

2 Phil. 332

[G.R. No. 1051. May 19, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FRED L. DORR ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

LADD, J.:

The defendants have been convicted upon a complaint charging them with the offense of writing, publishing, and circulating a scurrilous libel against the Government of the United States and the Insular Government of the Philippine Islands. The complaint is based upon section 8 of Act No. 292 of the Commission, which is as follows:

“Every person who shall utter seditious words or speeches, write, publish, or circulate scurrilous libels against the Government of the United States or the Insular Government of the Philippine Islands, or which tend to disturb or obstruct any lawful officer in executing his office, or which tend to instigate others to cabal or meet together for unlawful purposes, or which suggest or incite rebellious conspiracies or riots, or which tend to stir up the people against the lawful authorities, or to disturb the peace of the community, the safety and order of the Government, or who shall knowingly conceal such evil practices, shall be punished by a fine not exceeding two thousand dollars or by imprisonment not exceeding two years, or both, in the discretion of the court.”

The alleged libel was published as an editorial in the issue of the “Manila Freedom” of April 6, 1902, under the caption of “A few hard facts.”

The Attorney-General in his brief indicates the following passages of the article as those upon which he relies to sustain the conviction:

“Sidney Adamson, in a late letter in ‘Leslie’s Weekly,” has the following to say of the action of the Civil Commission in appointing rascally natives to important Government positions:

” ‘It is a strong thing to say, but nevertheless true, that the Civil Commission, through its ex-insurgent office holders, and by its continual disregard for the records of natives obtained during the military rule of the Islands, has, in its distribution of offices, constituted a protectorate over a set of men who should be in jail or deported. * * * [Reference is then made to the appointment of one Tecson as justice of the peace.] This is the kind of foolish work that the Commission is doing all over the Islands, reinstating insurgents and rogues and turning down the men who have during the struggle, at the risk of their lives, aided the Americans.’

* * * * *

“There is no doubt but that the Filipino office holders of the Islands are in a good many instances rascals.

* * * * *

“The Commission has exalted to the highest positions in the islands Filipinos who are alleged to be notoriously corrupt and rascally, and men of no personal character.

* * * * *

“Editor Valdez, of ‘Miau,’ made serious charges against two of the native Commissioners—charges against Trinidad H. Pardo de Tavern, which, if true, would brand the man as a coward and a rascal, and with what result? * * * [Reference is then made to the prosecution and conviction of Valdez for libel ‘under a law which specifies that the greater the truth the greater the libel.’] Is it the desire of the people of the United States that the natives against whom these charges have been made (which, if true, absolutely vilify their personal characters) be permitted to retain their seats on the Civil Commission, the executive body of the Philippine Government, without an investigation?

“It is a notorious fact that many branches of the Government organized by the

Civil Commission are rotten and corrupt. The fiscal system, upon which life, liberty, and justice depends, is admitted by the Attorney-General himself to be most unsatisfactory. It is a fact that the Philippine judiciary is far from being what it should. Neither fiscals nor judges can be persuaded to convict insurgents when they wish to protect them.

* * * * *

Now, we hear all sorts of reports as to rottenness existing in the province [of Tayabas], and especially the northern end of it; it is said that it is impossible to secure the conviction of lawbreakers and outlaws by the native justices, or a prosecution by the native fiscals.

* * * * *

“The long and short of it is that Americans will not stand for an arbitrary government, especially when evidences of carpetbagging and rumors of graft are too thick to be pleasant.”

We do not understand that it is claimed that the defendants succeeded in establishing at the trial the truth of any of the foregoing statements. The only question which we have considered is whether their publication constitutes an offense under section 8 of Act No. 292, above cited.

Several allied offenses or modes of committing the same offense are defined in that section, viz: (1) The uttering of seditious words or speeches; (2) the writing, publishing, or circulating of scurrilous libels against the Government of the United States or the Insular Government of the Philippine Islands; (3) the writing, publishing, or circulating of libels which tend to disturb or obstruct any lawful officer in executing his office; (4) or which tend to instigate others to cabal or meet together for unlawful purposes; (5) or which suggest or incite rebellious conspiracies or riots; (6) or which tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government; (7) knowingly concealing such evil practices.

The complaint appears to be framed upon the theory that a writing, in order to be punishable as a libel under this section, must be of a scurrilous nature and directed against the Government of the United States or the Insular Government of the Philippine Islands,

and must, in addition, tend to some one of the results enumerated in the section. The article in question is described in the complaint as “a scurrilous libel against the Government of the United States and the Insular Government of the Philippine Islands, which tends to obstruct the lawful officers of the United States and the Insular Government of the Philippine Islands in the execution of their offices, and which tends to instigate others to cabal and meet together for unlawful purposes, and which suggests and incites rebellious conspiracies, and which tends to stir up the people against the lawful authorities, and which disturbs the safety and order of the Government of the United States and the Insular Government of the Philippine Islands.” But it is “a well-settled rule in considering indictments that where an offense may be committed in any of several different modes, and the offense, in any particular instance, is alleged to have been committed in two or more modes specified, it is sufficient to prove the offense committed in any one of them, provided that it be such as to constitute the substantive offense” (Com. vs. Kneeland, 20 Pick., Mass., 206, 215), and the defendants may, therefore, be convicted if any one of the substantive charges into which the complaint may be separated has been made out.

We are all, however, agreed upon the proposition that the article in question has no appreciable tendency to “disturb or obstruct any lawful officer in executing his office,” or to “instigate” any person or class of persons “to cabal or meet together for unlawful purposes,” or to “suggest or incite rebellious conspiracies or riots,” or to “stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government.” All these various tendencies, which are described in section 8 of Act No. 292, each one of which is made an element of a certain form of libel, may be characterized in general terms as seditious tendencies. This is recognized in the description of the offenses punished by this section, which is found in the title of the act, where they are defined as the crimes of “seditious utterances, whether written or spoken.” Excluding from consideration the offense of publishing “scurrilous libels against the Government of the United States or the Insular Government of the Philippine Islands,” which may conceivably stand on a somewhat different footing, the offenses punished by this section all consist in inciting, orally or in writing, to acts of disloyalty or disobedience to the lawfully constituted authorities in these Islands. And while the article in question, which is, in the main, a virulent attack against the policy of the Civil Commission in appointing natives to office, may have had the effect of exciting among certain classes dissatisfaction with the Commission and its measures, we are unable to discover anything in it which can be regarded as having a tendency to produce anything like what may be called disaffection, or, in other words, a state of feeling incompatible with a disposition to remain loyal to the

Government and obedient to the laws. There can be no conviction, therefore, for any of the offenses described in the section on which the complaint is based, unless it is for the offense of publishing a scurrilous libel against the Government of the United States or the Insular Government of the Philippine Islands.

Can the article be regarded as embraced within the description of "scurrilous libels against the Government of the United States or the Insular Government of the Philippine Islands?" In the determination of this question we have encountered great difficulty, by reason of the almost entire lack of American precedents which might serve as a guide in the construction of the law. There are, indeed, numerous English decisions, most of them of the eighteenth century, on the subject of libelous attacks upon the "Government, the constitution, or the law generally," attacks upon the Houses of Parliament, the Cabinet, the Established Church, and other governmental organisms, but these decisions are not now accessible to us, and, if they were, they were made under such different conditions from those which prevail at the present day, and are founded upon theories of government so foreign to those which have inspired the legislation of which the enactment in question forms a part, that they would probably afford but little light in the present inquiry. In England, in the latter part of the eighteenth century, any "written censure upon public men for their conduct as such," as well as any written censure "upon the laws or upon the institutions of the country," would probably have been regarded as a libel upon the Government, (2 Stephen, History of the Criminal Law of England, 348.) This has ceased to be the law in England, and it is doubtful whether it was ever the common law of any American State. "It is true that there are ancient dicta to the effect that any publication tending to 'possess the people with an ill opinion of the Government' is a seditious libel (per Holt, C. J., in R. vs. Tutchin, 1704, 5 St. Tr., 532, and Ellenborough, C. J., in R. vs. Cobbett, 1804, 29 How. St. Tr., 49), but no one would accept that doctrine now. Unless the words used directly tend to foment riot or rebellion or otherwise to disturb the peace and tranquillity of the Kingdom, the utmost latitude is allowed in the discussion of all public affairs." (11 Enc. of the Laws of England, 450.) Judge Cooler says (Const. Lim., 528) : "The English common-law rule Avhich made libels on the constitution or the government indictable, as it was administered by the courts, seems to us unsuited to the condition and circumstances of the people of America, and therefore" never to have been adopted in the several States."

We find no decisions construing the Tennessee statute (Code, sec. 6663), which is apparently the only existing American statute of a similar character to that in question, and from which much of the phraseology of the latter appears to have been taken, though with some essential modifications.

The important question is to determine what is meant in section 8 of Act No. 292 by the expression “the Insular Government of the Philippine Islands.” Does it mean in a general and abstract sense the existing laws and institutions of the Islands, or does it mean the aggregate of the individuals by whom the Government of the Islands is, for the time being, administered? Either sense would doubtless be admissible.

“We understand, in modern political science, * * * by the term *government*, that institution or aggregate of institutions by which an independent society makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming that society by those who possess the power or authority of prescribing them. Government is the aggregate of authorities which rule a society. By *administration*, again, we understand in modern times, and especially in more or less free countries, the aggregate of those persons in whose hands the reins of government are for the time being (the chief ministers or heads of departments).” (Bouvier, Law Dictionary, 891.) But the writer adds that the terms “government” and “administration” are not always used in their strictness, and that “government” is often used for “administration.”

In the act of Congress of July 14, 1798, commonly known as the “Sedition Act,” it is made an offense to “write, print, utter, or publish,” or “cause to procure to be written, printed, uttered, or published,” or to “knowingly and willingly, assist or aid in writing, printing, uttering, or publishing any false, scandalous, and malicious writing or writings against the Government of the United States, or either House of the Congress of the United States, or the President of the United States, with intent to defame the said Government, or either House of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute, or to excite against them or either or any of them the hatred of the good people of the United States,” etc. The term “government” would appear to be used here in the abstract sense of the existing political system, as distinguished from the concrete organisms of the Government—the Houses of Congress and the Executive—which are also specially mentioned.

Upon the whole, we are of the opinion that this is the sense in which the term is used in the enactment under consideration.

It may be said that there can be no such thing as a scurrilous libel, or any sort of a libel,

upon an abstraction like the Government in the sense of the laws and institutions of a country, but we think an answer to this suggestion is that the expression “scurrilous libel” is not used in section 8 of Act No. 292 in the sense in which it is used in the general libel law (Act No. 277)—that is, in the sense of written defamation of individuals—but in the wider sense, in which it is applied in the common law to blasphemous, obscene, or seditious publications in which there may be no element of defamation whatever. “The word ‘libel’ as popularly used, seems to mean only defamatory words; but words written, if obscene, blasphemous, or seditious, are technically called libels, and the publication of them is, by the law of England, an indictable offense.” (*Bradlaugh vs. The Queen*, 3 Q. B. D., 607, 627, per Bramwell, L. J. See *Com. vs. Kneeland*, 20 Pick., 206, 211.)

While libels upon forms of government, unconnected with defamation of individuals, must in the nature of things be of uncommon occurrence, the offense is by no means an imaginary one. An instance of a prosecution for an offense essentially of this nature is *Respublica vs. Dennie*, 4 Yeates (Pa.), 267, where the defendant was indicted “as a factious and seditious person of a wicked mind and unquiet and turbulent disposition and conversation, seditiously, maliciously, and willfully intending, as much as in him lay, to bring into contempt and hatred the independence of the United States, the constitution of this Commonwealth and of the United States, to excite popular discontent and dissatisfaction against the scheme of polity instituted, and upon trial in the said United States and in the said Commonwealth, to molest, disturb, and destroy the peace and tranquillity of the said United States and of the said Commonwealth, to condemn the principles of the Revolution, and revile, depreciate, and scandalize the characters of the Revolutionary patriots and statesmen, to endanger, subvert, and totally destroy the republican constitutions and free governments of the said United States and this Commonwealth, to involve the said United States and this Commonwealth in civil war, desolation, and anarchy, and to procure by art and force a radical change and alteration in the principles and forms of the said constitutions and governments, without the free will, wish, and concurrence of the people of the said United States and this Commonwealth, respectively,” the charge being that “to fulfill, perfect, and bring to effect his wicked, seditious, and detestable intentions aforesaid he . . . * * * falsely, maliciously, factiously, and seditiously did make, compose, write, and publish the following libel, to wit: ‘A democracy is scarcely tolerable at any period of national history. Its omens are always sinister and its powers are unpropitious. With all the lights of experience blazing before our eyes, it is impossible not to discover the futility of this form of government. It was weak and wicked at Athens, it was bad in Sparta, and worse in Rome. It has been tried in France and terminated in despotism. It was tried in England

and rejected with the utmost loathing and abhorrence. It is on its trial here and its issue will be civil war, desolation, and anarchy. No wise man but discerns its imperfections; no good man but shudders at its miseries; no honest man but proclaims its fraud, and no brave man but draws his sword against its force. The institution of a scheme of polity so radically contemptible and vicious is a memorable example of what the villainy of some men can devise, the folly of others receive, and both establish, in despite of reason, reflection, and sensation."

An attack upon the lawfully established system of civil government in the Philippine Islands, like that which Dennie was accused of making upon the republican form of government lawfully established in the United States and in the State of Pennsylvania would, we think, if couched in scandalous language, constitute the precise offense described in section 8 of Act No. 292 as a scurrilous libel against the Insular Government of the Philippine Islands.

Defamation of individuals, whether holding official positions or not, and whether directed to their public conduct or to their private life, may always be adequately punished under the general libel law. Defamation of the Civil Commission as an aggregation, it being "a body of persons definite and small enough for its individual members to be recognized as such" (Stephen, Digest of the Criminal Law, art. 277), as well as defamation of any of the individual members of the Commission or of the Civil Governor, either in his public capacity or as a private individual, may be so punished. The general libel law enacted by the Commission was in force when Act No. 292 was passed. There was no occasion for any further legislation on the subject of libels against the individuals by whom the Insular Government is administered—against the Insular Government in the sense of the aggregate of such individuals. There was occasion for stringent legislation against seditious words or libels, and that is the main if not the sole purpose of the section under consideration. It is not unreasonable to suppose that the Commission, in enacting this section, may have conceived of attacks of a malignant or scurrilous nature upon the existing political system of the United States, or the political system established in these Islands by the authority of the United States, as necessarily of a seditious tendency, but it is not so reasonable to suppose that they conceived of attacks upon the personnel of the government as necessarily tending to sedition. Had this been their view it seems probable that they would, like the framers of the Sedition Act of 1798, have expressly and specifically mentioned the various public officials and collegiate governmental bodies defamation of which they meant to punish as sedition.

The article in question contains no attack upon the governmental system of the United

States, and it is quite apparent that, though grossly abusive as respects both the Commission as a body and some of its individual members, it contains no attack upon the governmental system by which the authority of the United States is enforced in these Islands. The form of government by a Civil Commission and a Civil Governor is not assailed. It is the character of the men who are intrusted with the administration of the government that the writer is seeking to bring into disrepute by impugning the purity of their motives, their public integrity, and their private morals, and the wisdom of their policy. The publication of the article, therefore, no seditious tendency being apparent, constitutes no offense under Act No. 292, section 8.

The judgment of conviction is reversed and the defendants are acquitted, with costs *de officio*.

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