

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RICARDO F. GUTIERREZ, DEFENDANT AND APPELLANT.

G.R. No. 4750. January 19, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This appeal was interposed by the accused on January 30, 1908, against a judgment of the Court of First Instance of Manila, whereby he was sentenced to two months and one day's imprisonment and to pay a fine of 6,250 pesetas and costs.

It appears: (1) That on the 25th of September, 1907, in oral proceedings brought before the court of the justice of the peace of Manila by Vicente W. Pastor against Ricardo F. Gutierrez, the court ordered the latter to vacate the apartments that he occupied, and to pay the plaintiff the sum of P35.33, P2 for his legal costs, and P5.12 as costs of the proceedings. A writ of execution was issued to enforce the payment of the said amounts, and on the 26th of November, 1907, the writ was returned unsatisfied. (2) That Vicente W. Pastor, in supplementary proceedings for the execution of the judgment, asked the court to summon the defendant Ricardo F. Gutierrez and The California-Manila Lumber Company, by which the defendant was employed, and to order the latter to produce in court the account books of its establishment, together with all other proofs that might be considered proper for the protection of the rights of the plaintiff. This was duly ordered by the said court on November 26, 1907, "in order to testify and answer with regard to the property of the said defendant, and to comply with any other order which the court may consider proper in this matter." (3) That Ricardo F. Gutierrez appeared on the 11th of December, 1907, and declared under oath, that about the month of September, 1907, he purchased two small wardrobes, for the value of which, amounting to P45, he became indebted to The California-Manila Lumber Company of this city, where the said defendant was employed and is working; that the said articles of furniture were no longer in his possession for the reason that he had given them to a friend of his in Baliuag named Amalio Fernando, to whom he forwarded the same by rail, collect, in the latter part of September or the beginning of October, 1907, and that for the transportation of the said furniture from his house to the railway station he had paid the sum of 30 centavos. This sworn testimony was ratified by the accused on folio 123. (4) That the whole of said sworn declaration turned out to be untrue upon the confession of the accused, to whom' was put the following question:

"Q. Did you then know on that afternoon that your testimony in court was not the truth-that the wardrobes had not been sent?-A. Yes, sir; for that reason I went to Senor Machuca's office to arrange the matter."

Machuca testified that the accused Gutierrez had told him that his declaration in the court of the justice of the peace was not true, and that he had made such declaration because the attorney of The California-Manila Lumber Company had advised him to do so. (5) That having been convicted of perjury on the above and other evidence, the court below sentenced him as above set forth. (6) That in this instance the defense has alleged against the judgment, first, that it is contrary to law, and second that it is contrary to the evidence.

This second point is put forward with the allegation that the statement of the accused before the justice of the

peace was not made with the knowledge that it was false, an allegation that can not be considered because it is a circumstance that is not expressly referred to in the law, and for the further reason that it is set forth in the proceedings, without any protest on the part of the accused or his counsel, that he had knowingly testified falsely.

With reference to the first point, it is alleged that the false testimony punished by article 321 of the Penal Code is that which is given in a civil cause, and that the proceedings supplementary to an execution, in which the accused gave the testimony considered to be false, is not a civil cause.

Article 321 of the Penal Code says:

"False testimony given in a civil cause shall be punished with a penalty of *arresto mayor* in its maximum degree to *presidio correccional* in its medium degree and a fine of from 625 to 6,250 pesetas.

If the amount of the claim should not exceed 625 pesetas, the penalties shall be those of *arresto mayor* and a fine of from 325 to 3,250 pesetas."

What should be considered as a "civil cause" under the terms of this article, is defined by the penal jurisprudence of Spain, which considers as such every proceeding wherein opposing interests are contested; under Spanish jurisprudence, if false testimony were given in supplementary proceedings for the execution of a civil action, it would nevertheless be false testimony in a civil cause.

Perjury committed by a party in his own cause would not be punishable under Spanish legislation, because in said legislation no one was a witness in his own cause, and could not therefore become guilty of giving false testimony in a civil cause in which he was either the plaintiff or the defendant; but under the procedure in force by virtue of Act No. 190, a party to a suit may testify in his own behalf, and if he declares falsely under oath as a witness in his own cause, like any other witness, he incurs the penalty by which false testimony in civil matters is repressed and punished. This court has so held, it being a settled rule, that the false testimony given by a litigant as a witness constitutes the crime of giving false testimony inasmuch as such a declaration, according to the new laws in force, may determine a judgment in his favor and to the prejudice of the adverse party, and that a litigant who, in sworn testimony given by him as a witness in a civil cause, shall pervert the truth and give false testimony, incurs as such witness the penalties imposed by article 321 of the Penal Code. As grounds for its judgment the court below said:

"A question has arisen as to whether or not a supplementary proceeding is a 'civil cause' in order that it may be included within the meaning of article 321 of the Penal Code. The word 'cause' has been judicially defined as 'any legal process which a party institutes to enforce his demand, or by which he seeks his right, or supposed right.' (Ex parte Milligan, 4 Wall. [71 U. S.], 112.) It embraces an action for temporary attachment (Logan vs. Small, 43 Mo., 255), proceedings for contempt (Lainont vs. Ward, 36 Wis., 559; Taylor vs. U. S., 45 Fed., 531), an alternative order to show cause why a new trial should not be ordered (Haupt vs. Henninger, 37 Pa. St., 141), and a report of arbitrators (Preston vs. Englert, 5 Bonn., Pa., 390). It appears that in the expression 'civil cause proceedings supplementary to an execution may be included as well as any of the cases cited above. And even more, to limit the application of article 321 to ordinary actions would be to reduce its operation to narrow limits, to lessen the usefulness of every special and collateral proceeding, and in many cases would work an injustice. It is not believed that such an interpretation is supported by sound principles of law or jurisprudence."

For the reasons above set forth the judgment appealed from is hereby affirmed in the main, that is, so far as the accused is sentenced to imprisonment for two months and one day, which imprisonment shall be of *arresto mayor*, and it is modified with regard to the fine which, according to paragraph 2 of article 321, can not exceed 3,250 pesetas nor be less than 325. We therefore impose the minimum fine, to wit, the sum of P65, with the corresponding subsidiary imprisonment, and the costs of the first instance, as imposed in the said judgment, in

addition to the costs of this instance.

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

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