

TIRSO LOPEZ, PLAINTIFF AND APPELLANT, VS. JOSE DELGADO, DEFENDANT AND APPELLEE.

G.R. No. 3499. March 14, 1907

Ponente: CARSON, J.

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CARSON, J.:

This is an action for libel, wherein the plaintiff prayed for 4,000 pesos damages for an alleged malicious defamation expressed in writing, which was inclosed in an envelope and sent to the plaintiff by the defendant by special messenger. The trial court rendered judgment in favor of the plaintiff for 1 peso damages and costs, and from this judgment the plaintiff appealed, and insists that the damages allowed are wholly inadequate.

The plaintiff alleged that the libelous matter was sent to him in an open envelope, but the trial court found from the evidence that the envelope in question was sealed, and since the appellant has failed to bring the record of the testimony here on appeal, we are compelled to accept the finding of the trial court as correct.

Act No. 277 of the Philippine Commission provides for the recovery of damages in civil actions for the publication of libels or malicious defamations and it becomes necessary, therefore, to determine whether the defendant did, in fact, publish the alleged libelous matter.[1]

Section 5 of Act No. 277 is as follows:

"To sustain a charge of publishing a libel it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read or seen by any other person than himself."

The trial court found that the defendant knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read or seen by third persons, in that he intrusted it to a messenger in a sealed envelope. This finding can not be sustained. It is true that the messenger might have torn open the envelope and acquainted himself with the contents, but it is difficult to conceive of any case where one knowingly parts with the immediate control of libelous matter, wherein it could not be said that it is possible that in some way or other it might thereby become exposed to be read or seen by another. To hold that publication of a libel may be presumed in all cases where one knowingly parts with the immediate custody thereof, under circumstances which by any possibility expose it to be read or seen by another, would be equivalent to a holding that publication will be presumed in all cases where one parts with the immediate custody of an alleged libel. This construction of the Act would make the last clause of section 5 thereof meaningless and of no effect, and when possible such a result is always to be avoided in construing legislative provisions.

We think that the publication of a libel should not be presumed from the mere fact that the immediate control thereof has been parted with, unless it appears that there was a reasonable probability that it was thereby exposed to be read or seen by third persons, and we do not believe that it can be fairly said that when the defendant inclosed the alleged libelous matter in a sealed envelope, addressed to the plaintiff, and sent it by messenger, he parted with its custody under circumstances which suggest a reasonable probability that it was thereby exposed to

be read or seen by third persons. (Spaits vs. Poundstone, 87 Ind., 523; Syle vs. Clason, 1 Caines, N. Y., 583; also Am. & Eng. Ency. of Law, 2d ed., vol. 18, p. 1017, and English and American cases there cited.)

It not appearing that the alleged libelous matter was "published" by the defendant, the plaintiff has no cause of action against him, and of course his contention that the trial court erred in granting him inadequate damages can not be maintained.

The defendant did not appeal from the judgment of the trial court, and we are therefore precluded from reviewing its action in imposing damages of 1 peso and costs against him.

The judgment is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days, let judgment be rendered in accordance with this decision, and ten days thereafter let the case be remanded to the lower court for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.

[1] 1 Pub. Laws, 675.

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