

RAMON SOTELO MATTI, PLAINTIFF AND APPELLANT, VS. THE BULLETIN PUBLISHING COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 11202. February 04, 1918

Ponente: STREET, J.

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STREET, J.:

Upon the morning of September 26, 1913, there appeared in the columns of the Manila Daily Bulletin, a periodical published in English in this city, an account of some sensational disclosures revealed in three affidavits filed in connection with a motion made by the defendant in the case of Maria Mortera de Eceiza and husband vs. the West of Scotland Insurance Company (Ltd.), in the Court of First Instance of the city of Manila. In that case the plaintiffs had, about five months prior to the date of the publication in question, recovered a judgment upon two insurance policies upon a house situated in this city and its contents. This judgment had been duly satisfied by the insurance company.

By the motion filed by the defendant company upon the date mentioned, the company sought to open said judgment and recover the amount paid by it to the insured. The ground of the motion was that the fire which occasioned the loss was of incendiary origin, as the company had lately discovered, and was the result of a conspiracy in which the plaintiffs had figured as instigators. The three affidavits were made by three persons who alleged that they were the instruments of the plaintiffs in setting said fire.

The account which appeared in the Bulletin relative to this matter was given considerable prominence in an article beginning upon the first page of the periodical. In this article there appeared one paragraph which gave occasion to the present action for libel. This paragraph was of the following tenor:

"Implicated in the charges of the conspiracy and fraud is the name of the attorney for the plaintiffs who made affidavit as to the burning of the house and against whom criminal proceedings will be brought as well as against the original owners."

The present plaintiff, Ramon Sotelo Matti, an attorney of the Manila Bar, had represented the plaintiffs in the action against the insurance company and afterwards represented them upon the hearing of the motion to which reference has been made. The paragraph in question was false in all particulars so far as concerns Sotelo; and he instituted this civil action in the Court of First Instance of the city of Manila to recover damages for the libelous publication. The damages claimed were these: (1) P70,000, for injury to feelings and reputation; (2) P5,000, for pecuniary loss incident to his professional practice; and (3) P25,000, as punitive or exemplary damages.

At the trial the Court of First Instance disallowed damages altogether under the second and third heads alleged in the complaint and gave judgment in favor of the plaintiff for P200 under the first head. The plaintiff appealed from this judgment on the ground that the damages assessed under the first cause of action were inadequate, and that the court had erred in disallowing damages upon the second and third grounds of action.

The offensive paragraph is of course libelous on its face, and actionable per se, since it imputes to the person

libelled complicity in a crime; and the Court of First Instance so held. It is also in our opinion sufficiently connected with the plaintiff, though his name is not mentioned, to make him the object of the injurious imputations conveyed therein. A person acquainted with the history of the litigation in the case of *Eceiza vs. The West of Scotland Insurance Co.*[1] must have inferred from the paragraph in question that Sotelo was the person referred to. It is true that at the time when the motion was made the litigation appeared upon the records of the courts as having been terminated; and from this the conclusion might have been drawn that Sotelo no longer represented the plaintiffs in that case. But his name was of record as the attorney of the plaintiffs while the cause had been in course of litigation, and as the whole sensational disclosure related to occurrences connected with that litigation, no reasonable conclusion could be drawn other than that this plaintiff was the attorney intended by the writer of that paragraph.

The answer to the material allegations of the complaint consisted of a general denial, and the testimony adduced by the defense shows that the offensive paragraph was written and published by mistake and without design to injure the plaintiff. It also appears that as soon as the defendant's manager was apprised of the fact that a libel suit had been filed against the *Daily Bulletin* by the plaintiff herein, he published a short article in the paper giving information about the institution of said action; and in connection therewith, referring to the alleged libelous paragraph, said:

"The *Bulletin* does not know who the attorney for the plaintiff was. No names are mentioned in the article to give any clue as to who the attorney is. The *Bulletin* received its information in good faith from reliable sources and there was no intention to reflect upon the integrity of any individual except some of those who have since been arrested for implication in the case."

It is suggested that this should be considered a retraction; but it is lacking in candor and generosity, and in our opinion evinces but little of the desire to repair a wrong which should inspire a retraction. The defense in this case evidently hoped to avoid liability on the ground that the libelous imputation was not directed towards the plaintiff; and this hope may have unfortunately restrained the editor from making the direct admission of mistake which was appropriate. When a periodical gives currency, whether innocently or otherwise, to a false and defamatory statement concerning any person, it is under both a legal and moral duty to check the propagation of such statement as soon as practicable by publishing a retraction; and in order to have the desired effect the retraction should contain an admission of the incorrectness of the libelous publication and evince a desire to repair the wrong occasioned thereby. The statement here made that "the *Bulletin* does not know who the attorney for the plaintiff was" is evidently disingenuous evasion; and, in view of this circumstance the suggestion that there was no intention to reflect upon the plaintiff's integrity loses its force.

Among the circumstances favorable to the defendant is the fact that plaintiff was not mentioned by name in the offensive paragraph. This had the result of limiting the injurious primary effects of the publication to the comparatively narrow circle of those readers who knew that Sotelo had served as attorney for the plaintiffs in the insurance case. As Sotelo is not a member of the English speaking community, information as to his connection with that case was naturally possessed by comparatively few readers of the *Daily Bulletin*.

In assessing the damages for injury to the feelings and reputation of the plaintiff in this case it is proper to consider that he is an attorney in good standing, and he is shown by the evidence to be an esteemed member of the community. The false imputation of complicity in the crime of arson is enough seriously to impair the standing of any person, and if not speedily corrected its effects are likely to be marked and enduring. In view of all the circumstances we are constrained to believe that the Court of First Instance placed too moderate an estimate upon the amount of general damages assessable by way of reparation for injury to the plaintiff's feelings and reputation; and reluctant as we are to interfere with the estimate made by the lower court upon such a matter, we have

nevertheless decided to increase these damages from P200 to P500.

In the opinion of the court below, reference is made to *Jimenez vs. Reyes* (27 Phil. Rep., 52), and the principles therein enunciated appear in the main to have been correctly applied. We there assessed general damages in favor of the plaintiff in the sum of P300, where the Court of First Instance had allowed none at all. In that case the original publication was libelous per se, and was evidently intended to expose the injured party to contempt and ridicule; while the second publication, a pretended disavowal, was in effect a mere repetition of the first; and both were manifestly inspired by the malicious design to injure the party libelled. It should be noted that the factor of malice in fact is generally more pertinent in the assessment of punitive damages than in the assessment of the actual damages for injury to the feelings and reputation of the party libelled. In *Jimenez vs. Reyes*, (supra) punitive or exemplary damages were awarded in the sum of P200, from which it may be inferred that the evil design of the defendant in that case was chiefly considered by the court in assessing these damages. It is also worthy of note that the libelous publication in that case had its explanation in differences of religious opinion, and while the publication was extremely rancorous, there was no charge of complicity in the commission of any public offense. The libelous imputation in the case now before us is evidently of a much more harmful character than that with which the court was concerned in *Jimenez vs. Reyes*. In view of these considerations and of the further circumstance that the retraction in the case before us is unsatisfactory, we think that we are fully justified in increasing the damages allowed by the lower court to the extent already stated.

Testimony was introduced by the plaintiff tending to show that the emoluments received from his professional practice suffered a decline in the year following the publication of the libel; and the depositions of two witnesses were read in which they testified that after reading the libel they had refrained from entrusting to the plaintiff certain legal business which they had contemplated placing in his hands. The trial judge, upon considering this testimony, came to the conclusion that the decline in the receipts from plaintiff's professional income was probably due either to general conditions affecting business adversely or to the unaccountable fluctuations which, as experience teaches, are sometimes noted in the practice of individual lawyers. The court accordingly held that the diminution in the plaintiff's yearly income, of which he complained, was not due to the effects of the libelous publication. We think the court was correct in so holding, as the evidence was too indefinite to support an award of pecuniary damages. We are also of the opinion that the court was right in refusing to take account of the loss of prospective business which two witnesses testified they might have placed in the plaintiff's hands but for the unfavorable effects of the libel. It did not appear that the business to which they referred had ever materialized or had been committed into the hands of any other lawyer, and we think that if the thought of placing that business with any lawyer was ever seriously entertained at all by these witnesses, the idea was transient and illusory.

The case was not one which would have justified the assessment of punitive, vindictive, or exemplary damages. No malice in point of fact, or evil motive, on the part of the offending paper, or its employees, towards the plaintiff was proved or existed; and neither the author of the article nor the manager of the paper knew the plaintiff until the day of the trial of the case. The manager of the paper testified that from the information which he had received the plaintiff had a very good reputation, and that he regretted that such a thing had happened. Obviously it was a case of unintentional mistake on the part of the reporter.

From what has been said it follows that the judgment of the court below should be modified by substituting the sum of P500 for so much thereof as awards to the plaintiff the sum of P200; and as so modified the judgment is affirmed without costs. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Aravillo, Malcolm, and Avanceña, JJ., concur.

[1] Mortera and Eceiza vs. West of Scotland Insurance Office, 36 Phil. Rep., 994.

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