

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANK DEL. CARRINGTON, DEFENDANT AND APPELLANT.

G.R. No. 2600. March 15, 1906

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendant was charged with the crime of the falsification of a public document, as a public official, as follows:

"That on or about the 12th day of February, 1904, in the city of Manila, Philippine Islands, the said Frank de L. Carrington, being then and there a public official of the United States Civil Government of the Philippine Islands, to wit, a duly appointed and commissioned major of the First Infantry, United States Army, and the duly designated, qualified, and acting commander of the Provisional Battalion of the Philippine Scouts, and a duly appointed, qualified, and acting disbursing officer of public funds for the said United States Civil Government of the Philippine Islands, appropriated on account of the said Provisional Battalion and on account of the Louisiana Purchase Exposition at St. Louis, did, willfully, unlawfully, feloniously, corruptly, with abuse of his office and with the intent then and there to deceive and defraud the United States Civil Government of the Philippine Islands and its officials, falsify a public or official document of which he had charge and in which he had participation by reason of his office, namely, a voucher for the expenditure of public funds, which voucher is in words and figures following, to wit:

"Auditor 125.

"GENERAL EXPENSE VOUCHER.

"(Philippine, Mexican, or United States currency.)

"APPROPRIATION FOR EXPOSITION PURPOSES, ACT 824, FISCAL YEAR 1904.

"The Government of the Philippine Archipelago to Charles A. Jollie, Dr.

Date.

Article or service.

Amount.

Remarks.

1904. Jan. 10 2,750 ft. hardwood lumber @ P280 per M.....

770.00

"Authority filed with voucher 1, Abt. Dis., Dec, 1903. (See Note D.)

"I certify that the above account is correct and just The services were rendered as stated and were necessary for the public service. Articles purchased have been taken up in the property book of this office..... and will be accounted for to the Auditor on my return for the period ending March 31,1904.

(Signed) "P. DE L. CARRINGTON,
"Maj, 1st Infantry, D. O."

"Approved:

(Signed) "F. DE L. CARRINGTON,
"Maj. 1st Inf., Gomdg. Prov. Batt. N. S.

"Received of Maj. P. de L. Carrington, 1st Inf., this 10th day of January, 1904, the sum of seven hundred seventy (770) 00/100 pesos, in full of payment of above, which I hereby certify to be correct.

"Paid by check No.....

"Date....., 190

"On.....

"In favor of.....

(Signed) "CHARLES A. JOLLIE.
(Signature of creditor.)

"In this, that the said Frank de L. Carrington did then and there pervert the truth in the narration of facts contained in said voucher in that he then and there stated, declared, and certified that he had, on the 10th day of January, 1904, purchased from Charles A. Jollie two thousand seven hundred fifty (2,750) feet of hardwood lumber for seven hundred seventy (770) pesos, Philippine currency, and that he had on said date paid to the said Charles A. Jollie from public funds the sum of seven hundred seventy (770.00) pesos, Philippine currency, and that the said voucher as stated by the said Carrington and as shown above was correct and just, when in truth and in fact the said Prank de L. Carrington did not, on January 10th, 1904, or on any other date, purchase from Charles A. Jollie, two thousand seven hundred fifty (2,750) feet of hardwood lumber for seven hundred seventy (770.00) pesos, Philippine currency, and had not, on said date, or on any other date, paid to said Charles A. Jollie the sum of seven hundred seventy (770.00) pesos, Philippine currency, for said lumber or for any other purpose.

"All contrary to law.

(Signed) "W. W. BARRE.

"Subscribed and sworn to before me and in my presence, in the city of Manila, Philippine Islands, this 14th day of October, 1904, by the said W. W. Barre.

(Signed) "MANUEL ARAULLO,
"Judge of the Court of First Instance,
"City of Manila, P. I."

This complaint was filed on the 19th of October, 1904. Under this complaint a warrant of arrest was issued and the defendant was arrested and brought before the court on the 21st of October, 1904, and gave bond for his appearance for trial.

On the 2d day of November, 1904, the defendant, through his attorneys, presented the following motion:

"Now comes the defendant, by his attorneys, and moves the court that the complaint filed against him in this case be made more definite and certain in this:

"(1) That there be stricken out of said complaint all that there is set forth in said complaint relative to the defendant being a major in the United States Army.

"(2) That there be set forth in the said complaint specifically what office the defendant held under the United States Civil Government in the Philippine Islands, when he was appointed thereto; by whom he was appointed thereto, and when he qualified."

On the same day the defendant, through his attorneys, presented the following demurrer:

"Comes now the defendant and hereby demurs to the complaint herein filed against him for the following reason:

"That the facts alleged in the complaint are not sufficient to constitute a public offense."

Upon the 12th day of December, 1904, the judge of the Court of First Instance, after hearing the attorneys for the defendant, as well as the attorney for the State, denied the said motion and overruled the said demurrer. The record does not disclose that any exception was taken to this ruling of the court on the said motion and demurrer.

On the 13th of December, 1904, the defendant was duly arraigned in the Court of First Instance of the city of Manila and pleaded "Not guilty" to the charges contained in said complaint.

The trial proceeded in the Court of First Instance of the city of Manila on the 24th day of January, 1905. After hearing the evidence adduced during the trial of said cause, the court found the defendant guilty of the crime charged in the complaint and sentenced him to be imprisoned for the period of twelve years and one day and to pay the costs. From this decision the defendant appealed to this court.

The defendant assigns the following reasons in this court for the reversal of the sentence imposed by the inferior court:

"(1) That the document set out in the complaint was not falsified.

"(2) That the document set out in the complaint is not a public document, at least it was not such a document at the time the appellant signed the incorrect certificate thereto attached.

"(3) The document set forth in the complaint was not a public document because it was not issued by a public functionary.

"(4) The complaint itself shows that the appellant did not hold any official position.

"(5) The case should likewise be reversed for the reason that there is no legal record in the Supreme Court of any trial had in the Court of First Instance. It appears that the stenographer took down the testimony in English; that it was only translated after the trial into Spanish; the Spanish translation in this court is not the record of the court below. The appellant does not know whether it is correct or not.

"(6) Exhibit A, the document that the appellant is charged with having falsified, must be a public document by reason of pertaining to some office or having been issued, made, or executed by a person who was an officer, by reason of which official status of the author the document acquired the nature of a public document.

"(7) The appellant is an officer of the Army of the United States and was, at the time of the alleged offense, in command of a battalion of Filipino Scouts, stationed at Caloocan, Province of Rizal; the appellant is therefore a Federal officer and was, at the time of the alleged offense, in the Philippine Islands by virtue of orders emanating from the President, the constitutional Commander in Chief of the Army of the United States. As a soldier, therefore, the appellant, owing implicit obedience to the President of the United States, could and would have been brought to the Philippine Islands by military force, if he had for any reason refused to come voluntarily, in obedience to orders. We therefore ask the question whether the appellant, who must obey the

orders of the Commander-in-Chief by virtue of the provisions of the Constitution, is protected wherever he may be by the guaranties of the same Constitution, by virtue of which his superiors command him."

These various assignments of error present to this court the following questions;

- (1) Was the defendant, at the time of his trial, entitled to the right of trial by jury?
- (2) Did the defendant, in performing the acts set forth in the complaint, act as a public functionary?
- (3) Was the document set out in the complaint a public document?
- (4) Was the defendant guilty of falsifying the document set out in the said complaint?

The cause of the United States vs. Dorr[1] has settled the question with reference to the right of trial by jury in the Philippine Islands. The defendant, however, claims that, notwithstanding the fact that citizens of the Philippine Islands are not entitled to the right of trial by jury, he, as a member of the American Army, and being in the Philippine Islands not by his own wishes, but by order of the President of the United States, is entitled to such trial. This right is based upon the fact that, being compelled under the order of the President of the United States to come to the Philippine Islands, he does not thereby lose the privileges under the Constitution of the United States in this particular. In the United States each State of the Union has the right to establish its own method of trial and procedure in both civil and criminal cases, and it has been decided time after time, both by the State courts as well as by the Supreme Court of the United States, that a State, if it saw fit, could deprive its citizens of the right of trial by jury, notwithstanding the provision of the guaranty of the Constitution of the United States. Suppose, then, that the defendant, under an order of the President of the United States, was sent into a particular State, which State did not provide a trial by jury, and the defendant while there should violate the laws of that State. Could he in the courts of that State, where no machinery was provided for the trial of cases by jury, insist upon being tried by a jury under the Constitution of the United States, which has no force or effect in such State? We are of the opinion that when any citizen, whether he be a member of the United States Army or not, goes into a particular Territory or State of the Union and violates the laws thereof, he is subject to be tried according to the rules laid down in such Territory or State, so long as the procedure adopted in such Territory or State provides for a fair and impartial trial. Moreover, it has been decided in numerous cases that a State might provide for a jury composed of a different number of men than that required under the Constitution of the United States in the courts of the United States. Suppose again that the defendant was in a State or Territory which provided for a trial by a jury of two men instead of twelve: Could he insist upon having a jury of twelve men? We think not. The only way that a person can avoid being tried in the courts of the different Territories or States of the United States in accordance with the rules of practice and procedure in such Territory or State, is not to violate the laws of such Territory or State. While in such Territory or State if he violates the will of the sovereign of such Territory or State he is subject to be punished in accordance with the practice and procedure in such Territory or State.

Did the defendant, in performing the act set forth in the complaint, act as a public functionary? Article 300 of the Penal Code provides that—

"The penalties of cadena temporal and a fine of from one thousand two hundred and fifty to twelve thousand five hundred pesetas shall be imposed upon a public official who, taking advantage of his authority, shall commit a falsification:

"1. By counterfeiting or feigning any writing, signature, or rubric;

"2. By including in any act the participation of persons who had no such participation;

"3. By attributing to those who were present as their acts, declarations or statements different from those which they made;

"4. By perverting the truth in the narration of facts;

"5. By altering true dates;

"6. By making in a genuine document any alteration or interlineation altering its meaning;

"7. By giving out an authentic copy of a fictitious document, or by stating therein a contrary or different thing from that contained in the genuine original;

"8. By intercalating any instrument in a protocol, register, or official book."

It is charged that the defendant committed a falsification as a public official "by perverting the truth in the narration of facts" in the document set out in the complaint Article 401 of the Penal Code provides that:

"For the purposes of this and of the preceding titles of this book every person shall be considered a public official who, by the immediate provisions of law or by popular election or appointment by competent authority, takes part in the exercise of public functions."

It is asserted that the defendant was appointed by competent authority, and took part in the exercise of public functions, and therefore must be considered as a public official under the provisions of article 300. The facts relating to his appointment are disclosed by the following documents:

On the 8th day of October, 1903, the defendant sent the following letter to Mr. A. W. Fergusson, Executive Secretary of the Insular Government for the Philippine Islands:

"Sir: I have the honor to submit the following statement for the consideration of the Civil Governor: As I understand it, the Scout battalion will be, in a way, a part of the Philippine exhibit at the Louisiana Purchase Exposition, and will be quartered on the site set apart for the Philippine exhibit. I believe the battalion is to be put in tents, but I will require some sort of an administration building in which to conduct the business of the battalion.

"It has occurred to me that a model building of native materials would serve the purpose well and add to the attractiveness of the Philippine section, as I propose to furnish it with native furniture and decorate it with native arms, weapons, wares, etc., and have a room for the reception of Army, Navy, and Philippine civil officials. I propose to perform all of the construction work with the labor of my scouts after my arrival at St. Louis. As the Exposition will then be open it will give the public an opportunity to see Philippine house building in progress. I estimate that for \$3,000, gold, I will be able to buy the materials, furnishings, etc., and put it on the ground. It will require from three weeks to a month to construct the building. If the Commission will authorize the transfer to me of the necessary funds from those already appropriated for the Philippine exhibit I feel sure that there will be no cause to regret the step, and myself and my battalion officers will be greatly inconvenienced thereby, while a pleasing addition will be made to the Philippine exhibit. Early action is requested in order that I may proceed with the collection of materials.

"Very respectfully,

(Signed) "F. L. CARRINGTON,

"Major, First Infantry, Commanding Battalion."

On the 9th day of October, 1903, William H. Taft, then Civil Governor, referred the above letter to the Exposition Board, strongly advising that the request contained in said letter be granted, and that the Commission should appropriate the amount named from the appropriation already made for the Exposition Board.

On October 12, 1903, the said Exposition Board accepted the proposal in the said letter made by the defendant. This acceptance on the part of the Exposition Board was duly communicated to the defendant by William H. Taft, then Civil Governor, on the 13th of October, 1903.

On the 3d of November, 1903, the honorable Civil Commission of the Philippine Islands enacted the following resolution:

"On motion, Resolved, That the disbursing officer of the Philippine Exposition Board be, and he is hereby, authorized and directed to transfer to the credit of Major F. L. Carrington, First United States Infantry, commanding the Provisional Battalion of the Philippine Scouts, to be transferred to St. Louis in nineteen hundred and four, in connection with the Philippine exhibit at the Louisiana Purchase Exposition, the sum of three thousand dollars, United States currency, out of the general fund appropriated for the Philippine exhibit, to be used and accounted for by Major Carrington in the construction, by the members of the battalion in the Philippine section of the Louisiana Purchase Exposition grounds, of a model administration building of native materials in which to conduct the business of the battalion, exhibit weapons, arms, wares, and so forth, and to contain a reception room for Army, Navy, and Philippine civil officials; and

"Be it further resolved, That the disbursing officer of the Philippine Exposition Board be, and he is hereby, authorized and directed to deposit to the credit of Major Carrington the further sum of five hundred dollars, United States currency, with which to defray in part the expenses of transportation and maintenance of such families of scouts who may be given permission to accompany the battalion to St. Louis: Provided, however, That the foregoing resolutions, together with the correspondence, be forwarded to Don Pedro A. Paterno, member of the Exposition Board, and Señor Leon Guerrero, secretary of the Board, for their approval and concurrence in these resolutions, or disapproval of the same, and the return of all papers to the Civil Governor, who may then, if the resolution be approved, designate Major Carrington as disbursing officer to receive the funds mentioned in these resolutions."

This resolution was communicated to the said Paterno and Guerrero, and their acceptance of the propositions contained in said resolution was duly noted in a letter dated the 8th day of November, 1903, directed to the Hon. William H. Taft, Civil Governor of the Philippine Islands.

In conformity with this acceptance on the part of the said Paterno and Guerrero, the Hon. William H. Taft, then Civil Governor, on the 24th day of November, 1903, sent the following letter to the defendant.

"Maj. FRANK DB L. CARRINGTON,
"First United States Infantry, Commanding
"Provisional Battalion Philippine Scouts,
"Caloocan, Rizal.

"SIR: You are hereby designated to withdraw, receive, expend, and account for the funds authorized by resolution of the Commission adopted November 3, 1903, to be expended in the preparation and display of a Scout exhibit at the Louisiana Purchase Exposition, as set forth in said resolution.

"Very respectfully,
(Signed) "WILLIAM H. TAFT, Civil Governor.

In pursuance of the authority granted by the Commission authorizing the defendant to use the sum of \$3,500, United States currency, or P7,000, Philippine currency, Leon M. Guerrero, secretary of the said Exposition Board, on the 16th day of November, 1903, requested the Auditor of the Philippine Islands to issue in favor of Maj. F. L. Carrington, in his capacity of disbursing officer for Exposition funds, the sum of P7,000, payable out of the civil funds of the Philippine Islands, pursuant to the appropriation specified (see minutes of the Philippine Commission of November 3, 1903), and for which the said disbursing officer is to be charged and held accountable. This request was duly approved by the Hon. A. L. Lawshe, Auditor of the Philippine Islands, as well as by the Hon. William H. Taft, Civil Governor, through the Assistant Executive Secretary, Frank W. Carpenter, on the 25th day of November, 1903. On the same day, the 25th of November, 1903, accountable warrant No. 4194 was issued by which the sum of P7,000, Philippine currency, was transferred to the account of Maj. F. L. Carrington, disbursing

officer, Exposition funds, in the following language:

"To the Treasurer of the Philippine Archipelago:

"Pay to Maj. F. L. Carrington, disbursing officer, Exposition funds, or order, the sum of 7,000 pesos, Philippine currency.

(Signed) "W. H. TAFT, Civil Governor,

"A. L. LAWSHE, Auditor,

"Frank A. Branagan, the Treasurer, Philippine Islands, will pay this warrant.

(Signed) "FRANK A. BRANAGAN, Treasurer."

On the reverse side of this accountable warrant appears the following indorsement:

"For deposit to my official credit.

"Major F. L. CARRINGTON.

"Official signature:

"F. DE L. CARRINGTON, Major First Inf."

On the face of the said accountable warrant it appears that the same was paid by the Treasurer of the Philippine Islands December 1, 1903.

During the trial of said cause several expense vouchers were introduced in evidence, as well as a check, No. 173001, and also an account current rendered by the defendant for the month of January, 1904, showing expenditures made by the defendant out of the said money transferred to his account, each signed by the defendant for the purpose of showing the official character which he assumed in signing the said vouchers, the check, and the account-current. His signature to each of these various documents was proven to be genuine. The signature in each case was as follows: "R de L. Oarrington, Major 1st Infantry, D. O."

During the trial of said cause it was proven by competent authority that it was the custom of disbursing officers to indicate their official character as disbursing officers by the letters "D. O."

The above resolution of the Philippine Commission and the appointment of the defendant by the Governor in pursuance thereof and the acceptance of the position by the defendant, and his actually performing the duties imposed thereby, had the effect of a law creating the position of disbursing officer of. the funds so designated and for the purposes mentioned in said resolution. No greater effect could have been given an act of the Commission.

From all these foregoing facts we are convinced and find the fact to be that the defendant acted as a public official and took part in the exercise of public functions. (U. S. vs. Sarmiento, 1 Phil. Rep., 484.)

Was the document set out in the complaint a public document?

The document set out in the complaint and alleged to have been falsified by the defendant was made out upon a form entitled "General Expense Voucher," and known as form "Auditor 125." It was proven during the trial of said cause that this form of "General expense voucher" was the form on which disbursing officers were required to make their reports of expenditure of public funds.

RULE 12, section 1, of Act No. 90 of the Philippine Commission authorizes the Auditor of the Philippine Islands to make such rules and regulations and provide such forms for the accounting of money expended by disbursing officers as he may deem advisable and necessary. That rule is as follows:

"RULE 12. The Auditor shall * * * prescribe the forms for keeping and rendering all accounts subject to his examination," etc.

We are of the opinion and so hold that the document set out in the complaint and alleged to have been falsified by the defendant was a public document, according to the provisions of article 1216 of the Civil Code.

Was the defendant guilty of falsifying the document set out in the said complaint? The defendant certified that the account contained in the document upon which the complaint was based was correct and just; that the services were rendered as stated in the said account and were necessary for the public service; that the articles purchased had been taken up in the property book of his office and would be accounted for to the Auditor for the period ending March 31, 1904. The said document stated that on the 10th of January, 1904, the defendant had purchased of one Charles A. Jollie, 2,750 feet of hardwood lumber at P280 per thousand, amounting to P770, Philippine currency. The defendant certified to this fact. The evidence discloses beyond peradventure of doubt that the defendant did not purchase this lumber of Mr. Jollie on the 10th of January, 1904, or any other quantity of lumber at any other time. We therefore hold that the defendant is guilty of the crime of the falsification of a public document as a public official and should be punished in accordance with the provisions of article 300 of the Penal Code. Neither aggravating nor extenuating circumstances attended the commission of the crime; the defendant must therefore be punished in the medium degree of cadena temporal. (Par. 1, art. 81.)

The sentence of the inferior court is modified and the defendant is hereby sentenced to be imprisoned for a period of fourteen years eight months and one day of cadena temporal and to pay a fine of 1,250 pesetas and the costs. So ordered.

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

[1] Phil. Rep., 269; 195 U. S. 138.

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