Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-14639 March 25, 1919

ZACARIAS VILLAVICENCIO, ET AL., petitioners,
vs.
JUSTO LUKBAN, ET AL., respondents.

Alfonso Mendoza for petitioners.
City Fiscal Diaz for respondents.

MALCOLM, *J.*:

The annals of juridical history fail to reveal a case quite as remarkable as the one which this application for *habeas corpus* submits for decision. While hardly to be expected to be met with in this modern epoch of triumphant democracy, yet, after all, the cause presents no great difficulty if there is kept in the forefront of our minds the basic principles of popular government, and if we give expression to the paramount purpose for which the courts, as an independent power of such a government, were constituted. The primary question is — Shall the judiciary permit a government of the men instead of a government of laws to be set up in the Philippine Islands?

Omitting much extraneous matter, of no moment to these proceedings, but which might prove profitable reading for other departments of the government, the facts are these: The Mayor of the city of Manila, Justo Lukban, for the best of all reasons, to exterminate vice, ordered the segregated district for women of ill repute, which had been permitted for a number of years in the city of Manila, closed. Between October 16 and October 25, 1918, the women were kept confined to their houses in the district by the police. Presumably, during this period, the city authorities quietly perfected arrangements with the Bureau of Labor for sending the women to Davao, Mindanao, as laborers; with some government office for the use of the coastguard cutters *Corregidor* and *Negros*, and with the Constabulary for a guard of soldiers. At any rate, about midnight of October 25, the police, acting pursuant to orders from the chief of police, Anton Hohmann and the Mayor of the city of Manila, Justo Lukban, descended upon the houses, hustled some 170 inmates into patrol wagons, and placed them aboard the steamers that awaited their arrival. The women were given no opportunity to collect their belongings, and apparently were under the impression that they were being taken to a police station for an investigation. They had no knowledge that they were destined for a life in Mindanao. They had not been asked if they wished to depart from that region and had neither directly nor indirectly given their consent to the deportation. The involuntary guests were received on board the steamers by a representative of the Bureau of Labor and a detachment of Constabulary soldiers. The two steamers with their unwilling passengers sailed for Davao during the night of October 25.

The vessels reached their destination at Davao on October 29. The women were landed and receipted for as laborers by Francisco Sales, provincial governor of Davao, and by Feliciano Yñigo and Rafael Castillo. The governor and the *hacendero* Yñigo, who appear as parties in the case, had no previous notification that the women were prostitutes who had been expelled from the city of Manila. The further happenings to these women and the serious charges growing out of alleged ill-treatment are of public interest, but are not essential to the disposition of this case. Suffice it to say, generally, that some of the women married, others assumed more or less clandestine relations with men, others went to work in different capacities, others assumed a life unknown and disappeared, and a goodly portion found means to return to Manila.

To turn back in our narrative, just about the time the *Corregidor* and the *Negros* were putting in to Davao, the attorney for the relatives and friends of a considerable number of the deportees presented an application for *habeas corpus* to a member of the Supreme Court. Subsequently, the application, through stipulation of the parties, was made to include all of the women who were sent away from Manila to Davao and, as the same questions concerned them all, the application will be considered as including them. The application set forth the salient facts, which need not be repeated, and alleged that the women were illegally restrained of their liberty by Justo Lukban, Mayor of the city of Manila, Anton Hohmann, chief of police of the city of Manila, and by certain unknown parties. The writ was made returnable before the full court. The city fiscal appeared for the respondents, Lukban and Hohmann, admitted certain facts relative to sequestration and deportation, and prayed that the writ should not be granted because the petitioners were not proper parties, because the action should have been begun in the Court of First Instance for Davao, Department of Mindanao and Sulu, because the respondents did not have any of the women under their custody or control, and because their jurisdiction did not extend beyond the boundaries of the city of Manila. According to an exhibit attached to the answer of the fiscal, the 170 women were destined to be laborers, at good salaries, on the *haciendas* of Yñigo and Governor Sales. In open court, the fiscal admitted, in answer to question of a member of the court, that these women had been sent out of Manila without their consent. The court awarded the writ, in an order of November 4, that directed Justo Lukban, Mayor of the city of Manila, Anton Hohmann, chief of police of the city of Manila, Francisco Sales, governor of the province of Davao, and Feliciano Yñigo, an *hacendero* of Davao, to bring before the court the persons therein named, alleged to be deprived of their liberty, on December 2, 1918.

Before the date mentioned, seven of the women had returned to Manila at their own expense. On motion of counsel for petitioners, their testimony was taken before the clerk of the Supreme Court sitting as commissioners. On the day named in the order, December 2nd, 1918, none of the persons in whose behalf the writ was issued were produced in court by the respondents. It has been shown that three of those who had been able to come back to Manila through their own efforts, were notified by the police and the secret service to appear before the court. The fiscal appeared, repeated the facts more comprehensively, reiterated the stand taken by him when pleading to the original petition copied a telegram from the Mayor of the city of Manila to the provincial governor of Davao and the answer thereto, and telegrams that had passed between the Director of Labor and the attorney for that Bureau then in Davao, and offered certain

affidavits showing that the women were contained with their life in Mindanao and did not wish to return to Manila. Respondents Sales answered alleging that it was not possible to fulfill the order of the Supreme Court because the women had never been under his control, because they were at liberty in the Province of Davao, and because they had married or signed contracts as laborers. Respondent Yñigo answered alleging that he did not have any of the women under his control and that therefore it was impossible for him to obey the mandate. The court, after due deliberation, on December 10, 1918, promulgated a second order, which related that the respondents had not complied with the original order to the satisfaction of the court nor explained their failure to do so, and therefore directed that those of the women not in Manila be brought before the court by respondents Lukban, Hohmann, Sales, and Yñigo on January 13, 1919, unless the women should, in written statements voluntarily made before the judge of first instance of Davao or the clerk of that court, renounce the right, or unless the respondents should demonstrate some other legal motives that made compliance impossible. It was further stated that the question of whether the respondents were in contempt of court would later be decided and the reasons for the order announced in the final decision.

Before January 13, 1919, further testimony including that of a number of the women, of certain detectives and policemen, and of the provincial governor of Davao, was taken before the clerk of the Supreme Court sitting as commissioner and the clerk of the Court of First Instance of Davao acting in the same capacity. On January 13, 1919, the respondents technically presented before the Court the women who had returned to the city through their own efforts and eight others who had been brought to Manila by the respondents. Attorneys for the respondents, by their returns, once again recounted the facts and further endeavored to account for all of the persons involved in the *habeas corpus*. In substance, it was stated that the respondents, through their representatives and agents, had succeeded in bringing from Davao with their consent eight women; that eighty-one women were found in Davao who, on notice that if they desired they could return to Manila, transportation fee, renounced the right through sworn statements; that fifty-nine had already returned to Manila by other means, and that despite all efforts to find them twenty-six could not be located. Both counsel for petitioners and the city fiscal were permitted to submit memoranda. The first formally asked the court to find Justo Lukban, Mayor of the city of Manila, Anton Hohmann, chief of police of the city of Manila, Jose Rodriguez and Fernando Ordax, members of the police force of the city of Manila, Feliciano Yñigo, an *hacendero* of Davao, Modesto Joaquin, the attorney for the Bureau of Labor, and Anacleto Diaz, fiscal of the city of Manila, in contempt of court. The city fiscal requested that the *replica al memorandum de los recurridos*, (reply to respondents' memorandum) dated January 25, 1919, be struck from the record.

In the second order, the court promised to give the reasons for granting the writ of *habeas corpus* in the final decision. We will now proceed to do so.

One fact, and one fact only, need be recalled — these one hundred and seventy women were isolated from society, and then at night, without their consent and without any opportunity to consult with friends or to defend their rights, were forcibly hustled on board steamers for transportation to regions unknown. Despite the feeble attempt to

prove that the women left voluntarily and gladly, that such was not the case is shown by the mere fact that the presence of the police and the constabulary was deemed necessary and that these officers of the law chose the shades of night to cloak their secret and stealthy acts. Indeed, this is a fact impossible to refute and practically admitted by the respondents.

With this situation, a court would next expect to resolve the question — By authority of what law did the Mayor and the Chief of Police presume to act in deporting by duress these persons from Manila to another distant locality within the Philippine Islands? We turn to the statutes and we find —

Alien prostitutes can be expelled from the Philippine Islands in conformity with an Act of congress. The Governor-General can order the eviction of undesirable aliens after a hearing from the Islands. Act No. 519 of the Philippine Commission and section 733 of the Revised Ordinances of the city of Manila provide for the conviction and punishment by a court of justice of any person who is a common prostitute. Act No. 899 authorizes the return of any citizen of the United States, who may have been convicted of vagrancy, to the homeland. New York and other States have statutes providing for the commitment to the House of Refuge of women convicted of being common prostitutes. Always a law! Even when the health authorities compel vaccination, or establish a quarantine, or place a leprous person in the Culion leper colony, it is done pursuant to some law or order. But one can search in vain for any law, order, or regulation, which even hints at the right of the Mayor of the city of Manila or the chief of police of that city to force citizens of the Philippine Islands — and these women despite their being in a sense lepers of society are nevertheless not chattels but Philippine citizens protected by the same constitutional guaranties as are other citizens — to change their domicile from Manila to another locality. On the contrary, Philippine penal law specifically punishes any public officer who, not being expressly authorized by law or regulation, compels any person to change his residence.

In other countries, as in Spain and Japan, the privilege of domicile is deemed so important as to be found in the Bill of Rights of the Constitution. Under the American constitutional system, liberty of abode is a principle so deeply imbedded in jurisprudence and considered so elementary in nature as not even to require a constitutional sanction. Even the Governor-General of the Philippine Islands, even the President of the United States, who has often been said to exercise more power than any king or potentate, has no such arbitrary prerogative, either inherent or express. Much less, therefore, has the executive of a municipality, who acts within a sphere of delegated powers. If the mayor and the chief of police could, at their mere behest or even for the most praiseworthy of motives, render the liberty of the citizen so insecure, then the presidents and chiefs of police of one thousand other municipalities of the Philippines have the same privilege. If these officials can take to themselves such power, then any other official can do the same. And if any official can exercise the power, then all persons would have just as much right to do so. And if a prostitute could be sent against her wishes and under no law from one locality to another within the country, then officialdom can hold the same club over the head of any citizen.

Law defines power. Centuries ago Magna Charta decreed that — "No freeman shall be taken, or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed; nor will we pass upon him nor condemn him, but by lawful judgment of his peers or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right." (Magna Charta, 9 Hen., 111, 1225, Cap. 29; 1 eng. stat. at Large, 7.) No official, no matter how high, is above the law. The courts are the forum which functionate to safeguard individual liberty and to punish official transgressors. "The law," said Justice Miller, delivering the opinion of the Supreme Court of the United States, "is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives." (U.S. *vs.* Lee [1882], 106 U.S., 196, 220.) "The very idea," said Justice Matthews of the same high tribunal in another case, "that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." (Yick Wo *vs.* Hopkins [1886], 118 U.S., 356, 370.) All this explains the motive in issuing the writ of *habeas corpus*, and makes clear why we said in the very beginning that the primary question was whether the courts should permit a government of men or a government of laws to be established in the Philippine Islands.

What are the remedies of the unhappy victims of official oppression? The remedies of the citizen are three: (1) Civil action; (2) criminal action, and (3) *habeas corpus*.

The first is an optional but rather slow process by which the aggrieved party may recoup money damages. It may still rest with the parties in interest to pursue such an action, but it was never intended effectively and promptly to meet any such situation as that now before us.

As to criminal responsibility, it is true that the Penal Code in force in these Islands provides:

> Any public officer not thereunto authorized by law or by regulations of a general character in force in the Philippines who shall banish any person to a place more than two hundred kilometers distant from his domicile, except it be by virtue of the judgment of a court, shall be punished by a fine of not less than three hundred and twenty-five and not more than three thousand two hundred and fifty pesetas.
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> Any public officer not thereunto expressly authorized by law or by regulation of a general character in force in the Philippines who shall compel any person to change his domicile or residence shall suffer the penalty of destierro and a fine of not less than six hundred and twenty-five and not more than six thousand two hundred and fifty *pesetas*. (Art. 211.)

We entertain no doubt but that, if, after due investigation, the proper prosecuting officers find that any public officer has violated this provision of law, these prosecutors

will institute and press a criminal prosecution just as vigorously as they have defended the same official in this action. Nevertheless, that the act may be a crime and that the persons guilty thereof can be proceeded against, is no bar to the instant proceedings. To quote the words of Judge Cooley in a case which will later be referred to — "It would be a monstrous anomaly in the law if to an application by one unlawfully confined, ta be restored to his liberty, it could be a sufficient answer that the confinement was a crime, and therefore might be continued indefinitely until the guilty party was tried and punished therefor by the slow process of criminal procedure." (In the matter of Jackson [1867], 15 Mich., 416, 434.) The writ of *habeas corpus* was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. Any further rights of the parties are left untouched by decision on the writ, whose principal purpose is to set the individual at liberty.

Granted that *habeas corpus* is the proper remedy, respondents have raised three specific objections to its issuance in this instance. The fiscal has argued (l) that there is a defect in parties petitioners, (2) that the Supreme Court should not a assume jurisdiction, and (3) that the person in question are not restrained of their liberty by respondents. It was finally suggested that the jurisdiction of the Mayor and the chief of police of the city of Manila only extends to the city limits and that perforce they could not bring the women from Davao.

The first defense was not presented with any vigor by counsel. The petitioners were relatives and friends of the deportees. The way the expulsion was conducted by the city officials made it impossible for the women to sign a petition for *habeas corpus*. It was consequently proper for the writ to be submitted by persons in their behalf. (Code of Criminal Procedure, sec. 78; Code of Civil Procedure, sec. 527.) The law, in its zealous regard for personal liberty, even makes it the duty of a court or judge to grant a writ of *habeas corpus* if there is evidence that within the court's jurisdiction a person is unjustly imprisoned or restrained of his liberty, though no application be made therefor. (Code of Criminal Procedure, sec. 93.) Petitioners had standing in court.

The fiscal next contended that the writ should have been asked for in the Court of First Instance of Davao or should have been made returnable before that court. It is a general rule of good practice that, to avoid unnecessary expense and inconvenience, petitions for *habeas corpus* should be presented to the nearest judge of the court of first instance. But this is not a hard and fast rule. The writ of *habeas corpus* may be granted by the Supreme Court or any judge thereof enforcible anywhere in the Philippine Islands. (Code of Criminal Procedure, sec. 79; Code of Civil Procedure, sec. 526.) Whether the writ shall be made returnable before the Supreme Court or before an inferior court rests in the discretion of the Supreme Court and is dependent on the particular circumstances. In this instance it was not shown that the Court of First Instance of Davao was in session, or that the women had any means by which to advance their plea before that court. On the other hand, it was shown that the petitioners with their attorneys, and the two original respondents with their attorney, were in Manila; it was shown that the case involved parties situated in different parts of the Islands; it was shown that the women might still be imprisoned or restrained of their liberty; and it was

shown that if the writ was to accomplish its purpose, it must be taken cognizance of and decided immediately by the appellate court. The failure of the superior court to consider the application and then to grant the writ would have amounted to a denial of the benefits of the writ.

The last argument of the fiscal is more plausible and more difficult to meet. When the writ was prayed for, says counsel, the parties in whose behalf it was asked were under no restraint; the women, it is claimed, were free in Davao, and the jurisdiction of the mayor and the chief of police did not extend beyond the city limits. At first blush, this is a tenable position. On closer examination, acceptance of such dictum is found to be perversive of the first principles of the writ of *habeas corpus*.

A prime specification of an application for a writ of *habeas corpus* is restraint of liberty. The essential object and purpose of the writ of *habeas corpus* is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient. The forcible taking of these women from Manila by officials of that city, who handed them over to other parties, who deposited them in a distant region, deprived these women of freedom of locomotion just as effectively as if they had been imprisoned. Placed in Davao without either money or personal belongings, they were prevented from exercising the liberty of going when and where they pleased. The restraint of liberty which began in Manila continued until the aggrieved parties were returned to Manila and released or until they freely and truly waived his right.

Consider for a moment what an agreement with such a defense would mean. The chief executive of any municipality in the Philippines could forcibly and illegally take a private citizen and place him beyond the boundaries of the municipality, and then, when called upon to defend his official action, could calmly fold his hands and claim that the person was under no restraint and that he, the official, had no jurisdiction over this other municipality. We believe the true principle should be that, if the respondent is within the jurisdiction of the court and has it in his power to obey the order of the court and thus to undo the wrong that he has inflicted, he should be compelled to do so. Even if the party to whom the writ is addressed has illegally parted with the custody of a person before the application for the writ is no reason why the writ should not issue. If the mayor and the chief of police, acting under no authority of law, could deport these women from the city of Manila to Davao, the same officials must necessarily have the same means to return them from Davao to Manila. The respondents, within the reach of process, may not be permitted to restrain a fellow citizen of her liberty by forcing her to change her domicile and to avow the act with impunity in the courts, while the person who has lost her birthright of liberty has no effective recourse. The great writ of liberty may not thus be easily evaded.

It must be that some such question has heretofore been presented to the courts for decision. Nevertheless, strange as it may seem, a close examination of the authorities fails to reveal any analogous case. Certain decisions of respectable courts are however very persuasive in nature.

A question came before the Supreme Court of the State of Michigan at an early date as to whether or not a writ of *habeas corpus* would issue from the Supreme Court to a person within the jurisdiction of the State to bring into the State a minor child under guardianship in the State, who has been and continues to be detained in another State. The membership of the Michigan Supreme Court at this time was notable. It was composed of Martin, chief justice, and Cooley, Campbell, and Christiancy, justices. On the question presented the court was equally divided. Campbell, J., with whom concurred Martin, C. J., held that the writ should be quashed. Cooley, J., one of the most distinguished American judges and law-writers, with whom concurred Christiancy, J., held that the writ should issue. Since the opinion of Justice Campbell was predicated to a large extent on his conception of the English decisions, and since, as will hereafter appear, the English courts have taken a contrary view, only the following eloquent passages from the opinion of Justice Cooley are quoted:

> I have not yet seen sufficient reason to doubt the power of this court to issue the present writ on the petition which was laid before us. . . .
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> It would be strange indeed if, at this late day, after the eulogiums of six centuries and a half have been expended upon the Magna Charta, and rivers of blood shed for its establishment; after its many confirmations, until Coke could declare in his speech on the petition of right that "Magna Charta was such a fellow that he will have no sovereign," and after the extension of its benefits and securities by the petition of right, bill of rights and *habeas corpus* acts, it should now be discovered that evasion of that great clause for the protection of personal liberty, which is the life and soul of the whole instrument, is so easy as is claimed here. If it is so, it is important that it be determined without delay, that the legislature may apply the proper remedy, as I can not doubt they would, on the subject being brought to their notice. . . .
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> The second proposition — that the statutory provisions are confined to the case of imprisonment within the state — seems to me to be based upon a misconception as to the source of our jurisdiction. It was never the case in England that the court of king's bench derived its jurisdiction to issue and enforce this writ from the statute. Statutes were not passed to give the right, but to compel the observance of rights which existed. . . .
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> The important fact to be observed in regard to the mode of procedure upon this writ is, that it is directed to and served upon, not the person confined, but his jailor. It does not reach the former except through the latter. The officer or person who serves it does not unbar the prison doors, and set the prisoner free, but the court relieves him by compelling the oppressor to release his constraint. The whole force of the writ is spent upon the respondent, and if he fails to obey it, the means to be resorted to for the purposes of compulsion are fine and imprisonment. This is the ordinary mode of affording relief, and if any other means are resorted to, they are only auxiliary to those which are usual. *The place of confinement*

> *is, therefore, not important to the relief, if the guilty party is within reach of process, so that by the power of the court he can be compelled to release his grasp*. The difficulty of affording redress is not increased by the confinement being beyond the limits of the state, except as greater distance may affect it. The important question is, where the power of control exercised? And I am aware of no other remedy. (In the matter of Jackson [1867], 15 Mich., 416.)

The opinion of Judge Cooley has since been accepted as authoritative by other courts. (Rivers *vs*. Mitchell [1881], 57 Iowa, 193; Breene *vs*. People [1911], Colo., 117 Pac. Rep., 1000; *Ex parte* Young [1892], 50 Fed., 526.)

The English courts have given careful consideration to the subject. Thus, a child had been taken out of English by the respondent. A writ of *habeas corpus* was issued by the Queen's Bench Division upon the application of the mother and her husband directing the defendant to produce the child. The judge at chambers gave defendant until a certain date to produce the child, but he did not do so. His return stated that the child before the issuance of the writ had been handed over by him to another; that it was no longer in his custody or control, and that it was impossible for him to obey the writ. He was found in contempt of court. On appeal, the court, through Lord Esher, M. R., said:

> A writ of *habeas corpus* was ordered to issue, and was issued on January 22. That writ commanded the defendant to have the body of the child before a judge in chambers at the Royal Courts of Justice immediately after the receipt of the writ, together with the cause of her being taken and detained. *That is a command to bring the child before the judge and must be obeyed, unless some lawful reason can be shown to excuse the nonproduction of the child. If it could be shown that by reason of his having lawfully parted with the possession of the child before the issuing of the writ, the defendant had no longer power to produce the child, that might be an answer; but in the absence of any lawful reason he is bound to produce the child, and, if he does not, he is in contempt of the Court for not obeying the writ without lawful excuse*. Many efforts have been made in argument to shift the question of contempt to some anterior period for the purpose of showing that what was done at some time prior to the writ cannot be a contempt. But the question is not as to what was done before the issue of the writ. The question is whether there has been a contempt in disobeying the writ it was issued by not producing the child in obedience to its commands. (The Queen *vs*. Bernardo [1889], 23 Q. B. D., 305. See also to the same effect the Irish case of *In re* Matthews, 12 Ir. Com. Law Rep. [N. S.], 233; The Queen *vs*. Barnardo, Gossage's Case [1890], 24 Q. B. D., 283.)

A decision coming from the Federal Courts is also of interest. A *habeas corpus* was directed to the defendant to have before the circuit court of the District of Columbia three colored persons, with the cause of their detention. Davis, in his return to the writ, stated on oath that he had purchased the negroes as slaves in the city of Washington;

that, as he believed, they were removed beyond the District of Columbia before the service of the writ of *habeas corpus*, and that they were then beyond his control and out of his custody. The evidence tended to show that Davis had removed the negroes because he suspected they would apply for a writ of *habeas corpus*. The court held the return to be evasive and insufficient, and that Davis was bound to produce the negroes, and Davis being present in court, and refusing to produce them, ordered that he be committed to the custody of the marshall until he should produce the negroes, or be otherwise discharged in due course of law. The court afterwards ordered that Davis be released upon the production of two of the negroes, for one of the negroes had run away and been lodged in jail in Maryland. Davis produced the two negroes on the last day of the term. (United States *vs*. Davis [1839], 5 Cranch C.C., 622, Fed. Cas. No. 14926. See also Robb *vs*. Connolly [1883], 111 U.S., 624; Church on Habeas, 2nd ed., p. 170.)

We find, therefore, both on reason and authority, that no one of the defense offered by the respondents constituted a legitimate bar to the granting of the writ of *habeas corpus*.

There remains to be considered whether the respondent complied with the two orders of the Supreme Court awarding the writ of *habeas corpus*, and if it be found that they did not, whether the contempt should be punished or be taken as purged.

The first order, it will be recalled, directed Justo Lukban, Anton Hohmann, Francisco Sales, and Feliciano Yñigo to present the persons named in the writ before the court on December 2, 1918. The order was dated November 4, 1918. The respondents were thus given ample time, practically one month, to comply with the writ. As far as the record discloses, the Mayor of the city of Manila waited until the 21st of November before sending a telegram to the provincial governor of Davao. According to the response of the attorney for the Bureau of Labor to the telegram of his chief, there were then in Davao women who desired to return to Manila, but who should not be permitted to do so because of having contracted debts. The half-hearted effort naturally resulted in none of the parties in question being brought before the court on the day named.

For the respondents to have fulfilled the court's order, three optional courses were open: (1) They could have produced the bodies of the persons according to the command of the writ; or (2) they could have shown by affidavit that on account of sickness or infirmity those persons could not safely be brought before the court; or (3) they could have presented affidavits to show that the parties in question or their attorney waived the right to be present. (Code of Criminal Procedure, sec. 87.) They did not produce the bodies of the persons in whose behalf the writ was granted; they did not show impossibility of performance; and they did not present writings that waived the right to be present by those interested. Instead a few stereotyped affidavits purporting to show that the women were contended with their life in Davao, some of which have since been repudiated by the signers, were appended to the return. That through ordinary diligence a considerable number of the women, at least sixty, could have been brought back to Manila is demonstrated to be found in the municipality of Davao, and that about this number either returned at their own expense or were produced at the second hearing by the respondents.

The court, at the time the return to its first order was made, would have been warranted summarily in finding the respondents guilty of contempt of court, and in sending them to jail until they obeyed the order. Their excuses for the non-production of the persons were far from sufficient. The, authorities cited herein pertaining to somewhat similar facts all tend to indicate with what exactitude a *habeas corpus* writ must be fulfilled. For example, in Gossage's case, supra, the Magistrate in referring to an earlier decision of the Court, said: "*We thought that, having brought about that state of things by his own illegal act, he must take the consequences*; and we said that he was bound to use every effort to get the child back; that he must do much more than write letters for the purpose; that he must advertise in America, and even if necessary himself go after the child, and do everything that mortal man could do in the matter; and that the court would only accept clear proof of an absolute impossibility by way of excuse." In other words, the return did not show that every possible effort to produce the women was made by the respondents. That the court forebore at this time to take drastic action was because it did not wish to see presented to the public gaze the spectacle of a clash between executive officials and the judiciary, and because it desired to give the respondents another chance to demonstrate their good faith and to mitigate their wrong.

In response to the second order of the court, the respondents appear to have become more zealous and to have shown a better spirit. Agents were dispatched to Mindanao, placards were posted, the constabulary and the municipal police joined in rounding up the women, and a steamer with free transportation to Manila was provided. While charges and counter-charges in such a bitterly contested case are to be expected, and while a critical reading of the record might reveal a failure of literal fulfillment with our mandate, we come to conclude that there is a substantial compliance with it. Our finding to this effect may be influenced somewhat by our sincere desire to see this unhappy incident finally closed. If any wrong is now being perpetrated in Davao, it should receive an executive investigation. If any particular individual is still restrained of her liberty, it can be made the object of separate *habeas corpus* proceedings.

Since the writ has already been granted, and since we find a substantial compliance with it, nothing further in this connection remains to be done.

The attorney for the petitioners asks that we find in contempt of court Justo Lukban, Mayor of the city of Manila, Anton Hohmann, chief of police of the city of Manila, Jose Rodriguez, and Fernando Ordax, members of the police force of the city of Manila, Modesto Joaquin, the attorney for the Bureau of Labor, Feliciano Yñigo, an *hacendero* of Davao, and Anacleto Diaz, Fiscal of the city of Manila.

The power to punish for contempt of court should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail. Nevertheless when one is commanded to produce a certain person and does not do so, and does not offer a valid excuse, a court must, to vindicate its authority, adjudge the respondent to be guilty of contempt, and must order him either imprisoned or fined. An officer's failure to produce the body of a person in obedience to a writ of

habeas corpus when he has power to do so, is a contempt committed in the face of the court. (*Ex parte* Sterns [1888], 77 Cal., 156; In re Patterson [1888], 99 N. C., 407.)

With all the facts and circumstances in mind, and with judicial regard for human imperfections, we cannot say that any of the respondents, with the possible exception of the first named, has flatly disobeyed the court by acting in opposition to its authority. Respondents Hohmann, Rodriguez, Ordax, and Joaquin only followed the orders of their chiefs, and while, under the law of public officers, this does not exonerate them entirely, it is nevertheless a powerful mitigating circumstance. The *hacendero* Yñigo appears to have been drawn into the case through a misconstruction by counsel of telegraphic communications. The city fiscal, Anacleto Diaz, would seem to have done no more than to fulfill his duty as the legal representative of the city government. Finding him innocent of any disrespect to the court, his counter-motion to strike from the record the memorandum of attorney for the petitioners, which brings him into this undesirable position, must be granted. When all is said and done, as far as this record discloses, the official who was primarily responsible for the unlawful deportation, who ordered the police to accomplish the same, who made arrangements for the steamers and the constabulary, who conducted the negotiations with the Bureau of Labor, and who later, as the head of the city government, had it within his power to facilitate the return of the unfortunate women to Manila, was Justo Lukban, the Mayor of the city of Manila. His intention to suppress the social evil was commendable. His methods were unlawful. His regard for the writ of *habeas corpus* issued by the court was only tardily and reluctantly acknowledged.

It would be possible to turn to the provisions of section 546 of the Code of Civil Procedure, which relates to the penalty for disobeying the writ, and in pursuance thereof to require respondent Lukban to forfeit to the parties aggrieved as much as P400 each, which would reach to many thousands of pesos, and in addition to deal with him as for a contempt. Some members of the court are inclined to this stern view. It would also be possible to find that since respondent Lukban did comply substantially with the second order of the court, he has purged his contempt of the first order. Some members of the court are inclined to this merciful view. Between the two extremes appears to lie the correct finding. The failure of respondent Lukban to obey the first mandate of the court tended to belittle and embarrass the administration of justice to such an extent that his later activity may be considered only as extenuating his conduct. A nominal fine will at once command such respect without being unduly oppressive — such an amount is P100.

In resume — as before stated, no further action on the writ of *habeas corpus* is necessary. The respondents Hohmann, Rodriguez, Ordax, Joaquin, Yñigo, and Diaz are found not to be in contempt of court. Respondent Lukban is found in contempt of court and shall pay into the office of the clerk of the Supreme Court within five days the sum of one hundred pesos (P100). The motion of the fiscal of the city of Manila to strike from the record the *Replica al Memorandum de los Recurridos* of January 25, 1919, is granted. Costs shall be taxed against respondents. So ordered.

In concluding this tedious and disagreeable task, may we not be permitted to express the hope that this decision may serve to bulwark the fortifications of an orderly government of laws and to protect individual liberty from illegal encroachment.

Arellano, C.J., Avanceña and Moir, JJ., concur.
Johnson, and Street, JJ., concur in the result.

Separate Opinions

TORRES, *J.,* dissenting:

The undersigned does not entirely agree to the opinion of the majority in the decision of the *habeas corpus* proceeding against Justo Lukban, the mayor of this city.

There is nothing in the record that shows the motive which impelled Mayor Lukban to oblige a great number of women of various ages, inmates of the houses of prostitution situated in Gardenia Street, district of Sampaloc, to change their residence.

We know no express law, regulation, or ordinance which clearly prohibits the opening of public houses of prostitution, as those in the said Gardenia Street, Sampaloc. For this reason, when more than one hundred and fifty women were assembled and placed aboard a steamer and transported to Davao, considering that the existence of the said houses of prostitution has been tolerated for so long a time, it is undeniable that the mayor of the city, in proceeding in the manner shown, acted without authority of any legal provision which constitutes an exception to the laws guaranteeing the liberty and the individual rights of the residents of the city of Manila.

We do not believe in the pomp and obstentation of force displayed by the police in complying with the order of the mayor of the city; neither do we believe in the necessity of taking them to the distant district of Davao. The said governmental authority, in carrying out his intention to suppress the segregated district or the community formed by those women in Gardenia Street, could have obliged the said women to return to their former residences in this city or in the provinces, without the necessity of transporting them to Mindanao; hence the said official is obliged to bring back the women who are still in Davao so that they may return to the places in which they lived prior to their becoming inmates of certain houses in Gardenia Street.

As regards the manner whereby the mayor complied with the orders of this court, we do not find any apparent disobedience and marked absence of respect in the steps taken by the mayor of the city and his subordinates, if we take into account the difficulties encountered in bringing the said women who were free at Davao and presenting them before this court within the time fixed, inasmuch as it does not appear that the said women were living together in a given place. It was not because they were really detained, but because on the first days there were no houses in which they could live with a relative independent from one another, and as a proof that they were free a

number of them returned to Manila and the others succeeded in living separate from their companions who continued living together.

To determine whether or not the mayor acted with a good purpose and legal object and whether he has acted in good or bad faith in proceeding to dissolve the said community of prostitutes and to oblige them to change their domicile, it is necessary to consider not only the rights and interests of the said women and especially of the patrons who have been directing and conducting such a reproachable enterprise and shameful business in one of the suburbs of this city, but also the rights and interests of the very numerous people of Manila where relatively a few transients accidentally and for some days reside, the inhabitants thereof being more than three hundred thousand (300,000) who can not, with indifference and without repugnance, live in the same place with so many unfortunate women dedicated to prostitution.

If the material and moral interests of the community as well as the demands of social morality are to be taken into account, it is not possible to sustain that it is legal and permissible to establish a house of pandering or prostitution in the midst of an enlightened population, for, although there were no positive laws prohibiting the existence of such houses within a district of Manila, the dictates of common sense and dictates of conscience of its inhabitants are sufficient to warrant the public administration, acting correctly, in exercising the inevitable duty of ordering the closing and abandonment of a house of prostitution ostensibly open to the public, and of obliging the inmates thereof to leave it, although such a house is inhabited by its true owner who invokes in his behalf the protection of the constitutional law guaranteeing his liberty, his individual rights, and his right to property.

A cholera patient, a leper, or any other person affected by a known contagious disease cannot invoke in his favor the constitutional law which guarantees his liberty and individual rights, should the administrative authority order his hospitalization, reclusion, or concentration in a certain island or distant point in order to free from contagious the great majority of the inhabitants of the country who fortunately do not have such diseases. The same reasons exist or stand good with respect to the unfortunate women dedicated to prostitution, and such reasons become stronger because the first persons named have contracted their diseases without their knowledge and even against their will, whereas the unfortunate prostitutes voluntarily adopted such manner of living and spontaneously accepted all its consequences, knowing positively that their constant intercourse with men of all classes, notwithstanding the cleanliness and precaution which they are wont to adopt, gives way to the spread or multiplication of the disease known as syphilis, a venereal disease, which, although it constitutes a secret disease among men and women, is still prejudicial to the human species in the same degree, scope, and seriousness as cholera, tuberculosis, leprosy, pest, typhoid, and other contagious diseases which produce great mortality and very serious prejudice to poor humanity.

If a young woman, instead of engaging in an occupation or works suitable to her sex, which can give her sufficient remuneration for her subsistence, prefers to put herself under the will of another woman who is usually older than she is and who is the

manager or owner of a house of prostitution, or spontaneously dedicates herself to this shameful profession, it is undeniable that she voluntarily and with her own knowledge renounces her liberty and individual rights guaranteed by the Constitution, because it is evident that she can not join the society of decent women nor can she expect to get the same respect that is due to the latter, nor is it possible for her to live within the community or society with the same liberty and rights enjoyed by every citizen. Considering her dishonorable conduct and life, she should therefore be comprised within that class which is always subject to the police and sanitary regulations conducive to the maintenance of public decency and morality and to the conservation of public health, and for this reason it should not permitted that the unfortunate women dedicated to prostitution evade the just orders and resolutions adopted by the administrative authorities.

It is regrettable that unnecessary rigor was employed against the said poor women, but those who have been worrying so much about the prejudice resulting from a governmental measure, which being a very drastic remedy may be considered arbitrary, have failed to consider with due reflection the interests of the inhabitants of this city in general and particularly the duties and responsibilities weighing upon the authorities which administer and govern it; they have forgotten that many of those who criticize and censure the mayor are fathers of families and are in duty bound to take care of their children.

For the foregoing reasons, we reach the conclusion that when the petitioners, because of the abnormal life they assumed, were obliged to change their residence not by a private citizen but by the mayor of the city who is directly responsible for the conservation of public health and social morality, the latter could take the step he had taken, availing himself of the services of the police in good faith and only with the purpose of protecting the immense majority of the population from the social evils and diseases which the houses of prostitution situated in Gardenia Street have been producing, which houses have been constituting for years a true center for the propagation of general diseases and other evils derived therefrom. Hence, in ordering the dissolution and abandonment of the said houses of prostitution and the change of the domicile of the inmates thereof, the mayor did not in bad faith violate the constitutional laws which guarantees the liberty and the individual rights of every Filipino, inasmuch as the women petitioners do not absolutely enjoy the said liberty and rights, the exercise of which they have voluntarily renounced in exchange for the free practice of their shameful profession.

In very highly advanced and civilized countries, there have been adopted by the administrative authorities similar measures, more or less rigorous, respecting prostitutes, considering them prejudicial to the people, although it is true that in the execution of such measures more humane and less drastic procedures, *fortiter in re et suaviter in forma*, have been adopted, but such procedures have always had in view the ultimate object of the Government for the sake of the community, that is, putting an end to the living together in a certain place of women dedicated to prostitution and changing their domicile, with the problematical hope that they adopt another manner of living which is better and more useful to themselves and to society.

In view of the foregoing remarks, we should hold, as we hereby hold, that Mayor Justo Lukban is obliged to take back and restore the said women who are at present found in Davao, and who desire to return to their former respective residences, not in Gardenia Street, Sampaloc District, with the exception of the prostitutes who should expressly make known to the clerk of court their preference to reside in Davao, which manifestation must be made under oath. This resolution must be transmitted to the mayor within the shortest time possible for its due compliance. The costs shall be charged *de officio*.

ARAULLO, *J.*, dissenting in part:

I regret to dissent from the respectable opinion of the majority in the decision rendered in these proceedings, with respect to the finding as to the importance of the contempt committed, according to the same decision, by Justo Lukban, Mayor of the city of Manila, and the consequent imposition upon him of a nominal fine of P100.

In the said decision, it is said:

> The first order, it will be recalled, directed Justo Lukban, Anton Hohmann, Francisco Sales, and Feliciano Yñigo to present the persons named in the writ before the court on December 2, 1918. The order was dated November 4, 1918. The respondents were thus given ample time, practically one month, to comply with the writ. As far as the record disclosed, the mayor of the city of Manila waited until the 21st of November before sending a telegram to the provincial governor of Davao. According to the response of the Attorney for the Bureau of Labor to the telegram of his chief, there were then in Davao women who desired to return to Manila, but who should not be permitted to do so because of having contracted debts. The half-hearted effort naturally resulted in none of the parties in question being brought before the court on the day named.

In accordance with section 87 of General Orders No. 58, as said in the same decision, the respondents, for the purpose of complying with the order of the court, could have, (1) produced the bodies of the persons according to the command of the writ; (2) shown by affidavits that on account of sickness or infirmity the said women could not safely be brought before this court; and (3) presented affidavits to show that the parties in question or their lawyers waived their right to be present. According to the same decision, the said respondents ". . . did not produce the bodies of the persons in whose behalf the writ was granted; did not show impossibility of performance; and did not present writings, that waived the right to be present by those interested. Instead, a few stereotyped affidavits purporting to show that the women were contented with their life in Davao, some of which have since been repudiated by the signers, were appended to the return. That through ordinary diligence a considerable number of the women, at least sixty, could have been brought back to Manila is demonstrated by the fact that during this time they were easily to be found in the municipality of Davao, and that

about this number either returned at their own expense or were produced at the second hearing by the respondents."

The majority opinion also recognized that, "That court, at the time the return to its first order was made, would have been warranted summarily in finding the respondent guilty of contempt of court, and in sending them to jail until they obeyed the order. Their excuses for the non production of the persons were far from sufficient." To corroborate this, the majority decision cites the case of the Queen *vs.* Barnardo, Gossage's Case ([1890], 24 Q. B. D., 283) and added "that the return did not show that every possible effort to produce the women was made by the respondents."

When the said return by the respondents was made to this court in banc and the case discussed, my opinion was that Mayor Lukban should have been immediately punished for contempt. Nevertheless, a second order referred to in the decision was issued on December 10, 1918, requiring the respondents to produce before the court, on January 13, 1919, the women who were not in Manila, unless they could show that it was impossible to comply with the said order on the two grounds previously mentioned. With respect to this second order, the same decision has the following to say:

> In response to the second order of the court, the respondents appear to have become more zealous and to have shown a better spirit. Agents were dispatched to Mindanao, placards were posted, the constabulary and the municipal police joined in rounding up the women, and a steamer with free transportation to Manila was provided. While charges and countercharges in such a bitterly contested case are to be expected, and while a critical reading of the record might reveal a failure of literal fulfillment with our mandate, we come to conclude that there is a substantial compliance with it.

I do not agree to this conclusion.

The respondent mayor of the city of Manila, Justo Lukban, let 17 days elapse from the date of the issuance of the first order on November 4th till the 21st of the same month before taking the first step for compliance with the mandate of the said order; he waited till the 21st of November, as the decision says, before he sent a telegram to the provincial governor o f Davao and naturally this half-hearted effort, as is so qualified in the decision, resulted in that none of the women appeared before this court on December 2nd. Thus, the said order was not complied with, and in addition to this noncompliance there was the circumstances that seven of the said women having returned to Manila at their own expense before the said second day of December and being in the antechamber of the court room, which fact was known to Chief of Police Hohmann, who was then present at the trial and to the attorney for the respondents, were not produced before the court by the respondents nor did the latter show any effort to present them, in spite of the fact that their attention was called to this particular by the undersigned.

The result of the said second order was, as is said in the same decision, that the respondents, on January 13th, the day fixed for the protection of the women before this

court, presented technically the seven (7) women above-mentioned who had returned to the city at their own expense and the other eight (8) women whom the respondents themselves brought to Manila, alleging moreover that their agents and subordinates succeeded in bringing them from Davao with their consent; that in Davao they found eighty-one (81) women who, when asked if they desired to return to Manila with free transportation, renounced such a right, as is shown in the affidavits presented by the respondents to this effect; that, through other means, fifty-nine (59) women have already returned to Manila, but notwithstanding the efforts made to find them it was not possible to locate the whereabouts of twenty-six (26) of them. Thus, in short, out of the one hundred and eighty-one (181) women who, as has been previously said, have been illegally detained by Mayor Lukban and Chief of Police Hohmann and transported to Davao against their will, only eight (8) have been brought to Manila and presented before this court by the respondents in compliance with the said two orders. Fifty-nine (59) of them have returned to Manila through other means not furnished by the respondents, twenty-six of whom were brought by the attorney for the petitioners, Mendoza, on his return from Davao. The said attorney paid out of his own pocket the transportation of the said twenty-six women. Adding to these numbers the other seven (7) women who returned to this city at their own expense before January 13 we have a total of sixty-six (66), which evidently proves, on the one hand, the falsity of the allegation by the respondents in their first answer at the trial of December 2, 1918, giving as one of the reasons for their inability to present any of the said women that the latter were content with their life in Mindanao and did not desire to return to Manila; and, on the other hand, that the respondents, especially the first named, that is Mayor Justo Lukban, who acted as chief and principal in all that refers to the compliance with the orders issued by this court, could bring before December 2nd, the date of the first hearing of the case, as well as before January 13th, the date fixed for the compliance with the second order, if not the seventy-four (74) women already indicated, at least a great number of them, or at least sixty (60) of them, as is said in the majority decision, inasmuch as the said respondent could count upon the aid of the Constabulary forces and the municipal police, and had transportation facilities for the purpose. But the said respondent mayor brought only eight (8) of the women before this court on January 13th. This fact can not, in my judgment, with due respect to the majority opinion, justify the conclusion that the said respondent has substantially complied with the second order of this court, but on the other hand demonstrates that he had not complied with the mandate of this court in its first and second orders; that neither of the said orders has been complied with by the respondent Justo Lukban, Mayor of the city of Manila, who is, according to the majority decision, principally responsible for the contempt, to which conclusion I agree. The conduct of the said respondent with respect to the second order confirms the contempt committed by non-compliance with the first order and constitutes a new contempt because of non-compliance with the second, because of the production of only eight (8) of the one hundred and eighty-one (181) women who have been illegally detained by virtue of his order and transported to Davao against their will, committing the twenty-six (26) women who could not be found in Davao, demonstrates in my opinion that, notwithstanding the nature of the case which deals with the remedy of *habeas corpus*, presented by the petitioners and involving the question whether they should or not be granted their liberty, the respondent has not given due attention to the same nor has he made any effort to comply with the second order. In other words, he

has disobeyed the said two orders; has despised the authority of this court; has failed to give the respect due to justice; and lastly, he has created and placed obstacles to the administration of justice in the said *habeas corpus* proceeding, thus preventing, because of his notorious disobedience, the resolution of the said proceeding with the promptness which the nature of the same required.

> Contempt of court has been defined as a despising of the authority, justice, or dignity of the court; and he is guilty of contempt whose conduct is such as tends to bring the authority and administration of the law into disrespect or disregard. . . ." (Ruling Case Law, vol. 6, p. 488.)
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> It is a general principle that a disobedience of any valid order of the court constitutes contempt, unless the defendant is unable to comply therewith. (Ruling Case Law, vol. 6, p. 502.)
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> It is contempt to employ a subterfuge to evade the judgment of the court, or to obstruct or attempt to obstruct the service of legal process. If a person hinders or prevents the service of process by deceiving the officer or circumventing him by any means, the result is the same as though he had obstructed by some direct means. (Ruling Case Law, vol. 6, p. 503.)
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> While it may seem somewhat incongruous to speak, as the courts often do, of enforcing respect for the law and for the means it has provided in civilized communities for establishing justice, since true respect never comes in that way, it is apparent nevertheless that the power to enforce decorum in the courts and obedience to their orders and just measures is so essentially a part of the life of the courts that it would be difficult to conceive of their usefulness or efficiency as existing without it. Therefore it may be said generally that where due respect for the courts as ministers of the law is wanting, a necessity arises for the use of compulsion, not, however, so much to excite individual respect as to compel obedience or to remove an unlawful or unwarranted interference with the administration of justice. (Ruling Case Law, vol. 6, p. 487.)
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> The power to punish for contempt is as old as the law itself, and has been exercised from the earliest times. In England it has been exerted when the contempt consisted of scandalizing the sovereign or his ministers, the law-making power, or the courts. In the American states the power to punish for contempt, so far as the executive department and the ministers of state are concerned, and in some degree so far as the legislative department is concerned, is obsolete, but it has been almost universally preserved so far as regards the judicial department. The power which the courts have of vindicating their own authority is a necessary incident to every court of justice, whether of record or not; and the authority for issuing attachments in a proper case for contempts out of court, it has been declared, stands upon the same immemorial usage as supports the whole fabric of the common law. . . . (Ruling Case Law, vol. 6, p. 489.)

The undisputed importance of the orders of this court which have been disobeyed; the loss of the prestige of the authority of the court which issued the said orders, which loss might have been caused by noncompliance with the same orders on the part of the respondent Justo Lukban; the damages which might have been suffered by some of the women illegally detained, in view of the fact that they were not brought to Manila by the respondents to be presented before the court and of the further fact that some of them were obliged to come to this city at their own expense while still others were brought to Manila by the attorney for the petitioners, who paid out of his own pocket the transportation of the said women; and the delay which was necessarily incurred in the resolution of the petition interposed by the said petitioners and which was due to the fact that the said orders were not opportunately and duly obeyed and complied with, are circumstances which should be taken into account in imposing upon the respondent Justo Lukban the penalty corresponding to the contempt committed by him, a penalty which, according to section 236 of the Code of Civil Procedure, should consist of a fine not exceeding P1,000 or imprisonment not exceeding months, or both such fine and imprisonment. In the imposition of the penalty, there should also be taken into consideration the special circumstance that the contempt was committed by a public authority, the mayor of the city of Manila, the first executive authority of the city, and consequently, the person obliged to be the first in giving an example of obedience and respect for the laws and the valid and just orders of the duly constituted authorities as well as for the orders emanating from the courts of justice, and in giving help and aid to the said courts in order that justice may be administered with promptness and rectitude.

I believe, therefore, that instead of the fine of one hundred pesos (P100), there should be imposed upon the respondent Justo Lukban a fine of five hundred pesos (P500), and all the costs should be charged against him. Lastly, I believe it to be my duty to state here that the records of this proceeding should be transmitted to the Attorney-General in order that, after a study of the same and deduction from the testimony which he may deem necessary, and the proper transmittal of the same to the fiscal of the city of Manila and to the provincial fiscal of Davao, both the latter shall present the corresponding informations for the prosecution and punishment of the crimes which have been committed on the occasion when the illegal detention of the women was carried into effect by Mayor Justo Lukban of the city of Manila and Chief of Police Anton Hohmann, and also of those crimes committed by reason of the same detention and while the women were in Davao. This will be one of the means whereby the just hope expressed in the majority decision will be realized, that is, that in the Philippine Islands there should exist a government of laws and not a government of men and that this decision may serve to bulwark the fortifications of an orderly Government of laws and to protect individual liberty from illegal encroachments.