

VICENTE SOTTO, PETITIONER, VS. JUAN RUIZ, RESPONDENT.*G. R. No. 17419. March 18, 1921*

Ponente: MALCOLM, J.

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The petitioner in this case is the proprietor of the weekly periodical, *The Independent*. The respondent was, on February 10, 1921, the Acting Director of the Bureau of Posts. The latter refused to forward as registered mail, a copy of *The Independent*, on the ground that it contained libelous matter. Hence, the petition for mandamus, filed in this court, asking that an order issue directing the distribution through the mails of the copies of *The Independent* of January 29, 1921, with civil damages in the amount of P10,000. To this complaint, two special defenses have been interposed by the Attorney-General; the first, formal in nature, and the second, joining issue on the merits. As consideration of the first point would merely mean delay, we have decided to address ourselves to a decision of the principal and only question submitted.

Section 1954 of the Administrative Code declares among other things, that no written or printed matter and photographs of an obscene, lewd, lascivious, filthy, indecent, or libelous character, whether sealed as first-class matter or not, shall be deposited in, or carried by, the mails of the Philippine Islands, or be delivered to its addressee by any officer or employee of the Bureau of Posts. This provision of Philippine law is not unlike a provision of the Federal law. The Postmaster-General of the United States is vested with authority to determine what mail matter is obscene, lewd, filthy, or libelous. Although not expressly stated, similar power must lie in the Director of Posts.

The Director of Posts has thrice refused to distribute copies of the issue of *The Independent* of January 29, 1921. This action was taken only after consultation with the law officer of the Government whose advice was that the Director of Posts would be justified in considering the printed message on a postal card consisting of a copy of a supposed telegram from one official in Cebu to another in Manila, as defamatory or libelous, and as matter that should be debarred from the mails.

The use of the mails by private persons is in the nature of a privilege which can be regulated in order to avoid its abuse. Persons possess no absolute right to put into the mail anything they please, regardless of its character.

On the other hand, the exclusion of newspapers and other publications from the mails, in the exercise of executive power, is extremely delicate in nature and can only be justified where the statute is unequivocally applicable to the supposed objectionable publication. In excluding any publication from the mails, the object should be not to interfere with the freedom of the press or with any other fundamental right of the people. This is the more true with reference to articles supposedly libelous than to other particulars of the law, since whether an article is or is not libelous, is fundamentally a legal question. In order for there to be due process of law, the action of the Director of Posts must be subject to revision by the courts in case he has abused his discretion or exceeded his authority. (Ex parte Jackson [1878], 96 U. S., 727; *Public Clearing House vs. Coyne* [1903], 194 U. S., 497; *Post Publishing Co. vs. Murray* [1916], 230 Fed., 773.)

As has been said, the performance of the duty of determining whether a publication contains printed matter of a libelous character rests with the Director of Posts and involves the exercise of his judgment and discretion. Every intendment of the law is in favor of the correctness of his action. *The rule is (and we go only to those cases coming from the United States Supreme Court and pertaining to the United States Postmaster-General), that the courts will not interfere with the decision of the Director of Posts unless clearly of opinion that it was wrong. (Bates & Guild Co. vs. Payne [1904], 194 U. S., 106; Smith vs. Hitchcock [1912], 226 U. S., 63; Masses Pub. Co. vs. Patten [1917], 246 Fed., 24. But see Davis vs. Brown [1900], 103 Fed., 909, announcing a somewhat different doctrine and relied upon by the Attorney-General.)

The ultimate question then comes down to this: Have we a clear opinion that the decision of the Director of Posts was erroneous?

The Attorney-General advised the Director of Posts that "the matter printed on the enclosed postal card is obviously intended to reflect injuriously upon the character of a public official by giving publicity to a supposed telegram which might be interpreted by a certain portion of the public as an attempt on the part of said official to interfere with the due administration of justice." However, the Honorable George R. Harvey, before whom an action for mandamus presented by the instant petitioner was heard in the Court of First Instance of Manila, took a diametrically contrary view of the matter. He was of the opinion that "To say that the publication of an official telegram from one public official to another is printed or written matter of a libelous character, when such telegram contains no attack upon any person, is manifestly arbitrary and unjust and is not based upon any reasonable interpretation of the law." We are in full accord with the latter. The propriety of a periodical distributing copies of a confidential telegram sent by one official to another may well be questioned. But to do so is not libelous per se. Even the squib following the copy of the telegram is no more than attempted humor and would not be taken seriously by the reading public.

We reach the conclusion that the action of the Director of Posts in disbarring from the mails copies of The Independent of January 29, 1921, on the ground that they contained matter of a libelous character, was clearly wrong. We are, however, left with the firm conviction that the Director of Posts acted in the best of faith, and should accordingly not be mulcted in damages.

An order shall issue to the respondent, directing him to receive, to carry, and to deliver, the registered package containing copies of The Independent of January 29, 1921. No special finding as to costs. So ordered.

Mapa, C. J., Araullo, Street, and Villamor, JJ., concur.

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