

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHAUNCEY MCGOVERN, DEFENDANT AND APPELLANT.

G.R. No. 2731. November 06, 1906

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This case having been duly tried, judgment was rendered convicting the defendant of the crime charged. The defendant appealed to this court, wherein he has made the following assignment of errors alleged to have been committed at the trial and in the rendition of judgment, to wit:

- (1) That the court never acquired jurisdiction to hear and determine the case against the defendant by reason of the lack of all preliminary investigation.
- (2) That the court erred in overruling the demurrer to the complaint interposed by defendant.
- (3) That the evidence adduced did not establish the guilt of the defendant beyond a reasonable doubt.

There is nothing in the appellant's brief relating to the matters of the case showing that the court below committed the last two errors assigned by him. He is therefore bound by the findings of the court below and the order of that court overruling the demurrer, he not having raised any question in regard thereto.

As to the first assignment of error it is alleged (1.) that no preliminary investigation was had, and (2) that the only deposition taken at the time of the issuance of the warrant of arrest was that of the complaining witness, who never signed. These were the same grounds upon which defendant's motion to dismiss the case in the Court of First Instance were based, and that court, in its order overruling the said motion, said:

"Considering that a preliminary investigation was made by this court before the allowance of the complaint, and before the issuance of the warrant for the arrest of the defendant, and further, that the matter which is alleged to be libelous is embodied in the said complaint, this being the reason why such preliminary investigation consisted of the deposition of the complaining witness, Mr. Haussermann, only, and which said deposition has not been attached to the record for the reason that it is not a part of the same but which may be attached thereto if the court should deem it proper, etc., * * *" (record, p. 21).

Counsel for the defendant presented a motion to this court which was granted, asking that the Court of First Instance be ordered to send up to this court the deposition to which reference is made in the order of the court above referred to. This deposition appears on page 26 of the record and it purports to be a deposition taken by the stenographer but not signed by the witness.

If the signature of a witness to testimony given by him at a trial when such testimony has been taken by an official stenographer is not necessary according to section 32 of General Orders, No. 58, much less should such signature, be required in & preliminary investigation, but however it may be, this was a mere formal defect that could not in any way affect the validity of the proceedings and constituted no error.

Moreover, the complaint was filed in the month of August, 1904, when Act Hfo. 612, approved February 3, 1903, was in force. Section 2 of that act provided: "In cases triable only in the Courts 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 where the prosecuting attorney, after a 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 the proper form: Provided, however, That the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable it to fix the bail or to determine whether the offense is bailable."

The court, acting upon the complaint filed in this case, issued a warrant for the arrest of the defendant, taking into consideration for this purpose the result of the investigation held by him with the assistance of the assistant prosecuting attorney of the city of Manila, Jesse George, the court being of the opinion that the crime of libel with which the accused was charged had been committed, and that there were reasonable grounds to believe that the party charged had committed it (record, p. 7). Such, and no other, is the purpose of sections 13 and 14 of General Orders, No. 58. They require that a preliminary investigation be held by the court for the purpose only of inquiring as to whether there is reasonable ground either to order the arrest of the party charged or to direct that he be released from confinement in case he has been held in detention for the commission of an alleged crime.

There was, therefore, no lack of preliminary investigation in this case. Investigation made by the judge was not substantially defective, nor was it necessary, and this is the most important, the complaint having been, presented to the Court of First Instance of the city of Manila, in which an accused person is not entitled, as a matter of right, to a preliminary examination. Consequently no law or statute has been violated by the court below, and due process of law has not been lacking.

The trial court sentenced the defendant to subsidiary imprisonment in default of payment of the fine imposed, but the act punishing the crime of libel is a special law and no penalty can be imposed except that which is expressly provided therein. That act does not make any provision for subsidiary imprisonment.

We accordingly affirm the judgment of the trial court in all respects, except in so far as it condemns the defendant to subsidiary imprisonment, the defendant to pay the costs of proceedings. Ten days after the rendition of final judgment, let the record be remanded to the court below for execution. So ordered.

Torres, Mapa, Willard, and Tracey, JJ., concur.

Johnson, J., reserves his vote.

DISSENTING

CARSON, J.:

I dissent.

The sentence imposed by the trial court deprives the accused of his liberty and of his property "without due process of law."

Against his objection, which was submitted in due time, and upon a complaint signed and submitted by a private citizen, the accused was forced to trial, convicted of a delito (felony), and sentenced to imprisonment and to the payment of a fine, without a preliminary trial and without even a preliminary investigation for the purpose of ascertaining whether there was "probable cause" for committing him to stand trial for the offense charged.

It is contended that under existing laws in these Islands an accused person is not entitled to a preliminary trial "as

of right," nor to any preliminary investigation as to his probable guilt, other than that upon which the magistrate who orders his arrest bases such order. I am convinced, however, that the provisions of General Orders, No. 58, and the acts of the Philippine Commission secure the right to a preliminary trial to every person charged with a delito (felony), except only in those cases wherein the prosecuting attorney of the city of Manila files an information after an investigation, as provided in section 2 of Act No. 612; and I am further convinced that section 5 of an act of Congress enacted July 1, 1902, which provided that "no law shall be enacted in these Islands which shall deprive any person of life, liberty, or property without due process of law," guarantees to the inhabitants of the Philippine Islands the right not to be put on trial for a delito (felony) over their objection without some orderly inquiry either by way of a preliminary trial before a magistrate, an indictment by grand jury, or some other proceeding reasonably adapted to secure the ends contemplated by these methods of preliminary investigation—that is, to determine whether there is reasonable ground to believe that a crime has been committed and that the accused committed it.

Section 13 of General Orders, No. 58, is as follows:

"When a complaint or information alleging the commission of a crime is laid before a magistrate he must examine, on oath, the informant or prosecutor and the witnesses produced, and take their depositions in writing, causing them to be subscribed by the parties making them. If the magistrate be satisfied from the investigation that the crime complained of has been committed, and that there is reasonable ground to believe that the party charged has committed it, he must issue an order for his arrest. If the offense be bailable, and the defendant offers a sufficient security, he shall be admitted to bail; otherwise he shall be committed to prison."

Section 14 of the said orders is as follows:

"If the magistrate shall believe from the evidence submitted, either that the crime complained of was not committed, or that, if committed, the person charged did not commit it, he must set the person at liberty; but such release shall not prevent the filing of a new complaint or information and the arrest of the accused thereon at any time before the prosecution of the offense shall be barred by the statute.. In case the promotor fiscal may appeal from the order of release, the judge shall subject the accused to such inspection and measures of vigilance as may be deemed prudent to prevent his escape."

Section 15 of said orders provides that:

"In all criminal prosecutions the defendant shall be entitled (1) to appear and defend in person and by counsel at every stage of the proceedings."

Counsel for the prosecution insists that these sections merely provide for an examination of the informant or prosecutor and such witnesses as may be produced at the time when the complaint or information is lodged and before the accused is arrested, and that if on this testimony the magistrate is of opinion that there is reasonable ground to believe that the offense charged (even though it be a capital crime) has been committed by the accused, he may not only order the arrest of the accused but direct that he be held for trial without further investigation. I do not believe that this proposition can survive a careful scrutiny of the foregoing sections of the law.

If there is to be no further investigation after the issuing of the order for arrest as provided in section 13, what possible meaning can be given to section 14, which provides that if the magistrate shall believe that the person charged with a crime did not commit it, he must set the person at liberty? How is the magistrate who, before the arrest, on the evidence then taken, was of opinion that there was ground to believe that a crime had been committed and that the accused committed it, to change his mind and to come to the belief either that no crime was committed or that, if committed, the person charged did not commit it, unless after the arrest he continues the

inquiry or institutes a new inquiry and as a result of testimony then produced is forced to conclude that in the light of the new evidence there is not reasonable ground to believe the accused guilty as charged?

I admit that the language of these sections is somewhat obscure and does not clearly and adequately prescribe the mode in which the investigation is to proceed after the arrest of the accused, but it is evident that the committing magistrate must at least take such further testimony pertinent to the issue, including evidence on behalf of the accused as may be produced, so that when his order is issued either committing the accused for trial or setting him at liberty, that order shall not rest on his mere arbitrary exercise of power but on the exercise of his sound judicial discretion on all the available testimony; and it would further appear that since the accused is entitled to appear and defend himself in person and by counsel at every stage of the proceedings, he should be given an opportunity to be present during the taking of this testimony.

General Orders, No. 58, which was issued in the early days of the American military occupation of the Philippines, implanted in these Islands a new system of criminal procedure which practically did away with the old Spanish Code, and substituted therefor a system based upon the procedure in the courts of the United States and the various States of the Union. They consist, however, of but 110 short sections, occupying a little less than 13 pages of the volume of the acts of the Commission wherein they are printed, and it has been necessary for the courts at every stage of the proceedings to give life to this bare skeleton of the law of criminal procedure, breathing into it the spirit of American criminal jurisprudence, interpreting its provisions in accordance with generally accepted authorities on American law, and applying it in accordance with the recognized practice in the courts of the country from which it was brought.

Sections 13 and 14, above cited, undertake to provide all the necessary steps in a criminal prosecution from the filing of a complaint or information to the institution of the trial, but they would prove wholly inadequate and unintelligible unless construed and applied with the aid of the generally accepted rules of practice in the United States. Examined from this point of view, I can not doubt that they not only provide for but prescribe a preliminary trial, and that when an accused is denied the right thus secured to him, a sentence based on such proceedings is imposed without due process of law.

Later legislation touching the same subject-matter, if it does not expressly provide for preliminary trials as of right, at least clearly indicates that the legislator was of opinion that such right existed and legislated in contemplation thereof. Section 2 of Act No. 612 of the Philippine Commission, amending Act No. 183, provides that "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 examination 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." It is clear that the authors of this act were of opinion that this right existed prior to its enactment, and it is worthy of note that the legislator did not presume to do away with this right even in those cases wherein an "information" is filed by the prosecuting attorney of the city of Manila without providing a substitute in the nature of a sworn investigation by the prosecuting attorney as provided in section 39 of Act No. 183. In the case at bar the complaint is signed by a private citizen and not by the prosecuting attorney of the city of Manila, and no such investigation was had as is provided for in the above-mentioned section 39 of Act No. 183.

But the right of the inhabitants of these Islands not to be forced to trial for grave offenses without some orderly and appropriate proceeding for the purpose of establishing a "probable cause" rests on a still broader and firmer foundation than the express or implied provisions of local law and is guaranteed by Congressional enactment in the very language of the Constitution of the United States.

Section 5 of an act of Congress, enacted July 1, 1902, provides that "no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law."

Any system of criminal procedure which wholly denies the right of individual citizens to be secure from the trouble, expense, anxiety, and risk of trial for grave offenses for which an infamous punishment is prescribed by law until "probable cause" is established is, as I understand it, prohibited by this constitutional provision, except, perhaps, in those cases where the State's attorney files an "information" which itself implies a preliminary investigation of the facts by a sworn officer of the law and his statement upon his official oath that he has reasonable grounds to believe the accused is guilty as charged.

In the case of *Hurtado vs. California*, the Supreme Court of the United States uses the following language:

"But it is not to be supposed that these legislative powers are absolute and despotic, and that the amendment prescribing due process of law is too vague and indefinite to operate as a practical restraint. It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. It must be not a special rule for a particular person or a particular case, but, in the language of Webster, in his familiar definition, 'the general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial so 'that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society/ and thus excluding, as not due process of law, acts of attainder, bills of pains and , penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments and decrees, and other similar special, partial, and arbitrary exertions of power under the iforia of legislation. Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude. And the limitations imposed by our constitutional law upon the action of the governments, both State and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of selfcommunities to protect the rights of individuals and minorities, as well against the power of numbers as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the government.

"The supreme court of Mississippi, in a well-considered case, *Brown vs. Levee Commissioners* (50 Miss., 468), speaking of the meaning of the phrase 'due process of law says:

"The principle does not demand that the laws existing at any point of time shall be ir repealahle, or that any forms of remedies shall necessarily continue. It refers to certain fundamental rights which that system of jurisprudence, of which ours is a derivative, has always recognized. If any of these are disregarded in the proceedings by which a person is condemned to the loss of life, liberty, or property, then the deprivation has not been by "due process of law."

"This court, speaking by Mr. Justice Miller, in *Loan Association vs. Topeka* (20 Wall., 655-662), said:

" 'It must be conceded that there are such rights in every free Government beyond the control of the State. A Government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is nevertheless a despotism. It may be doubted, if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.'

"It follows that any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law."

And the opinion of the court concludes:

"Tried by these principles, we are unable to say that the substitution for a presentment or indictment by a grand jury of the proceeding by information, after examination and commitment by a magistrate, certifying to the probable guilt of the defendant, with the right on his part to the aid of counsel and to the cross-examination of the witnesses produced for the prosecution, is not due process of law. It is, as we have seen, an ancient proceeding at common law, which might include every case of an offense of less grade than a felony, except misprision of treason; and in every circumstance of its administration, as authorized by the statute of California, it carefully considers and guards the substantial interest of the prisoner."

In its opinion the court discussed at length the meaning and effect of the words "due process of law" as used in the Constitution, with especial reference to the right of the legislature of any particular State to provide any other mode of procedure in bringing to trial a person accused of a capital offense than the ancient method of presentment or indictment by a grand jury, and affirmed this right. The question here, however, is not whether a particular form of preliminary inquiry to ascertain probable cause must be adopted, but whether the accused shall be entitled to any inquiry at all, and it appears that the right not to be forced to trial for a delito (felony) on the complaint of a private citizen is "one of those fundamental rights which that system of jurisprudence of which ours is a derivative," as well as the Spanish system for which it has been substituted, have "always recognized."

My attention has not been directed to a single case in the courts of England or of the United States, or of the separate States and Territories of the United States, from the enactment of the Bill of Rights to the present day, wherein a person accused of a felony was forced to trial against his objection upon the complaint of a private citizen and without some form or other of preliminary examination or inquiry to determine whether there was or was not probable cause; and under the Spanish system of criminal procedure the juicio plenario (trial), when the accused was charged with a delito (felony), was always and necessarily preceded by the juicio sumario (preliminary investigation), and the accused was discharged without entering on the stage of the proceedings known as the juicio plenario (trial) unless it appeared that there was "probable cause." It would seem that if a right thus uniformly and universally secured is "disregarded in a procedure by which a person is condemned to the loss of life, liberty, or property, then the deprivation has not been by 'due process of law;' " and although the decision of *Hurtado vs. California* establishes the right of an individual State to adopt such mode of inquiry, by grand jury or otherwise, as it may deem proper, it nevertheless does not deny, and on the contrary seems to sustain, the right of the accused to some system of preliminary proceeding which "considers and secures the substantial interest of the prisoner" at this stage of a criminal proceeding.

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