

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SIMEON CAÑETE ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 11612. June 21, 1918

Ponente: FISHER, J.

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FISHER, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Leyte, whereby the appellants were found guilty of the crime of libel.

Two informations were filed in the trial court charging the fifty persons named in each information with the crime of libel. In the information in case No. 4138 of the trial court, the publication complained of is averred to be a libel upon the Rev. Nicanor Acebedo, and in case No. 4139, it is charged that the same publication is a libel upon one Timotea Camposano. By stipulation the two cases were consolidated and tried together in the court below. The trial judge acquitted all of the defendants in case No. 4138, except Simeon Canete, Hermogenes Camposano, Margarito Nolasco, Balbino Alminario, and Eulogio Villablanca, who were found guilty and sentenced to short terms of imprisonment. In case No. 4139, in which Timotea Camposano is the complaining witness, the court below acquitted all of the defendants, except Simeon Canete and Hermogenes Camposano, each of whom was sentenced to pay a fine of P500, and Eulogio Villablanca whom he sentenced to pay a fine of P100. From the consolidated judgment thus rendered in the two cases, the convicted defendants have appealed to this court.

The publication upon which the informations are based consists of a charge in writing signed by appellants and their codefendants in the trial court, and addressed to the Roman Catholic Archbishop of Manila, in which Father Acebedo, at that time a parish priest of Dagami, Leyte, of which the defendants are residents, is accused of maladministration, and misappropriation of the funds and property of the church of Dagami under his charge, drunkenness, taking indecent liberties of the women of his congregation, illicit relations with the complainant, Timotea Camposano, and general immoral and indecent behavior. The charges are in such a character that we do not believe they should be given further publicity by reproducing them in this decision.

The publication is unquestionably defamatory in character, and this is admitted by the appellants. They based their defense upon an attempt to prove that the charges were true and the contention that the communication was privileged, having been made only to Father Acebedo's superior, in order that the charges might be investigated. The court below held that the defendants had failed in their effort to prove the truth of the charges, and in this conclusion we concur. Whatever ground for doubt or suspicion there may have been, the evidence falls short of proof that the complaining witnesses were in fact guilty of any of the charges made against them in the publication upon which this prosecution is based.

Before considering the other defense upon which appellants rely, namely that the communication was privileged, it will be necessary to state the facts disclosed by the record regarding the circumstances under which the offensive publication was written, the conduct of the defendants, and their efforts to persuade the church authorities to make an investigation into the charges.

The evidence shows that for a long time prior to the preparation of the complaint against Father Acebedo, which led to this prosecution, his conduct had been the subject of general dissatisfaction in his parish. The culmination of this feeling was a meeting held by a number of the accused at the house of Gil Camposano at which the conduct and character of Father Acebedo were discussed. The result of the discussion was a decision to request the church authorities to hold an investigation, and the appellant, Simeon Cañete was designated to formulate the complaint in writing. For this purpose Canete availed himself of the services of one Pastor, who wrote out the charges in the form of a complaint addressed to the Catholic Archbishop of Manila.

Thereupon a number of the accused met again at the house of Gil Camposano, signed the document, and designated the accused, Simeon Canete, to take it to Manila and present it to the Archbishop. The document was then taken to a number of prominent residents of Dagami, for the purpose of obtaining their signatures, if possible, and several additional signatures were added to it by this means. The subscribers include the presidente and vice-presidente of Dagami, the auxiliary justice of the peace, several concejales and ex-concejales, the chief of police, an ex-presidente of the municipality, and many other prominent members of the community, including a number of municipal teachers. The names subscribed to the charges against Father Acebedo include, as stated by the trial judge, "a very large proportion of the intelligent and educated men of the municipality, so that in a sense the present prosecution is an indictment against the whole municipality."

The statement of the charges ended with a petition as follows:

"For the reasons cited we pray His Grace, the Archbishop of Manila, to be pleased to order an investigation of the charges made against the parish priest of Dagami, Rev. Nicanor Acebedo, of the acts committed in the exercise of his office, as a representative of the Apostolic Roman Catholic Religion, and that upon proof of the charges by conclusive and satisfactory evidence, to direct that this priest be removed from the parish of this municipality, and sent to some other place, and that, if found guilty, he be made to suffer a punishment adequate to the acts committed by him."

The charges and petition for the removal of Father Acebedo were taken by the appellant, Canete, to Manila, and by him turned over to the Catholic Archbishop of Manila, by whom the papers were referred to the Bishop of Calbayog, Leyte. He in turn referred the matter to his vicar general residing at Tanauan, Leyte, with instructions to conduct a judicial investigation before the ecclesiastical tribunal, if the complainants were disposed to make a deposit of P300 to cover the costs, or to institute an administrative inquiry, at which the complainants and accused should be heard, if they were not willing to make such deposit. The vicar general thereupon addressed a communication to the complainants under the general designation, "the signers of the libel against Father Acebedo," asking them to state whether they desired an administrative or a judicial investigation, and in the latter event to make the required deposit. To this a reply was made on behalf of the defendants that they were unable to make the deposit required of them, but would like to have the investigation conducted administratively or by an ex officio judicial proceeding in the ecclesiastical courts. The vicar general answered under date of February 9, 1915, that even were the inquiry to be conducted ex officio it would entail "not only work but also disbursements and expenses which will have to be paid by whomever it may concern." The communication ended with this statement:

"When the Bishop receives a complete and faithful reproduction of your written charges against your parish priest he will proceed in accordance with the canon law and the Instruction of 1880, and take such action as may seem proper."

Evidently discouraged by these requirements, and the apparent reluctance of the church authorities to take any action in the matter, the defendants made no effort to comply with the conditions imposed upon them and in July,

1915, these prosecutions were commenced.

The prosecution relied upon proof of the publication of the defamatory writing, and made no attempt to prove actual malice. Defendants made some effort to prove the truth of the allegations, but in this they were unsuccessful. We are of the opinion, however, that the record, as a whole, justifies the conclusion that at the time of the preparation and presentation of the charges against Father Acebedo the belief prevailed very generally in Dagami that he had been guilty of the misconduct imputed to him, that the appellants and their codefendants below were actuated by no actual malice, and that their purpose was, in good faith, to bring about an investigation of the charges by Father Acebedo's ecclesiastical superiors. That being the case, are they guilty of libel, notwithstanding the fact that the proof fails to establish the truth of the charges? Is the petition addressed by them to the Archbishop a privileged communication?

In the case of the United States vs. Bustos (37 Phil. Rep., 731), in which the defendants were charged with libel of a public official for statements made in a petition for his removal addressed to his administrative superior, Mr. Justice Malcolm, writing the opinion of the court, said:

"Public policy, the welfare of society, and the orderly administration of government, have demanded protection for public opinion. The inevitable and incontestable result has been the development and adoption of the doctrine of privilege.

"The doctrine of privileged communications rests upon public policy, "which looks to the free and unfettered administration of justice, though, as an incidental result, it may in some instances afford an immunity to the evil-disposed and malignant slander." (Abbott vs. National Bank of Commerce, Tacoma [1899], 175 U. S., 409, 411.)

"Privilege is classified as either absolute or qualified. With the first, we are not concerned. As to qualified privilege, it is as the words suggest a prima facie privilege which may be lost by proof of malice. The rule is thus stated by Lord Campbell, C. J.

" 'A communication made bona fide upon any subject-matter in which the party 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, although it contained criminary matter which without this privilege would be slanderous and actionable.' (Harrison vs. Bush, 5 E. & B., 344; 1 Jur. [N. S.], 846; 25 L. J. Q. B., 25; 3 W. R., 474; 85 E. C. L., 344.)

"A pertinent illustration of the application of qualified privilege is a complaint made in good faith and without malice in regard to the character or conduct of a public official when addressed to an officer or a board having some interest or duty in the matter. Even when the statements are found to be false, if there is probable cause for belief in their truthfulness and the charge is made in good faith, the mantle of privilege may still cover the mistake of the individual. But the statements must be made under an honest sense of duty; a self-seeking motive is destructive. Personal injury is not necessary. All persons have an interest in the pure and efficient administration of justice and of public affairs. The duty under which a party is privileged is sufficient if it is social or moral in its nature and this person in good faith believes he is acting in pursuance thereof although in fact he is mistaken. The privilege is not defeated by the mere fact that the communication is made in intemperate terms. A further element of the law of privilege concerns the person to whom the complaint should be made. The rule is that if a party applies to the wrong person through some natural and honest mistake as to the respective functions of various officials such unintentional error will not take the case out of the privilege.

"In the usual case malice can be presumed from defamatory words. Privilege destroys that presumption. The onus of proving malice then lies on the plaintiff. The plaintiff must bring home to the defendant the existence of malice

as the true motive of his conduct. Falsehood and the absence of probable cause will amount to proof of malice. (See *White vs. Nicholls* [1845], 3 How. 266.)

"A privileged communication should not be subject to microscopic examination to discover grounds of malice or falsity. Such excessive scrutiny would defeat the protection which the law throws over privileged communications. The ultimate test is that of bona fides."

It is true that the communication in the *Bustos* case (*supra*) was addressed to a government official, but the American and British courts have extended the qualified privilege by analogy to include cases like the present, in which a member of a church makes a complaint regarding his minister to their common ecclesiastical superior.

It is the established doctrine of the American courts that in matters purely ecclesiastical the decisions of the proper church tribunals are conclusive upon the civil tribunals. A church member who is expelled from membership by the church authorities, or a priest or minister who is by them deprived of his sacred office, is without remedy in the civil courts, which will not inquire into the correctness of the decisions of the ecclesiastical tribunals. (*Landis vs. Campbell*, 79 Mo., 433; *Watson vs. Garvin*, 54 Mo., 364; *Stack vs. O'Hara*, 98 Penn., 213.) The right of such ecclesiastical tribunals to try members offending against the canons of conduct established by the church being thus recognized it is reasonable that their decisions should be privileged, however derogatory they may be to the reputation of the persons affected.

"Persons who join churches * * * voluntarily submit themselves to the jurisdiction of these bodies, and in matters of faith and individual conduct affecting their relations as members thereof subject themselves to the tribunals established by those bodies to pass upon such questions, and, if aggrieved by a decision against them, made in good faith by such judicatories they must seek their redress within the organization, as provided by its laws or regulations." (*Landis vs. Campbell*, *supra*.)

In the case of *Farnsworth vs. Storrs* (59 Mass., 412), the defendant, the pastor of a church, was sued for libel for having published, by reading from his pulpit, a sentence of excommunication in which it was stated in plain terms that plaintiff had violated the Seventh Commandment. The defendant's plea of qualified privilege was sustained. Chief Justice Shaw, writing the opinion of the court, said:

"The rights of churches to use, exercise, and enjoy all their accustomed privileges and liberties, respecting divine worship, church order and discipline, etc., are declared and secured by statutes passed at various times, and in force to the present day. * * * Amongst these powers and privileges, established by long and immemorial usage, churches have authority to deal with their members, for immoral and scandalous conduct; and for that purpose, to hear complaints, to take evidence and to decide; and, upon conviction, to administer proper punishment by way of rebuke, censure, suspension and excommunication. To this jurisdiction, every member, by entering into the church covenant, submits, and is bound by his consent. (*Remington vs. Congdon*, 2 Pick., 310, 315.)

"The proceedings of the church are quasi judicial and therefore those who complain, or give testimony, or act and vote, or pronounce the result, orally or in writing, acting in good faith, and within the scope of the authority conferred by this limited jurisdiction, and not falsely or colorably, making such proceedings a pretense for coveringj' an intended scandal, are protected by law. It appears to us, that the defendant, as pastor of the church, and minister of the congregation, was acting within the scope of his authority, in reading a paper, which, it was proved had been adopted in a separate meeting of the church, and directed thus to be read."

The right of ecclesiastical tribunals to hear and decide cases involving the conduct of their officers and members /being recognized, and this of necessity involving immunity from charges of libel and slander based upon statements made in good faith by the members of such tribunals and by parties or witnesses giving evidence

before them (*York vs. Pease*, 68 Mass., 282), a like immunity must be extended to persons who, in good faith, make charges, written or oral, to the church authorities, intended to provoke an investigation concerning the conduct or character of a member, officer, or minister of the institution. That such charges are privileged communications, if made without actual malice, is the settled doctrine of the courts of the United States and of Great Britain.

In the case of *Shurtleff vs. Stevens* (51 Vermont, 501), it appeared that the defendant, a member of a religious organization, had made charges against the plaintiff, a minister of the church, which led to his expulsion from membership by the tribunals of the organization. The lower court held that the charge was defamatory and that its publication implied malice. The Supreme Court of Vermont reversed this decision, ruling that the communication was one of qualified privilege and that in the absence of proof of express malice, did not constitute libel. The court said:

"The plaintiff became a member of the Windham County Association voluntarily. He entered into its covenant and subscribed to its rules. Under its covenant and rules it had rightful jurisdiction to investigate charges of unministerial conduct affecting its members, and on conviction to administer proper punishment. The good name and good standing of every member of the association was a matter of common interest to all the rest. The members were all representative men, largely responsible for the growth and prosperity of the churches under their charge. This association was an instrumentality whereby they could advance the common interest of denominational work in Windham County; and by virtue of its relationship to like organizations elsewhere, it was a factor in the prosperity of the denomination throughout the land. Not only this, but the general public not immediately related to these clergymen by the ties of church covenant or society relationship, are more or less directly, within the range of that moral influence which they are charged to exert. Thus the general cause of public morality which underlies all good government, and which every good citizen, be he priest or layman, is bound to promote, is affected by the fidelity with which ministers of the gospel discharge the high trust of their appointment. In order to be successful public teachers of morality, they must be unspotted public exemplars of it. Hence, if it be suspected that a wolf in sheep's clothing has invaded their ranks, and sits at their council board, it is not only for the interest of all the members of the association to know the fact, but it is their imperative duty, to make inquiry and ascertain the fact. They owe such duty to the plaintiff as a brother member, if he is charged with scandalous conduct, to the end that his innocence may be established. They owe it to themselves, lest by indifference they give apparent approval to his conduct. Their intimate official relation to the plaintiff in the cause of their common work leaves them no other alternative; and if, in making such inquiry and in acting upon the subject matter of it, they proceed with honesty of purpose and act from a sense of duty, the law protects them."

Public policy is the foundation of the doctrine of privileged communications. It is based upon the recognition of the fact that the right of the individual to enjoy immunity from the publication of untruthful charges derogatory to his character is not absolute and must at times yield to the superior necessity of subjecting to investigation the conduct of persons charged with wrongdoing. In order to accomplish this purpose and to permit private persons having, or in good faith believing themselves to have, knowledge of such wrongdoing, to perform the legal, moral, social duty resulting from such knowledge of belief, without restraining them by the fear that an error, no matter how innocently or honestly made, may subject them to punishment for defamation, the doctrine of qualified privilege has been evolved, under which, "the occasion on which the communication was made rebuts the inference of malice prima facie arising from a statement prejudicial to the character of the plaintiff, and puts upon him the burden of proving * * * that the defendant was actuated by motives of personal spite or ill-will, independent of the occasion on which the communication was made." (*Newell, Slander & Libel* [3d ed.] pp. 477, 478.)

When the publication complained of is such that, in the absence of express malice, it is privileged, the burden of proving malice rests with the plaintiff.

* * * 'malice' a term used to indicate the fact that the defamer is prompted by personal ill-will or spite and speaks not in response to duty, but merely to injure the reputation of the person defamed. * * * The term 'malice' implies an intention to do ulterior and unjustifiable harm. * * * the existence of actual malice in any given case can be proved either by extrinsic, internal, or circumstantial evidence, like any other fact necessary to make out the plaintiff's case." (Street, Foundations of Legal Liability, vol. 1, p. 313.)

It has been suggested that the fact that the communication was addressed and delivered to the Roman Catholic Archbishop of Manila, instead of the bishop to whom Father Acebedo was directly subordinate, deprives it of its privileged character. We are of the opinion that this view cannot be accepted. (U. S. vs. Bustos, supra.) There is nothing to show that this mistake, if such it was, was not honestly made, or that the purpose of appellants was to give undue publicity to their charges.

It must be admitted that the Libel Law (Act No. 277) contains no express recognition of the doctrine of qualified privilege in such a case as this. The only section dealing expressly with the subject of privilege is the ninth, which by its terms is limited to private communications made for the sole purpose of protecting the interests of the person making the communication or the interests of the person to whom such communications are made. The communication here in question was in no proper sense a private communication as it was clearly made with the intention and in the hope that it would be followed by a public investigation. We are of the opinion, however, that it is an error to assume that the right to freedom of speech as now enjoyed in these Islands is conferred by Act No. 277, or that the scope and limit of its exercise must be found in that statute. On the contrary, the principle which guarantees to the people of these Islands the privileges of freedom of speech and of the press is firmly embedded in the fundamental law of the land, to which all statutes are subordinate. (Philippine Bill, sec. 5; Jones Law, sec. 3.) The right to petition the Government for the redress of grievances rests upon an equally solid foundation. Nevertheless, these rights would be of no practical value were their exercise, in the utmost of good faith, subjected to the condition that failure to establish the truth of all statements made with a view to inciting official action is to be punished as constituting the crime of defamation. With the fear of such consequences constantly before him, the citizen might well refrain from exercising his perilous privilege of petition or of free speech.

The provisions relating to freedom of speech and the right of petition contained in the Philippine Bill and the Tones Law are taken from the Constitution of the United States. Judge Cooley, in his well-known work on Constitutional Limitations (6th ed., p. 523), expresses the opinion that publications which are privileged for some reason of public policy are within the constitutional protection. Assuming that this view is correct it is obvious that the constitutional right cannot be impaired, or abolished by implication, by the failure to make provision for it in the statute concerning libels. The Supreme Court of the United States, construing the provision in section 5 of the Philippine Bill securing to accused persons the right to be heard by himself and counsel, said that if that provision of the paramount law makes the presence of the accused indispensable at every stage of the trial, "it is of no moment that the Philippine laws do not go so far, for they cannot lessen its force or effect. * * * It is the right which these constitutional provisions secure to persons accused of crime in this country that was carried to the Philippines by the congressional enactment, and, therefore, according to a familiar rule, the prevailing course of decision here may and should be accepted as determinative of the nature and measure of the right there." (Diaz vs. United States, 223 U. S., 442.)

The plainest principles of natural right and sound public policy require that the utmost possible freedom should be accorded every citizen to complain to the supervising, removing and appointing authorities of the misconduct of the public officials with whom he comes into contact, and like considerations make it equally proper that

members of a religious organization should enjoy equal freedom in bringing to the attention of the church authorities the misbehavior of their spiritual leaders or of fellow-members. Manifestly, the right must be exercised in good faith, and may not with impunity be made the occasion for the venting of private spite. It is subject to the limitation and restriction that such complaints must be made to a functionary having authority to redress the evils complained of; that they must be made in good faith and that they must not be actuated by malice.

As we are convinced that the conduct of defendants in making the complaint which has led to these prosecutions has conformed to the conditions upon which the qualified privilege they claim may be enjoyed, the judgment of the trial court in both cases is reversed and the appellants are acquitted, with the costs of both instances de officio. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Araullo, Street, and Malcolm, JJ., concur.

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