

HABEAS CORPUS.

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Honorable Commander in Chief of the Department.

Sir:

*New draft
for
approval
-GMB*

I have looked over the project of the General Order on Habeas Corpus that Major Scharpe proposed to you.

If you approve that order, you will notice great dissatisfaction all over the country immediately after its publication.

That will be true on account of the following just reasons.

Major Scharpe, in referring to what the Constitution of the United States enacts on the subject of Habeas Corpus, forgets that said Constitution directs that the liberty of the Civil Courts be respected.

That liberty of the Civil Courts would not be respected by granting only to the Military authorities, as Major Scharpe pretends, the right of issuing the writ of Habeas Corpus.

That concession to the Military courts, besides being vexatious to the Civil Courts, deprives them absolutely of their authority, leaves them without jurisdiction and takes away their prestige, making it impossible for them to administer justice,

C. J. K. Meyer

and gets to contradicting the wise and prudent orders in which you directed that the Commanders and Officers of the army abstain from interfering with in every thing that relates to matters of the Municipalities and Civil Courts.

In this new scheme of Major Scharpe is again seen the deplorable tendency of that gentleman of presenting our upright Civil Courts as obstructionists of the right and laws, and of replacing them by Military courts.

In the military rules, under which we are, the Civil Courts must not have other superior authority than the Commander in Chief of the Department, and in the Secretary of Justice alone must be vested by you with the power to dictate orders to the Courts in your name and with your previous approval.

Only in this way, allowing each branch to act within the limit of its jurisdiction, the work will be divided; eachone will be responsible for the particular work that may have been entrusted to him: no conflict will arise and in conclusion with the assistance of all, we will bring this country entirely into the American ways and customs.

Let the Habeas Corpus be implanted, but allowing to the proper authorities the right of determining it within the limit of their own jurisdiction, and assuming on your self, as absolute Commander of the Island, the supreme authority to issue the write in all cases through the Secretary of Justice, if the prisoner be amenable before a civil court, or directly to the Commission, Court Martial or Commander of Post, should he depend on a military court.

Bearing in mind such remarks, having examined atten-

tively "The Statutes of the United States and The Encyclopaedia of Pleading and Practice acts at common law, in Equity and in Criminal Cases;" and respecting what the American constitution prescribes, I have the honor of proposing to you, that in lieu of the order proposed by Major Scharpe, you kindly approve the following

GENERAL ORDER.

HABEAS CORPUS.

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1st. Habeas Corpus is in general terms the writ issued for the purpose of delivering a person to the authority that issues it to inquire and determine briefly if he must be kept in prison with more or less bail, for what may have been charged against him, or if he must be released.

2nd. That writ, in the necessary cases, shall be issued in metu proprio or at the request of any person, by the authority that has the power for that purpose.

3rd. The following authorities have power to issue the writ of Habeas Corpus:

1st. The Commander in Chief of the Department over all the Island, whether it be directed to a Civil or Military officer.-2nd. The Secretary of Justice, and the President of the Supreme Court over all the Island.-3rd. The President of the Courts of Justice of San Juan, Ponce and Mayaguez, the Judges of Instructions, and the Municipal Judges, within the limit in which they respectively exercise jurisdiction.

4th. The Secretary of Justice, the President of the Supreme Court, the Presidents of the Court of Ponce and Mayaguez and the Judge of Instruction, will not be able to make use of the power granted them by the preceeding article, whenever the writ relates to a person confined under sentence and executed imposed in judicial decision; whenever it relates to persons imprisoned under the authority of the Commanding General of the Department, or of an authority superior in hierarchy to that from which the writ may have been solicited, and when the arrest may have been ordered by the military jurisdiction by virtue of a process that may be instructed.

5th. The one who, considering himself illegally imprisoned, or the one who thinks that the bail assigned for his release is excessive, and wisher to have a writ of Habeas Corpus issued in his favor, will send a petition to any of the authorities mentioned in the 3rd. article of this Order.

6th. In that petition, the party will state the authority or person who arrested or orderes his arrest the date when he was arrested, the causes that in his opinion gave place to his arrest, the kind and amount of bail required of him, the arguments which he may think proper to make to shaw the illegality of the arrest or the excess of the bail assigned, the evidence he may have to prove it, stating, if it be susceptible of proof, the names and residence of the witnesses and finally the petition for the proper writ of Habeas Corpus; and, that previous to the formalities mentioned in this Order, to decree his release or to reduce the bail to which he may have been put to.

7th. That petition being received by the authorities

to which it may have been addressed, if said authority has no jurisdiction over the party, it will remit it without delay to the nearest one which has said jurisdiction, notifying the party interested of the remittance.

8th. Once said petition be in the hands of the authority which has jurisdiction over the petitioner, if from said petition does not appear that it refers to some of the cases mentioned in article 4th. of this order, it will issue immediately after receiving it, the writ of Habeas Corpus to him under whose custody the petitioner is held, so that within three days he may take or order to be taken before him, the prisoner and return the writ, reporting on the causes of the arrest and on the length of time that the prisoner is confined.

9th. The petitioner, being in presence of the authority which issued the writ of Habeas Corpus, will be asked under oath regarding the truth of what he writes in the petition.

The report sent with the writ, by the one who had him in custody, will be made known to him immediately.

Within ten days or more, should he ask it, the evidences that he may have or may propose will be in a summary way put in execution to prove the facts mentioned in the petition.

10th. In the day following the one in which the term fixed to prove the evidence, the authority referred to appraising them in their true value, and bearing in mind the alleged facts of the petitioner, will decide on what the accused may have asked and what may be proper in law and justice.

11th. Any accused whose punishment be not more than a short imprisonment, shall remain at liberty, during the determination of the proceedings in Habeas Corpus.

All parties under process, who have been sentenced to a severer punishment than the short arrest, shall be required to give bail in money or in properties in proportion to the extent of the crime and to the prejudice done.

12th. The authorities mentioned in the 3rd. article of this Order will be able to designate the inferior court before which the party must be brought by the officer or authority who has him in custody when the petitioner of Habeas Corpus may not reside in the same city or town in which the authorities are, mentioning it in the writ of Habeas Corpus issued.

13th. Against the denial of writ of Habeas Corpus made by the Commander in Chief of the Department, there will be no appeal.

Against those made by some of the judicial authorities which are determined in the 3rd. article of this Order or against what may be resolved on the petition after hearing the evidences, the appeal that may be sanctioned will be admitted freely before the heirarchical superior who will resolve the appeal within twenty four hours after receiving it, in view of what may appear in said documents.

14th. When by virtue of the writ of Habeas Corpus, the release of a prisoner is decreed or the reduction in bail assigned to him once that resolution be executed the procedures instructed for that purpose will be sent to the Courts or Judges who try the case, to be attached to the same.

15th. The writ of Habeas Corpus and the resolution that in its consequence may be dictated, will never adjudge before hand the last sentence that ultimately may be pronounced in

the case against the party who may have solicited the writ.

Its purpose is only to prevent the undue prolongation of the imprisonment before trial.

Porto Rico April 15th. 1899.

Very Respectfully,

Benjamin D. ...

Secretary of Justice.

U. S. DEPARTMENT OF PORTO-RICO
RECEIVED
8/14
1899

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AUG 14 1899 Filed.

file

Return to
Cruz Cruz

Turned over to me

By Gen Henry
S. O. K.

13-8-99