

JAMES F. MACLEOD, PLAINTIFF AND APPELLEE, VS. PHILIPPINE PUBLISHING COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 4841. January 08, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

On the 14th of June, 1907, Aldecoa & Co., in liquidation, filed in the Court of First Instance of the city of Manila a complaint in a civil action against Alejandro S. Macleod and James Macleod. It was alleged therein that Alejandro S. Macleod, being the manager of Aldecoa & Co. and conspiring with Miguel Ossorio, wrongfully used the money of Aldecoa & Co. in the purchase of an interest in the Pasay estate, and as a result of such wrongful use of the money of Aldecoa & Co., Alejandro S. Macleod had obtained a profit of P161,000, which was represented by the stock of the Pasay Estate Company, Limited. The only allegation in regard to James Macleod was to the effect that Alejandro S. Macleod had transferred to him, James Macleod, all of the stock in the Pasay Estate Company, Limited; that this transfer was fraudulent and simulated, and was made in order to defraud Aldecoa & Co. and to prevent it from obtaining the stock.

On the afternoon of the 14th of June a reporter of the "Manila Times" examined this complaint in the office of the clerk of the court and, the complaint being in Spanish, procured the clerk to translate it to him, in English. This the clerk did, and from the translation thus made by the clerk the reporter made notes of the contents of the complaint. On the afternoon of Friday, June 14, 1907, the "Manila Times," owned by the defendant, published an article in its newspaper which contained the following statement:

"Sensational charges for recovery alleging collusion, removing money from the vaults of Aldecoa & Co., and charging wrongful entry of the amounts on the books, were made this morning by Aldecoa & Co., in liquidation, against Alejandro Macleod and James Macleod in the Court of First Instance."

On the morning of June 15 there was published in the "Manila American," a paper also owned by the defendant, an article relating to this case, which contained the following statement:

"Alejandro Macleod and James Macleod are charged by Aldecoa & Co., in liquidation, in a complaint filed this morning, with fraud, collusion, and removing money from the safe of the company for private purposes."

It will be seen that these statements were not true, so far as James Macleod was concerned. The complaint made no allegations against him of collusion or removing money from the vaults of Aldecoa & Co. or of wrongful entry of amounts in the books of that company. These charges by the complaint were limited to Alejandro Macleod. It was proven at the trial that the plaintiff James F. Macleod was the James Macleod referred to in this complaint and in these articles so published. He wrote a letter on the night of the 14th, which was published on the morning of the 16th in the "Manila Cablenews," in which he referred to the article published in the "Times" and stated that it was a lie and was not even substantiated in any way by the tenor of the complaint. The "Times" on the afternoon of June 15 published another article relating to the matter, which contained the letter of the plaintiff published in the "Cablenews" of that morning and, among others, the following statement:

"So far as the complaint is concerned, while published in part yesterday as a matter of court record and so a privileged communication, its being filed in court does not by any means imply that it sustains the truth. Frequently in court complaints serious charges are made with a view to prejudice the case, only later to be neglected or entirely disproved. Pending further action in the case it will be well to suspend judgment."

On the 17th of June, Aldecoa & Co., in liquidation, filed an amended complaint in the suit, in which it was stated that a mistake had been made in inserting the name of James Macleod as a defendant and asking that the complaint be amended by striking his name out and inserting in lieu thereof the name of William S. Macleod. This was done. On the afternoon of June 17 the "Times" published, in a prominent place on the first page of its newspaper, a statement to the effect that this amendment had been made and the reasons therefor.

On the 19th of June, plaintiff commenced this action of libel against the defendant for the recovery of P100,000 damages. Judgment was entered in the court below in favor of the plaintiff for the sum of P15,000. Of this sum, P4,000 was allowed for actual damages suffered by the plaintiff by reason of the publication aforesaid; P7,000 for damages to his feelings and reputation, and P4,000 as punitive damages. From this judgment the defendant has appealed.

As said by the defendant in its brief, there is very little controversy about the facts in the case. Section 7 of Act No. 277 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 proceeding, 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."

It was held by the court below that the filing of a complaint in a civil action does not constitute a judicial proceeding until some action is taken thereon by the court. Considerable space in the briefs is devoted to a discussion of that question, but it is not necessary to decide it, because it is apparent that the articles published in these newspapers were not a fair and true report of the complaint. The complaint did not charge James Macleod with removing the money from the vaults of Aldecoa & Co. nor did it charge him with making wrongful entry of the amounts in the books of that company. The articles published stated that the complaint did make these charges. It is apparent that in no way can the published articles be said, therefore, to be a fair and true report of the complaint. That they were libelous within the meaning of the definition of "libel" found in section 1 of Act No. 277, can not be doubted. For their publication the defendant is responsible unless some excuse therefor is shown.

It is claimed that they were published with justifiable motives, and that the defendant is, therefore, not liable by virtue of section 3 of Act No. 277. That section is as follows:

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

The meaning of this section was considered by this court in the case of the United States vs. Lerma (2 Phil. Rep., 254). In the case at bar the defendant entirely failed to prove any justifiable motive for the publication. The mere desire of a newspaper to keep the public informed of what is going on in court can not be considered a justifiable motive for making false statements as to what has actually occurred in such courts. With what was said to the contrary in the case of Butler vs. News-Leader Co. (104 Va., 1), cited by the appellant in its brief, we can not agree, and it is to be noted moreover that what was there said was entirely outside of the question really decided in that case, because judgment was rendered therein for the defendant on the ground that the article published did not refer to the plaintiff but to another person.

The defendant being liable to the plaintiff for damages, the next question is, what damages can the latter recover? Section 11, of Act No. 277 in part is as follows:

"In addition to such criminal action, any person libeled as hereinbefore set forth, shall have a right of civil action against the person libeling him for damages sustained by reason of such libel, and the person so libeled shall be entitled to recover in such civil action not only the actual pecuniary damages sustained by him but also damages for injury to his feelings and reputation, and in addition such punitive damages as the court may think will be a just punishment to the libeler and an example to others."

The court below allowed the plaintiff P4,000 actual pecuniary damages. We do not think that the evidence in the case showed that the plaintiff had suffered any damages of this kind. The phrase "actual pecuniary damages" found in this law, would probably be considered as equivalent to the phrase "special damages," as that term is defined in the common law of England and America. The phrase "actual damages," is found in the statutes of several of the United States, and in the case of *Allen vs. Pioneer-Press Company* (40 Minn. Rep., 117), the court said that it included "all injuries pecuniary in their nature which he may have sustained by the libel." The nature of such damages is illustrated by the case of *Causin vs. Ricamora* (5 Phil. Rep., 31), where, by reason of the publication of the libel, the plaintiff lost employment as a school-teacher.

The plaintiff testified that he had relatives in Scotland to whom he sent copies of the paper containing this publication and added;

"They are persons of means and very religious, and if they should come to know anything concerning me, they might believe that I am not a person worthy to receive a legacy from them. Naturally they may differ in the way they look upon this affair."

There was no evidence in the case to show that any one of these relatives had in fact disinherited the plaintiff or had failed to bequeath property to him by reason of the publication of these articles. It, therefore, was not proven that he had suffered any pecuniary loss as far as these persons are concerned.

The plaintiff was and is engaged in the business of a commercial broker. He testified that-

"The business has for sometime now been much less than it was formerly; I can not attribute it to any particular person; I do not know whether they have withdrawn their confidence from me or not but my business at the present time is much less either by reason of the times being bad or from some other cause."

He further testified upon this subject as follows:

"Q. Be kind enough to tell the court the amount, nature, and income of your business as a broker?-A. Heretofore P20,000 a year.

"Q. What would you say it is now?-A. Much less than heretofore; I have not made my settlement for the last year, but know it was much less than heretofore, some P12,000 at least."

This is all the evidence there is on this branch of the case, and it is very apparent that it falls far short of proving that the decrease in the plaintiff's business was due to the publication of the libel. As he says himself, he does not know whether it was or not. The judgment for P4,000 pecuniary damages can not be sustained.

The appellant devotes considerable space in his brief to the claim that, no actual pecuniary damages having been proven, the plaintiff is entitled to no damages at all. That there is nothing in this point, is apparent from a mere reading of section 11, above quoted. The cases cited by the appellant in support of its contention are cases brought against telegraph companies for failure to deliver messages or for the wrongful transmission thereof, in which it was held that damages for mental suffering alone could not be recovered. These cases have nothing to do with the question here involved. Section 11 expressly allows such damages. Moreover, the general damages which are allowed in actions of libel are not for mental suffering alone, but they are allowed for injury to the standing and reputation of the person libeled and the common law of England and America presumed that such damages

existed, without proof thereof, from the mere fact of the publication of the libel. It would seem absurd to say that the plaintiff could recover no damages for the injury to his reputation unless he proved that he had suffered some other special pecuniary damages.

The court below also allowed the plaintiff P4,000 as punitive damages. Such damages can not be recovered in every action for libel. The cases in which they can be recovered in the United States are indicated by the decisions of the Supreme Court of the United States. The case of the Philadelphia, Wilmington and Baltimore Railroad Company vs. Quigley (21 How., 202), was, like the case at bar, an action for libel. The court below charged the jury in that case that they might give exemplary damages. The Supreme Court held that this instruction was erroneous. The court said, at page 213:

"In Day against Woodward (13 Howard, 371), this court recognized the power of a jury in certain actions in tort to assess against the tort-feasor punitive or exemplary damages. Whenever the injury complained of has been inflicted maliciously or wantonly, and with circumstances of contumely or indignity, the jury are not limited to the ascertainment of a simple compensation for the wrong committed against the aggrieved person. But the malice spoken of in this rule is not merely the doing of an unlawful or injurious act. The word implies that the act complained of was conceived in the spirit of mischief, or of criminal indifference to civil obligations. Nothing of this kind can be imputed to these defendants."

In the case of Scott vs. Donald (105 U. S., 58), the court said, at page 86-

"Damages have been defined to be the compensation which the law will award for an injury done, and are said to be exemplary and allowable in excess of the actual loss where a tort is aggravated by evil motive, actual malice, deliberate violence or oppression-

and at page 88, quoting from the case of Day against Woodward, it said:

"In actions of trespass, where the injury has been wanton and malicious, or gross and outrageous, courts permit juries to add to the measured compensation of the plaintiff which he would have been entitled to recover, had the injury been inflicted without design or intention, something further, by way of punishment or example, which has sometimes been called 'smart money.' "

It is very apparent that the facts proven in the case at bar do not bring it within the rule thus laid down. There was of course the malice implied by law, but there was no proof whatever of any actual malice against the plaintiff, either on the part of the reporter or of the managers of the newspaper. The reporter testified that he did not know who James Macleod was until he saw him in court. It appeared that a relative of the plaintiff was one of the members of the Board of Directors of the defendant company. It seems plain that the false publication was due to an unintentional mistake made by the reporter in believing that the charges contained in the complaint were made against both defendants when in fact they were made against one only.

It is true that the paper did not make any formal retraction, nor did it expressly apologize to the plaintiff for its mistake. But, on the other hand, it did not propagate the libel. On the following day it published the letter of the plaintiff in which he stated that the charges against him were not true; it suggested that judgment be withheld until the facts could be ascertained, and later published the facts relating to an amendment of the complaint, which exonerated the plaintiff from the charges formerly made against him. The case is not one for punitive damages.

The general damages allowed for injury to the plaintiff's feelings and reputation the court fixed at P7,000. In view of all the circumstances in the case, we think that P5,000 is a reasonable compensation for such injuries. The judgment of the court below is reversed, and judgment is entered in favor of the plaintiff and against the defendant for the sum of P5,000, with costs of the first instance. No costs will be allowed to either party in this court. So ordered.

Arellano G. J., Torres, Mapa, Johnson, and Tracey, JJ., concur.
Carson, J., did not sit in this case.

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