1 Phil. 513

[G. R. No. 1105. November 26, 1902]

IN THE MATTER OF THE PETITION OF R. W. CARR ET AL. FOR A WRIT OF HABEAS CORPUS.

D E C I S I O N

WILLARD, J.:

An application for a writ of *habeas corpus* having been presented to this court in behalf of R W. Carr and three others, an order was directed to whomsoever might have them in custody requiring such person to show cause why the writ should not issue. In pursuance of this order a captain of the Marine Corps appeared and showed cause. It was proved at the hearing that these four men are marines in the service of the United States; that it was alleged that they had committed an offense Avhich was in violation of the military laws and regulations by which that corps is governed, and that at the time the application for the writ was made they were in the guardhouse of the marines at Oavite by virtue of an order of the commanding officer of that corps at that place. These facts are sufficient to show that they are not illegally detained.

But it is claimed by the petitioners that the offense charged against them was a violation not only of the military law, but also of the civil law; that they had been arrested by the local police at Cavite on account thereof; that by reason of the insecurity of the local jail the civil authorities had transferred them to the Marine Corps; that they were being held by the latter awaiting trial by the civil authorities; that in the language of their counsel they were civil prisoners held by the military arm, and that no warrant for their detention had ever been issued. These facts do not make their confinement illegal. When a soldier commits an offense which makes him amenable both to the civil and military law he can be tried by either. (Coleman vs. Tennessee, 97 U. S., 513; *ex parte* Mason, 105 U. S., 696; Johnson vs. Sayre, 158 U. S., 115.)

If the military authorities have him in their possession they can turn him over to the civil

courts for trial or they can try him themselves. The fact that they have agreed to surrender him to the civil courts does not deprive them of jurisdiction to try him before such surrender.

The marine authorities having jurisdiction to try the petitioners when this application was made their detention by such authorities was not illegal. (Carter vs. McClaughry, 183 U. S., 365.)

The application for the writ is denied, with costs *de oficio.*

Arellano, C. J., Torres, and *Mapa, JJ.,* concur.

COOPER, J., *dissenting*:

I dissent.

SMITH, J., *concurring*:

I am of the opinion that the petitioners had a right to make answer to the respondent's return to the order to show cause, and in case of a denial of all or any of the material allegations thereof to put the respondents to their proof. In view of the fact, however, that the petitioners did not ask leave or offer to make any such answer, the facts alleged in the return must be considered as admitted, and I therefore concur in the foregoing decision.

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