34 Phil. 662

[G.R. Nos. 10114 and 10137. August 03, 1916]

MELECIO MONTINOLA, PLAINTIFF AND APPELLANT, VS. JOSE G. MONTALVO ET AL., DEFENDANTS AND APPELLANTS; AND MELECIO MONTINOLA, PLAINTIFF AND APPELLANT, VS. JOSE G. MONTALVO ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

TRENT, J.:

The plaintiff, Melecio Montinola, instituted two civil actions for libel against the defendants, Jose G. Montalvo, Fidel Hervas, and Crescenciano Lozano. The two articles, which form the basis of these actions, are those published in *El Adalid* on November 29th and December 2d, 1913. Judgment was entered in the first case (R. G. No. 10114) in favor of the plaintiff for the sum of ₱1,000 and in the second (R. G. No. 10137) the defendants were absolved upon the ground that the publication was not libelous in so far as the plaintiff was concerned. The defendants' appeal, which was taken from the judgment in the first case, was dismissed by this court on the 14th of December, 1915.

Counsel for the plaintiff urge that the trial court erred

> (1) "in assessing the damages for the libel printed by the defendants at only ₱1,000" (R. G. No. 10114), and (2) "in giving judgment in favor of the defendants" (R. G. No. 10137).

From the bill of exceptions presented by the defendants in the first case it appears that the plaintiff excepted to the judgment, made the statutory motion for a new trial, and excepted to the order of the court overruling such motion, but nothing further was done toward perfecting a bill of exceptions on behalf of the plaintiff. There is no agreement in the defendants' bill to the effect that it may be considered as that of the plaintiff also. In their printed brief counsel for the plaintiff say: "The above cases were tried together in the lower

court, and as they are very closely connected, it would seem to be proper to brief them together in this court. In one of the cases the court gave judgment against the defendants for the sum of ₱1,000; giving a decision in favor of the defendants in the other." Nothing further is said about the first case. We, therefore, conclude that the correctness of the judgment in that case is not now an issue before us.

The articles of November 29th and December 2d, 1913, which form, as we have indicated, the basis of the two civil actions, the second of which is now under consideration, were the basis of a criminal case for libel against these same defendants. In that case the defendants were found guilty and sentenced to pay a fine of ₱1,000, with subsidiary imprisonment in case of insolvency. This judgment was affirmed by the Supreme Court (U. S. *vs.* Montalvo, 29 Phil. Rep., 595). In the criminal case just referred to both the trial court and the Supreme Court found that each of the articles was a libel against Melecio Montinola as justice of the peace of the city of Iloilo. As to the second, this court said:

> "But the articles impute discrimination to the justice of the peace in his treatment of attorneys having business in his court, based upon race distinction. * * * In the second article, in speaking of the exclusion of the public from the court room, this language was used: 'It was not, as we said at first, for the purpose of justice and much less for the protection of the rights of the accused, but was due to certain prejudices and scruples of high society and only on account of what might be said. * * * Was it done for the deliberate purpose of not compromising certain officials who, according to those who have had an opportunity to look over the green-cloth roster, figure as gamblers? * * * Such an enormous injustice in that I was compelled to leave the court room, not through due process of law, as Mr. Block says, but on account of certain characters who bow before the hint of a threat and through fear of. losing their jobs.' Here was a positive charge laid against the justice of the peace that he was shielding or assisting in shielding certain persons, and also a charge that he was prostituting his office in order to retain his position."

By agreement of the parties all of the evidence taken in the criminal case was introduced without change in the two civil cases. Both the civil case and the criminal case contain exactly the same evidence. Subsequent publications in the same paper were considered in the criminal case and in the first civil case to aid in showing express malice on the part of

the defendants. Both articles having been published before the commencement of those actions, they were inserted in the criminal complaint. The first was published as a result of the exclusion of the public by the plaintiff as justice of the peace during a preliminary investigation in a certain criminal case. Counsel for the accused in that criminal case answered this article in another paper and the second article, that of December 2d, was in answer to counsel's article. The article of December 2d is not mentioned or referred to in the judgment in the first civil case. As the record shows beyond any doubt that the article of December 2d is a libel against the plaintiff, and we so found in the criminal case, the question arises: Can the plaintiff maintain two civil actions for damages under these facts?

> "A libel is a malicious defamation, expressed either in writing, printing, * * * tending * * * to impeach the honesty, virtue, or reputation, * * * of a person. (Sec. 1, Act No. 277.) Each and every publication falling within this definition is a libel, and any person libeled, as set forth in Act No. 277, has a right to institute and maintain for each offense a civil action for damages against the person libeling him. But where, as in the instant case, the two libelous publications arose out of one and the same controversy and formed the basis of a criminal action in which a judgment of conviction was entered and one was the cause of action in a civil suit wherein the second was put in evidence and could have been considered by the court, the question presents some difficulties. In our opinion, however, the court could not have considered the second article for the purpose of enhancing the amount of damages in the first civil case because it was a separate and distinct libel, although in some respects reiterating the previous libelous one. Neither can the two articles be considered in these civil cases as constituting one publication and one cause of action. The fact that the second article was or could have been considered for the purpose of showing malice makes no difference, for, when a repetition or a subsequent defamation not constituting the cause of action is admitted, as is commonly said, to prove malice, the plaintiff cannot recover damages for it; yet, where a libel is printed in an edition of many copies for general circulation, the extent of the circulation procured or caused by the publisher may be shown against him as evidence of the injury to the person libeled. A contrary holding would have to rest upon the ground that "a judgment of a court of competent jurisdiction is final and conclusive upon the parties not only as to the issues actually determined, but as to any other question which the parties *might or ought to have litigated*." We

> understand the rule in this jurisdiction to be that a judgment "is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered to sustain or defeat the *claim or demand,* but as to any other admissible matter which might have been offered for t*hat purpose*." (Palanca Tanguinlay *vs.* Quiros, 10 Phil. Rep., 360; Peñalosa *vs.* Tuason, 22 Phil. Rep., 303; sees. 90 and 307, Code of Civil Procedure.)

Bearing in mind that the Libel Law was enacted by an American commission, the majority of whose members were American lawyers, and that its provisions were borrowed almost verbatim from the statutes of one or the other of the States of the Union, we may, as we have frequently done, cite American authorities in support of our holdings in the instant case. In Cook *vs.* Conners (215 N. Y., 175), decided May 25, 1915, the defendant owned and published at the city of Buffalo, in the same building and with the same plant and. operators, except as to editorial staffs, two newspapers, the one, the *Buffalo Enquirer,* issued in the afternoon, and the other, the *Buffalo Courier,* issued in the morning of each day. The libel in this case was published in substance and effect, though not in identical language, in the *Enquirer* on the afternoon of August 27, 1910, and in the *Courier* the next morning. The plaintiff brought a separate action for each publication, and had been paid a judgment in the action based upon the publication in the *Enquirer.* The lower courts held that the judgment in the former action was a bar to recovery in the subsequent action. The Court of Appeals reversed the judgment and, after a thorough investigation, wherein many authorities are cited, quoted with approval the following from Underwood *vs.* Smith (93 Tenn., 687) :

> "Every separate and distinct publication of a libel is a distinct offense, for which a separate action will lie, and a recovery of damages for the first publication of the libel is no bar to an action based upon its repetition or republication. * * * The rule which requires a party not to split his cause of action, and prosecute it by piecemeal, does not require that distinct causes of action, each of which would authorize independent relief, should be presented in a single suit. And this is true, even though the several causes of auction may exist at the same time. * * * The doctrine of *res adjudicata* is based upon reasons and principles which have no application to the case at bar. In order to sustain the plea the causes of action must be the same, between the same parties, based upon the same evidence, and

> resulting in damages based on the same reasons. * * * While it is true that one recovery in an action for libel is a bar to a second recovery for the same cause of action, as in all other suits, still it is no bar when there is a separate and distinct cause or ground of action for a repetition of the libel, which is a similar but not the same offense, any more than a judgment for one assault and battery would bar an action for a second assault and battery by the same person on the same party."

And consequently the plaintiff is entitled to recover in the instant case. The record fails to show that the plaintiff has suffered any actual pecuniary damages, but nevertheless he is entitled to damages for injury to his feelings and reputation, and also on account of the existence of actual malice, to punitive damages. There are no definite and fixed rules for the determination of the amount of such damages. In the short opinion heretofore filed in this case (not published) we said:

> "In view of the fact that this is the third libel case growing out of a series of articles and that judgments have been rendered against these defendants in the other two cases, we think that the ends of justice will be met by the entry of a judgment for a small amount. The judgment appealed from in the case under consideration is reversed and judgment will be entered in favor of the plaintiff for the sum of ₱200f being ₱100 as punitive damages and ₱100 for injury to feelings and reputation. No costs will be allowed in this instance;" following, as nearly as possible, our holdings in our former cases as to the amount of damages. So ordered.

Torres, Johnson, and *Araullo, JJ.,* concur.
Moreland, J., concurs in the result.

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