

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. M. X. BURGOS, JR., DEFENDANT AND APPELLANT.

G. R. No. 38485. January 16, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Manila convicting the defendant-appellant of the crime of libel and sentencing him to pay a fine of P100.

During the years 1929 and 1930, the appellant was the managing editor of the Philippines Herald, a reputable daily newspaper published in the English language and of general circulation in the Philippine Islands. The information charges that as such managing editor, he published in the Philippines Herald "a series of defamatory and libelous articles" which are reproduced in full and extend over seven typewritten pages in the information. It is alleged that the appellant published said articles "for the purpose of impeaching the virtue, reputation, integrity, and honesty of Jose Topacio, then Director of the Bureau of Posts, and with the evident intent of exposing him to public hatred, contempt, and ridicule, both in his capacity as such Director of Posts and as a private citizen."

As a background for the understanding of the articles complained of, it should be noted that on May 8, 1929, the Secretary of Commerce and Communications, by Department Order No. 89, appointed a committee of investigators to report on the manner in which the Bureau of Posts was administered with respect to its various functions and activities and special reference to the following matters (Exhibit 20) :

- "1. The manufacture and sale of postage stamps, including special issues;
- "2. The management and administration of the Post and Telegraph Review;
- "3. The method of requisitions for and use of supplies and equipment in the central and provincial offices and the manner of accounting therefor;
- "4. The handling and delivery of mail subject to customs duty;
- "5. The administration and handling of the registry systems, money orders, telegraphic transfers, indemnity system, C. O. D., and insured parcels; and
- "6. Any other feature or activities of the Bureau of Posts which the committee may, in the course of its work, find it necessary and advisable to investigate."

On November 27, 1929, the committee of investigators made its report (Exhibit 18), which is as follows:[1]

On November 27, 1929, the Philippines Herald published Topacio's reply to the eight charges made by the investigating committee.

On March 27, 1930 (Exhibit 1), the Governor-General called for the resignation of Topacio as Director of Posts effective immediately, stating that after careful consideration of the complete record in the administrative

investigation, Director Topacio "lost the confidence of your Department Secretary and myself and your usefulness to the Government has terminated."

It was during the course of the administrative proceedings conducted by the investigating committee that the Philippines Herald published the following four articles which are set up in the information as being libelous:

"CHARGES AGAINST TOPACIO TO BE FILED BY PROBES BEFORE END OF OCTOBER

"Investigators To Hold Him Directly or Indirectly Responsible for Nearly All Anomalies

"Concrete charges will be filed against Director of Posts Jose Topacio before the end of this month by the special investigating committee of the post office in connection with the anomalies in the various divisions of the Bureau as well as in different transactions in which the Government is involved, it was learned in official circles yesterday.

"The special investigating committee is now preparing the different charges against Director Topacio, it was learned. Director Topacio, according to the findings of the committee, is either directly or indirectly involved in the various irregularities committed in the Bureau of Posts particularly those in the property and mailing divisions. The committee holds Director Topacio responsible for the shortage in the property division amounting to more than P150,000, and for the apparent lax in supervision over the different divisions which made possible the existence of gross irregularities.

"Director Topacio has already been officially informed by the investigating committee that his investigation is finished. He was, however, made to understand by the chairman of the committee, that the probe committee is ready at any time to listen to any explanation or any witness he may present for his defense. The posts head will be given five days by the committee to answer the charges now being prepared against him.

"One of the gravest charges against Director Topacio is in connection with the falsification of practically all requisitions for supplies in the property division. According to testimonies of former cashier Buenaventura and other postal officials, Director Topacio signs all requisitions for supplies of the bureau, and oftentimes what requisitions should be made.

"The committee, it was learned yesterday, is filing separate charges against Director Topacio in connection with the following: smuggling opium into the mails, the loss of stamps amounting to P374,000, publication of the POST AND telegraph review personally edited by Director Topacio, the shortage in the property division, and various other anomalies.

"It was announced yesterday that no more suspensions or dismissals will be ordered until after formal charges have been filed against Director Topacio, before the end of the month. After the committee is through with Director Topacio, it will concentrate on the property division where practically all of the officials and employees and laborers are reported to have directly or indirectly participated in the falsification of requisitions which resulted in a shortage of more than P150,000.

"The investigating committee has temporarily suspended the investigation of the property division pending failure of several laborers from that division to appear. The investigation will be resumed early next month, it was indicated yesterday." (Published October 18, 1929.)

Second Article

"POSTAL HEAD IMPLICATED IN EVERY IRREGULARITY, SPECIAL PROBES FIND

"Director To Be Given Five Days To Reply To Charges; Inquiry Now Nearing Close

"Eight principal charges will be formally filed by the special investigating committee of the Bureau of Posts against Director of Posts Jose Topacio on or before November 15 in connection with the various anomalies in

the administration of the post office, it was learned from official circles yesterday.

"Director Topacio, the special investigators found, has some connection either directly or indirectly with practically every phase of the irregularities in the Bureau of Posts, particularly those unearthed in the mailing, property and money order divisions. The investigating committee is now busy preparing the charges against the Posts head.

"The probe committee holds Director Topacio civilly responsible for the shortage in the accounts of the Bureau which is estimated conservatively at half a million pesos. Separate charges are also being preferred against Director Topacio in connection with the publication of the POST AND TELEGRAPH REVIEW, the commemorative stamps, the smuggling of opium through the mails, and the anomalies in the preparation of requisitions for supplies in the property division, which resulted in the loss of a considerable sum to the Government.

"Several minor charges will be filed against Director Topacio in addition to the eight principal ones, it was learned. These charges have something to do with the administration of the various divisions of the Bureau of Posts and outside transaction in which the post office is involved.

"Director Topacio will be given five days within which to answer the charges preferred against him by the special investigating committee. The recommendations of the committee will be submitted earlier in order to give ample time for Secretary Filemon Perez of Commerce and Communications to study the matter, before the end of the month.

"It was indicated yesterday that the investigation of the post-office anomalies is now practically through. Fiscal Arsenio Paez, chairman of the committee, is working on the charges against the Posts head. The two other members of the committee are in the provinces on vacation. Colonel Francisco, whose leave expires next Monday, is not expected in the city until the end of this month in time for the 'finishing touches' of the probe.

"Secretary Perez is expected to render his final decision on the case before the end of this month. His decision will be largely based on the findings of the special investigating committee and the auditors specially detained at the property division to make an inventory of the supplies and materials.

"The special auditors, in their recent report to the committee in connection with the inventory, hold Director Topacio accountable for the shortage in the accounts amounting to more than P150,000. According to the findings of the auditors, the Government suffered losses in the purchase of supplies for the provinces in view of an unsystematic requisition system long practised in the bureau.

"The investigation of the Bureau of Posts was started last May shortly after the departure of Director Topacio as one of the two Philippine delegates to the World Postal Congress held in London. As a result of the investigation, 11 postal officials and employees were subsequently either dismissed or forced to resign. Five more employees connected with the property division are facing charges." (Published November 10, 1929.)

Third Article

"NEW INQUIRY FOLLOWS PAEZ RECOMMENDATION TO COMMERCE SECRETARY

"Valuable Portions of Collection Believed Missing; Quilon Designated for Job

"Revision of the foreign stamps in stock in the Bureau of Posts was ordered yesterday by Secretary Filemon Perez of Commerce and Communications, upon recommendation of Fiscal Arsenio Paez, chairman of the special postal probe committee, following alleged disappearance of foreign stamps, it was learned yesterday at the Ayuntamiento.

"Nicolas Quilon, superintendent of the inspection division of the post office, started the check-up yesterday. He is expected to be through with his work, and get his report ready sometime next week.

"It was indicated yesterday that any loss which might be discovered in the foreign stamps collection will be charged against the official in charge of the stock. Considerable quantity of the collection of foreign stamps in the post-office is reported to have disappeared.

"The special investigating committee is now preparing the charges against the postal officials responsible for the various anomalies in the Bureau of Posts. Formal charges will be filed shortly.

"It is understood that eight principal charges will be filed against Director of Posts Jose Topacio. According to the findings of the committee, the Posts head is directly or indirectly connected with practically every phase of irregularities unearthed in the Bureau." (Published November 15, 1929.)

Fourth Article

"DIRECTOR TOPACIO IS 'DOOMED', SAYS COMMITTEEMAN

"SPECIAL INVESTIGATORS HOLD HIM RESPONSIBLE FOR ANOMALIES AS CHIEF OF POSTS BUREAU

"Committee Will Give J. Ruiz Clean Slate

"Theory of Defense Director Is Expected To Put Up Is Not Sustained By Inquiry Board

"The main line of defense which Director Jose Topacio is expected to pursue in answering the charges to be filed against him by the special investigating committee on the Bureau of Posts anomalies will fail as the investigators have virtually decided to give Acting Director Juan Ruiz a clean slate and to hold Mr. Topacio responsible as Chief of the Bureau, for the irregularities, it was learned from a ranking member of the committee yesterday.

"In his testimony before the investigators, Director Topacio sought to clear himself by shifting the blame on the Acting Director. The committee has also been informed that Mr. Topacio is now exerting all efforts to gather incriminating data and facts against Mr. Ruiz.

"In this connection, Fiscal Arsenio Paez declared some time ago that the question involves a difficult point of law and admitted that Director Topacio's contention may be justified by the accounting law. Director Topacio maintains that the anomalies may have taken place during his absence and further points out that he was given a certificate of clearance by Ruiz and other division chiefs before he left the Islands to attend the postal convention in London.

"After a careful study of the whole question, however, it is understood that the special committee has come to the conclusion that Director Topacio and not Mr. Ruiz should answer for the postal anomalies. It was explained that the irregularities did not take place during Mr. Topacio's absence, but while he was in the Bureau as director.

"Two ranking members of the special committee have intimated to the Herald that Director Topacio is 'doomed', and that he has 'not the slightest chance to escape' from the charges to be presented by the committee. It is understood that many concrete charges, most of them administrative in nature, but some of them making Mr. Topacio liable to criminal prosecution, will be filed by the committee within two weeks.

"The investigation into the foreign stamps collection of the Bureau of Posts, now being conducted by the committee with the aid of Nicolas Quilon of the Bureau of Posts, is still going on. It is reported that a great part of the collection have disappeared." (Published November 19, 1929.)

As a result of the findings of the investigating committee, the Government of the Philippine Islands brought suit against Jose Topacio to recover P153,470.63. A photograph taken during the trial of this case appeared in the

Philippines Herald of February 14, 1930, which was accompanied by the following explanation:

"GOVERNMENT OPENS EFFORT IN COURT TO RECOVER P153,470.63 FROM POSTS DIRECTOR JOSE TOPACIO

"The photograph shows a view of the courtroom during the trial of Director Jose Topacio of the Bureau of Posts which opened before Judge Imperial of Manila yesterday. The accused is shown at the end of the table standing between his attorneys, Messrs. Guevara and Del Rosario." (February 14, 1930.) The publication of the photograph and the explanation are set up in the information as a libelous publication.

The result of the Government's suit for the said P153,470.63 is stated in an issue of the Philippines Herald of June 2, 1930, as follows and constitutes the sixth of the alleged libelous articles set out in the information:

"COURT ACQUITS TOPACIO, PAYS SALARY CLAIMS

"Government Fails To Collect Big Sum From Former Director of Posts

"P100,000 Claim Also Dismissed

"Attempt of Accused To Collect Damages Fails Also; Perez Comments

"The Insular Government this morning lost its claim instituted in the City Court of First Instance against former Director Topacio of Posts in connection with alleged damages amounting to P153,470.63 sustained by the Government through Topacio's questionable conduct during his incumbency. Judge Carlos A. Imperial, who heard the case, rendered his decision this morning absolving the former director.

"In accordance with the decision, the former director will recover from the Government P2,773.42 which represents the expenses he incurred when he went to London as Philippine delegate to the International Posts Convention held there in 1929, and P4,200 representing his salary from the date of his arrival from London to the time he submitted his resignation as Director of the Bureau of Posts.

"In his counterclaim, Mr. Topacio asked for damages amounting to P100,000 he alleged to have sustained as a result of the attachment of all his properties, real and personal. Judge Imperial did not sustain the contention of the former director, also absolving the Insular Government of the demand for damages. The judge says that there have been sufficient grounds for the attachment asked by the Government, among the incidents mentioned being the sale of certain shares owned by the defendant during the pendency of his case.

"The court also contends that the damages supposed to have been sustained by the former director were not proven, being merely uncertain and speculative.

"The court based its decision on the ground that it had not been shown that the defendant had been negligent in the performance of his duties, resulting in the loss alleged to have been sustained by the Government.

"The court accepts the theory of the Office of the Attorney-General that the accounts of the former director could be reopened by the Insular Auditor. It was contended by the defendant that the reopening of the accounts of the former director after they had been approved was illegal.

"Likewise the court sustains the contention that the former Director of Posts cannot be held liable for the negligence of his subordinates. To sustain the contrary is inconceivable under the present system of government. This ruling is in conflict with an opinion rendered by the corresponding Department Secretary that the chief of an office is responsible for the losses which may be caused through the negligence of his subordinates.

"With regard to the salary of the former chief of the Bureau of Posts, the decision says that there has been no proof that he was under suspension from the time of his arrival from London to the date of his resignation, and,

therefore, he should be paid the corresponding salaries for that period of time.

"The court orders the attachment of his properties discharged. However, this order will not take effect until the decision becomes final. The decision will become final 30 days after the Office of the Attorney-General receives official notice of the judgment. This morning no official notice was yet received by the Office of the Attorney-General. So the 30-day period will be counted, most probably, from tomorrow. The 30-day period will hold good only if no appeal is taken during that period of time.

"It is very likely, however, that the case will be appealed to the local Supreme Court and, probably to the Federal Supreme Court.

"Immediately after Solicitor-General Alex. Reyes, who is acting in the place of Attorney-General Delfin Jaranilla who was out this morning, was advised of the decision of the court, he went to the office of the Secretary of Justice for a conference. The decision of the court will be thoroughly studied before a definite step will be taken by the Government. At any rate in which to appeal from the judgment.

"The former director refused the plaintiff holds that there is sufficient ground for an appeal.

"Former Director Topacio refused to make any comment when he was asked this noon to comment on the decision of the court. His lawyers, Attorneys Guillermo B. Guevara of the law firm of Guevara, Francisco, and Recto, and Pantaleon del Rosario, will be notified tomorrow of the decision of the court.

"Whether or not the defendant will appeal from the decision of the court in view of the ruling with regard to the damages of P100,000, it could not be definitely ascertained this morning. It is believed, however, that, unless the plaintiff appeals, the decision will become final.

"The case against the former Director of Posts aired in the local court in accordance with the recommendations of the postal investigating board which inquired into alleged irregularities in the Bureau of Posts. This board has been the subject of bitter criticism on the part of Mr. Topacio and one of his lawyers, Mr. Guevara. The committee was charged with being biased and being ignorant of the real facts of the case.

"Filemon Perez, Secretary of Commerce and Communications, commenting today on the acquittal of Jose Topacio, former Director of Posts, stated that the court decision in no way has anything to do with the administrative case which resulted in the forced resignation of Mr. Topacio.

" 'The case decided by the court,' explained Secretary Perez, 'refers only to the disallowances made by the former Insular Auditor, Ben. F. Wright, against Mr. Topacio. The administrative case investigated by the special postal investigating committee and decided by the Governor-General has not been submitted to the consideration of the court.'"

The court below concluded that "los articulos" are libelous. Neither in the information nor in the decision of the court below nor in the brief of the Solicitor-General in this court is any specific word, phrase, sentence or paragraph quoted or discussed that is thought to be libelous. We are left to grope through a mass of published statements, most of which are admittedly non-libelous, covering seven typewritten pages, in order to sift out expressions which we might guess the prosecution and the court below had in mind as being "defamatory and libelous". Had any previous effort been made to discover and single out supposedly libelous words, had the parties carefully scrutinized the facts instead of indulging in temperamental irrelevancies of fact and nebulous generalities of law, this painful litigation (which so far from alleviating actually irritated the sore spots) might have been avoided.

The court below did not concern itself to single out any specific word, phrase, sentence or paragraph that is libelous. It evidently considered "los articulos" libelous in their entirety. That they are not so in their entirety is obvious.

The information is fatally defective—and this defect was not cured by the evidence—in that it sets out seven pages of published statements alleging in effect that they are all and singly libelous, whereas upon their face, both as a matter of fact and as a matter of law, the greater part thereof is not libelous. Nowhere does the prosecution single out of this mass any expression alleged to be of libelous character. This court is left to grope its way through all these pages to arrive at a surmise as to what statements the prosecution and the court below had in mind when the entire articles were denounced and condemned as libelous. It is elementary law that in any prosecution for libel the offensive expressions must be set out verbatim. In the present case, if there are any such nuggets in the information, they are buried under a mountain of valueless and irrelevant matter. It is not incumbent upon the courts to mine them out. Where an article is lengthy and contains matter that is libelous with much that is not, the libelous matter must be singled out and the prosecution based thereon. (*Jackson vs. State*, 77 Southwestern Reporter, 223.)

The first four articles are reports of proceedings had or to be had in the administrative investigation of the Bureau of Posts and in the courts. The reports seem to us to be reasonably fair and true. The merest glance at their contents shows that the articles which appeared in the news columns of the Herald were published as news items without comment or expressions of opinion whatever of the appellant, either adverse or favorable. There is no evidence in the record tending to show that they were in any way unfair. In so far as the reports, upon information of a member of the investigating committee, state, by way of anticipation, some resolution or conclusion of the committee, agreed upon but not yet formulated, the reports are amply confirmed by the formal charges published on November 27, 1930 (Exhibit 18). The assumption that the proceedings were secret is not borne out by the evidence. Moreover, there is nothing in the Secretary's Order No. 89 (Exhibit 20), by which the investigation was governed, that required or authorized secrecy in the proceedings. Nor was there anything in the nature of the subject matter that required secrecy in the interest of public morals or public welfare—indeed, quite the contrary seems to be true.

As to the fifth and sixth articles which relate to the judicial proceedings, although they are possibly included indiscriminately in the term "los articulos" occurring so often in the decision of the court a quo, it is not clear that they were condemned; nor are they mentioned in the Solicitor-General's brief on this appeal. They are too clearly privileged to require any discussion.

Section 7 of Act No. 277 being an act to define the law of libel, is as follows:

"No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication."

There is no proof of express or actual malice on the part of the appellant in the publication of the six news articles in the Philippines Herald. Such malice is not to be implied from the mere fact of publication. This court stated in the case of *United States vs. Bustos* (37 Phil., 731, 743) :

"A privileged communication should not be subjected to microscopic examination to discover grounds of malice or falsity. Such excessive scrutiny would defeat the protection which the law throws over privileged communication. The ultimate test is that of bona fides. (See *White vs. Nicholls* [1845], 3 How., 266; *Bradley vs. Heath* [1831], 12 Pick. [Mass.], 163; *Kent vs. Bongartz* [1885], 15 R. I., 72; *Street*, Foundations of Legal Liability, vol. 1, pp. 308, 309; *Newell*, Slander and Libel, various citations; 25 Cyc., pages 385 et seq.)"

There is not a scintilla of evidence in the record that impugns the bona fides of the Philippines Herald or of the appellant as its managing editor, in the publication of the articles in question.

For the reasons stated, the judgment of the court below is reversed with costs de oficio.

Avancena, C. J., Street, Vickers, and Diaz, JJ., concur.

[1] "CHARGES AGAINST MR. JOSE TOPACIO, DIRECTOR OF POSTS, AS PRESENTED BY THE BUREAU OF POSTS INVESTIGATING COMMITTEE

"1. Mr. Topacio submitted time and again to the Bureau of Audits certain accounts for the Bureau of Posts for the years 1924-1928, which are not true to the facts or are not a faithful record of actual transactions, or which are contrary to the express legal provision? or to accounting requirements, or to the circulars of the Bureau of Audits, notwithstanding the fact that his attention had been repeatedly called thereto. Thus, contrary to the provisions of Act No. 2935, the unexpended balance of appropriation at the end of each year, in the total amount of P490,780.51 was certified to accounts payable when a great portion thereof is not actually owed. This is also true with regard to the cost of office equipment which was charged against special appropriation (Act No. 3213), and the free distribution of medicine (Act No. 2935). Again, supplies and materials issued to the provinces to the value of P50,808.62 were credited twice in the Bureau's accounts (6th indorsement of the Bureau of Audits, dated June 21, 1928). Moreover, not all receipts for supplies issued to the provinces by the Bureau of Posts for the years 1924-1925 were presented as evidence, the total sum amounting to P230,452.35 (see letter of the Bureau of Audits, dated September 2, 1921 and letter of October 18, 1929). Supplies and materials to the value of P4,806.03, alleged to have been issued during the period from June 30, 1926 to March 22, 1929 and which were not received by the requisitioned, were also credited in the accounts. Said accounts also contain false balances in General Form No. C5-A, in violation of the Auditor's General Circular Unnumbered, dated March 14, 1923.

"2. Mr. Topacio did not only ignore the accounting legal provisions, regulations and circulars, but he also disregarded the provisions of the Manual of the Postal and Telegraph Service prepared by the Bureau of Posts and approved by the Department of Commerce and Communications, defining the powers of the superintendents of the different divisions, in that he personally exercised and seized for himself their authority. Thus, Mr. Topacio instructed all the superintendents of divisions and even the Assistant Director to refrain from recommending the promotion of any employee unless so requested by Mr. Topacio, declaring that recommendation not requested by him would be 'considered improper and uncalled for'.

"Mr. Topacio also ignored the order of the Department (No. 73) and made attempts to eliminate the intervention of the Bureau of Supply with regard to purchases for the Bureau of Posts by making orders marked 'to be selected', or by advanced deliveries of the articles before the filing of the requisition therefor, or by direct purchases without considering the requisites imposed by regulations in such cases (Requisitions Nos. 9134, 151699, 152209, 151688, 151515, etc.). In a letter of Mr. Topacio to the manager of a Manila business firm, he said that the latter got the lion's share of the purchases of the Bureau of Posts because he (the manager) is his good friend.

"And those who dared to differ with him were separated or dropped from the service. Thus, Mr. Moncayo, as Superintendent of the Money Order Division, told his assistant not to do work for the Review, Mr. Topacio's private publication, during office hours. This came to the knowledge of the latter. Since then Mr. Moncayo was harassed and, later on, for a futile cause, dropped from the service. Mr. Santos Javier another superintendent, for having uttered certain comment unfavorable to Mr. Topacio relative to the launch deal, was likewise harassed and humiliated, until he was obliged to seek transfer to the City of Manila, and even in his latter position, Mr. Topacio continued persecuting him to the great damage of the latter. Messrs. Novenario, Hombrebueno and others, for like cause, were similarly persecuted.

"3. Mr. Topacio, as Director of Posts, engaged in the business of speculation in stamps issued by his own bureau, an act against all rules of good administration and highly demoralizing in effect. In the surcharge of L. 0. F. stamps, Mr. Topacio ordered 6,000 sets only, which were far less than the reservations made by the public before the surcharging. Mr. Carlos Young reserved 1,000 sets of these stamps; Mr. B. Miller, 500; Mr. Quay

Qua, 400; Mr. L. Cotton, 500; Mr. Goldenberg, 500; etc., but each was given only 30 sets. A few hours after these stamps were put on sale at the post office windows, none could be gotten any more. The public was informed that they were all sold. It appears, however, that Mr. Topacio reserved 1,500 sets for himself, some of which were taken by him to Europe during his last trip. The face value of one set of L. O. F. stamps is P2.34 but due to the limited amount ordered surcharged, the price has gone up, and now the ordinary market quotation ranges from P15 to P20 a set.

"Unperforated stamps which are not generally used for mail purposes were specially ordered printed by Mr. Topacio for speculative purposes, without notifying the Department of the nature thereof. The deal appeared in the name of Mr. Lambert, his friend. Obstacles were put so as to deny subsequent petitions of philatelists, some of whom are Filipinos, for the printing and sale to the public of similar stamps, evidently to favor the speculation in said stamps.

"The collection of foreign stamps, probably the biggest in the Philippines and worth several thousand pesos, has been pilfered in that many of the rare stamps of special value have been forcibly removed therefrom. These stamps were kept by Mr. Florencio Reyes but were left in the office of Mr. Topacio upon the latter's request.

"4. Mr. Topacio took advantage of his official position for his personal benefit and to the detriment of the efficiency of the service. In the publication of the Post & Telegraph Review, which is owned and managed by him, he used the post-office building, typewriters, fixtures and official time of himself and of his employees contrary to the conditions set forth in the permission granted him by the Bureau of Civil Service, the Department of Commerce and Communications and the Council of State. He also used post-office inspectors in soliciting subscriptions among the postal employees in the provinces, who, out of deference, could not help but subscribe, although some of them do not know how to read or speak English in which the Review is published. Every postal employee is supposed to be a subscriber to the Review. Whenever a new man is employed, a copy of the Review, together with a form of authority for the cashier of the bureau to deduct from his salary the amount of subscription, is sent to him.

"Mr. Topacio converted the Money Order Division into a collecting agency of the Review by requiring the superintendent thereof to deduct payments for the subscriptions of more than 2,000 employees from their salaries, which naturally consumed much time and entailed much work, resulting in the delay in the mailing of salary warrants to provincial employees, from whom complaints were received.

"Post-office Inspector Dionisio Cerillo, who has a record against him and whose efficiency leaves much to be desired, was given successive rapid promotions and automobile allowance, altho a comparatively small amount of official work was assigned to him, simply because Mr. Cerillo secured most of the advertisements for the Review and had been running all sorts of errands therefor.

"Advertisers to the Review are given by Mr. Topacio undue advantage over firms which are not advertisers in the purchase of supplies and materials and equipment, paying for the articles purchased from such advertisers higher prices than those generally obtained by the Bureau of Supply. (Transfer by his order in 1924 of purchases from Manila Trading & Supply Co., then not an advertiser, to Motor Service Co. which began to advertise; leather article from Riu Hermanos, an advertiser, but not from Manila Harness Co. which was not an advertiser; Req. No. 151515, etc.)

"There were other cases showing that he took advantage of his official position for his personal benefit even in small matters. For instance, he paid the gas consumption of the heater of the bath used by him from the funds of the athletic association without the knowledge and approval of such association notwithstanding that no member thereof used the bath. He also established a restaurant in the premises of the Bureau of Posts, although there was no need for it, because there are restaurants and 'carinderias' in the vicinity of the bureau, where sanitary food at prices within the reach of all, are sold. He gave the business to his townmates. It occupied a big space in the post-office building which could have been used for more important functions of the Bureau. The Bureau pays rent but no rent was collected from his townmates. Tables, chairs, and certain other

equipment used in the restaurant were ordered purchased by him out of the funds of the Bureau's Athletic Association without the knowledge and approval of such association.

"5. The official conduct of Mr. Topacio in relation to the requisitions for supplies and materials, especially from cross-arms, bluestones, iron telegraph poles, lead seals and crowfoot obtained from the Zamora firm, is widely open to suspicion. An excessive number of cross-arms sufficient for three years' use was ordered in a single requisition, contrary to the provisions of the Executive Order on the matter. Notwithstanding the poor make and quality and exorbitant prices of such cross-arms, Mr. Topacio continued requisitioning for same, authorizing warrants in payment thereof for more than double the price of cross-arms of better quality and expert workmanship previously acquired by the bureau. A good number of such cross-arms, which broke to pieces due to poor quality while being handled in the usual way or being placed on telegraph poles, were returned to said local manufacturer over two years ago for replacement, but they have not as yet been replaced and no demand therefor has ever been made. Of the 9,000 cross-arms supposed to have been actually supplied by the Zamora firm, about 2,000 are unaccounted for.

"Bluestones in constant use by the bureau for the operation of telegraph stations were purchased from said firm in excessive quantities at P0.42 per pound for a number of years when the Bureau used to get it from the United States at P0.13 a pound.

"In 1926, there were issued 8,676 kilos of lead seal in the Manila Post Office which were used in dispatching 181,615 sacks of mail, or about 21 mail sacks to each kilo of lead seal. It appeared that one kilo of lead seal contains from 95 to 115 pieces of lead seal, depending upon the kind, and that only one piece issued for every sack. There were, therefore, about 80 pieces of lead seal for every kilo unaccounted for, and the loss to the Government during the period 1924-1928 in lead seal alone, amounted to more than P21,000. In order to conceal the loss, some of the records thereof were missing, others were altered, or otherwise falsified.

"Other materials, like crowfoot and iron poles, were also supplied by the Zamora firm. A good number of crowfoot made of lead was accepted in place of zinc, as specified in the requisitions, the latter costing about four times as much as the former. Iron poles not of the length, weight, or size specified in the requisition, were accepted by the bureau.

"These were not only true of the purchases of supplies and materials made from said firm, but also true of the contract entered into by the Bureau of Posts. Thus, in spite of the communication of the Director of Public Works, dated June 20, 1926, inviting the attention of Mr. Topacio to the fact that the Zamora Brothers were not expert radio constructors, that the nature of the bid presented by them showed immaturity, that many of the conditions of the contract were impossible of performance, and that since radio science at the time was not perfect, a trial only should be made to avoid loss to the government, Mr. Topacio insisted and, in fact, awarded the contract for the construction of ten radio short-wave stations, costing P128,811.25, to the Zamora Brothers. Many of the conditions, as predicted by the Director of Public Works, were not fulfilled, resulting in a sort of compromise whereby a small sum of seven thousand pesos was deducted from the amount covering the cost of the stations, as penalty. In these dealings with the Zamora firm, the Bureau of Posts played a losing hand.

"6. Mr. Topacio was grossly negligent in the supervision of the activities of the Bureau of Posts. The conduct observed by him shows indifference and carelessness in safeguarding the properties and interests of the Bureau.

"(a) Bluestones and cross-arms were bought at from 200 to 300 per cent over the price the Bureau of Posts used to pay. He approved the purchase of said materials at such exorbitant prices and authorized warrants in payment thereof, notwithstanding that his attention was called thereto. Carbon paper costing only P.006 was bought at P.06 a sheet.

"(b) Postage stamps to the value of P375.000 were lost during a number of years thru substitution in his bureau and the loss was not discovered until the present investigation.

"(c) Dutiable goods and prohibited drug, such as precious stones and opium, passed thru the mails in great quantities for a number of years without his being able to stop same. On the contrary, letters denouncing Dionisio Cerillo, the master mind in the importation of opium, thru the mail, were turned over by him to Mr. Cerillo.

"(d) According to the inventory of supplies and materials of the Bureau of Posts made by the representatives of the Bureau of Audits, there is a shortage of more than P51,000. Fake or short deliveries were found, important records, like issue vouchers, have been tampered with, and many of them were found missing.

"(e) An unnecessary big stock of stamps worth more than 50 million pesos, sufficient to last a number of years, is kept in the Bureau, without providing an adequate and suitable place for safekeeping. The unusually large number of stamps made checking difficult and cumbersome, and facilitated the commission of irregularities. He did not pay attention to the destruction of damaged stamps amounting at times to the big sum of P67,000 a year, and he did not even take the trouble of knowing the procedure of the Committee on Damaged Stamps.

"(f) There is no system in the distribution of supplies and materials to provincial post offices, which resulted in overstocking thereof, sufficient to last for many years and in the deterioration of many of them, the value amounting to several thousand pesos. There are no statistics of monthly or yearly consumption of supplies which could serve as guide in filling the requisitions of the different post offices.

"(g) Neither the cost of each telegraph project nor the cost of maintenance and repairs of any line is known.

"7. Thru a series of omissions, negligence and carelessness committed by him since 1924 or 1925 as described in the foregoing charges, the Bureau of Posts lost several hundred thousand pesos. On the other hand, on or about that time, Mr. Topacio began to invest shares and stocks, and notwithstanding his big family of nine to support, he is now possessed with 5,975 shares in five sugar centrals, 100 shares in one book company, 202 paid-up and 99 ordinary shares in two savings and loan associations, the total face value of which amounts to approximately P120,000 aside from two lots and three houses in the City of Manila, assessed at P26,344, and other properties. In loan and building associations alone, he had bought and paid stocks during 1925 to 1927 to the value of nearly P40,000. Recently, however, and during this investigation, he began disposing of his shares among which were the 2,198 shares he owned in one of the sugar centrals.

"8. Shortly, after the confirmation of the appointment of Mr. Topacio as Director, charges were filed against him relative to his participation in certain transactions involving funds and properties of his own bureau. Among these charges were those of the shady purchase of a steam launch to be used by the Bureau of Posts for the transportation of mails; the purchase by him of old materials of the old post office at a very insignificant price, using same in the construction of his house; and the use of the services of government employees for his own personal benefit. These cases were then referred to the Bureau of Audits for investigation. Upon submission of the report thereon, the then Governor-General Wood altho ordered it filed, made the following notation:

" 'File. No definite proof. At next offense, ask for resignation as a matter of public policy.' Records thus show that the GovernorGeneral had, on filing these papers, already decided to ask for his resignation at the next offense. Notwithstanding said charges and the warning which must have come to his knowledge, Mr. Topacio went back to his old practices which were highly prejudicial to the interest of the government."

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