

LIME CORPORATION OF THE PHILIPPINES, PARSONS HARDWARE COMPANY, INC., MONTALBAN LIME CORPORATION, WILLIAM PARSONS, RESTITUTO YNCHAUSTI, AND ISIDRO SANTIAGO, PETITIONERS, VS. MANU...

G.R. No. 40759. December 20, 1933

Ponente: MALCOLM, J.

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MALCOLM, J.:

In these proceedings the petitioners ask that the respondent judge be prohibited from enforcing the order of the Court of First Instance of Manila of November 4, 1933, which directed the petitioners to produce at the taking of the depositions of Restituto Ynchausti and Isidro Santiago "such part of the records of the Lime Corporation of the Philippines as will show the source and disposition of all transactions of said corporation with any and all of the other defendants in the case, either in the nature of money borrowed or credits extended or merchandise sold or delivered, together with the corresponding supporting vouchers." The question is if the language of the order, with its corresponding subpoena duces tecum, requiring the production of documents in the possession of an adverse party, is sufficiently specific and if the documents sought are material to petitioners' case. The question calls for the reexamination of the law with reference to the place of the bill of discovery in Philippine jurisprudence and for a restatement of the basic principles governing the issuance of a bill of discovery.

On October 24, 1932, A. de Marcaida y Cia., S. en C., plaintiff, filed a complaint in the Court of First Instance of Manila, which sought the rescission of a contract and an accounting with damages from the defendants William Parsons, Parsons Hardware Company, Inc., Lime Corporation of the Philippines, and Montalban Lime Corporation. In regular course, the defendants presented their answers with special defenses. Thereafter and before trial, an order was promulgated which provided for the taking of the depositions of Restituto Ynchausti and Isidro Santiago. In connection with the taking of the depositions, a subpoena duces tecum was issued addressed to the secretary-treasurer of the Lime Corporation of the Philippines, which required the production of certain books and records. However, pursuant to the stipulation of the parties, the Lime Corporation of the Philippines permitted the plaintiff and its representatives to examine the books and records listed in the subpoena duces tecum in the offices of the corporation. It was only when a dispute arose between the parties as to what particular books and records of the Lime Corporation could be inspected by the agents of the plaintiff that the matter was a second time brought to the attention of the trial court. Thereupon, Judge Diaz approved an order, in the form set out in the beginning of this decision, for the production of the specified records of the Lime Corporation. The attorneys for the defendants protested in a motion for reconsideration, but this motion was overruled in an order handed down by Judge Moran then sitting in the branch of the Court of First Instance of Manila to which the case appertained. Parenthetically, since we are disposing of the facts, it may be said that in argument here both parties have been guilty of importing matters into the record which have to do with the merits of the case, and not the issue of jurisdiction or lack of jurisdiction, which is to be decided in prohibition proceedings.

Trial practice in the Philippines is governed mainly by the Codes of Civil and Criminal Procedure, as amended,

and slightly by rules of court. In neither the codes nor the rules is any mention made of a bill of discovery. Under code practice, therefore, doubt might well arise as to the existence of a bill of discovery in this jurisdiction. Our law such as it is on analogous subject comes from the State of California, and there it is well to observe that uncertainty persists relative to whether a bill of discovery may be maintained under the California system of procedure. However, our Civil Procedural Code, in section 355, authorizes the examination under deposition *de bene esse* of a party to an action or special proceeding, or an officer or a member of a corporation which is a party to an action or special proceeding, and in section 402, authorizes the issuance of a subpoena *duces tecum* for the compulsory production of books and documents under the control of the witness. And this court, in at least two cases, has seen fit to recognize a bill of discovery. (*Tan Chico vs. Concepcion and Asia Banking Corporation* [1922], 43 Phil., 141; *Everett vs. Asia Banking Corporation* [1926], 49 Phil, 512. See further *Liebenow vs. Philippine Vegetable Oil Co.* [1918], 39 Phil., 60; and *Frank & Company vs. Clemente* [1922], 44 Phil., 30.) Accepting these authorities at their face value, we can take it for granted that there exists in the Philippines a remedy analogous to a bill of discovery.

At this point a little further consideration should be given to the decision in *Tan Chico vs. Concepcion and Asia Banking Corporation*, *supra*. This was a petition for certiorari. The subpoena *duces tecum* which was issued required the defendant and his attorney to appear at the time and place fixed in the notice and to bring with him or them the following documents: "All correspondence between the F. A. Thompson Commercial Co. and the said Tan Chico and all documents and writings of every nature with relation to the order for the merchandise which is the subject of this action, and especially the confirmation in writing by the F. A. Thompson Commercial Co. of the cancellation of said order referred to by the defendant in the fourth special defense." It was held, and we think properly, that the court did not exceed its jurisdiction in issuing the subpoena in question. However, in the body of the decision is to be found language in the nature of *obiter dicta* which appears to authorize "fishing expeditions", and to this language we are unable to subscribe.

Conceding, therefore, that a remedy analogous to a bill of discovery can be made use of in proper cases, it is now timely to determine, with particular reference to the facts before us, if this is a proper case. In this connection, it should be recalled that the parties are operating under section 355 of the Code of Civil Procedure relating to the taking of the deposition of a witness within the Philippine Islands, and under section 402 of the Code of Civil Procedure recognizing a subpoena *duces tecum*. It is accordingly too plain for words that the parties are bound to observe the law as found in the sections under which they presume to act. It is likewise self-evident that it is for the trial court to guide the parties in their actions and that the trial court retains a discretionary control over the proceedings, for otherwise the use of the remedy would be susceptible to grave abuse. It is further perfectly plain that the remedy applies only to relevant documents sufficiently described and existing in the opponent's possession or under his control. The test to be applied by the trial judge in determining the relevancy of documents and the sufficiency of their description is one of reasonableness and practicability. As a corollary, it is apparent that a party is entitled to the production and inspection of a document applicable to his case, although the same document may likewise be evidence for the other party's case. But as a negative injunction, the remedy cannot be made use of to secure documents entirely irrelevant to the issues of the case, and cannot be provided in so loose a manner as to constitute an omnibus order or a fishing expedition.

We are asked by the respondents to sanction a rule which would allow the examining party not only to secure facts connected with his own case, but also to secure facts which of themselves are exclusively evidence of his opponent's case. We are cited to a proposed model procedure act advocated by the American Judicature Society and to rules of courts approved by certain states in the American union. Without expressing any opinion on this subject, it suffices to say that if such an innovation is deemed advisable, it should be the object of legislation. Other jurisdictions, for instance California and the federal government, have made provision for a remedy of

inspection in the nature of a bill of discovery, and the same opportunity is left open for our Code Committee and the Philippine Legislature. For the present, recognizing the place in our jurisprudence of a remedy akin to a bill of discovery, and being fully cognizant of the benefits to be derived from a conservative use of the remedy to clarify the issues before trial, we have to circumscribe the scope of the remedy within proper limits so as to make our rules agree with those generally accepted in other jurisdictions and so as not to offend the constitutional prohibition against unreasonable searches and seizures.

Only a few months ago, in the case of *Sinclair Refining Company vs. Jenkins Petroleum Process Company* ([May 29, 1933], United States Supreme Court Advance Opinions, p. 900), in speaking of a bill of discovery, Justice Cardozo observed:

"Help for the solution of problems of this order is not to be looked for in restrictive formulas. Procedure must have the capacity of flexible adjustment to changing groups of facts. The law of discovery has been invested at times with unnecessary mystery. There are few fields where considerations of practical convenience should play a larger role. The rationale of the remedy, when used as an auxiliary process in aid of trials at law, is simplicity itself. At times, cases will not be proved, or will be proved clumsily or wastefully, if the litigant is not permitted to gather his evidence in advance. When this necessity is made out with reasonable certainty, a bill in equity is maintainable to give him what he needs. Equity Rule 58. There were other reasons in times past, when parties were not permitted to be witnesses, and when there was no compulsory process for the production of books or documents. (*Carpenter vs. Winn*, 221 U. S., 533; 55 L. ed., 842; 31 S. Ct., 683; *Pressed Steel Car. Co. vs. Union P. R. Co.* [D. C.], 240 Fed., 135, 136.) Today the remedy survives, chiefly, if not wholly, to give facility to proof. In the practice of many states there is a summary substitute by an order for examination before trial or for the inspection of books and papers. * * *

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"To hold that the plaintiff in an action at law may have discovery of damages is not to say that the remedy will be granted as of course, or that protection will not be given to his adversary against impertinent intrusion. *Wigram*, supra, sec. 115. The court may decline to open the defendant's records to the scrutiny of a competitor posing as a suitor, if the suit has been begun without probable cause or as an instrument of malice. It is all a matter of discretion. Good faith and probable cause were here abundantly established. The remedy of specific performance had been refused, but the very court that refused it had found sufficient merit in the suit to call for an amendment of the pleadings that would give the plaintiff an opportunity to maintain a remedy at law."

To consolidate our discussion of the case, we agree that there is a remedy which may be invoked by parties before trial to obtain evidence from records under the control of their adversaries; that the materiality of the documents and the specification of the same are important considerations; that the test of reasonableness and practicability are to be applied, and that a discretion is lodged in trial courts to determine these questions. Here we have the finding, at least impliedly made by Judge Diaz, that the documents described by the subpoena are relevant to the case, and the finding by Judge Moran, expressly made, that the said documents are material in order that there might be demonstrated the alleged conspiracy by the defendants to defraud the plaintiff; and it is apparent that it was just as essential for the plaintiff to have knowledge of the records of the Lime Corporation of the Philippines, showing the source and disposition of all transactions of the corporation with the defendants, either in the nature of money borrowed or credits extended or merchandise sold or delivered, which was the purport of the challenged subpoena, as it was to authorize the plaintiff to obtain the records of the corporation showing the source and disposition of all moneys borrowed by the corporation from the other defendants, which was the purport of the first subpoena. Therefore, we are unable to say that a showing of abuse of sound discretion on the part of the trial judges has been demonstrated.

In consonance with the foregoing, the petition will be denied, and the preliminary injunction dissolved, with the

costs to be paid by the petitioners.

Avanceña, C. J., Street, Villa-Real, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

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