

LEE YICK HON, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.

G.R. No. L-16779. March 30, 1921

Ponente: STREET, J.

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STREET, J.:

This is an appeal by the Insular Collector of Customs from the action of the Court of First Instance of Manila in imposing upon him a fine of P50 for an alleged contempt of court. The circumstances connected with the incident which gave rise to the proceeding are these:

It appears that on July 23, 1920, a petition for the writ of habeas corpus was filed in the Court of First Instance of Manila by one Lee Yick Hon, alleging he had lately arrived from China at the port of Manila with a view to entering the Philippine Islands, but was prevented from so doing by the Insular Collector of Customs, who was detaining him for deportation. Upon the presentation of said petition, his Honor, Pedro Concepcion, presiding in Sala IV of said court, cited the collector to appear and show cause in writing why the writ of habeas corpus should not be issued as prayed. This citation was served at about 11 a. m., at which hour arrangements had already been perfected for the deportation of Lee Yick Hon on a boat scheduled to leave Manila for Hongkong at noon on the same day; and either by oversight or design the Insular Collector failed to countermand the order for his embarkation on that boat. The result was that Lee Yick Hon was deported within two or three hours after the Insular Collector had been served with the citation to show cause in the habeas corpus proceeding. Thereupon contempt proceedings were instituted against the Insular Collector, with the result already stated.

We are of the opinion that the action of the lower court in imposing fine on the appellant cannot be sustained; and the judgment must accordingly be reversed.

The conditions under which a person can be punished for contempt are precisely defined in sections 231 and 232 of the Code of Civil Procedure; and unless the reprobated conduct legitimately falls under those provisions, it cannot be punished as for contempt. The first of these sections contemplates misbehavior in the presence of the court or so near the court or judge as to obstruct the administration of justice. With this situation we are not here, concerned, as the act which constitutes the alleged contempt was committed away from the presence of the court and if punishable at all, it falls under subsection (1) of section 232, wherein it is declared that any person may be punished as for contempt who is guilty of "disobedience of or resistance to a lawful writ, process, order, judgment, or command of the court or injunction granted by a court or judge."

In this case before us, if it be asked what lawful writ, process, order, judgment or command of the court or judge below was disobeyed or resisted by the appellant, the answer must be: None whatever. The citation that was served upon the appellant required him to appear 'at a stated time in the Court of First Instance of Manila and show cause if any there might be, why the writ prayed for should not issue. That citation was literally complied with when, on July 30, 1920, the Attorney-General, on behalf of the Insular Collector, filed his answer, wherein it was in effect stated that the case of Lee Yick Hon had been regularly passed upon by the Special Hoard of

Inquiry, and that it had been found that he had entered the Philippine Islands in contravention of the Immigration and Exclusion Acts, wherefore the Insular Collector had ordered his deportation. That answer, so far as appears in this case, has not been found to be false or insufficient; and the sole ground relied upon to sustain the judgment finding the appellant guilty of contempt is that by allowing Lee Yick Hon to be deported under the conditions stated he has frustrated the possible issuance of the writ of habeas corpus for which application had been made.

At this point attention should be directed to the fact that the order to show cause, a copy of which was served on the Insular Collector of Customs on July 23, 1920, is not the peremptory writ of habeas corpus, unconditionally commanding the respondent to have the body of the detained person before the court at a time and place therein specified. The requisites of the peremptory writ of habeas corpus are stated in section 533 of the Code of Civil Procedure; and appropriate forms are supplied in section 534 of said Code and in section 82 of General Orders, No. 58. The order served in the case before us was merely a preliminary citation requiring the respondent to appear and show cause why the peremptory writ should not be granted. The practice of issuing a preliminary citation of this character, upon applications for the writ of habeas corpus, has, as all legal practitioners are aware, become common in our courts; and upon considerations of practical convenience, the usage has much to commend it, in cases where the necessity for the immediate issuance of the peremptory writ is not manifest. Nevertheless in a case like that now before us, it is necessary to take account of the difference between the preliminary citation and the real writ of habeas corpus; and when advertence is had to this point, and the actual terms of the citation are considered, it is at once obvious that the appellant did not put himself in contempt by allowing Lee Yick Hon to be deported.

Of course if the judge issuing the citation had had his attention directed to the fact that the deportation of Lee Yick Hon was imminent, and there had been any reason to fear that the Collector of Customs might proceed with his deportation notwithstanding the service of the bare citation, his Honor could have penned a few additional words, adding to the citation an admonition to the effect that the petitioner should not be deported until his application for the writ of habeas corpus should be heard. If a temporary restraining order of that kind had been issued, it would no doubt have been respected.

In proceedings against a person alleged to be guilty of contempt of court, it is not to be forgotten that such proceedings are commonly treated as criminal in their nature even when the acts complained of are incidents of civil actions. For this reason the mode of procedure and rules of evidence in contempt proceedings are assimilated as far as practicable to those adapted to criminal prosecutions. (6 R. C. L., p. 530.) Moreover, it is well settled that a person cannot be held liable for contempt in the violation of an injunction or in fact of any judicial order unless the act which is forbidden or required to be done is clearly and exactly defined, so as to leave no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required. (U. S. vs. Atchison, etc., R. Co., 146 Fed., 176, 183.) A party cannot be punished for contempt in failing to do something not specified in the order. (13 C. J., 15.) In the case before us, the deportation of the petitioner was not forbidden by any order of the court, and hence that act cannot be considered as disobedience to the court.

Upon principle the point is clear; and although no case exactly identical with the present one has been called to our attention from the decisions of American courts, something very similar is found in *Ex parte Lake* (37 Tex. Orim. Rep., 656; 66 Am. St. Rep., 848). The facts involved in that case were these: One Edwards had been charged with the commission of a criminal offense in Oklahoma, but he fled to the State of Texas; and upon requisition from the Governor of Oklahoma, a warrant was issued by the Governor of Texas for his arrest in that State. Upon his being arrested, application was made in his behalf before one of the Texas courts for the writ of habeas corpus to secure his release. During the period when the propriety of granting the writ was under consideration in said court, one Lake, the legally appointed extradition agent, acting under the authority of a

proper warrant issued by the Governor of Texas, obtained the custody of Edwards from the sheriff who had him in charge and hurriedly departed with the prisoner for Oklahoma. The result was that the proceedings upon the application for the writ of habeas corpus were frustrated and the writ was in fact never issued—as occurred in the case now before us. The judge before whom the application for the writ of habeas corpus was pending thereupon caused Lake to be arrested and fined him 50 dollars for the supposed contempt. It was held by the Texas Court of Criminal Appeals that this action could not be sustained and the judgment was reversed.

Among the reasons stated for this decision was the fact that the alleged contemner had disobeyed no order issued by the judge, for there was none of any character made in the case, "and there was no order, decree, writ, or any other process in existence, forbidding him from doing just what he did." Speaking further of this aspect of the case, the court said: "We have found no case authorizing punishment by contempt for such conduct as is attributed to Lake, and we believe none can be found. The authorities have been closely and exhaustively examined, and the rule deducible therefrom is, that unless the court has jurisdiction of the supposed contemner, or some order, decree, or process has been resisted or disobeyed, the court has no jurisdiction to punish for contempt. Jurisdiction over the party will not confer power to punish for contempt unless some order, decree, or process has been disobeyed or the party is guilty of some act of the nature of malpractice in the case, or has disobeyed the reasonable rules of the court." {Ex parte Lake, supra.}

The considerations found in that decision are applicable to the case now before us and corroborate the conclusion to be inevitably drawn from our own provisions relative to contempt, namely, that the deportation of Lee Yick Hon by the Insular Collector under the circumstances stated was not a contempt of court.

Judgment is reversed and the defendant absolved, with costs de oficio. So ordered.

Mapa, C. J., and Villamor, J., concur.

MALCOLM, J., with whom concurs ARAULLO, J., dissenting:

I am in complete accord with the decision of Judge of First Instance Concepcion finding Vicente Aldanese, Insular Collector of Customs, guilty of contempt of court and sentencing him to pay a nominal fine of F50. This action of the trial court was justified, considering that the Collector of Customs deported a Chinese alien claiming to be a member of the household of the Consul-General for China, during the pendency of the habeas corpus proceedings, in disregard of a judicial order, and to the great prejudice of the rights of the alien. A brief narration of the facts of record will serve to demonstrate the correctness of the foregoing statements.

The Chinaman Lee Yick Hon arrived at the port of Manila and asked for admission into the Philippine Islands on the ground that he was the cook of the Chinese Consul-General. He was refused admission by a Board of Special Inquiry. The Insular Collector of Customs, in a decision filed on July 22, 1920, affirmed the findings of the Board of Special Inquiry and ordered that the alien be deported from the Philippine Islands to China. Immediately on receipt of this order, counsel for the alien filed in the Court of First Instance of Manila a petition for a writ of habeas corpus in which, among other things, it was alleged that the respondent Collector of Customs held the petitioner for the purpose of deportation. Early on the morning of July 23, 1920, the Honorable Pedro Concepcion, Judge of First Instance, issued an order directed to the Collector of Customs requiring his appearance before the Judge of First Instance one week later to show cause why the writ of habeas corpus prayed for should not issue. This order of the court was served on the Insular Collector of Customs by Antonio de la Cruz, deputy sheriff of the city of Manila, in company with a representative of the counsel for the petitioner, at approximately 10.30 on the morning of "July 23. Mr. Aldanese was told "Que ese chino se va a deportar y por eso la orden es esta." (That that Chinaman will be deported and therefore this is the order.) Nevertheless, on the same afternoon at about 4 o'clock, the Chinese petitioner was placed on a boat and deported to Hongkong.

It appears that when the Insular Collector of Customs received the order of Judge Concepcion, he merely passed it on to Mr. Obieta of the same office, with this notation: "Forward these papers with the case to the Attorney-General.—V. A." Mr. Obieta found the papers on his desk at about 3 o'clock in the afternoon, and forwarded them to Mr. Sotelo, the chief of the immigration division. Mr. Sotelo received the order on the following morning, that is, subsequent to the deportation of the alien. Apparently, the Insular Collector of Customs had no exact knowledge of what had actually occurred, for on July 24, he signed a letter requesting the Attorney-General to represent the interests of the Government in the case. This the Attorney-General did by filing an answer on July 30, 1920, or exactly one week after the Chinaman had been sent out of the country.

These facts constitute, in my opinion, constructive contempt. Paraphrasing the definitions of contempt, there has been a disregard of, or disobedience to, the orders of a judicial body. An act has been done not in the presence of the court but at a distance, which tends to belittle, to obstruct, to interrupt, and to embarrass the administration of justice. It matters not that Mr. Aldanese had no malicious intention of refusing obedience to an order of the court, for it is the action done which determines whether a contempt has been committed. In the words of Chief Justice Taney, "As regards the question whether a contempt has or has not been committed, it does not depend on the intention of the party, but upon the act he has done. It is a conclusion of law from the act; disobedience to the legitimate authority of the court is, by law, a contempt, unless the party can show sufficient cause to excuse it." (Wartman vs. Wartman [1853], 29 Fed. Cas. No. 17210.) Whether intentionally or unintentionally, whether maliciously or negligently, the result is as disastrous to the rights of the person who might possibly have been granted admission to the Philippine Islands. Fines for contempt of court at least have the merit of making customs officials more careful in the performance of their duties. Faulty governmental routine should not be permitted to defeat a writ as fundamental in nature as is habeas corpus.

It is said, however, by the majority, that for there to have been a contempt of court, the order issued by the judge should not only have been one requiring attendance to show cause why the writ should not issue, but should further have contained a clause in the nature of a preliminary injunction. There is no gainsaying that a negative always makes an affirmative stronger. At the same time it is not usually considered necessary for courts to explain their meaning by restating it in an opposite manner. The order issued by Judge Concepcion was a judicial one, a replica of hundreds of others, which should have been respected by the respondent. Instead, the action of the respondent made compliance impossible and served to defeat the petition for habeas corpus. From the moment the order was received by the respondent, the person of the petitioner was technically in the custody of the law, and when the respondent interfered with such custody a contempt of court was committed.

It is not desired by this opinion to criticize unduly the conduct of the Insular Collector of Customs. It is only desired to uphold the hands of the lower court in the legitimate performance of its functions, and to make known that such orders must be respected.

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