipality which showed "his intention to cheat our municipal government."

The records show that complainant was originally accused of violating Municipal Ordinance No. 14, s. 1946, by the Municipal Treasurer of Basey for his failure to pay municipal license fees on certain fishing privileges. At the trial, accused Yancha asked for the dismissal of the case on the ground that Municipal Ordinance No. 14, s. of 1946, had been disapproved by the Provincial Board in Resolution No. 331, s. of 1947. Instead of dismissing the case, the respondent ordered the municipal treasurer to amend his complaint so as to charge the accused with violation of Ordinance No. 18, s. of 1944. Respondent reasoned that inasmuch as Ordinance No. 14, s. of 1946, which sought to amend Ordinance No. 18, s. of 1944, had been disapproved, the latter ordinance remained in full force and effect. Not satisfied, Yancha filed a petition for prohibition and for a writ of preliminary injunction, assailing respondent's order to amend the complaint as an abuse of discretion.

The Court of First Instance of Samar agreed with respondent's theory and upheld the legality of his action, citing Rule 115, Section 12, of the Rules of Court and the case of U.S. vs. Tan Boming, 48 Phil. 877. Upon the resumption and conclusion of the trial on the merits, the respondent justice of the peace convicted the accused of violation of Ordinance No. 18, s. 1944.

There was no evidence presented to prove that respondent was motivated by any improper motive in his conduct of the above case. To disprove the allegations that his actions were motivated by hatred or revenge, the respondent pointed out that he ordered the temporary dismissal of another case (for estafa) against Yancha for lack of sufficient evidence.

The respondent is therefore exonerated in Administrative Case No. 232.

In Administrative Case No. 233, respondent is charged with having had carnal knowledge by force of complainant Mrs. Medelina Viojan. Complainant declared that on September 20, 1954, she met respondent on a motorboat bound for Marabut