

5 Phil. 682

[G.R. No. 1451. March 06, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AURELIO TOLENTINO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

Aurelio Tolentino, the appellant in this case, was convicted upon an information charging him with the crime of “uttering seditious words and writings, publishing and circulating scurrilous libels against the Government of the United States and the Insular Government of the Philippine Islands, committed as follows: That said Aurelio Tolentino, on or about the 14th day of May, 1903, in the city of Manila, Philippine Islands, did unlawfully utter seditious words and speeches and did write, publish, and circulate scurrilous libels against the Government of the United States and the Insular Government of the Philippine Islands, which tend 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 tend to instigate others to cabal and meet together for unlawful purposes, and which suggest and incite rebellious conspiracies and riots, and which tend to stir up the people against the lawful authorities and to disturb the peace of the community and the safety and order of the Government of the United States and the Insular Government of the Philippine Islands, which said seditious words and speeches are false and inflammatory, and tend to incite and move the people to hatred and dislike of the government established by law within the Philippine Islands, and tend to incite, move, and persuade great numbers of the people of said Philippine Islands to insurrection, riots, tumults, and breaches of the public peace; which said false, seditious, and inflammatory words and scurrilous libels are in the Tagalog language in a theatrical work written by said Aurelio Tolentino, and which was presented by him and others on the said 14th day of May, 1903, at the “Teatro Libertad,” in the city of Manila, Philippine Islands, entitled ‘Kahapon ifrgayon at Bukas’ (Yesterday, Today, and Tomorrow). An exact translation of the said drama is included in the information, and various parts thereof are

especially assigned, which, in the opinion of the prosecution, were more especially in violation of the statute in such cases made and provided.

It was proven at the trial beyond a reasonable doubt that the accused did in fact write the drama and the announcement thereof, substantially as set out in the information, and did, with other members of a theatrical company, of which he was director, utter and publish the same substantially in manner and form as charged, and as we understand it, the only question for decision is whether, in writing, publishing, and uttering the drama, the accused was in fact guilty of a violation of section 8 of Act No. 292 of the Philippine Commission, upon which the information was based.

This section 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.”

Counsel discussed at some length the question whether the drama or any part of it was of a “scurrilous” nature in the legal acceptance of the word, but for the purposes of this decision we do not deem it necessary to make a finding on this point. In the case of the United States vs. Fred L. Dorr and Edward F. O’Brien,^[1] decided May 19, 1903, this court said:

“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 being 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"

"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."

In accordance with the principles laid down in the preceding paragraph the judgment of conviction in this case must be sustained, if it appears from the evidence in the record that the accused was guilty as charged of any one of those offenses.

We are all agreed that the publication and presentation of the drama directly and necessarily tended to instigate others to cabal and meet together for unlawful purposes, and to suggest and incite rebellious conspiracies and riots and to stir up the people against the lawful authorities and to disturb the peace of the community and the safety and order of the Government.

The manifest, unmistakable tendency of the play, in view of the time, place, and manner of its presentation, was to inculcate a spirit of hatred and enmity against the American people and the Government of the United States in the Philippines, and we are satisfied that the principal object and intent of its author was to incite the people of the Philippine Islands to open and armed resistance to the constituted authorities, and to induce them to conspire together for the secret organization of armed forces, to be used when the opportunity presented itself, for the purpose of overthrowing the present Government and setting up another in its stead.

Counsel for the appellant insists that the intent of the accused to commit the crime with which he is charged does not appear from the evidence of record, and that the drama is, in itself, a purely literary and artistic production wherein the legendary history of these Islands and their future, as imagined by the author, are presented merely for the instruction and entertainment of the public.

This contention can not be maintained. The public presentation of the drama took place in the month of May, 1903, less than two years after the establishment of the Civil Government. The smouldering embers of a widespread and dangerous insurrection were not yet entirely extinguished, and here and there throughout the Islands occasional outbreaks still required the use of the armed forces of the Government for their suppression. A junta in the city of Hongkong, composed of persons whose announced purpose and object in organizing was the overthrow of the present Government, was actively engaged in the endeavor to keep the people of these Islands from peaceably accepting the authority of that Government, and this junta, acting with confederates in the Philippines, was still able to keep alive a certain spirit of unrest and uncertainty which it hoped to fan into open revolt and rebellion at the first favorable opportunity.

The manner and form in which the drama was presented at such a time and under such conditions, renders absurd the pretense that it was merely or even principally a literary or artistic production, and the clumsy devices, the allegorical figures, the apparent remoteness, past and future, of the events portrayed, could not and in fact were not intended to leave the audience in doubt as to its present and immediate application, nor should they blind this court to the true purpose and intent of the author and director of the play.

It is further contended that even though the accused were in fact guilty as charged, the court erred in imposing an excessive and unjust penalty, and in fixing the amount of the fine

in dollars instead of Philippine currency. As to the latter objection it is sufficient to say that the use of the word “dollars” was in strict conformance with the words of the statute, and that the equivalent of that word in Philippine currency is fixed by law. The penalty was within the limits prescribed by law, and we are not prepared to hold that the trial court erred in the exercise of its discretion in imposing it.

The judgment and sentence appealed from is affirmed, with the costs against the appellant. So ordered.

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

^[1] 2 Phil. Rep., 332.
