

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JULIO BUSTOS, DEFENDANT AND APPELLANT.

G.R. No. 4280. February 01, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 20th day of August, 1906, the prosecuting attorney of the city of Manila presented a complaint against the defendant, charging him with the crime of libel. On the same day the defendant was arrested and brought before the court and presented a bond for his appearance.

On the 24th day of August, the defendant presented a motion asking for a bill of particulars, which motion was denied by the court on the 28th day of August, to which ruling of the court the defendant duly excepted.

On the 30th day of August, the defendant presented a demurrer to said complaint, which demurrer was overruled by the court.

On the 5th day of September, 1906, the defendant was duly arraigned and pleaded "not guilty," and the cause was duly set down for trial on the 15th day of October, 1906. The trial of the cause was actually begun on the 23d day of October, 1906.

On the 25th day of October, 1906, the prosecuting attorney of the city of Manila, after having obtained permission of the court, filed an amended complaint in said cause, which complaint was signed and sworn to by V. Singson Encarnacion. The amended complaint was as follows:

"The undersigned accuses Julio Bustos of the crime of libel, committed as follows:

"That on or about the 21st day of March, 1906, in the city of Manila, Philippine Islands, the said Julio Bustos did willfully, unlawfully, feloniously, with malicious intent to injure and disgrace Vicente Singson Encarnacion, who was then and there the provincial fiscal of the Province of Ilocos Sur, Philippine Islands, and Dionisio Chanco, who was then and there judge of the Court of First Instance for the Second Judicial District of the Philippine Islands, write and publish, and procure to be written and published, a certain false, scandalous, malicious, defamatory, and injurious publication, defamation and libel of and concerning the said Vicente Singson Encarnacion and the said Dionisio Chanco, in one part of which libel there were and are contained, amongst other things, certain false, scandalous, malicious, defamatory, and injurious matters and things of and concerning the said Vicente Singson Encarnacion and the said Dionisio Chanco, according to the tenor and effect following, that is to say:

""(c) Away back in 1904, a horrible murder perpetrated in the presence of many persons, and which produced general indignation among all the people of the town, took place in the municipality of Narvacan, Province of Ilocos Sur. The justice of the peace of that municipality made the proper preliminary examination in which all of the eyewitnesses to the crime testified, their testimony constituting conclusive proof. In view of this fact the justice of the peace found the accused guilty and bound him over for trial in the Court of First Instance of Ilocos Sur where the case was registered as No. 90. The fiscal, Don Vicente Singson, without bringing

information asked for the dismissal of the said case, and the same was dismissed, much to the surprise of all persons who had a knowledge of the facts.

"There are rumors current in Vigan, which I have heard from many persons, that the accused in the said cause No. 90 won over the fiscal, Señor Vicente, Judge Chanco, and the clerk of the court, Señor Alviar, with the sum of P6,000 which was delivered to the said clerk who distributed it among the three.

"(d) These rumors are confirmed by others with reference to the clerk of the court, Alviar, for it is said that when he was removed from office, the authority removing him recommended to the judicial authorities of Vigan that he be prosecuted for estafa. This, however, was not done, no complaint ever having been brought up against Clerk Alviar. I have been told that the said clerk publicly stated that if Fiscal Singson and Judge Chanco should dare to prosecute him for estafa they also would be prosecuted as they had been parties to the acts committed by the said clerk,'—

"tending to impeach the honesty, virtue, and reputation of the said Vicente Singson Encarnacion and the said Dionisio Chanco, and thereby expose them to public hatred, contempt, and ridicule.

"Contrary to the statute in such case made and provided."

The defendant, after having demanded a bill of particulars and after having demurred to said complaint, upon arraignment entered the pleas of "not guilty" and "former jeopardy."

After hearing the evidence adduced during the trial of the cause the lower court found the defendant guilty of the crime charged in said complaint and sentenced him to be imprisoned in the Insular Prison of Bilibid for a period of three months and to pay a fine of P100 and the costs of the prosecution. From this sentence the defendant appealed.

From the record it appears that sometime in the early part of March, 1906, the defendant sent a communication to the then honorable Secretary of Justice, Mr. Ide, which was personally delivered by the defendant to the private secretary of the said Secretary, and later by the said private secretary to Mr. Ide, which communication, among many other things, contained the statements found in paragraphs (c) and (d) of the above complaint. This communication contains many statements reflecting upon the official integrity of the judge of the Court of First Instance of the Province of Ilocos Sur, of the fiscal of said province and of the clerk of said court. In the present case, however, the prosecuting attorney relies only upon those statements found in said communication quoted as paragraphs (c) and (d).

The attorney for the appellant admits that the statement made in writing to the said Secretary of Justice tended to impeach the honesty, virtue, and reputation of the honorable judge and the fiscal, and under some circumstances would constitute the crime of libel. But there are present in this case certain facts which place them without the provisions of the law.

The appellant bases his defense in this court upon two grounds:

First. That the communication to the Secretary of Justice was a privileged communication; and

Second. That it was made in good faith.

The above-implied admission by the defendant relieves this court of the necessity of discussing the questions whether or not the said communication was libelous, and whether or not it was actually published.

The attorney for the defendant in his brief also states that "it [the official communication] was a duty devolving upon him [the defendant] with a fair and reasonable purpose of protecting his own interest, therefore is a privileged communication. (Sec. 9, Act No. 277.)" The attorney in his brief continues and says:

"This being a privileged communication, the truth or falsity of its contents is not to be taken into consideration. However, it is to be expected that a man, laboring under normal conditions, would have taken steps to satisfy his mind as to the truth or falsity of such rumors before allowing his actions to be governed by them."

The theory of the appellant, judged by the foregoing statements, evidently is that the communication, being privileged and having been made in good faith, the truth or falsity of the statements found in it is of no importance; in other words, the contention of the appellant is that the communication belongs to a class of privileged communications, the truth or falsity of which is of no importance.

Section 1 of Act No. 277 (sec. 3427 of the Compilation of the Acts of the Philippine Commission) defines libel to be "A malicious defamation, expressed either in writing, printing, or by signs or pictures, or the like, or public theatrical exhibitions, tending to blacken the memory of one who is dead or to impeach the honesty, virtue, or reputation, etc., of one who is alive, and thereby expose him to public hatred, contempt, or ridicule."

Section 2 of said law provides the punishment for the offense described in section 1.

It will be noted that section 1 says that "A libel is a malicious defamation," etc. Section 2 which provides the punishment says that "Every person who willfully and with malicious intent to injure another * * * shall be punished," etc.

Section 3 provides that "An injurious publication is presumed to have been malicious, if no justifiable motives for making it are shown."

Under section 1 malice is an essential ingredient of the offense of libel. By section 3 this essential ingredient or element of the offense may be presumed and need not be proved when the defendant fails to prove some justifiable motive. In other words, if the plaintiff should prove in an action for libel that a certain publication "was injurious," it would be unnecessary for him to prove that said publication was made with malice; malice would then be presumed. The burden is then upon the defendant to show that such publication was made with "justifiable motives." If the defendant fails in this he is liable under the law.

Reading sections 1, 2, and 3, without reference to the other provisions of said laws, it would seem that no one can be punished for libel, if by any possibility he can show that the same was published with "justifiable motives." The presence of justifiable motives eliminates the element of malice, and malice is a necessary ingredient of the offense. (U. S. vs. Lerma, 2 Phil. Rep., 254.) Was it the intention of the lawmaking body to relieve all persons from criminal liability for injurious publications simply by showing "justifiable motives?" If that was the intention, then what was the necessity of section 4, for example, which provides that the party committing the acts described in section 1 may be relieved from the punishment provided for in section 2, by permitting him to prove the truth of the alleged libelous matter?

Section 4 relieves the party committing the acts described in section 1 from the punishment provided for in section 2, by permitting him to prove the truth of the alleged libelous matter. By a careful reading of said section 4, it will be seen that the truth is not an absolute defense. Under said section, the alleged libelous matter must not only be proved to be true, but it must be proved that it was published (a) "with good motives," and (b) "for justifiable ends."

If, for example, the defendant in an action for libel should prove that his statements were true and fail to prove that they were published with good motives and for justifiable ends (or with justifiable motives) he would yet be liable to the punishment provided for in said section 2, for the law (sec. 4) expressly provides that, in the absence of proof of "good motives" and "justifiable ends," the defendant shall be convicted.

Reading sections 3 and 4 together, the question rises: May any injurious publication be made, with "good

motives" and "for justifiable ends," which is not true? In other words, if the defendant shows that the publication was made with "justifiable motives," will that relieve him from criminal liability, admitting that the publication was false? This question has been answered in the affirmative in the cases of the United States vs. Lerma (2 Phil. Rep., 254), and United States vs. Crozier (5 Phil. Rep., 621).

It will be difficult to harmonize section 3 with other sections (4 and 9) of the law unless we give practically the same meaning to the phrases "justifiable motives" in section 3, "good motives and justifiable ends" in section 4, and "good faith," etc., in section 9.

It is manifestly impossible to give illustrations of all the defenses which would show "justifiable motives." These must be settled one at a time, from time to time, as cases arise. The law has, however, given us two cases: (a) the truth always when made with good motives and for justifiable ends (sec. 4); and (b) communications made under the conditions enumerated in section 9.

In an action for libel suppose the defendant fails to prove that the injurious publication or communication was true. Can he relieve himself from liability by showing that it was published with "justifiable motives" whether such publication was true or false or even malicious? There is no malice in law when "justifiable motives" exist, and, in the absence of malice, there is no libel under the law. (U. S. vs. Lerma, supra.) But if there is malice in fact, justifiable motives can not exist. The law will not allow one person to injure another by an injurious publication, under the cloak of "good ends" or "justifiable motives," when, as a matter of fact, the publication was made with a malicious intent. It is then a malicious defamation. The law punishes a malicious defamation and it was not intended to permit one to maliciously injure another under the garb of "justifiable motives." When malice in fact is shown to exist the publisher can not be relieved from liability by a pretense of "justifiable motives." Section 3 relieves the plaintiff from the necessity of proving malice simply when no justifiable motives are shown, but it does not relieve the defendant from liability under the guise of "justifiable motives" when malice actually is proved. The defense of "the truth" of the "injurious publication" (sec. 4) and its character as a privileged communication (sec. 9) means nothing more than the truth in one instance and the occasion of making it in the other together with proof of justifiable motive, rebuts the prima facie inference of malice in law and throws upon the plaintiff or the State, the onus of proving malice in fact. The publication of a malicious defamation, whether it be true or not, is clearly an offense under Act No. 277.

Section 9 of said law furnishes another justification for the publication of matter that might be, under some conditions, considered libelous. Said section 9 provides that—

"A private communication made by any person to another in good faith, in the performance of any duty, whether legal, moral, or social, solely with the fair and reasonable purpose of protecting the interests of the person making the communication, or in the interests of the person to whom the communication is made, is a privileged communication, and the person making the same shall not be guilty of libel nor be within the provisions of this Act."

It will be noted from this section that, in order that a private communication, libelous in character, shall be privileged, certain conditions must exist:

- (a) It must be made in good faith;
- (b) It must be made in the performance of a duty, which duty must be legal, moral, or social; and
- (c) It must be made solely with the fair and reasonable purpose of protecting—
 - (1) The interests of the person making the communication; or

(2) The interests of the person to whom the communication is made.

It will be seen, then, from the provisions of this section that, if the communication was made, in good faith, for example, or in the performance of some legal, moral, or social duty, and not for the sole purpose of protecting the interests of the person making the same or the interests of the person to whom it was made, it would not be a privileged communication. Granting that, under said section 9, a private communication is made and published, in good faith, in the performance of a duty and with the sole purpose of the protection mentioned in said section, but is false and malicious, is it entitled to the privilege mentioned in said section, and is the party relieved from liability when the communication was made "with good motives" and for "justifiable ends" or with "justifiable motives?" Malicious motives are inconsistent with "good motives," for "justifiable ends" and with "justifiable motives." It was not the purpose of the Legislature to make the "private communication" in section 9 "absolutely privileged." Such communications must also be free from malice.

Section 9 must be read in connection with sections 3 and 4. Section 4 provides that in all criminal prosecutions, etc., the party charged with libel may be relieved from criminal responsibility, under the conditions therein mentioned. It would seem, therefore, that one who is charged with libel and seeks the privilege granted under section 9, must always comply with the conditions, under which the privilege is granted, mentioned in sections 3 and 4. The mere fact that a private communication is made in good faith, etc., under section 9, will not relieve the party from responsibility, unless he can show that the same was made "with good motives," "for justifiable ends," and "with justifiable motives" and without malice.

In the case of the *United States vs. Lerma* (2 Phil. Rep., 254), the communication was a private communication (a petition) made to a justice of the peace before whom a criminal complaint was pending against the defendant. The lower court found the defendant guilty.

In that case this court found (p. 259) that—

"The matter contained in the petition presented to the justice by the defendant all related to the supposed prosecutions against the latter, and we think the circumstances of the case show quite conclusively that the sole motive of the defendant in presenting the petition was to defend himself against those charges. It was not an attempt to make use of judicial proceedings as a vehicle for the utterance of slander. It was merely an exercise of the natural right which a person accused of crime possesses, and which it is for the public interests that he should enjoy unhampered so long as he exercises it in good faith and in a proper manner, to bring to the notice of the tribunal which is to pass upon his guilt all such considerations as he thinks may influence its judgment in his behalf, even though he may in so doing "incidentally disparage private character." In the sense of the law we think, therefore, that the defendant's motives must be regarded as justifiable."

In the case of *Lerma* (supra) he believed that he was being persecuted and, after stating his grounds for this belief, petitioned the justice of the peace to hear him before any sentence should be rendered against him. This right to be heard was a right accorded to him under the law. He simply stated in his petition what he had a right to say before the justice of the peace in open court. (Sec. 7, Act No. 277.) There was no malice shown. He merely exercised a natural right which he possessed. His petition was made to one who had a right to hear it and one who had power to remedy the wrong if one had been done. The petition was clearly presented in good faith and with the sole purpose of protecting the interest of the one making it and with justifiable motives. Had this same communication been made to a third person who had no interest to be protected, or who could in no way protect the interest of the one making it, even though with good faith, would it have been protected under section 9? Section 9 provides that such communications must be made with the sole purpose of protecting the interest (a) of the one making it and (b) or of the one to whom it is made. This section clearly implies that such communications must be made not only for the purpose of protecting the interest of the one making it, but that such communications must be made to

persons who have the power to furnish such protection. Otherwise such communications would be idle and that provision of the law meaningless. In a government where all or practically all of the higher officials are appointed without the consent of the governed, every avenue of communication between the former and the latter should be left open, and this was one of the evident purposes of section 9. Said section did not contemplate, however, that the files of any and every department of the government should be filled with idle effusions of malignity and detraction with perfect immunity. Its purpose, among other things, was to permit all interested persons or citizens with grievances, to freely communicate, with immunity, to the persons who could furnish the protection asked for, requiring, however, at all times that such petitions or communications shall be made in good faith or "with justifiable motives." This privilege must not be abused. If it appears that the communication was made maliciously or to persons who could not furnish the protection, then the mere pretext can not afford protection under the law, nor furnish an occasion for a privileged communication.

In the present case the communication (a part of which is found in paragraphs (c) and (d) in the complaint) was a private one. It was made with the evident intention of having said judge and prosecuting attorney removed from office. There was no pretense that the injurious communication was made for the sole purpose of protecting the interests of the defendant or for the purpose of protecting the interests of the Secretary of Justice to whom it was made. The concluding part of said communication shows quite a different purpose. The conclusion is:

"Said facts sufficiently explain the partiality with which they [the judge and fiscal] have both acted in the criminal case against Jose Rivero for robbery. But as the dismissal ordered in this case does not, in my opinion, prevent the bringing of a new case against him for the same crime, of robbery, that is to say, for the acts which have been denounced, I appeal to Your Honor [the Secretary of Justice] petitioning that you issue the proper order to the end that some fiscal of the Government other than the provincial fiscal of Ilocos Sur, Sr. Vicente Singson, bring information of the acts against the said Jose Rivero, and that he be tried by some judge other than the Honorable Dionisio Chanco.

"Respectfully petitioned.

(Signed) "JULIO BUSTOS, petitioner."

The burden of the petition seems to be, as indicated by the above quotation, to have the said Jose Rivero brought to trial upon a charge for the crime of robbery.

Neither do we believe that the communication was made in good faith. The defendant, during the trial of the cause, admitted that he had personally made no investigation with reference to the truth of many of the statements made in said communication, and especially with reference to the statements relating to the rumors that the said judge and prosecuting attorney had received a bribe in a particular case. The defendant stated that he had heard the said rumor from two or three persons. These persons were called as witnesses and they each stated that they had made no investigation whatever with reference to the rumors referring to the said bribery and the other illegal acts charged against the said judge and fiscal.

It seems clear to us that the communication was malicious, was not made in good faith, nor was it made with the sole purpose of protecting either the interests of the defendant or for protecting the interests of the Secretary of Finance and Justice, and is, therefore, not a privileged communication. The communication having been made, as we believe, with malice, and without the presence of the justifiable motives mentioned in said section 9, we are of the opinion and so hold that the sentence of the lower court should be revoked and that the defendant should be sentenced to be imprisoned for a period of six months, to pay a fine of P100, and to pay the costs.

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

Tracey, J., concurs in the result.

DISSENTING

CARSON, J.:

I dissent.

Believing as I do that the application of the provisions of the Libel Law to the facts in this case, for the purpose of determining, first, whether the communication complained of was a privileged one, and, second, whether, if the privilege existed, the accused is entitled to exemption thereunder, if it should become a precedent in this jurisdiction, places almost insurmountable difficulties in the way of a clean administration of government in these Islands, and materially abridges the right of the people to petition the Government for redress of grievances, and seek relief from abuses at the hands of those set in authority over them, I deem it my duty to set out the reasons upon which I base my opinion.

The basic facts in the case, so far as they are developed by the evidence of record and are necessary for the purpose of this opinion, are for the most part undisputed.

Bustos, the accused in this case, was the private prosecutor and complaining witness in a criminal action in the Court of First Instance of the Province of Ilocos Sur. In that action, after an exhaustive preliminary examination, the defendant Riviera, was held for trial in the Court of First Instance by the justice of the peace before whom the complaint was filed; but the complaint was dismissed in that court, without trial, upon the motion of the provincial fiscal or prosecuting attorney, and apparently without investigation by the trial judge. The civil damages to which Bustos claims he would have been entitled upon a judgment of conviction in that action amounted to more than P25,000; and the procedure adopted by him in instituting a criminal action, with a view to the recovery of civil damages, was adopted under advice of counsel, and was in accordance with the usual practice under Spanish procedural law, a practice which is still generally followed under those provisions of the Spanish Penal Code which are continued in force, and which permit the recovery of civil damages by the offended party in criminal actions, where the facts are such as to sustain a judgment of conviction.

In the province wherein this litigation was pending, a rumor had gained more or less circulation to the effect that the local law officers of the Government were guilty of malfeasance of office, and that the trial judge, the provincial fiscal or prosecuting attorney, the provincial clerk of the court, and perhaps some other court officials were corrupt, and had taken bribes on one or more occasions. No evidence appears in the record which casts any reflection upon the integrity of the judge or the provincial fiscal; but it does appear that some time before the institution of these proceedings, the then clerk of the Court of First Instance was dismissed from office as a result of financial irregularities, and maladministration in the conduct of his office; and there is evidence in the record to the effect that this person, on one or more occasions, threatened to involve the judge and provincial fiscal in his own downfall, if they pressed criminal proceedings against him, intimating that they were parties with him in the financial wrongdoing with which he was charged. Bustos, believing that the complaint filed by him had been improperly dismissed, and claiming that he did not believe that he could with safety submit the conduct and judgment of his case to the prosecuting attorney and judge of the court wherein it was filed, came to Manila and laid his case verbally before the Attorney-General of the Philippine Islands, and by his advice before the Honorable H. C. Ide, then Secretary of Finance and Justice and Acting Governor-General of the Philippine Islands. That official informed Bustos that he could take no action on a mere verbal complaint, which would not justify the institution of the necessary investigation, and directed or suggested that the accused file a written complaint, expressly or impliedly agreeing that, if upon investigation the complaint appeared to be well founded, the complainant would have the relief sought. Bustos then prepared and submitted to the Secretary of Finance and

Justice and Acting Governor-General, a written communication wherein he set out at considerable length the alleged improper procedure whereby the criminal action instituted by him had been dismissed, and prayed that a new judge and fiscal be sent to the province, for the purpose of rehearing and reconsidering his complaint; in support of his petition for a change of law officers in his province he set out a number of instances of alleged misconduct and incompetence on the part of the judge, prosecuting attorney, and clerk, and stated that it was rumored in his province that these and perhaps some other court officials were corrupt, and had taken bribes on one or more occasions, giving the alleged details of one specific case, wherein it was said that certain officials, including the trial judge, provincial fiscal, and the clerk of the court, conspired together, and for the sum of 6,000 pesos, procured the dismissal of a grave criminal complaint, in a case known as the Narvacan murder case. The Secretary of Finance and Justice forwarded a copy of this complaint to the various officers whose names were mentioned therein, and later a complaint was filed against Bustos in the Court of First Instance of the city of Manila, charging him with the crime of libel, of which crime he was convicted, and upon conviction sentenced to three months' imprisonment in the Insular Prison at Bilibid and to pay a fine of 100 pesos and the costs of the prosecution; the trial judge (in the language of his decision) stating that "the fact that the defendant was seeking to obtain a new trial of the case in which he may have considered himself wronged, and that he consulted with the Attorney-General and Chief of the Bureau of Justice, before making the petition, should, in the opinion of the court, be construed a mitigating circumstance, and taken into consideration by the court in fixing the penalty."

The trial court appears to have convicted the accused, notwithstanding his claim of privilege, on the theory that under the provisions of section 4 of the Libel Act, it was incumbent on the accused to prove that not only did he make the injurious and defamatory publication on a privileged occasion, but that the facts set out therein were true, and that the trial judge and provincial fiscal had in fact accepted bribes.

The majority opinion in this court, however, apparently recognizes and reaffirms (with certain modifications and limitations) the doctrine laid down by this court in the case of *The United States vs. Lerma* (2 Phil. Rep., 254), wherein it was held that when it is shown that an injurious publication was made with a justifiable motive, it is not incumbent on the defendant to prove the truth of the statements made by him on that occasion; but it affirms the judgment of conviction in the court below on the ground that the accused failed to establish his right to have his communication treated as a privileged communication, under the provisions of section 9 of the Act. This section, however, is limited by its terms to the privilege accorded upon certain conditions to private communications, made by one person to another in the performance of some duty, whether legal, moral, or social, while the communication in question, was in no proper sense a private communication, having been submitted for the purpose and with the expectation that it would be followed by a public investigation, and that its contents would be communicated to others; and although the fact that the accused appears to have exercised commendable discretion in avoiding an excessive publication gives to his communication the appearance of a private communication, as defined in section 9 of the Act, the real ground of the privilege, as it appears to me, is to be sought elsewhere.

The first nine sections of the Libel Law, Act No. 277 of the Philippine Commission, are as follows:

"SECTION 1. A libel is a malicious defamation, expressed either in writing, printing, or by signs or pictures, or the like, or public theatrical exhibitions, tending to blacken the memory of one who is dead or to impeach the honesty, virtue, or reputation, or publish the alleged or natural defects of one who is alive, and thereby expose him to public hatred, contempt, or ridicule.

"SEC. 2. Every person who willfully and with a malicious intent to injure another publishes or procures to be published any libel shall be punished by a fine of not exceeding two thousand dollars or imprisonment for not exceeding one year, or both.

"SEC. 3. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

"SEC. 4. In all criminal prosecutions for libel the truth may be given in evidence to the court, and if it appears to the court that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted; otherwise he shall be convicted; but to establish this defense, not only must the truth of the matter so charged be proven, but also that it was published with good motives and for justifiable ends.

"SEC. 5. 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.

"SEC. 6. Every author, editor, or proprietor of any book, newspaper, or serial publication is chargeable with the publication of any words contained in any part of such book or number of each newspaper or serial as fully as if he were the author of the same.

"SEC. 7. 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.

"SEC. 8. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of being so connected.

"SEC. 9. A private communication made by any person to another, in good faith, in the performance of any duty, whether legal, moral, or social, solely with the fair and reasonable purpose of protecting the interests of the person making the communication or the interests of the person to whom the communication is made, is a privileged communication, and the person making the same shall not be guilty of libel nor be within the provisions of this Act."

These provisions were discussed and construed at considerable length in the case of *The United States vs. Lerma* (2 Phil. Rep., 254), wherein the accused, against whom a criminal complaint had been filed in the court of the justice of the peace, admitted having sent a sealed letter to the justice, containing highly defamatory expressions directed against the provincial governor and prosecuting attorney, charging them with various acts of wrongdoing, including the fabrication of false and malicious accusations and the extortion of affidavits in support of these charges. By a bare majority, this court held in that case that the effect of the above-cited section 3 of the Act "is to make the existence of justifiable motives a complete defense to the prosecution for libel." Justices Willard and Cooper, in separate opinions, vigorously combated this proposition, contending that the sole purpose and object of section 3 is to do away with the necessity of proving malice in certain cases, by establishing a presumption of malice from the fact of the injurious publication, and that the provisions of this section should not be held to operate as an independent and substantive provision, being merely intended as a rule of evidence, fixing the burden of proof in certain cases. The majority opinion in the case at bar, while apparently accepting (with certain modifications and limitations) the general doctrine laid down in the *Lerma* case, treats the provisions of this section (as did Justices Willard and Cooper in the former case) rather from the standpoint of its effect as a rule of evidence touching presumptions than as a substantive provision furnishing a defense; and having thus questioned the reasoning on which the doctrine laid down in the *Lerma* case is based, fails, as I conceive, to lay down the broad principle upon which the doctrine thus modified should be based, and in the resulting uncertainty, rests the decision of this case (as did Justice Cooper his concurring vote in his separate opinion in the *Lerma* case) on the express provisions of section 9, which, in my opinion, are as inapplicable in the case at bar, as they were held to be in the *Lerma* case.

The difficulty throughout the whole discussion, as it seems to me, is the apparent belief in the necessity for, and the attempt to discover an express provision of the statute exempting from the penalties prescribed therein, persons who merely "incidentally disparage private character" in the performance of some duty, or in the exercise of a natural right, or of a right secured to them by law, on any occasion where public policy requires that freedom of speech and action should not be unnecessarily hampered or abridged by the fear of prosecution and punishment.

Thus the writer of the Lerma decision seems to have undertaken, by inverting the language of section 3 of the Act, to find an express provision that where a justifiable motive for making the injurious publication is shown, it must be presumed not to have been malicious, and as a consequence, that proof of the existence of a justifiable motive is "a complete defense to a charge of libel." But aside from the reasons advanced by the writers of the separate opinions in that case in declining to accept the reasoning upon which this conclusion is based; and the reasons advanced in the majority opinion in the case at bar in modifying and limiting the force of the doctrine thus stated; I think that, confining ourselves strictly to an examination of the language of this section, it will appear that its terms in themselves do not support the conclusion as unreservedly stated in the Lerma case, and that we must look elsewhere for the grounds upon which justifiable motives are to be admitted as a defense in libel cases. The logical result of the inversion of the language of the section is that where a justifiable motive for making an injurious publication is shown, there is no presumption of the existence of malice; and, not that the publication must be presumed not to have been malicious; so that in such cases, the existence or nonexistence of malice, one of the essential ingredients of the offense, as defined in section 1, becomes a question of fact, to be proven or disproven, as is any other essential allegation in a criminal action, the only presumption admissible being the presumption of innocence, which casts its mantle around the accused at every stage of the proceedings in this as well as in all other criminal actions.

Thus also the writers of the separate opinions in the Lerma case, who dissented from the construction placed upon section 3 by the majority, appear to have been of opinion, that (except in those cases where the truth is proven as expressly provided in section 4 of the Act, and the cases provided for in sections 7 and 9, which under certain conditions expressly exempt from liability newspaper reports of judicial and legislative proceedings, and certain private communications), the Act fails to provide for the exemption of liability of persons who in the United States and England would be exempted because the otherwise libelous matter was uttered on a "privileged occasion;" Justice Williard being of opinion that there is and can be no privilege for injurious or defamatory statements made in the course of judicial proceedings, express provision therefor having been omitted from the Act; and Justice Cooper, while not in full agreement with this conclusion, resorting to the privilege expressly granted to private communications in section 9 of the Act to relieve the accused from criminal responsibility on account of defamatory statements, made in the course of judicial proceedings.

Thus also, as it seems to me, the writer of the majority opinion in the case at bar, while he accepts with some modifications and limitations the doctrine laid down in the Lerma case, fails to lay down the broad principle on which the modified doctrine securely rests, and does not appear to recognize that the doctrine thus modified carries with it as a necessary consequence the general doctrine of qualified privilege as it is laid down by the authorities in England and the United States, except so far as that doctrine may be modified either by the express provisions of sections 7 and 9 of the Act or by peculiar conditions existing in these Islands. As a result, in its last analysis, the judgment of the court is based on the failure of the accused to prove that his communication was privileged as a "private communication," under the express terms of section 9, when as I believe, the true ground of the privilege under which the accused should be acquitted, is the right of the citizen, under proper restrictions, to submit complaints against public officers, in regard to their character or conduct, to the functionary having authority to redress grievances, to remove such officials from office, and to appoint their successors.

I think that, in general, the circumstances under which one has a right to publish defamatory matter, so as to give it the quality of a privileged communication, in other words, the determination of what are justifiable motives which will negative the presumption of malice, raised under the provisions of section 3, are not to be sought in the express provisions of the law, for, as intimated in the Lerma decision, they rest on "principles of natural right as well as of public policy too obvious to require any express recognition in the written law;" and that in each particular case it becomes the duty of the court to determine whether the particular circumstances sustain the claim of privilege, basing its conclusion on those broad principles, except in so far as their application is modified or controlled by express provision of law.

Examining the provisions of the statute (keeping in mind that it was enacted by an American Commission, the majority of whose members were American lawyers, and that its provisions are borrowed almost verbatim from the statutes of one or other of States of the Union; and keeping in mind also the construction placed on section 4, in the opinion of this court in the Lerma case, a construction which is in strict accord with the juridical and legislative history of the evolution of the doctrine by virtue of which, as a rule, in the United States, the truth may be given in evidence in libel cases) I find nothing in its terms which limits or denies the duty and authority of this court to declare that those principles of natural right and justice, and the requirements of public policy which gave rise to the doctrine of privilege in the United States and England, are not less efficacious in support of the existence of a similar doctrine in this jurisdiction. On the contrary, the statute taken as a whole manifestly recognizes the necessity for, and the existence of this doctrine. Thus section 3, while it does not, as I believe, make proof of conditions which, *prima facie*, establish the existence of a justifiable motive, a complete defense, clearly indicates that in making an injurious publication one may be actuated by a justifiable motive; and when it appears from the circumstances under which the publication was made that such publication may have been actuated by justifiable motives, there is nothing in the statute which penalizes the act unless it further appears that the accused was actuated by malice in fact, or, as it is sometimes called, express or actual malice. So again section 4 clearly recognizes the fact that defamatory matter may be published with good motives and justifiable ends. And so the language of sections 7, 8, and 9, expressly recognizes the existence of certain privileged defamatory communications, while it is manifest that in thus enumerating and defining two instances of privileged communications the lawmaker did not attempt to exhaust the classification.

It has been said that in thus importing into this jurisdiction the doctrine of privilege, or rather in thus recognizing the limitations and restrictions placed upon the provisions of the Libel Law by the principles on which that doctrine rests, the courts and the people are left "without a guide or compass" in determining on what occasions an injurious publication is or is not to be considered privileged, with the result that the courts are left at perfect liberty to decide each case, without reference to any rules whatever which declare what are and what are not justifiable motives, as that term is used in the statutes. Resting the doctrine, as I contend it should rest, on those broad principles of natural right and public policy, upon which it rests in England and the United States, and by reference to which it has been formulated and established, it must necessarily result that sound reasoning upon these principles as applied to the statute under consideration, will lead to substantially the same conclusions in this jurisdiction as it has in the jurisdictions from which the provisions of that statute have been adopted, modified only so far as may be required by exceptional conditions existing here, and local statutes. Thus we have in the sound reasoning upon which the doctrine has been established in the multitude of reported cases in England and the United States, a safe and authoritative guide to a just conclusion in the various cases which may present themselves in this jurisdiction.

I have been led into a much more extended discussion of the doctrine than I had anticipated, partly as a result of my conviction that the legislator not having attempted to define, except in a few cases, what circumstances go to make an injurious publication on a particular occasion a privileged communication, or, in other words, what may

constitute a justifiable motive in making such a publication, the rulings of this court declaring that a particular set of circumstances do or do not constitute a privileged occasion, under the provisions of the Libel Law as enacted here under American sovereignty, are of the utmost importance as establishing precedents; and partly because the case at bar, being the first which has been brought to this court involving the particular privilege to the benefits of which the accused is in my opinion entitled, I think the failure of the majority decision to define and qualify that privilege, and the basing of the decision on a privilege grounded on entirely different principles, is likely to lead to grave confusion, and in this case has resulted in an erroneous judgment.

In the case at bar, the accused addressed a communication complaining against the character, integrity, and conduct of certain public officials to the Secretary of Finance and Justice and Acting Governor-General of these Islands, that functionary being the officer ultimately charged with the supervision, appointment, and removal of the officials complained against.

No one will deny that the plainest principles of natural right and sound public policy require that the utmost possible freedom should be afforded every citizen over whom a public official has been appointed to complain to the supervising, removing, and appointing authority set over such official, of his official misconduct; and as might be expected, we find a great number of cases in the English and American law reports holding that such communications are to be regarded as conditionally or qualifiedly privileged, so that in the absence of actual or express malice, the complainants must be held free from liability, on account of defamatory or injurious matter contained in such complaints. (*White vs. Nicholas et al.*, 44 U. S., 266. See also numerous cases cited under this head in the digests and encyclopedias.)

In these Islands where the people have no direct part in the election or appointment of many if not most of the higher Government officials; where the ultimate appointing, removing, and supervising authority over all judicial and most executive officials is vested in the hands of men who are of a different race, tongue, and habits of thought and action from the vast majority of those over whom they are set in authority: where, more especially in the provinces, there is no intelligent public opinion with its salutary and restraining influence on local officials; where official reports, based on experience in the past, so frequently decry the tendency on the part of inferior officials to forget that a public office is a public trust, and criticize and deplore the supine attitude of the mass of the people who so often permit themselves to be plundered and abused, without complaint and without an effort to rid themselves of their plunderers; where one of the greatest difficulties in the administration of government and the correction of abuses is the oftentimes insurmountable difficulties encountered in procuring testimony against wrongdoers clothed with the insignia of office; it seems to me that public policy requires, even more imperatively than in England or the United States, that every avenue of communication between the aggrieved citizen and the appointing authority should be jealously guarded, so as not unnecessarily to abridge or to limit the right of the citizen to complain of abuses, and seek redress for wrongs.

Manifestly, therefore, a conditional or qualified privilege exists in these Islands as to such communications, with no greater restrictions or limitations attached thereto than have been placed upon the like privilege in England and the United States. The limitations and restrictions uniformly placed on the privilege in those jurisdictions are, first, that such complaints must be made to a functionary having authority to redress the grievances complained of; and, second, that they must be made in good faith, and must not be actuated by actual or express malice; and an examination of the nature of the privilege leaves no room for doubt that like restrictions and limitations and no others should be held to attach to this privilege in this jurisdiction.

That the complaint under consideration was made to the proper functionary, if a complaint could have been properly made at all, is not and can not be questioned, and the only question which remains is whether the record discloses the existence of express or actual malice or the absence of good faith on the part of the complainant. I

am satisfied that keeping in mind the purpose and object which the accused had in filing this complaint, the attitude of the accused toward the parties complained of, the conditions existing in his community at the time when that complaint was made, and the procedure adopted by the accused in submitting his complaint, as these facts are disclosed by the record, he must be held to have adopted the course he did, without actual malice and in good faith.

The trial court found as a fact that the defendant was seeking to obtain a new trial of the case in which he may have considered himself wronged; though in the opinion of the trial judge, this fact together with the fact that he consulted with the Attorney-General and Chief of the Bureau of Justice before making the petition, constituted merely a mitigating circumstance. I think that the arduous and expensive efforts which he made to bring to trial the person whom he charges with having robbed him of his patrimony while he was yet in his nonage, the fact that this person was held for trial at the preliminary investigation, and the testimony of the accused himself on the witness stand, leave no room for doubt, in the absence of any evidence whatever to the contrary, that not only "may" it be a fact, but that it is a fact that he considered himself wronged by the dismissal of the criminal complaint in the Riviera case filed by him. Believing himself wronged by the action of the provincial fiscal, in moving the dismissal of the case in which he had so large an interest, he left his native province, and came to consult with the Attorney-General of the Islands, that official being charged with a general supervisory authority over the provincial fiscals. That official advised him to lay his case before the Secretary of Finance and Justice, then the Acting Governor-General, and after consultation with and at the suggestion of this official, the accused filed a long communication setting out at length and in detail the grounds of his complaint against the various officers of the Court of First Instance of his province, to which he signed his name. This quite exceptional mode of procedure, in a country where the custom of filing anonymous charges and complaints is all too prevalent, taken together with the fact that the accused was informed by the Acting Governor-General that the written complaint was desired with a view to the institution of an investigation upon the result of which future action on the complaint would be predicated, strongly tends to confirm my belief that, rightly or wrongly, the accused in good faith believed in the righteousness of his cause, and that in filing his petition he sought merely to bring about the correction of the alleged disgraceful conditions in his province, and his own relief from what he believed to be a miscarriage of justice.

I am satisfied not only that there is not a scintilla of evidence in the record on which to base a finding of express malice, in the ordinary acceptance of that term, that is to say, of a state of mind or feeling which induced the accused to file the injurious complaint, for the purpose of injuring the persons complained of, wrongfully and intentionally, without just cause or excuse; but also that the record affirmatively discloses the absence of such an attitude of mind or intent, on the part of the accused, as the moving factor in filing his complaint.

It clearly appears from the record that the accused had no personal acquaintance with the trial judge, and that until the provincial fiscal procured the dismissal of the case instituted by the accused (which was the particular grievance which the accused sought to remedy), no unfriendly or inimical relations existed between them; the complaint, taken as a whole, while it severely animadverts on the official conduct and integrity of the officials complained of, contains nothing which would necessarily indicate that the accused was actuated in submitting it by any other motive than that expressly set out therein; and its allegations of misconduct though forcefully and vigorously stated, are no more so than the accused may well have deemed necessary for a clear exposition of the grounds of his complaint; and there is nothing in the record which tends to disclose that he himself did not believe his every allegation well founded and true in every particular.

But the courts have frequently held that proof that injurious publications have been made with reckless indifference as to their truth or falsity, and without probable cause, is sufficient to establish the existence of actual

malice and a lack of good faith in making such publications. (Locke vs. Bradstreet Co., 22 Fed. Rep., 771; Footbaker vs. Conant, 91 Me., 438; Karger vs. Rich, 81 Wis., 177; Bradstreet Co. vs. Gill, 72 Tex., 115; Howland vs. Flood, 160 Mass., 517.) This proposition can not fail of the approval of every fair-minded man, and if the record discloses such conduct on the part of the accused, the fact that his complaint was filed on what would otherwise be a privileged occasion can not and should not shield him from liability, civil and criminal, for the injury thus inflicted on others.

The question whether an injurious statement as to another has been made with reckless indifference as to truth or falsity, and without probable cause, must in the very nature of things depend largely on the particular circumstances under which the statement was made and the degree of caution which those circumstances impose as to the verification of the truth of such statements. And it is, I take it, because we view the conduct of the accused from wholly different standpoints, that I am unable to agree with the findings of the trial court in this regard. The trial judge evidently was much impressed with the failure of the accused to prove the truth of his allegations, and from the form of his findings I am satisfied that he was influenced in making these findings by his belief that under the provisions of section 4 of the Act, the accused had no right to submit his complaint, unless each and every charge contained therein was well founded in the sense that when he submitted them, the accused was prepared to submit evidence in support of the truth of each and every allegation, and especially that the officials complained of had in fact accepted bribes. From this point of view, I am entirely agreed with him that the accused must be held to have made his charges recklessly and heedlessly, and that the information upon which he acted was not such as to justify him in bringing those charges or in believing that he himself could establish the truth of these charges at any time he might be called upon so to do. In other words, from the point of view of the trial judge, they were not made in good faith.

So the majority opinion in this court, treating the communication as a private one, and applying the provisions of section 9 of the Act, finds that the object sought to be accomplished was not such as to give it the privilege expressly conferred by that article, it not having been published (in the language of the opinion adopted from the express provisions of that section) "for the sole purpose of protecting the interests of the defendant, or for the purpose of protecting the interests of the Secretary of Finance and Justice, to whom it was made," but merely to have one "Jose Riviera brought to trial upon a charge of the crime of robbery;" and I readily agree that if the accused, as a citizen of the Province of Ilocos Norte and as a litigant in the courts of that province, wherein he was asserting property rights of great alleged value, did not have an interest in the removal of alleged incompetent or corrupt officials, with a view to bringing his case before a tribunal differently constituted, such as to give him a perfect right to complain to higher authority with a view to the institution of an official investigation and the removal of these officials if the result of such investigation established his charge of misconduct and incompetency, then indeed the gratuitous repetition by the accused of the rumors, without personal investigation as to their truth, must be regarded as malicious and as not made in good faith.

Upon no other theory can I account for the fact that, wholly disregarding the fact conclusively established by the testimony that the rumors referred to by the accused did in fact exist (a fact not questioned in the majority opinion); and disregarding the fact that the accused did in fact institute a personal investigation into the truth of these rumors, and for that purpose sought to secure the necessary preliminary data from the clerk's office, but was practically compelled to desist from the prosecution of his investigation by the action of the judge and the clerk of the court in limiting his right to examine the records to those cases in which he could show that he had an interest; and disregarding also the fact that it may well be doubted whether a private citizen should or could with safety carry on a "personal investigation," without the aid of proper authority, of rumored charges of corruption and bribe-taking directed against the judge and other officials of a Court of First Instance; the majority opinion finds that the accused was lacking in good faith in filing his complaint, on the sole ground that neither he, nor any of the

witnesses called by him to prove the existence of the rumor, had actually made a personal investigation as to its truth.

I do not, of course, contend that proof of the existence of the rumor would even tend to prove the truth of the contents of the rumor, and indeed for that purpose it would in a libel case be wholly incompetent evidence; nor do I contend that proof of the existence of the rumor would justify or excuse one who repeated it under ordinary circumstances and without a justifiable motive; but I do contend that, where one sets out the fact of the existence of a rumor of official misconduct in the course of a complaint having for its object an official investigation of the conduct of certain officials, proof of the existence of the rumor is competent and proper evidence of good faith on the part of the complainant, just as proof that no such rumor existed would be strong and almost conclusive testimony of bad faith; and I contend further that, if we keep in mind the true nature of the privilege claimed by the accused, that his complaint was filed for the purpose of securing an official investigation into the conduct of certain officials and their removal as a result of that investigation, and that the existence of these rumors was only one of many facts alleged by the accused as ground for the belief that an official investigation should be had and that, as a result of that investigation, his charges of official misconduct would be sustained, and if we keep in mind further the utter impracticability, as a rule, of an attempt by a private citizen to hold personal investigation to verify or disprove such rumors; a finding of a lack of good faith, based on the sole ground that no such investigation was had, should not be sustained.

That a rumor such as was mentioned in the complaint filed by Bustos was at that time current in the Province of Ilocos Norte is, I think, satisfactorily established by the testimony of record. True the number of witnesses was limited, and a partially successful attempt was made to show that some of these witnesses were unfriendly to the provincial judge, and the reputation of one of these witnesses for truth and honesty was successfully impeached by evidence of his conviction of estafa on one occasion; but it must be remembered that the trial was had in Manila, at a long distance from the province wherein the witnesses resided, and that, under all the circumstances, it must have been extremely difficult, no matter how widespread the rumor may have been, to secure the presence of witnesses who would be willing to expose themselves and their friends to the possible risk of consequences arising out of the giving of testimony touching the repetition of a libelous rumor directed against the local judge and provincial fiscal. But, in the absence of evidence to the contrary (save only the testimony of the judge and fiscal themselves, who might well be expected to be in ignorance of the existence of a rumor of this nature), I think the evidence of record is fully sufficient to sustain a finding of the existence of the rumor, and this without the aid of the presumption of innocence in favor of the accused.

The trial judge expressly finds that, prior to the filing of the complaint by Bustos, an official report was prepared and submitted by a secret service employee of the Constabulary, who was detailed by his superior officer to investigate the sending of an anonymous letter to the provincial judge, and reported that it was currently rumored that the judge and fiscal had taken the bribe mentioned by Bustos in his complaint. This secret service officer was the witness whose reputation for truth and veracity was successfully impeached as mentioned above; but, as the trial judge finds, there can be no reasonable doubt of the truth of his testimony as to the fact that an investigation was made and the report filed as testified by him. It being accepted as true that a secret service employee of the Constabulary entered a remote province in these Islands, and made a secret investigation touching the character and conduct of the local judge and fiscal, and reported the existence of such a rumor, I would not need much additional testimony to satisfy me that, even if no such rumor existed theretofore, it would be found to exist thereafter; and all the more so in view of the testimony of the prosecution tending to prove that the secret service agent was unfriendly to the officials affected by the rumor.

It is also clear from the record that the clerk of the Court of First Instance of the Province of Ilocos Norte was

dismissed for financial irregularities in the conduct of his office, some time prior to the filing of the complaint by Bustos; and I think it also appears that this official threatened or boasted that he would involve the judge and fiscal in his downfall if criminally prosecuted. Knowing the relations which in the popular mind in these Islands are supposed to exist between the judge of the Court of First Instance and the clerk, I would not be surprised if financial irregularities did in fact mark the conduct of the clerk's office, and especially if the disgraced clerk made the threats or boasts attributed to him, to learn that rumors had gained currency in the province connecting the judge himself with these irregularities.

In view of these conditions, there seems to me to be no reason to doubt, to the prejudice of the defendant in a criminal action, the practically uncontradicted testimony of the accused and his witnesses, as to the existence of the rumors reported by him to the Secretary of Finance and Justice. This testimony is positive and definite, one of the witnesses, an American lawyer of good standing in this court, testifying as to the extent of these rumors of misconduct, incompetence, and corruption, in part as follows:

"While in Vigan, and I was there about a month in that case, I heard no end of rumors, statements made by people, some of whom I judge by their statements were open enemies of Fiscal Singson, and accounts of wrongs real or fancied; some of these statements were made by I would judge to be either enemies of Judge Chanco; others were made by persons evidently warm friends of Bustos and indifferent to the fiscal and to the judge; others of these statements were made to me by people apparently disinterested. Some of them were made to me by officers of the Constabulary, who apparently were not inclined to be friends of either Fiscal Singson or the judge; some of them were made by a new officer, whose name I can not recall, who was up there on a visit, in fact I do not recall the names of the other officers, and were made in various places at various times. Some of these were nothing more than old rumors and others gave grounds for the basis of the action. I remember of hearing of the Narvacan case reported there a number of times. I heard other cases by people one night at the governor's ball; two people or three called me off and told me about it; the exact details I do not know, or how much property or what. I did not pay much attention to those statements because the woods were full of them; Vigan itself was very much excited at that time, the whole of Vigan, on account of the Riviera case."

And asked if, when Bustos filed his complaint, he intended "to run this 6,000 pesos case to earth to find out all about it in Vigan," this witness replied: "I? No, sir, but if I tried to run those rumors down in Vigan, I would be dead."

I am convinced also, that there can be no reasonable doubt that before filing his petition, Bustos did in fact institute a personal investigation as to the truth of the rumors of corruption affecting the law officers of his province. To that end he went to the clerk's office, and attempted to secure a list of the various complaints in criminal cases dismissed without trial, the first step which would suggest itself to any intelligent man in an attempt to ascertain the truth or falsity of the rumors reported to the Secretary of Finance and Justice. He claims, however, that he was compelled to desist from his investigation by the action of the judge and clerk (two of the officials whose conduct he was attempting to investigate) who denied him free access to the records, and limited him in this respect, to his right to secure certified copies of documents in which he could show an interest. His testimony in this connection is fully and conclusively corroborated by the testimony of the judge and clerk, and the testimony of the clerk makes it very clear that it was no superficial investigation he was undertaking, for the objection raised to his examination of the records of the office was based on the fact that he was making himself a nuisance by his extended researches.

In passing, I should perhaps observe that, in referring to the fact that the accused's efforts to investigate were rendered abortive by the judge and clerk, I am not necessarily criticizing their conduct in this regard. It is not to be supposed that the accused ventured to inform these officials that he was investigating their conduct, and seeking

to ascertain the truth or falsity of rumors of their corruption; and the proper conduct of the clerk's office would in all probability justify the imposition of restrictions and conditions on the examination of the archives, which would render impracticable efforts of unauthorized persons to inspect and examine the various records, documents, and papers filed in the clerk's office, unless such persons could offer some reasonable explanation of the purposes of their investigation, or a special interest in the particular documents which they desired to examine. All this, however, merely emphasizes the futility, as a general rule, of personal investigations by private citizens of the truth or falsity of such rumors as those under consideration.

It is true that the accused admitted, as set out in the majority opinion, that he had made no personal investigation of the truth of these rumors, and that he had not verified their truth or falsity; but this statement must be taken in connection with the other evidence of record, showing that he had attempted to make an investigation and setting out the reasons for his failure to carry out his plans; and it should also be noted that this admission was made in response to a question as to whether he had personally investigated the truth of the rumor in connection with the Narvacan case, and visited the scene of the alleged crime. It appears that Narvacan is a village located a considerable distance from the provincial capital, and the accused explains that he did not have the funds to undertake an investigation of this sort; and it may well be doubted whether any such investigation might be expected to serve any useful purpose, as showing the truth or falsity of the rumors of corruption of the provincial officers, except as an incident to an official investigation, involving thorough examination of the records and other evidence not likely to be available to a private citizen.

An examination of all the evidence, and of the entire petition, of which a short extract is made the basis of this action, convinces me that, in view of the expressed motive which actuated the filing of this petition, and especially of the fact that it was filed with the expectation that it would be followed by an official investigation, there is no ground upon which to base a finding, beyond a reasonable doubt, that the accused, in filing his petition, was actuated by express or actual malice, or that there was an absence of good faith in his effort to secure redress for the grievances, which as a litigant and as a private citizen, he believed he suffered at the hands of the court officials in his province.

In conclusion, I should perhaps repeat, that I would not deem it necessary to set out at length my reasons for differing with my brethren as to the mere question of fact, touching the existence or nonexistence of malice and good faith, were I not convinced that our difference on this point arises not from any substantial difference as to the value and weight of the evidence of record, but from the fact that, in arriving at our findings of fact, we view the testimony from wholly different standpoints; and that I deem the failure of the majority opinion to define and to give full force and effect to the privilege arising from the right of the citizen to seek redress of alleged grievances, and the precedent established thereby, as of vital importance and grave import in its effect on the future administration of government in these Islands.

It may not be improper for me to add, that nothing appears in the record which would support a finding adverse to the probity and integrity of the judge of the Court of First Instance or the provincial fiscal, the complaining witnesses in this action; and that no attempt having been made to prove the truth of the rumors reported in the petition of the accused, my arguments and conclusions are not intended to, and do not in anywise reflect upon the character or conduct of these officials.

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