

FELIX MONTENEGRO, PLAINTIFF AND APPELLANT, VS. ENRIQUE MEDINA, DEFENDANT AND APPELLEE.

G.R. No. 48135. June 22, 1942

Ponente: OZAETA, J.

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OZAETA, J.:

This is an appeal from an order of the Court of First Instance of Oriental Negros sustaining defendant's demurrer to, and at the same time dismissing, plaintiff's complaint.

The complaint, which was dated November 14, 1939, alleged in substance that on July 14, 1939, the defendant Enrique Medina instituted civil case No. 1614 of the Court of First Instance of Oriental Negros against the herein plaintiff Felix Montenegro and Nicolas Montenegro for the recovery of a sum of money alleged to be due to Enrique Medina for professional services rendered at the instance of Felix Montenegro; that in relation to the complaint in said civil case No. 1614, and without being material, relevant, and pertinent to the cause of action alleged therein, but with the only purpose of mortifying the plaintiff and attacking his honesty, integrity, and reputation and of exposing him to public hatred and ridicule, the said defendant Enrique Medina wrote, inserted, and published as paragraph 24 of the first cause of action of the complaint in said civil case No. 1611 the following words which were highly malicious, defamatory, and libelous per se, to wit:

"24. Que el demandado Felix Montenegro es de las personas que con frecuencia procuran eludir el pago de sus juntas obligaciones, y no obstante su indiscutible solvencia, no paga religiosamente sus compromisos y cuentas legales, y muchos de sus acreedores, abogados, empleados, contratistas, y personas con quienes ha tenido cuentas, no han podido cobrarle sino riñendo con el y muchos, presentando acción o escrito judicial, razón por la cual, sus mismos parientes que trabajaban con dicho Felix Montenegro salieron todos disgustados, por no poder cobrar, lo que por ley tenían derecho de cobrar."

That subsequently, upon motion of the plaintiff and over the opposition of the defendant, the paragraph above quoted was stricken out by order of the court for being impertinent and unnecessary to the cause of action of the plaintiff in said civil case No. 1614; that the plaintiff is an hacendado and fit merchant and possesses valuable real estate in Manila, Cebu, and in the Province of Oriental Negros, and is the president and principal stockholder of the corporation Felix Montenegro, Inc., to which the Philippine National Bank had granted a credit of P100,000 without any security on account of his good name and reputation, and that the success of his enterprises depends to a great extent on the confidence of the public in his honesty and integrity; and that, as a consequence of the said acts of defamation, the plaintiff has suffered damages in the sum of P25,000 on account of the outrage to his feelings and reputation, and that, in addition to said sum, he is entitled to receive from the defendant another sum of P25,000 as punitive and exemplary damages.

To that complaint the defendant demurred on the grounds (1) that the facts alleged in the complaint do not constitute a cause of action and (2) that there exists another case between the parties founded on the same cause of action. In resolving said demurrer, the trial court quoted its order entered on October 11, 1939, in civil case No. 1614, in which it held that paragraph 24 of the complaint in said case was "impertinent, redundant, and

unnecessary" and ordered that the same be stricken out; and, upon the ground that said order had not yet become final inasmuch as the therein plaintiff (defendant in this case) had excepted thereto; the court held that the plaintiff did not yet have a cause of action, and therefore dismissed the complaint.

The first ground of the demurrer—that the facts alleged in the complaint do not constitute a cause of action—was based on the contention that the alleged defamatory matter complained of, having been published in the course of a judicial proceeding, was absolutely privileged and therefore not actionable; while the second ground of the demurrer—the existence of another action between the parties—was based on the contention that the order of the trial court striking out paragraph 24 of the complaint in civil case No. 1614 had not yet become final, that there was an intimate relation between the two cases, and that the plaintiff should have presented his claim for damages in the same civil case No. 1614.

The order appealed from is based on the assumption that it is an essential prerequisite that the court declare a defamatory matter uttered in the course of a judicial proceeding to be immaterial and irrelevant and order that the same be stricken out before an action for libel could be brought thereon. There is no basis in law or in jurisprudence for such an assumption. An action for libel accrues from the date of publication and must be instituted within two years thereafter. The fact that the plaintiff had moved to strike out the allegedly libelous allegation as being immaterial, irrelevant, and impertinent could not and did not in any way affect his right to bring an independent action for damages on account of the libel. The motion to strike out and the action for damages may be filed simultaneously and independently of each other; they are not mutually exclusive. Indeed, the court may of its own motion order expunged from its records any sham, irrelevant, scurrilous, or indecent matter to preserve its dignity and protect public morals.

It is patent that the trial court erred in holding in effect that plaintiff's action was premature.

The important question raised by the demurrer, which the trial court failed to decide, is whether the allegedly libelous matter complained of is absolutely privileged and therefore not actionable. In *Santiago vs. Calvo* (48 Phil., 919, 923), this Court held that "parties, counsel, and witnesses are exempted from liability in libel or slander for words otherwise defamatory published in the course of judicial proceedings, provided the statements are pertinent or relevant to the case." The same doctrine was applied in *Smith, Bell & Co. vs. Ellis* (48 Phil., 475). It is the generally accepted rule that in order to be protected by the mantle of privilege the defamatory words must be pertinent and relevant to the subject under inquiry. (See *Newell on Slander and Libel*, 3d ed., section 518, page 515, and cases therein cited; 33 Am. Jur., section 149, pages 144-145, and cases cited; 36 C. J., section 230, pages 1253-1254.) The reason for such requirement is that the protection given to individuals in the interest of an efficient administration of justice may not be abused as a cloak from beneath which private malice may be gratified (16 A. L. R., 748).

Are the allegations of paragraph 24 of the complaint in civil case No. 1614, hereinbefore quoted, material and relevant to the case? We do not need to decide that question on the merit because the case is before us on demurrer and the complaint in case No. 1614 has not been brought up here. It is expressly alleged in the complaint demurred to:

"4. Que en relacion con dicho escrito de demanda en dicha causa civil No. 1614 y sin ser materials, relevantes y pertinentes al motivo de accion objeto de dicha demanda pero si con el solo proposito de mortificar at demandante y atacar la honradez, integridad y reputation del aqui demandante y exponerle at desprerio, odio, oprobio y ticulo publicos, escribio, redacto, inserto y publico e hizo que se escribiera, redactara, insertara y publicara, como parrafo 24 del primer motivo de accion de la demanda en dicha causa civil No. 1614 las siguientes palabras altamente maliciosas, difamatorias y libelosas per se, que Be ken como sigue:

"* * * * *

(Underscoring ours.)

and these allegations are hypothetically admitted by the demurrer. We must therefore assume that paragraph 24 is immaterial and irrelevant and, hence, not privileged. Since the imputations contained in said paragraph constitute a grave reflection upon the moral character and reputation of Felix Montenegro as a property owner and businessman, they are libelous per se.

Defendant's contention that the plaintiff should have presented his claim for damages in the same civil case No. 1614, is devoid of merit inasmuch as plaintiff's claim did not exist at the time of the commencement of case No. 1614 and did not arise out of the transaction therein involved. Hence it was not obligatory for the plaintiff herein to set up his claim by way of counter-claim in said case. (Section 97, Act No. 190.)

We deem it unnecessary at this time to pass upon the question of whether or not section 11 of Act No. 277, which expressly allows the recovery, not only of actual pecuniary damages sustained by the party libeled but also of damages for 'injury to his feelings and reputation as well as punitive damages, is still in force notwithstanding the repealing clause of the Revised Penal Code. The complaint under consideration states facts sufficient to constitute a cause of action for actual damages, and the plaintiff-appellant is entitled to have it heard on the merits regardless of whether or not he is entitled also to damages for injury to his feelings and reputation and to punitive damages. That question has not been submitted to the court below, and we do not deem it necessary to decide it at this stage of the case.

The order appealed from is reversed, and let the case be remanded to the court of origin for further proceedings, with the costs of this appeal against the appellee. So ordered.

Yulo, C. J., Paras and Bocobo, JJ., concur.

Moran, J., concurs in the result.

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