

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DANIEL O'CONNELL, DEFENDANT AND APPELLANT.

G.R. No. 13173. March 11, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

Action for libel was begun in the Court of First Instance of the city of Manila against the defendant Daniel O'Connell under an information reading as follows:

"The undersigned accuses Daniel O'Connell of the crime of libel, committed as follows:

"That on, or about the 23d day of December, 1916, in the city of Manila, Philippine Islands, the said accused being then and there the editor and general manager of a weekly publication known as 'O'Connell's The Philippine Weekly,' edited and published in the city of Manila, Philippine Islands, which has a considerable circulation in said city and throughout the islands and foreign countries, did then and there willfully, unlawfully and feloniously and with malicious intent to injure one Florence Ann MacLeod Harper and one Donald C. Thompson, both war correspondents for the Leslie's Illustrated Weekly Newspaper, bound for Vladivostock, and with malicious intent to expose them to public hatred, contempt and ridicule, print and publish in the regular issue of the said O'Connell's The Philippine Weekly, corresponding to the 23d day of December, 1916, of and concerning the said Florence Ann MacLeod Harper and Donald C. Thompson, a certain malicious, false and defamatory libel tending to impeach their honesty, virtue and reputation, which said malicious, defamatory, false libel is as follows:

" 'These poor Manila dailies will swallow anything. By the Empress there arrived here a couple of comedians, a man by the name of Thompson and a woman by the name of Harper. They claimed that they are war correspondents bound for Vladivostock from whence they would journey to see the war from the Russian front. The couple said that they had several thrilling experiences and the male member of the comedy team told the reporter how he had cleverly foiled the Germans and that there was now a price on his head. The couple said that they represent Leslie's and an eastern newspaper syndicate. We think that they are a couple of bunko artist and their tale sounds fishy. For example, what are they doing coming to Manila from Japan if they are so anxious to get to Vladivostock? Why did they not leave the Empress at Japan and take one of the Jap steamers to Vladivostock? They travel away from Vladivostock and still claim that Vladivostock is where they want to go. Lies, pure and simple. We have read Leslie's for years and have never seen anything from the battle front or any place signed by any such pair. Our idea is that they are a couple of affinities out for a good time.' "

The defendant was convicted of publishing a libel against the two complaining witnesses and sentenced by the Honorable M. V. del Rosario, judge of first instance, to pay a fine of P100, or to suffer subsidiary imprisonment in case of insolvency, and to pay the costs. Defendant appeals but makes no assignment of error.

We can deduce from the brief of counsel for appellant that he believes that the information is defective in that it does not contain three essential allegations. It is true that the information includes no colloquium and innuendo, but only sets out the text of the libel. But the innuendo can only be explanatory of the words to which it is

attached. It cannot alter the sense of the words claimed to be libelous; it cannot enlarge or restrict the natural meaning of words; and it cannot render certain that which is uncertain, except in so far as it connects the words published with the extrinsic or explanatory circumstances. If the publication is not actionable per se, an innuendo cannot make it so. We have therefore to decide the crucial question raised by appellant and answered by the Attorney-General, of whether or not the article set out in the information constitutes libel.

Defendant made but a faint effort to establish the truth of his statements relative to Mrs. Florence Ann Macleod Harper and Mr. Donald C. Thompson. On the contrary, the evidence for the prosecution, especially the exhibits introduced, shows that Mrs. Harper and Mr. Thompson are what they represented themselves to be, namely, duly accredited war photographers and correspondents. Mrs. Harper is the representative of the Sunday Pictures Section of the New York Times, commissioned to make photographs in the belligerent countries of Europe or Asia, the representative of Leslie's Illustrated Weekly Newspaper, commissioned to write articles for publication therein, the staff correspondent and official photographer of the Central News Photo Service, and the representative of the Paramount Pictures Corporation commissioned to take photographs. Mr. Thompson holds similar commissions from the same principals. Mrs. Harper has seen experience on the Western front in France and has been in England. Mr. Thompson has had experience on both fronts and has written articles and printed photographs in numerous periodicals. Mrs. Harper and Mr. Thompson were on their way to the Roumanian front and were merely passing through Manila. Both testified that they are married persons, that no improper relations of any kind existed between them, and that they were merely working together for the same news syndicates.

To establish justifiable motive, there is the testimony of the defendant who said that there was no desire on his part to reflect on either of the complainants, that the article was aimed principally at the Manila newspapers, and that the words found in the article claimed to be libelous were used in their lexical sense. Mr. O'Connell said:

"Your Honor, this article was aimed principally at the newspaper. The Times published an interview on December 21, in which Mr. Thompson and Mrs. Harper were quoted as saying; That Mr. Thompson was in bad in Germany and it was difficult for him to get in there; that he faked some story which he had printed, with Gimbel's or some other and on the back of it, it was no newspaper, simply just fixed up in a printing office, that he was captured by the Germans in an attempt to cross the border and he had this article in his pocket; that he was in for a bad time of it, going to be mistreated, thrown into jail or something else of the sort, in fact he was in jail when they found this paper, so they released him, honored him, gave him a chance to visit Von Hindenberg and other high officials, all that sort of thing, but word was received from some sort of a German spy in England who notified the German officials in Berlin that Thompson was a spy or something else of the sort, so they got after him and some German girl took pity on him and got him out of the country on a passport which she had for herself and brother.' That was his story. She was quoted as saying that she and Mr. Thompson took part in all the greatest drives and pushes of the European struggle in Russia and France and that they saw the Germans driven out. She was a real Amazon, was more gallant than Joan of Arc. That was the idea she attempted to convey, and, of course, it is well known here in Manila that my sympathies are with the Germans in this war, and when I saw this thing about this man 'buncombing' the whole German Government—I have had some experience as a war correspondent, and met some of the best of them—I knew how impossible this thing was; I said the story is foolish and not true, and with that idea in mind I wrote this article. There was no desire at all to doubt or cast any muck on either one of these two people or to question the woman's virtue."

To show that the article in question was intended as a criticism of Manila newspaper there is the first sentence of Mr. O'Connell's article, reading: "These poor Manila dailies will swallow anything." There is also in evidence for the defense an article in the Manila Times of December 21, 1916, entitled "Correspondents here tell thrilling tales of the war." In the body of the write-up, the phrases "teamed" and "working as a team" are found. Although the

article in O'Connell's Weekly includes the one sentence mentioning the Manila dailies, and although the article may have been brought to mind by what had appeared in the newspapers, this cannot be pleaded as a bar to liability if the article does in fact libel Mrs. Harper and Mr. Thompson.

Mr. O'Connell testifying said that he had used the word "affinity" as meaning "a spiritual relationship between persons of the opposite sex." He further said that the word "bunco" is a derivative of "buncombe" meaning "talking for effect or publicity or bragging."

The article in O'Connell's Weekly contains several expressions, italicized in the body of the information, which may be considered libelous. These include the following; "A, couple of comedians," "the comedy team," "a couple of bunko artists," "a couple of affinities out for a good-time," and the use of such language as "they claimed," "the couple said," and "still claim," all intimating that Mrs. Harper and Mr. Thompson had not told the truth, and followed by the expression, "Lies, pure and simple." . ,

Defendant has imputed nothing wrong to the complainants in certain and express terms. But this is not necessary. Words calculated to induce suspicion are sometimes more effective to destroy reputation than false charges directly made. Ironical and metaphorical language is a favored vehicle for slander. A charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses, or are sufficient to impeach their honesty, virtue, or reputation, or to hold the person or persons up to public ridicule. Said Chief Justice Shaw of the Supreme Court of Massachusetts:

"The rule is a sound one that the law cannot shut its eyes to what all the rest of the world can see; and let the slanderer disguise his language, and wrap up his meaning in ambiguous givings out, as he will, and it shall not avail him, because courts will understand language, in whatever form it is used, as all mankind understands it." (Carter vs. Andrews [1834], 16 Pick. (Mass.), 1.)

Said another court much more recently:

"The test of libelous meanings is not the analysis of a sentence into component phrases with the meticulous care of the grammarian or stylist, but the import conveyed by the entirety of the language to the ordinary reader." (Miller vs. O'Connell, City Ct, 57 L. J., 1768, Sept. 12, 1917.)

The questions then are—What meaning would a reader of O'Connell's Weekly attach to the article describing Mrs. Harper and Mr. Thompson? Are the different phrases taken together and the style and tone of the article such as to constitute a libel?

We believe that the answers to these questions by the average reader would be that Mr. O'Connell intended to charge Mrs. Harper and Mr. Thompson with having told falsehoods, intended to ridicule them as war correspondents by terming them "comedians" and "bunko artists," and finally intended the public to think of them as travelling together under circumstances which were highly immoral. From beginning to end the article ridicules the complainants and their statements and casts reflections upon their veracity and morality. The statements charging immorality or conveying the impression that the complainants are prevaricators are libelous per se. It is further a general rule that a newspaper which holds one up to scorn and ridicule and to feelings of contempt or execration impairs such a person in the enjoyment of general society. It sets a person before his fellowmen in a scurrilous and ignominious light. Such written abuse affects his general fortune and comfort and is thus a positive injury. Especially is it to be condemned when the author directly or through veiled words speaks of a married woman as the paramour of a man not her husband. Under all the circumstances and in an effort to understand the language of the article in question in its plain and popular sense—to read the sentences as would the man on the

street—we can reach no other conclusion than that from this article it would be commonly understood and believed that Mrs. Harper and Mr. Thompson instead of being reputable war correspondents were falsifiers living in an illicit manner.

To summarize, the matter charged as libelous has not been proved to be true. Good motives, such as an endeavor to serve or protect the public, are not apparent. Justifiable motives have not been shown. Under our Libel Law, malice must, therefore, be presumed. The article in question is a malicious defamation tending to impeach the honesty, virtue, and reputation of two strangers within our gates, and does thereby expose respectable persons to public contempt and ridicule. This is libel.

Judgment of the lower court is modified by sentencing the defendant and appellant to pay a fine of five hundred pesos, or to suffer subsidiary imprisonment in case of insolvency, with the costs of both instances against the appellant. So ordered.

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

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