

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. FEDERICO CAÑET, DEFENDANT AND APPELLEE.

G.R. No. 9869. March 25, 1915

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal by the United States from an order of the Court of First Instance of Iloilo Province, sustaining a demurrer to the information filed against the defendant in the above-entitled case, for the crime of perjury, and dismissing the case for lack of jurisdiction.

On January 9, 1914, the provincial fiscal of Iloilo Province filed the original information in this case, the defendant's demurrer to which was sustained, and the information ordered amended, by the lower court. An amended information was filed on March 2, 1914, which charges the crime of perjury, as follows:

"That on or about September 29 of the present year, 1913, in the municipality of Iloilo, Iloilo Province, Philippine Islands, the said defendant Federico Cañet presented to the Court of First Instance of Iloilo a motion asking for annulment of the judgment of said court, dated March 28, 1913, rendered in the civil suit docketed as No. 1842 and entitled 'Abraham Weill, as attorney for Levy Hermanos, plaintiff, vs. Federico Cañet, defendant,' for a sum of money; with the further prayer that said case be reopened, and, as an integral and essential part of said motion, the said defendant presented the affidavit signed by himself, in which the defendant Federico Canet did knowingly, under oath, willfully, intentionally, criminally and falsely make, sign and swear to as true, before the notary public J. E. Blanco, duly appointed by the Supreme Court of these Islands as such notary and authorized by law to administer oaths, the following affidavit as hereinafter quoted:

" 'PHILIPPINE ISLANDS, City of Manila, ss:

" 'Don Federico Cañet, after being duly sworn, states:

" '1. That on January 6, 1913, Abraham Weill, as representative of Messrs. Levy Hermanos, of Iloilo, filed in the Court of First Instance of said province a suit against the deponent, praying for judgment for the sum of P12,700, and at the same time secured an attachment upon all his property, as a result whereof the sheriff attached the two automobiles the price of which was the subject matter of said suit, as well as other vehicles and furniture of the deponent, said case having been docketed as No. 1842 of that court.

" '2. That, by reason of the filing of said suit and issuance of the said attachment, deponent went to Iloilo and, after certain negotiations with the plaintiff Weill, executed and delivered to the latter a contract in writing for complete adjustment of the claim which was the subject matter of the suit, and a copy of this instrument of compromise is annexed to this affidavit, marked with the letter A, as an integral part thereof.

" '3. That said instrument of compromise was executed in duplicate by deponent before the notary public Don Engracio Padilla of Iloilo, and, after being executed, one copy was delivered to the plaintiff Weill, and the other, after being signed by the plaintiff underneath deponent's signature, was delivered by the latter to Don Ruperto Montinola, whom deponent had employed as his attorney on receiving notification of the attachment; and that in consideration of the execution and delivery of the said instrument of compromise plaintiff agreed to

request dismissal of the suit and also of the attachment issued in said orders as stated above.

" '4. That the said instrument of compromise was drawn up by Don Ruperto Montinola, attorney for deponent, and stipulated between the plaintiff Weill and the said attorney Don Ruperto Montinola, in behalf of deponent and in his presence, that said attorney and the plaintiff would go immediately to the court and present said instrument of compromise and make other necessary arrangements for securing dismissal of the suit and the attachment.

" '5. That on January 11, 1913, that is the next day after the execution of said instrument of compromise, the plaintiff Weill telegraphed to the sheriff of Occidental Negros, notifying him that said case had been compromised and directing him to raise the attachment levied upon deponent's property, and the sheriff thereupon exhibited said telegram to deponent and in conformity therewith raised the attachment.

" '6. That when the sheriff exhibited said telegram to deponent and raised the attachment levied upon his property, deponent believed in good faith that the agreement made in the instrument of compromise with the plaintiff had been carried out and that the suit, as well as the attachment, had been dismissed.

" '7. That in the months of February, March and April of the year 1913, deponent delivered to Messrs. Lizarraga Hermanos, in conformity with the agreement in said instrument of compromise, one thousand six hundred and thirteen (1,613) piculs of sugar, from the sale whereof said firm turned over to the plaintiff Weill the sum of P4,500, the net proceeds from the sale of said sugar, after deduction of the sum of P1,600 for expenses, instead of the P2,000 stipulated in said instrument of compromise.

" '8. That on April 5, 1914, the plaintiff Weill wrote deponent a letter, which reads thus:

" ' "ILOILO, April 5, 1913.

" ' "Sr. FEDERICO CAÑET,

" ' "Bago, Occidental Negros.

""MY DEAR SIR:

" ' "The bearer hereof, master of the lorcha Emilia, is leaving for your place to pick up the sugar you have ready.

" ' "Señor Montinola showed me your telegram and it was very difficult to find a lorcha.

" ' "Let us know whether you have any more on hand in order to send you more transportation.

" ' "According to Senor Montinola the firm of Lizarraga Hermanos has during this week received from you some two hundred eighty piculs of sugar but account has not yet been rendered us.

"We remain,

"Your obedient servants,

" "For LEVY HERMANOS,

(Sgd.) " ' "A. Weill."

" '9. That on April 11, 1913, when the last sum from the proceeds of the sale of said sugar, amounting to P200, had been delivered to the plaintiff, deponent sent through his son-in-law, Angel Mascuna, a message to the plaintiff, requesting the latter to please fix up his account and give him a memorandum of the balance still due after deduction of the proceeds of the sale of the sugar, so that deponent could execute or deliver to plaintiff a note for the balance of the debt, in conformity with the stipulation in the instrument of compromise, but the plaintiff Weill said to him in reply that the account could be fixed up later.

" '10. That on August 15, 1913, after judgment had been rendered against the deponent by virtue of said suit and without his consent, as is hereinafter set forth, an order of execution was issued and delivered to the sheriff, and then deponent went to Iloilo to learn why the plaintiff had secured judgment and execution against his property after the compact of compromise hereinbefore mentioned had been entered into, and upon talking with the plaintiff the latter agreed, in conformity with the stipulation in said compact of compromise, not to take any further steps against the deponent by virtue of said judgment, and thereupon, that is, August 15, 1913, plaintiff sent a telegram to the sheriff, notifying him that said suit had been compromised and directing him to suspend the execution.

" '11. That on August 24, 1913, notwithstanding the agreement made with the deponent, plaintiff again directed the sheriff to proceed with said execution and the latter, on the same day, took possession of the two automobiles that had been sold by the plaintiff to deponent for the sum of P11,000; and, on September 1, sold in the town of Bacolod, by virtue of the execution, for the sum of P4,005, the Renault automobile for which deponent had paid plaintiff P6,500; and, on September 12, in the city of Iloilo, the said Weill took part in the auction and purchased for the sum of P600 the Brazier automobile for which deponent had paid the plaintiff P4,500 and subsequently sold it to a third party for the sum of P2,000.

" '12. That on Sunday, September 21, 1913, the said sheriff of Occidental Negros, at the instance and petition of the plaintiff, went to deponent's house on his hacienda in the town of Bago, Occidental Negros, and finding the house closed, penetrated therein by force and levied attachment upon and seized all the deponent's furniture and effects and took them to the town of Bago in order to sell them, and there the said sheriff is preparing to sell and will sell such furniture and effects at public auction.

" '13. That, upon going to Iloilo by reason of the notice of attachment of August 15, deponent learned for the first time that the suit of the defendant Weill had not been dismissed, in conformity with said compact of compromise of January 10, 1913, but that the said Ruperto Montinola, attorney for deponent, and the plaintiff Abraham Weill had, illegally and without deponent's knowledge, agreed to leave said suit pending and that the said Ruperto Montinola, in conformity with the said unlawful compact of February 27, 1913, had presented a reply, the contents whereof deponent does not know.

" '14. That on March 28, 1913, Ruperto Montinola, conspiring deceitfully with the plaintiff to defraud deponent, and without the latter's knowledge or consent, drew up and submitted a petition asking that judgment be rendered against deponent, as defendant in said suit, for the sum of P10,750.99, and a copy of this judgment, marked Exhibit B for its identification, is annexed to this affidavit as an integral part thereof.

" '15. That on the same day, March 28, 1913, the Court of First Instance of Iloilo Province rendered judgment against the deponent for the sum of P10,758.99, in conformity with the petition mentioned that was presented by deponent's attorney, and a copy of this judgment, marked Exhibit C for its identification, is annexed hereto as a part of this affidavit.

" '16. That deponent has in good faith carried out all the stipulations in the compact of compromise of January 10, 1913, without ever having been informed or having knowledge of the fact that the plaintiff Weill had not fulfilled his agreement to dismiss said suit, and without knowledge that the said Weill had secured judgment against the deponent as stated above.

" '17. That the said judgment was rendered against the deponent as a result of the fraud of the said plaintiff Abraham Weill and of his own attorney Ruperto Montinola, and by surprise and excusable negligence, on deponent's part, in having confided implicitly in said attorney Ruperto Montinola, and in not having personally examined the orders of the Court of First Instance to determine whether or not the plaintiff had carried out his agreement to request dismissal of the suit.

" '18. That for the reasons hereinbefore set forth the deponent has been the victim of surprise and deceit, such as ordinary prudence was unable to avoid, and by reason thereof he has been greatly injured in his rights and

interests; and the judgment rendered in the said orders is completely null and void for the reason that the plaintiff Abraham Weill lacked power or authorization sufficient in law for exercising the action brought by him or for requesting that judgment be rendered in his favor, as the representative of Levy Hermanos, because he was not the real party in interest with reference to the subject matter of the action.

(Sgd.) " 'FEDERICO CAÑET.

" 'Subscribed and sworn to before me this 26th day of September, 1913, by Don Federico Canet who exhibited to me his personal cedula No. F-612224, issued at Bago, Occidental Negros, January 7, 1913.

(Sgd.) " 'J. E. BLANCO,

" 'Notary Public until December 31, 1914.'

(Notary's seal, Doc. No. 122. Page No. 27.)

"That said affidavit was presented by the defendant to the Court of First Instance of Iloilo, when the defendant knew that the facts and statements contained in paragraphs 2, 3, 4, 5, 6, 13, 14, 16, 17, and 18 of said affidavit were false and contrary to the truth, that said statements are essential for determination of said civil suit, and the defendant did deliberately, maliciously and criminally swear to and present to the Court of First Instance of Iloilo the said false affidavit for the purpose of securing a decision in his favor, to prevent execution upon and sale of his property in the said civil suit; in violation of the law."

To this amended information the defendant interposed another demurrer based on the following grounds: (1) That the facts alleged in the information do not constitute the crime charged against the accused, and (2) that the crime charged was not committed, in any case, within the jurisdiction of the court. This demurrer was overruled as to the first ground, but sustained as to the second, and on March 24, 1914, the case was ordered dismissed for lack of jurisdiction. The plaintiff appeals from this order of dismissal.

In disposing of this appeal we follow substantially the line of reasoning adopted in his brief by the Attorney-General, with which we are in entire accord.

The only question raised in this case is one of jurisdiction. The lower court found that the crime charged in the amended information was completed in Manila, inasmuch as the affidavit upon which the charge of perjury rested was subscribed and sworn to before a notary in that city, and therefore held that it lacked jurisdiction over the offense.

Without considering or deciding whether the facts alleged sufficiently charge the commission of the crime of perjury in the city of Manila, we hold that the complaint sets forth facts which, if proven, are sufficient to sustain a finding that the defendant committed the crime of perjury within the jurisdiction of the Court of First Instance of Iloilo, in that in a judicial proceeding pending in that court, "the defendant did deliberately, maliciously and criminally swear to and present in the Court of First Instance of Iloilo the said false affidavit," such affidavit being known to him to be false, and being intended by him to mislead the court. It is immaterial where the affidavit was subscribed and sworn, so long as it appears from the information that the defendant, by means of such affidavit, "swore to" and knowingly submitted false evidence, material to a point at issue in a judicial proceeding pending in the Court of First Instance of Iloilo Province. The gist of the offense charged is not the making of the affidavit in Manila, but the intentional giving of false evidence in the Court of First Instance of Iloilo Province by means of such affidavit.

Viewed in this light, the question which the case presents for determination resolves itself into an inquiry as to whether, in this jurisdiction, it is perjury to submit under oath false evidence upon a material point in issue in a judicial proceeding by means of an affidavit. Section 3 of Act No. 1697, defining and penalizing the crime of

perjury in the Philippine Islands, reads as follows:

"Any person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the Philippine Islands authorizes an oath to be administered that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand pesos and by imprisonment for not more than five years; and shall, moreover, thereafter be incapable of holding any public office or of giving testimony in any court of the Philippine Islands until such time as the judgment against him is reversed."

As was said in the case of *United States vs. Estrana* (16 Phil. Rep., 520), "section 3 of our perjury law is practically the same as that of nearly all of the States of the Union," and, "by the common law, perjury is the willful and corrupt taking of a false oath, lawfully administered, in a judicial proceeding or the course of justice in regard to a matter material to the issue or point of inquiry. (30 Cyc, 1399, the cases cited therein.)" And further that "this definition of perjury, as modified by statute, may be more accurately defined to be the willful and corrupt assertion of a falsehood, under oath or affirmation administered by authority of law, in a material matter, the offense being enlarged and made to extend to other false oaths than those taken in the course of judicial proceedings. (30 Cyc, 1400, and cases cited.)"

Wharton, in his work on Criminal Law (11th ed. vol. 2, sec. 1508), says: "Perjury, as the offense, modified by statute, is now generally defined, is the corrupt assertion of a falsehood, under oath, or affirmation, and by legal authority, for the purpose of influencing the course of law. Or, to give a definition drawn from the older common-law authorities, it is the willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court, or in an affidavit, or otherwise, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury, or person holding the proceeding."

It will be seen that, according to this definition, a willful assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, and whether such evidence is given in open court, or in an affidavit, or otherwise, such assertion being known to such witness to be false, and being intended by him to mislead the court holding the proceeding, constitutes the crime of perjury.

In view of the definition of perjury, as modified by statute, which has been accepted and followed in numerous cases, and upon the authority of the case of *United States vs. Estrana*, referred to above, we hold that it is perjury in this jurisdiction to submit false evidence in a judicial proceeding by means of an affidavit.

The conclusion thus reached is not only founded upon the soundest principles of reason and of law, but is even demanded by paramount considerations of public policy; for a contrary doctrine would open the way to injustice and fraud. Our Code of Civil Procedure provides that evidence may be given by means of an affidavit in certain instances (sec. 348), and that such affidavit may be taken in a foreign country before any judge of a court of record having a seal (sec. 351). It is easy to conceive of a case where a person, interested in the outcome of a judicial proceeding pending in one of the courts of these Islands, with the deliberate purpose of influencing the course of law in his favor, might go to a foreign country, and there before a judge of a proper court of record, subscribe and swear to an affidavit setting forth facts known to him to be false, but perfectly suited for the purpose he has in view, and then cause such affidavit to be filed with the court in which the case is pending. He could thus accomplish his purpose with absolute impunity, if it should be held that it is not perjury in this

jurisdiction to submit under oath false evidence material to a point in issue in a judicial proceeding by means of an affidavit, such as was done by the defendant in the case at bar.

As was said in the case of *Herring vs. State* (119 Ga., 709; 46 S. E., 876): "The nice and subtle technicalities with which some of the courts in the past surrounded the crime of perjury rendered a conviction for that offense well-nigh impossible. It is probable that these niceties were devised by the common-law courts, on account of the barbarous punishment which was visited upon persons convicted of this offense. The punishment has been humanely mitigated, and at the same time the class of persons competent to testify in court has been greatly enlarged. As all faith in judicial proceedings rests upon the final sanction of an oath, it is good policy, not only for this reason but for those above indicated, to facilitate, in so far as may be consistent with law and justice, convictions for this crime."

The order entered in the court below sustaining the demurrer should be set aside, without special condemnation of costs in this instance. So ordered.

Arellano, C. J., Torres, Moreland, Trent, and Araullo, JJ., concur.

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