

CARLOS M. SISON, PLAINTIFF AND APPELLEE VS. GONZALO D. DAVID, DEFENDANT AND APPELLANT.*G.R. No. L-11268. January 28, 1961*

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6078f15dbd1b/>**CONCEPCION, J.:**

In his amended complaint, herein plaintiff, Carlos Moran Sison, seeks to recover P50,000 by way of damages, and P5,000.00 as attorneys fees, in addition to costs. Defendant Gonzalo D. David answered admitting some allegations if the amended complaint, denying other allegations thereof, alleging some special and affirmative defenses, and setting up a counterclaim. In due course, on December 10, 1954, the Court of First Instance of Manila gave judgment for the plaintiff in the sums of P5,000, as moral damages, and P1,000 as attorney's fees, besides the costs. Subsequently, the court *motu proprio* rendered an amended decision, dated December 29, 1954, finding no merit in defendant's counterclaim and increasing the award in plaintiff's favor to P15,000 as moral damages, and P3,000.00 as attorney's fees, aside from costs. Defendant appealed from this amended decision to the Court of Appeals, which, considering that the sum awarded in said decision plus the amount claimed in the first three (3) causes of action set forth in defendant's counter claim aggregated P173,000.00, forwarded the records to this Court, pursuant to section 17 of Republic Act No. 296. Although this Act was subsequently amended by Republic Act No. 2613 to increase the exclusive appellate jurisdiction of the Court of Appeals, insofar as civil cases decided by courts of first instance are concerned, to those in which the value in controversy does not exceed P200,000.00, we retain such appellate jurisdiction over this appeal, for the pertinent facts are not disputed, and the issues raised in the appeal hinge on the conclusions deducible from said facts and the law applicable thereto (Section 17, subparagraph [6], of Republic Act No. 296.)

It appears that on December 20, 1938, Margarita David executed a will constituting several legacies in favor of specified persons and naming her grand nieces Narcisa de la Fuente de Teodoro and her sister Priscilla de la Fuente de Sison—hereafter referred to as Mrs. Teodoro and Mrs. Sison, respectively—as heirs of the residue of her estate, subject, however, to the condition that, if Mrs. Teodoro and Mrs. Sison should die leaving no descendants, the properties inherited by these sisters shall pass one-half to the heirs of the father of the testatrix and the other half to the heirs of her mother. Herein defendant Gonzalo D. David is one of such heirs of the parents of Margarita David. On October 21, 1939, Mrs. Teodoro and Mrs. Sison were legally adopted by Margarita David as her children. Soon later, or on September 6, 1940, Margarita David, donated to said sisters practically the same properties bequeathed to them in her aforementioned will. Upon the demise of Margarita David, in Manila, on February 24, 1941, Special Proceeding No. 58881 of the Court of First Instance of Manila was instituted for the settlement of her estate, and Jose Teodoro, Sr., was originally appointed executor of the aforementioned will, whereas Gonzalo D. David, who is a member of the Bar, acted as his counsel. Subsequently, Mrs. Teodoro and Mrs. Sison extra-judicially partitioned among themselves the properties bequeathed and donated to them by Margarita David. Plaintiff herein, Carlos Moran Sison, is the husband of Mrs. Sison.

On or about May 9, 1950, defendant herein caused to be annotated on the titles of several lands acquired by Mrs.

Sison as above stated a notice of adverse claim, for the fees of Jose Teodoro, Sr., as executor of the will of Margarita David, and his (defendant's) fees as counsel for said executor. It turned, however, that on or about February 28, 1949, said properties were assigned by Mrs. Sison to Priscila Estate, Inc.—a corporation organized on that date by her and plaintiff herein, aside from some nominal parties—in exchange for shares of stock thereof. Hence, on September 8, 1951, said corporation filed with the Court of First Instance of Manila, in G.L.R.O. Cadastral Record No. 99, an "Urgent Petition Ex-Parte" to lift defendant's adverse claim, insofar as one of the above-mentioned properties—that covered by Transfer Certificate of Title No. 20338 of the office of the Register of Deeds of Manila and located at the intersection of Sto. Cristo and M. de Santos streets, San Nicolas, Manila—upon the ground that said property belonged already to the corporation which wanted to sell it, and that there were other properties of the estate of Margarita David which sufficed to answer for said adverse claim. The motion was granted by an order of the same date, "provided that should any objection be interposed later on", the movant "obligates itself to file the corresponding bond to satisfy" what may be due to the adverse claimants.

On September 26, 1951, defendant herein filed in said cadastral proceedings, on his behalf and that of Jose Teodoro, Sr., a "Petition for Bond", praying that the sale of the property at Sto. Cristo street be disapproved "and/or a bond of P12,000 be forthwith furnished" by the Priscila Estate, Inc. In support of this petition, which led to the institution of the case at bar, defendant alleged, in paragraphs 2 to 7 thereof:

"2. That the movants herein object to the urgent petition ex-parte on the ground that the property to be sold herein is one of the few properties inherited from Da. Margarita David; which is not encumbered, because practically all of the properties of the heiress Priscila F. de Sison are mortgaged, and the Priscila Estate, Inc., is operating on an overdraft, which is the reason why these properties are to be sold;

"3. That the reason there is an overdraft is that new buildings or improvements have been made as conjugal properties of Carlos Sison and Priscila de la Fuente, and now, the paraphernal properties inherited from Da. Margarita David is being sold to pay for the obligations of these conjugal properties;

"4. That if the movants were informed or served copy of this petition to sell the property, they would have objected because it is in contravention of the provisions of the Last Will and Testament of the late Da. Margarita David to the effect that if Priscila de la Fuente dies without descendants, then the inheritance will go to Narcisa de la Fuente, and vice versa, and if both of them die, then all the properties of the late Da. Margarita David will be divided as follows: One-half of all the properties would go to the legatees on her father's side and other half of all the properties would go to the legatees on her mother's side;

"5. That of course, the incidental remedy would be to show where the said properties or the proceeds thereof went in case the above conditions should occur, and what properties were acquired in lieu of the same, considering the earning of the properties and the expenses therein;

"6. That answering the statement of petitioner that there are other valuable properties of the estate, still annotated with the adverse claim, it is respectfully offered that the said properties are mortgaged and in case of foreclosure, the adverse claim is relegated to a subsequent position as posterior to the mortgages Inscribed on the back of the aforesaid titles;

"7. That the properties mentioned in par. 4 of the ex-parte petition, namely, One-half pro-in-diviso interest of the lands in TCT Nos. 21063, Pampanga, composed of 3 lots, are assessed at P3,748.31, and 12861, Pampanga, composed of 2 lots, are assessed at P1,614.39, and TCT No. 12829, Pampanga, composed of 2 parcels, are assessed at P12,677.58, and the Manila property (land only) in TCT No. 60851, composed of 2 lots in Tondo, are assessed at P846.00, so that all in all the said properties actually are assessed at P9,020.14 plus P846.00 for Manila or P9,866.14, and are insufficient to meet the P17,000.00 claim of the Estate of Sideco, the Executor's fee of P4,000.00 with interest, and the attorney's fees of P5,000.00, which may still be increased on appeal."

Soon later, or on October 6, 1951, plaintiff commenced the present action. In his amended complaint therein, he alleged that the averment in the above-quoted paragraph 2 was made with malice and evident intent to put him in ridicule, for defendant knew him (plaintiff) to be the president of Priscila Estate, Inc. and, by the statements contained in said paragraph, the defendant, "in effect, implied with clear malevolence and malignity that plaintiff is incompetent and unfit to manage the affairs of the Priscila Estate, Inc."; that in paragraph 3 of defendant's petition for bond, he alleged that plaintiff "has been converting the paraphernal properties of his wife into conjugal, thus clearly implying that he, the plaintiff, has been and still is, scheming to enrich himself at the expense of his spouse", which allegation is "utterly false and completely irrelevant and immaterial to the point at issue"; that the clear implication of the above-quoted paragraph 4 is that the aforementioned urgent petition ex-parte of Priscila Estate, Inc. "was inspired by the condemnable desire of the plaintiff as president of Priscila Estate, Inc., to avoid the supposed fideicommissary provision of the Last Will and Testament of the late Margarita David so that he could enrich himself at the expense of the relatives of Margarita David who might eventually inherit the properties of Priscila de la Fuente de Sison"; that the allegations in said paragraph 4 were "irrelevant to the point raised" in defendant's "Petition for Bond"; that as a lawyer, defendant knew that said allegations were "unfounded in law", the aforementioned fideicommissary provision having been nullified and rendered inoperative when Margarita David adopted Mrs. Teodoro and Mrs. Sison and, thereafter, donated to them "practically all the properties" disposed of in said will; that said allegations in defendant's "Petition for Bond" were "clearly uncalled for and unnecessary"; and that, on account of the allegations made, in the three (3) paragraphs above mentioned, plaintiff "suffered, and is still suffering, from mental anguish, serious anxiety, wounded feeling, moral shock and social humiliation", for which he should be indemnified in the sums stated at the beginning of this decision.

In his answer, defendant denied that his aforementioned allegations were tainted with malice and the intent of slandering the plaintiff and averred that they were proper and necessary to protect his interests and those of his client Jose Teodoro, Sr.; that the petition for bond, in which said allegations were contained, is an absolutely privileged communication; and that plaintiff has no cause of action against him, for the party in interests in G.L.R.O. Cadastral Record No. 99 in which said petition had been filed, was Priscila Estate, Inc., not plaintiff herein.

Defendant further set a counterclaim, with four (4) causes of action. The first was based upon the fact that, in an "opposition" filed by the plaintiff, through his counsel, in the aforementioned Special Proceeding No. 58881, on March 31, 1951, the following allegedly "impertinent", "false" and "scandalous" statements were maliciously and illegally made:

"Why, if we do not watch out, some day we shall again be confronted with another petition for additional counsel's fees by Gonzalo David for filing his present Supplemental Petition for Counsel's Fees. And if this goes on, we might hear the end of this Testate Estate but, surely, never the end of David's claim for attorney's fees."

* * * *

"Merely to read the foregoing relation of alleged legal services rendered by Gonzalo David is to laugh. One gets the impression that David's time is more precious than gold and that for him to merely read or receive anything pertaining to this Testate Estate must cost some money. What a man!"

* * * *

"This claim for associate attorney's fees is ridiculous. It betrays an unpardonable ignorance of the law on the part of Attys. Gonzalo David and Jesus Ocampo who claim to have 'a well-established law office in Escolta, Manila'.

"It might be purely coincidental, but the amount of ten (10%) percent being asked for by Gonzalo David sounds very familiar. Is it possible that ten percenters have arrived even in the halls of justice? Some people, it would seem, need the reminder that our courts have no similarity whatsoever with the Import Control Administration."

By way of second cause of action, defendant asserted that, in a motion filed, on August 7, 1951, in said special proceeding, plaintiff, through his counsel, made the following "malicious, scurrilous, scandalous, false * * * and irrelevant" allegation:

"Surely, there must be a limit to judicial generosity, especially if such generosity would inevitably jeopardize the interest of the heirs who are entitled to protection by this Court from lawyers who already had been overpaid. If this present tendency continues, Gonzalo David, the frustrated heir, might yet blossom into a forced one."

As third cause of action, defendant alleged that on September 28, 1951, plaintiff "without any basis or reason, whatsoever, maliciously and illegally filed a criminal complaint for libel" against the defendant in the office of the City Fiscal of Manila, who dismissed the charge because it was "wanting in basis, reason and merit."

In each one of the aforementioned three (3) causes of action, defendant alleged, also, that, in consequence of the plaintiff's acts therein described, he (defendant) has suffered and continues to suffer from mental anguish, serious anxiety, besmirched reputation, wounded feelings, moral shock and social humiliation, because of which he prayed for judgment against the plaintiff in the sum of P50,000.00 for each cause of action.

Defendant's last cause of action is premised upon the allegation that, owing to the unjustified and unjustifiable complaint filed in this case, he (defendant) had to avail himself of the services of counsel at an expense of P10,000.00, which plaintiff should be made to pay.

The amendment *motu proprio* made by the lower court on December 29, 1954, of its decision dated December 10, 1954, is assailed by the defendant as a nullity, upon the ground that none of the parties had filed any motion or petition therefor, and that said amendment did not involve a correction of mere clerical mistakes, but a substantial modification, not only of the award for the plaintiff, but, also, of the findings of fact and the reasons for said award. There is no merit in this pretense, for the amended decision was rendered nineteen (19) days after the promulgation of the original decision, or within the reglementary period to appeal therefrom, and before any appeal had been taken by the parties herein, so that the lower court still had jurisdiction and control over the case. Moreover, said amendment is authorized by Rule 124, section 5, of the Rules of Court, pursuant to which "every court shall have power * * * to amend and control its processes and orders so as to make them conformable to law and justice."

Defendant has made several assignments of error, contesting propriety of the conclusions made in the decision appealed from on the merits of plaintiff's amended complaint and the demerits of defendant's defenses. In this connection, we note that the lower court sustained the former, and rejected the latter, upon the ground that the allegations in defendant's petition for bond "are based on malicious and unfounded grounds"; that said petition is a qualifiedly privileged communication, because the privilege exists only if the allegations therein are pertinent or relevant to the case; that said allegations "were impertinent and irrelevant to the issue then under inquiry, for all he (defendant) wanted in said petition was the filing of a bond"; and that the defendant went out of his way to harass and cause damage to the plaintiff, for the former had caused his adverse claim to be annotated on property worth much more than the amount of said claim, for which reason said annotation is "presumed" to have been made "with malice."

At the outset, it should be noted that the pertinency or relevancy essential to the privilege enjoyed in judicial

proceedings, does not make it a "qualified privileged" within the legal connotation of the term. Otherwise, all privilege communications in judicial proceedings would be qualified, and no communications therein would be absolutely privileged, for the exemption attached to the privilege in said proceedings never extends to matters which are patently unrelated to the subject of the inquiry. The terms "absolute privilege" and "qualified privilege" have established technical meanings, in connection with civil actions for libel and slander.

In the language of Corpus Juris Secundum:

"For the sake of clearness of application privileged communications are often divided into two classes: Absolute privilege; and conditional or qualified privilege, the second sometimes being called 'quasi privilege.' In cases of absolutely privileged communications, the occasion is an absolute bar to the action; whereas, in cases of conditionally or qualifiedly privilege communications, the law raises only a prima facie presumption in favor of the occasion. In the former class the freedom from liability is said to be absolute or without condition, regardless of the existence of express malice, as contrasted with such freedom in the latter class where it is said to be conditioned on the want or absence of express malice." (53 C. J. S., 141-142.)

"An absolutely privileged communication is one for which, by reason of the occasion on which it is made, no remedy is provided for the damages in a civil action for slander or libel. It is well settled that the law recognizes this class of communications which is so absolutely privileged that even the existence of express malice does not destroy the privilege, although there are some dicta denying the rule, and some eminent judges, in dealing with particular applications of the rule, have doubted or questioned the rationale or principle of absolutely privileged communications. As to absolutely privileged communications, a civil action for libel or slander is absolutely barred." (53 C. J. S., p. 142.)

"Qualified privilege exists in a larger number of cases than does absolute privilege. It relates more particularly to private interests; and comprehends communications made in good faith, without actual malice, with reasonable or probable grounds for believing them to be true, on a subject matter in which the author of the communication has an interest, or in respect to which he has a duty, public, personal, or private, either legal, judicial, political, moral, or social, made to a person having a corresponding interest or duty. Briefly stated, a qualifiedly privileged communication is a defamatory communication made on what is called an occasion of privilege without actual malice, and as to such communications there is no civil liability, regardless of whether or not the communication is libelous per se or libelous per quod." (53 C. J. S., pp. 143-144.)

"In the case of communications qualifiedly privileged, there must be both an occasion of privileged and the use of that occasion in good faith." (53 C. J. S., p. 145.)

To the same effect is the American Jurisprudence, from which we quote:

"On the ground of public policy, the law recognizes certain communications as privileged and, as such, not within the rules imposing liability for defamation. A privileged communication or statement, in the law of libel and slander, is one which, except for the occasion on which or the circumstances under which it is made, would be defamatory and actionable.

"Privileged communications are divided into two general classes namely: (1) those which are absolutely privileged; and (2) those which are qualifiedly or conditionally privileged, as defined in subsequent sections." (33 Am. Jr., p. 123).

"An absolutely, privileged communication is one in respect of which, by reason of the occasion on which, or the matter in reference to which, it is made, no remedy can be had in a civil action, however hard it may bear upon a person who claims to be injured thereby, and even though, it may have been made maliciously." (33 Am. Jur. pp. 123-124.)

"A publication is conditionally or qualifiedly privileged where circumstances exist, or are reasonably believed

by the defendant to exist, which cast on him the duty of making a communication to a certain other person to whom he makes such communication in the performance of such duty, or where the person is so situated that it becomes right in the interest of society that he should tell third persons certain facts, which he in good faith proceeds to do. This general idea has been otherwise expressed as follows: A communication made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege would be actionable, and although the duty is not a legal one, but only a moral or social duty of imperfect obligation. The essential elements of conditionally privileged communication may accordingly be enumerated as a good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only." (33 Am. Jur., pp. 124-125.)

Newell, in his work on the *The Law of Slander and Libel*, 4th ed., uses the following language:

"Absolute Privilege.—In this class of cases it is considered in the interest of public welfare that all persons should be allowed to express their sentiments and speak their minds fully and fearlessly upon all questions and subjects; and all actions for words so spoken are absolutely forbidden, even if it be alleged and proved that the words were Spoken falsely, knowingly and with express malice." (Section 350, pp. 387-388.)

"In the less important matters, however, the interests and welfare of the public do not demand that the speaker should be freed from all responsibility, but merely require that he should be protected so far as he is speaking honestly for the common good. In these cases the privilege is said not to be absolute but qualified; and a party defamed may recover damages notwithstanding the privilege if he prove that the words were not used in good faith, but that the party availed himself of the occasion willfully and knowingly for the purpose of defaming the plaintiff." (Section 389, p. 415; italics supplied.)

Apart from the occasion in which or the matter in reference to which it is made, what distinguishes an absolutely privileged communication from one which is only qualifiedly privileged is, therefore, that the latter is actionable upon proof of "actual malice", whereas its existence does not affect the exemption attached to the former, provided that, in the case of judicial proceedings, the derogatory statements in question are pertinent, relevant or related to or connected with the subject matter of the communication involved. Under peculiar situations, a few decisions have required probable cause for the enjoyment of the absolute privilege, but such" decisions not only do not reflect the view of the clear weight of authority, but, also, have acknowledged the wisdom of such view, although its non-application was sought to be justified by the special conditions obtaining in each case (See *Harshaw vs. Harshaw*, 136 ALR, 1411, 1413).

The reason underlying the general rule on absolutely privileged communications is set forth in the American Jurisprudence as follows:

"The class of absolutely privileged communications is narrow and is practically limited to legislative and judicial proceedings and other acts of state, including, it is said, communications made in the discharge of a duty under express authority of law, by or to heads of executive departments of the state, and matters involving military affairs. The privilege is not intended so much for the protection of those engaged in the public service and in the enactment and administration of law, as for the promotion of the public welfare, the purpose being that members of the legislature, judges of courts, jurors, lawyers, and witnesses may speak their minds freely and exercise their respective functions without incurring the risk of a criminal prosecution or an action for the recovery of damages." (33 Am. Jur., 123-124.)

It is, thus, clear that utterances made in the course of judicial proceedings, including all kinds of pleadings, petitions and motions, belong to the class of communications that are already absolutely privileged" (Newell on *The Law of Slander and Libel*, 4th ed., pp. 388, 391-392, 407; 53 C.J.S. 165, 167, 173; 33 Am. Jur., 142-143,

144-145, 147; *Tupas vs. Parreño*, L-12545 [April 30, 1950]). As the Supreme Court of Tennessee has put it:

"For reasons of public policy which looks to the free and unfettered administration of justice, it appears to be the prevailing rule in the United States that statements made in a pleading in a civil action are absolutely privileged and no action for libel may be founded thereon when pertinent and relevant to the subject under inquiry, however false and malicious such statements may be. 33 Am. Jur., 144, 145, Libel and Slander S. 149; 16 ALE 746, supplemented in 42 ALR 878 and 134 ALR 483." (*Hayslip vs. Wellford*, 195 Tenn. 621, 263, SW 2d 136, 42 ALR 2d 820.)

Hence, the "petition for bond" of defendant herein is absolutely privileged, and no civil action for libel or slander may arise therefrom, unless the contents of the petition are irrelevant to the subject matter thereof.

In this connection, the lower court appears to have labored under the impression that the only remedy therein sought was "the filing of a bond". However, defendant specifically prayed in said petition that the sale intended to be made by Priscila Estate, Inc. be disapproved "and/or the bond of P12,000 be forthwith furnished by" said corporation. Moreover, the body of the petition clearly indicates that said prayer for disapproval of the sale was merely a subtle and tactful way of seeking a reconsideration of the order of September 8, 1951 granting plaintiff's urgent petition ex-parte of the same day, copy of which was served on the defendant two days after the filing of said urgent petition and the issuance of said order. Indeed, it is alleged in the petition for bond of defendant herein and Jose Teodoro, Sr. that they "object to the urgent petition ex-parte on the ground that the property to be sold herein is one of the few properties inherited from Da. Margarita David, which is not encumbered." In other words, they were opposed to said urgent petition, which was granted by the order of September 8, 1951, and, hence, they wanted this order reconsidered and set aside, and this would be the result, if the lower court disapproved the sale contemplated by Priscila Estate, Inc. The filing of a bond was evidently intended to be pressed only if the first part of the prayer was denied.

Now, the reasons adduced in support of the petition for disapproval of the sale and implied reconsideration of the order of September 8, 1951, or for the filing of a bond, were: (1) that practically all of the properties of Mrs. Sison were mortgaged; (2) that the Priscila Estate, Inc. (to whom said properties had been assigned) is operating on an overdraft, and this is why said properties are to be sold; (3) that said overdraft is due to "new buildings or improvements * * made as conjugal properties" of plaintiff herein as his wife; (4) that the paraphernal properties inherited by Mrs. Sison from Margarita David are being sold to pay obligations of said conjugal properties; and (5) that the sale contemplated to be made by Priscila Estate, Inc., will defeat the fideicommissary provision in the last will and testament of the late Margarita David, to the effect that the properties transmitted by her to Mrs. Teodoro and Mrs. Sison should, in the event of their death without any surviving descendant, pass to the other persons indicated in said will.

Obviously, these allegations are, not only pertinent, but material to the relief prayed for by the defendant. They indicate clearly that, unless the annotation of the adverse claim of Jose Teodoro, Sr. and defendant herein is maintained or a bond is filed by the plaintiff, it will become harder and still harder to trace the paraphernal properties of Mrs. Sison and because, even if traced, there is a likelihood that said adverse claim may be defeated, either by subsequent obligations contracted by the conjugal partnership of Mr. & Mrs. Sison, or by Priscila Estate, Inc., or by rights thereafter acquired by third parties acting in good faith and for value. Whether or not the reasons given sufficed to justify the granting of the relief sought by the defendant and Jose Teodoro Sr. is of no moment. Nothing but relevancy to said relief was necessary for defendant's petition to have the benefits of the absolute privilege conferred by judicial proceedings. Such privilege is unaffected, either by actual malice or by factual or legal inaccuracies in the utterances made in the course of said proceedings.[1]

At any rate, the allegations in question in defendant's petition for bond were neither malicious nor unfounded.

Thus, it is a fact that most, or at least, several of the most valuable properties transmitted by Margarita David to Mrs. Sison were mortgaged. Those subsequently assigned by Mrs. Sison to Priscila Estate, Inc. were encumbered altogether for P397,717.00. In order to construct the Priscila Building No. 3 on a paraphernal land of Mrs. Sison, it had been necessary to borrow One Million Pesos (P1,000,000.00) from the RFC. The Priscila Estate, Inc., of which plaintiff is the president, began its operations with an overdraft line of P236,517.00. Most of the paraphernal properties of Mrs. Sison were transferred to said corporation. In fact, the same asked that the annotation, on the certificate of title of one of those properties, of the adverse claims of the defendant and Jose Teodoro Sr., be cancelled, upon the ground that said property now belongs to the corporation, not to Mrs. Sison.

What is more, plaintiff and his wife organized a corporation, entitled CMS Estate, Inc., to which some properties of Priscila Estate, Inc. (most of which had been originally inherited by Mrs. Sison from Margarita David) were transferred. The CMS Estate, Inc. had a capital stock of one million pesos (P1,000,000.00), divided into 1,000 shares of the par value of P1,000 each, of which 950 are non-voting preferred shares, and 50 are common voting shares. All of these common voting shares, in addition to 50 non-voting preferred shares, were subscribed by the plaintiff, whereas his wife had 96 non-voting preferred shares and no common shares. Four (4) other persons had each a nominal holding of one (1) non-voting preferred share. As the sole holder of all the voting common shares, plaintiff had absolute, exclusive and permanent control over the management of this new corporation. In fact, the letters "CMS", which are the initials of his name, Carlos Moran Sison, appear in the corporate name "CMS Estate, Inc.," for the seeming purpose of representing to the public that plaintiff was, for all intents and purposes, the corporation itself.

Considering that plaintiff is, also, president of the Priscila Estate, Inc., most of the properties of which had come from Margarita David, and the antagonism that had arisen between him and the defendant, in the course of the proceedings for the settlement of the estate of Margarita David—which antagonism was crystalized and sharpened in several litigations and many acrid, if not virulent incidents between the same parties—it is understandable, as well as natural and logical for defendant to be apprehensive about the fate of his aforementioned adverse claim and that of Jose Teodoro Sr., if the order directing the cancellation of the annotation thereof were not reconsidered and set aside, or plaintiff were not required to file a bond to guaranty the payment of said adverse, claims.

The alleged gross disparity between the amount thereof and the value of said properties is immaterial to the case at bar. To begin with, the properties were heavily encumbered. Besides, the transfer thereof to Priscila Estate, Inc., the subsequent assignment of some to CMS Estate, Inc., and, then, the sales that had been made and the one sought to be made in favor of third persons, tended to place said properties beyond the reach of said claimants. Then too, bad faith should not, and cannot be imputed to creditors, much less "presumed", merely because they seek the maximum possible guaranties for the protection of their rights. At any rate, the alleged bad faith in the annotation of the adverse claims does not warrant an inference of bad faith in the allegations of the petition for bond.

The lower court erred, therefore, in rendering judgment for the plaintiff under his amended complaint and said judgment should be reversed.

We will now consider defendant's Counterclaim. The first two (2) causes of action therein are based upon allegations, made by counsel for the plaintiff, in pleadings filed in the course of judicial proceedings, which, as such, are absolutely privileged. Considering that said allegations—although sarcastic, to the point of being, perhaps, unnecessarily pungent and harsh, as well as tending to detract from the dignity that should characterize proceedings in courts of justice—were relevant to the subject-matter of the aforementioned pleadings, the causes of action predicated thereon are necessarily untenable.

So is the third cause of action under defendant's counterclaim. The dismissal, by the office of the City Fiscal of Manila, of the complaint for estafa therein filed by the plaintiff is insufficient to warrant a judgment for damages in defendant's favor, there being no competent evidence that, in filing said complaint, plaintiff had acted in bad faith, knowing that the charge was groundless.

As regards the fourth cause of action in said counterclaim, it should be noted that plaintiff is a member of the bar. As such, he must have known that the petition for bond in question is an absolutely privileged communication, and that the allegations therein made were pertinent and relevant to the remedy sought in said petition. More important still, he knew that the basic facts therein stated were true. Aside from this, some of the inferences drawn by him therefrom are purely his, not necessarily deducible from said facts, and although he allegedly suffered injury to his reputation in consequence thereof, there has been not even an attempt to prove that it had adversely affected either his credit, or any of his business transactions, or his social or domestic relations. In other words, aside from the fact that plaintiff's complaint is clearly unfounded, the record strongly indicates that it was filed with a harassing purpose. In view of the circumstances surrounding this case, plaintiff should pay the defendant a reasonable amount for attorney's fees and expenses of litigation (Article 2208 [4], Civil Code of the Philippines).

Wherefore, the decision appealed from is hereby reversed, and another one shall be entered dismissing plaintiff's amended complaint, as well as the first three causes of action in defendant's counterclaim, and sentencing plaintiff to pay to the defendant, by way of attorney's fees and expenses of litigation, the sum of P3,000, with interest thereon at the legal rate, from the date on which this decision shall become final, aside from the costs. It is so ordered.

Padilla, Buatista Angelo, Labrador, Reyes, J.B.L., Barrera, and Gutierrez David, JJ., concur.

[1] 136 ALR, 1414; 33 Am Jur., 144-145; 53 C.J.S. 167; 16 ALR, 746; 42 ALR, 2d. 878; 134 ALR, 483.

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