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[G.R. No. 3174. April 20, 1906]

HARRY J. FINNICK, PETITIONER AND APPELLEE, VS. JAMES J. PETERSON, RESPONDENT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

On the 25th day of January, 1906, the applicant presented to the Hon. A. C. Carson, associate justice of the Supreme Court, a petition for a writ of *habeas corpus*, alleging that he was illegally detained and deprived of his liberties by virtue of an order made by the Hon. Manuel Araullo, presiding judge of part 1 of the Court of First Instance of the city of Manila, on the said 25th day of January. The said application contained the following statement as to the specific reason upon which said order of detention was made:

> "Your petitioner states that on the 25th day of January, 1906, he was served with a subpoena *duces tecum*, issued by the order of said Hon. Manuel Araullo, presiding judge of part 1, Court of First Instance of Manila, commanding petitioner to appear in said court at 10.30 a. m. of said day as a witness in a criminal case there pending of the United States *vs*. Nicolasa Pascual, charged with the offense of *estafa*, and further commanding petitioner to produce therein Certain books and certain articles of jewelry, which subpoena contained a particular reference to the jewelry which the applicant was required to bring into court; that pursuant to said command petitioner appeared in said court at the hour named in said subpoena, was during the trial of said cause called to the witness stand, duly sworn and examined as a witness for the Government, and cross-examined by counsel for defendant, fully, freely, and respectfully answering all questions propounded to him by the court and by the counsel for the respective parties, and at the same time produced in court certain stub books which he believed to be the books mentioned in said subpoena, but that

> petitioner failed to obey that part of said subpoena commanding him to produce in said court certain articles of jewelry, and when interrogated by said presiding judge concerning his failure to obey such subpoena, respectfully and deferentially stated to the court that he failed in such obedience because he believed the court had no legal authority to require the production of said jewelry, and because he did not desire to part with the possession of said jewelry, and believed it unsafe and prejudicial to his interests so to do, and that to protect his interests and rights he must persist in his failure and refusal to produce said jewelry, whereupon the said judge ordered that the petitioner be imprisoned until he should comply with the order of said court; that your petitioner at all times showed due respect to the said court and judge; that he was not guilty of any misbehavior in the presence of said court or judge, or elsewhere; that, immediately after said judge had ordered his imprisonment as hereinbefore stated, your petitioner duly excepted thereto, and gave notice in writing of his intention to appeal to the Supreme Court from said order, and at the same time asked said judge to admit him to bail pending such appeal; all as provided by sections 234 and 240 of the Code of Civil Procedure, whereupon the said judge entered an order denying petitioner's appeal, refusing to admit petitioner to bail, and ordering his immediate incarceration; that no charge in writing or otherwise was made against petitioner, nor was he given an opportunity to be heard by himself or counsel."

The applicant further alleges that his arrest, detention, and imprisonment is illegal for the following reasons:

> "(1) Because the subpoena *duces tecum* served on him was void, in that it was vague, unintelligible, and uncertain, and failed to describe with reasonable certainty the articles required to be produced in court.
>
> "(2)" That said court and judge had no authority in law to require by subpoena *duces tecum* the production in court of any personal property other than books, documents, or other articles of like nature.
>
> "(3) That the petitioner is deprived of his liberty without due process of law, in that no written charge was filed against him, and in that he was given no opportunity to be heard by himself or by counsel, as provided by section 233 of

the Code of Procedure in Civil Actions.

"(4) That the petitioner is deprived of his liberty without due process of law in that his right to appeal to the Supreme Court and his right to be admitted to bail pending such appeal, as provided by sections 233 and 240 of the Code of Procedure in Civil Actions, has been disregarded and denied him by said judge.

"(5) That the petitioner's failure to obey said *subpoena duces tecum* did not constitute contempt in the presence of the said court, as defined by section 231 of the Code of Procedure in Civil Actions, and he can not therefore be summarily punished therefor.

"(6) That said order of contempt is illegal, null, and void, in that it attempts to commit and punish petitioner for a contempt of the process of a court without trial or hearing, and in that the said judge was without jurisdiction to make and issue such order, and in that said order was made and issued by said judge without legal authority or color of authority, and without just cause, and in that such order is vague and unintelligible, and does not state the offense or alleged offense for which petitioner is being committed and imprisoned, and, therefore, for all of which reasons said order does not confer upon the respondent sheriff any legal authority to arrest, detain, and imprison the petitioner."

The petitioner further alleged that he had taken all legal steps and measures known to the law to induce said judge to correct his manifest error in ordering petitioner's arrest, detention, and imprisonment, and to annul his illegal order of commitment, and to elevate said cause to the Supreme Court by appeal, all without avail, and haying been by said judge deprived of and denied his legal right of appeal and bail, the petitioner was without remedy other than a resort to the writ of *habeas corpus* to prevent the wrong inflicted upon him by the illegal and void order of said judge.

Upon reading the foregoing petition the Hon. A. C. Carson, associate justice, issued the writ of *habeas corpus* prayed for in the foregoing petition.

To this petition respondent replied as follows:

"(1) Respondent alleges that he toot into his custody the person of Harry J. Finnick at the time of the service of the writ of *habeas corpus* herein, and that he

> held the said Harry J. Finnick in his custody under and by virtue of an order of commitment issued by the Hon. Manuel Araullo, judge of the Court of First Instance of Manila, Philippine Islands.
>
> "(2) Respondent further informs the court that he is informed and believes that the petitioner, Harry J. Finnick, was ordered to be detained and committed to prison under and by virtue of the provisions of section 231 of the Code of Procedure in Civil Actions for a contempt then and there committed by the petitioner in the presence of the court on the 25th day of January, 1906, in that the said petitioner then and there refused to comply with a verbal Order of the said court then and there entered requiring him, the said, petitioner, Harry J. Finnick, to forthwith produce certain articles of jewelry in court as evidence in the case of the United States vs. Nicolasa Pascual, then and there on trial, in order that said jewelry could be identified by witnesses in said court and cause as the jewelry alleged to have been embezzled in said cause then and there on trial; that the refusal of the said Harry J. Finnick to produce the jewelry as aforesaid obstructed the administration of justice in said court, and prevented the trial of the said case then and there being heard from proceeding to a final determination."

Attached to said petition of the applicant, and the return of said sheriff, is found the said subpoena duoes tecum, the evidence of the applicant given in open court relating thereto, and the order of the court directing that the applicant herein should" be detained and imprisoned. After hearing the respective parties upon the foregoing petition and answer, the Hon. A. C. Carson, associate justice, ordered the defendant discharged from custody. From this order the respondent appealed to this court, under and by virtue of the provisions of section 4 of Act No. 654 of the Philippine Commission.

The foregoing petition and return presents to this court two questions, as follows:

(1) Did the inferior court have authority to issue a subpoena *duces tecum* requiring the applicant to bring into court property, the jewelry mentioned in said subpoena? and

(2) Was the contempt for which the defendant was ordered to be detained committed within the presence of the court?

The said subpoena *duces tecum* was issued by virtue of the provisions of section 402 of the

Code of Procedure in Civil Actions. Said section is as follows:

> "The process by which the attendance of a witness is required is called a subpoena. It is a writ directed to a person and requiring his attendance at a particular time and place, to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control, which he is bound by law to produce in evidence, in which case it is called a subpoena *duces tecum*."

The applicant contends that the court, under the foregoing provision of the said code, had no authority to order brought into court by virtue of a subpoena *duces tecum* anything except books and documents, and that the phrase "other things under his control" did not justify or authorize the court in issuing the said subpoena requiring the defendant to bring into court personal property, and that the said phrase "other things" must be construed to mean only books and documents. In other words, the phrase in said section, "or other things under his control," adds nothing to said section, and that the said section would be the same as if it provided only for the issuance of a subpoena *duces tecum* for the purpose of bringing into court books and documents. This contention on the part of the applicant is based upon many decisions found in the United States to the effect that "when there are general words following particular and specific words, the former must be confined to things of the same kind."

It will be noted, however, that this same section authorizing the subpoena *duces tecum*, and which requires the witness to bring with him any books, documents, etc., also requires him to produce "other things under his control which he is bound by law to produce in evidence." We attach some importance to that part of the section which requires him to produce things "which he is bound by law to produce in evidence."

Article 120 of the Penal Code provides that—

> "The restitution of the thing itself must be made, if possible, with payment for deterioration or diminution of value, to be appraised by the court.
>
> "Restitution shall be made even though the thing may be in the possession of a *third person*, who had acquired it in a legal manner, reserving, however, his action against the proper person."

This provision makes it the duty of the court, when the right to personal property is in question in a criminal cause, to order its return to the proper person, after giving all persons interested a hearing, and the Code of Criminal Procedure provided a method for an examination into the question of the right of property. Evidently the legislature had the above provision of the Criminal Code in mind when they provided for the bringing into court of "other things" as evidence under a subpoena *duces tecum*. We are of the opinion, and so hold, that the inferior court was justified in ordering brought into court under the subpoena *duces tecum* the property in question, in order that he might determine by an ocular inspection of the same, if he so desired, the identity of the property, so that he might comply with the above provision of the Penal Code. The second question involved in this case is, Where was the contempt for which the applicant was punished committed? It is contended on the part of the respondent that the contempt was committed in the presence of the court, and therefore punishable, under section 231 of the Code of Procedure in Civil Actions, in a summary manner. Upon the other hand, it is contended by the applicant that the contempt, if contempt exists at all, was not committed in the presence of the court, and that he was therefore entitled to be heard upon the question of contempt in accordance with sections 232 to 240 of said code.

The facts involving the question of contempt were as follows: The Court of First Instance of the city of Manila issued a subpoena *duces tecum* to the applicant herein directing him to bring into court certain jewelry described in certain receipts which were mentioned in said subpoena. On the same day the applicant appeared as a witness in response to the command of said subpoena but refused to bring into court the jewelry mentioned in such subpoena. During the examination of the applicant as a witness on said day, he was asked by the prosecuting attorney if he had brought into court the said jewelry, to which he replied that he had not for the reason that he did not care to lose the possession of said property, whereupon the court issued a verbal order directing the applicant to bring into court said property in question. We are of the opinion that this verbal order issued by the inferior court during the examination of the applicant added nothing to the order contained in the subpoena *duces tecum*,, and that the contempt consisted in a refusal to obey the commands contained" in said subpoena, and not in a refusal to obey the verbal orders of the court made during the examination. We therefore hold—

(1) That the court was authorized to issue the said subpoena directing the applicant to bring into court the property in question; and

(2) That the contempt committed by the applicant was in disobedience of the commands of

said writ, and was not committed in the presence of the court, and, therefore, the applicant is entitled to the hearing or trial provided for in sections 232 to 240 of the Code of Procedure in Civil Actions before he can be punished for a contempt of the character committed here.

For the foregoing reasons, the order appealed from is hereby affirmed. So ordered.

Arellano, C. J., Torres, Mapa, Willard, and *Tracey, JJ.,* concur.

Date created: April 30, 2014