4 Phil. 317

[G.R. No. 1461. March 24, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. WILLIAM A. WILSON, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The defendant, Wilson, at all the times mentioned in the complaint, was the disbursing officer of the Bureau of Coast Guard and Transportation in the Insular Government. He had on deposit to his credit with the Insular Treasurer large sums of money against which he drew checks for the payment of claims properly chargeable to his Bureau.

In and prior to the month of December, 1902, S. C. Farnham, Boyd & Co., Limited, of Shanghai, had been engaged in the construction of vessels for the Insular Government, and in December had several claims against the Government therefor. The duly authorized agent in Manila of said company was the Hongkong and Shanghai Banking Corporation. On December 24, 1902, the defendant, Wilson, made a check on the Insular Treasurer payable to the Hongkong and Shanghai Banking Corporation for the sum of $50,293.74, local currency. This check was dated December 24, 1902, and was signed by the defendant as such disbursing officer for said Bureau. In the lower left hand corner, in a space reserved for that purpose, the defendant stated in his handwriting that the object for which the check was drawn was “payments on vessels.” On the same day, to wit, the 24th of December, 1902, the defendant carried this check to the Hongkong and Shanghai Bank, delivered it to said bank, and then received from the bank a receipt signed by the said S. C. Farnham, Boyd & Co., Limited, for $3,086.12, local currency, and another receipt from the same company

for the sum of $39,497.62. These receipts were attached to bills against the Insular Government for work done by the said company in the construction of said vessels. The amount of the two vouchers of receipt was $42,583.74, leaving a balance unused of said check amounting to $7,710, local currency. The said Hongkong Bank at this time, in addition to the delivery of the two vouchers aforesaid, delivered to said Wilson the said sum of $7,710, local currency, in cash, but reduced to money of the United States at the rate of $2.57, local currency, to $1, United States currency, the amount thus received in cash by Wilson at this time as a part of the proceeds of said check being the sum of $3,000, money of the United States. On the 26th day of December, 1902, the Hongkong and Shanghai Bank presented the check to the Insular Treasurer, and received from said Treasurer, the full amount thereof, to wit, the sum of $50,293.74, local currency. The check, to the extent of $42,583.74, was used in payment of vessels, but to the extent of $7,710, local currency, reduced to $3,000, United States currency, was not used by Wilson for the payment of any vessels. On the 27th of December, 1902, Wilson secretly left the city of Manila and the Philippine Islands, taking passage in a steamer bound for China under the fictitious name of C. T. Thorne.

As to the facts above set out there is no substantial dispute between the parties, but upon these facts the defendant claims, for several reasons, that his conviction in the court below was wrong:

> (1) It was stated in the oral argument that there was no proof in this case that Wilson was the disbursing officer of the Coast Guard Bureau. Counsel must have intended to apply this statement to another case against the same defendant, heard at the same time, for in this case it was expressly admitted at the trial that the defendant was the duly appointed, qualified, and acting disbursing officer of the Bureau of Coast Guard and Transportation of the United States Civil Government in the Philippine Islands, on the dates charged in the complaint.
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> (2) It is claimed by the defendant that those

> words in the check which stated the object for which it was drawn were no part of the check; that if this was a departure from the truth, it did not affect the integrity of the document nor the legal effect thereof.

It was shown at the trial that the Insular Treasurer, with whom Wilson's deposit was kept and on whom this check was drawn, had issued, prior to the time in question, to Wilson and other disbursing officers or clerks, instructions in regard to the drawing of checks against their deposits, and as to the contents of such checks. Article 3 of the instructions dated August 1, 1902, is in part as follows:

> "3. A disbursing officer or agent drawing checks on moneys deposited to his official credit must state on the face of each the object or purpose to which the avails are to be applied. Such statement may be made in brief form, but must clearly indicate the object of the expenditure."

Article 8 of the instructions dated October 25, 1902, is as follows:

> "8. The object for which a check is drawn must be stated in the space reserved therefor, and checks issued without such statements thereon will be refused payment by the depositary."

The Insular Treasurer, Mr. Branagan, was called as a witness by the defendant, and testified that his office would not honor a check unless it contained this statement. It thus appeared that without this statement on the check the person on whom it was drawn would not pay it; in other words, that without this statement the check was worthless. It needs no argument to show that a statement which is necessary to enable the bearer to get the money on the check is an essential part thereof.

> (3) It is further claimed by the defendant "that it

is an utter impossibility to defraud or deceive the Government by the issuance of checks in excess of the amount covered by legal sufficient vouchers." This claim is based upon the proposition that when the accounts of the disbursing officer are audited, and he is given credit for payments which he may have made, the amount of such credits is determined, not by reference to the checks which he may have drawn, but with reference to the vouchers or receipts which he has turned in to the Auditor's office, and that in this case, as he had received vouchers for only $42,583.74, local currency, he would be credited with that amount only, and the balance of the check in question, $7,710, would still be a charge against him. It is undoubtedly true that the defendant, as far as this case shows, still owes the Government this sum of $7,710; but it is none the less true that, as a matter of fact, by means of this check which contained a false statement as to the purpose for which it was drawn, Wilson succeeded in getting from the Government $3,000 in money which he would not have obtained if it had not been for this false statement. The Treasurer testified at the trial that if this check had contained a statement that $42,000, local currency, was for payment on vessels and had been silent as to the purpose for which the other $8,000 was to be used, payment would have been withheld until an investigation could have been made.

(4)Certain other objections are made to the preliminary proceedings by which the defendant was brought into court. It was stated at the argument that the defendant had been seized in Canada and brought through the United States to Manila without any warrant whatever, and, in fact, that he had been kidnaped. Nothing of this kind appears from the record in this case, and we therefore can not consider it. See, however, upon this point Ker vs. Illinois (119 U. S., 436).

(5) It is claimed, also, that the judgment of conviction is erroneous because no preliminary investigation was held, as required by sections 12 and 13 of General Orders, No. 58. This claim is answered by reference to Act No. (612 of the Commission, which in section 2 provides asfollows:

> "In cases triable only in the Court of First Instance in the city of Manila the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the prosecuting attorney, after due investigation of the facts under section 39 of the act of which this is an amendment, shall have presented an information against him in proper form."

The information in this case shows upon its face that such an investigation was made by the prosecuting attorney. This act took effect on the 15th day of February, 1903, before the defendant was arrested.

> (6)It is claimed by the defendant that the judgment should be set aside because the warrant of arrest was issued in violation of that part of section 5 of the act of Congress of July 1, 1902, relating to the Philippines, which part of said section 5 reads as follows:
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> "That no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized—" and also in violation of that other clause of said section 5, which reads as follows:
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> "That no person shall be held to answer for a criminal offense without due process of law."

It appears from the record that an unverified information was presented by the assistant prosecuting attorney on the 17th day of March, 1903; that on the same day the court upon this information issued a warrant of arrest, and on the same day the sheriff of Manila certified that he had arrested the defendant, and held him subject to the order of the court. On the 19th day of March the defendant, through his attorneys, moved that the warrant of arrest be declared void,

because the judge had not examined under oath the complainant and the witnesses, and that the testimony of such witnesses had not been taken down in writing. On the same day said prosecuting attorney made affidavit before the clerk of the court to the effect that he had investigated the charges in the information filed on the 17th, and was acquainted therewith, and knew the same to be true. This affidavit was attached to the complaint already on file.

On the 21st day of March the defendant renewed his motion to have the warrant of arrest declared void upon the same grounds stated in his former motion, and upon the additional ground that the assistant prosecuting attorney could not have known, of his own knowledge, the truth of the facts stated in the information. This motion was overruled on March 29. Whether or not any action was taken upon the first motion does not appear. After the overruling of the second motion the defendant was called upon to plead, entered a plea of not guilty, and the trial proceeded.

Article IV of the amendments to the Constitution of the United States, is as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

When this article was carried into the said act of Congress of July 1, 1902, it was divided into two parts; the latter part, which has already been quoted, appears near the end of section 5; the first part appears in substance in the middle of section 5, and is as follows:

> "That the right to be secure against unreasonable searches and seizures shall not be violated.'

Whether this division of the article into two parts and the slight change in the phraseology of one part has in any way changed the effect that should be given to the article it is not necessary to consider, for it must be apparent that neither under the Constitution itself nor under section 5 of the act of July 1, 1902, can that part relating to warrants be held to apply to all criminal cases.

The right to arrest without a warrant was well established in the common law of England and the cases in which that right could be exercised were clearly defined. They are also defined, as far as the city of Manila is concerned, by section 37 of Act No. 183. Where a person who has been legally arrested without a warrant was actually before a court, that court had a right to proceed against him without in the first place issuing a warrant for his detention. It is probable that the article was intended to apply to cases where an arrest without a warrant was not allowed and in which it was necessary that a warrant should be issued in order to get the accused person before the court.

In this case, whatever may be said about the manner of his arrest, the fact remains that the defendant was actually in court in the custody of the law on March 29, when a complaint sufficient in form and substance was read to him. To this he pleaded not guilty. The trial followed, in which, and in the judgment of guilty pronounced by the court, we find no error. Whether, if there were irregularities in bringing him personally before the court, he could have been released on a writ of *habeas corpus* or now has a civil action for damages against the person who arrested him we need not inquire. It is enough to say that such irregularities are not sufficient to set aside a valid judgment rendered upon a sufficient complaint and after a trial free from error.

In the case of In re Johnson (167 U. S., 120, 125, 127) the court says:

> "If the petitioner was in the actual custody of the marshal on September 1 his subsequent indictment and trial was valid though in the first instance he might have been illegally arrested. * *

> *" Had he been arrested without a warrant by the marshal, or even by a private individual, and detained in custody until after the 1st of September, he might then have been indicted, although perhaps an action might have lain against the person so arresting him for false imprisonment."

In the case of Ker vs. Illinois (119 U. S., 436, 440, 447), the court says :

> "We do not intend to say that there may not be proceedings previous to the trial in regard to which the prisoner could invoke in some manner the provisions of this clause of the Constitution; but for mere irregularities in the manner in which he may be brought into the custody of the law, we do not think he is entitled to say he should not be tried at all for the crime with which he is charged in a regular indictment. He may be arrested for a very heinous offense by persons without any warrant or without any previous complaint and brought before a proper officer. This may be in some sense said to be without due process of law,' but it would hardly be claimed that after the case had been investigated and the defendant held by the proper authorities to answer for the crime, he could plead that he was first arrested 'without due process of law."

The judgment of the court below is affirmed, with the costs of this instance against the defendant.

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

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