

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, AND FAUSTINO AGUILAR, DEFENDANTS AND APPELLANTS.

G.R. No. 5527. December 22, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 5th day of November, 1908, the Hon. L. M. Southworth, then acting prosecuting attorney for the city of Manila, presented in the Court of First Instance the following complaint:

"The undersigned accuses Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes, and Faustino Aguilar of the crime of libel, committed as follows:

"That on or about the 30th day of October, 1908, the said Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes, and Faustino Aguilar, and each of them, were the editors, proprietors, owners, directors, writers, managers, administrators, printers, and publishers, in the city of Manila, Philippine Islands, of a certain daily newspaper, known as 'El Renacimiento;' that said newspaper was, on and about the 30th day of October, 1908, printed, edited, published, and circulated daily by said defendants and each of them, in both the Spanish and Tagalog languages in the city of Manila, Philippine Islands; that on and about the 30th day of October, 1908, in the city of Manila, Philippine Islands, the said Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes, and Faustino Aguilar, and each of them, as editors, proprietors, owners, directors, administrators, writers, managers, printers, and publishers of the said newspaper, 'El Renacimiento in the city of Manila, Philippine Islands, did then and there willfully, unlawfully, feloniously, and with malicious intent to injure one Dean C. Worcester, who was at that time, and still is, a member of the Philippine Commission, and Secretary of the Interior of the Philippine Islands, and with the malicious intent to impeach the honesty, virtue, and reputation of the said Dean C. Worcester, both as a man and as an official of the Government of the Philippine Islands, and to expose the said Dean C. Worcester to public hatred, contempt, and ridicule, write, edit, print, and publish and circulate, and cause to be written, edited, printed, published, and circulated in a regular daily issue of said newspaper 'El Renacimiento,' of the date of October 30, 1908, of and concerning the said Dean C. Worcester, a certain false, injurious, and malicious defamation and libel, tending to impeach the honesty, virtue, and reputation of the said Dean C. Worcester, and expose him, the said Dean C. Worcester, to public hatred, contempt, and ridicule; that the said libel was printed, published, and circulated in the Spanish language; that the said publication in the Spanish language was as follows:

" 'Manila, 30 de Octubre de 1908.

[Editorial.]

" 'AVES DE RAPIÑA.

" 'En la extension del globo, unos han nacido para comer y devorar, otros para ser comidos y devorados.

" 'Una y otra vez, estos ultimos se han agitado, tratando de rebelarse contra un orden de cosas en que son presa y pasto para la voracidad insatiable de los primeros. Alguna vez han tenido suerte ahuyentando lejos a los

comedores y devoradores, pero en la mayor parte de las veces no se ha conseguido mas que un cambio de nombre 6 de plumaje.

" 'En todas las esferas de la creation, la situation es la misma, la relation entre unos y otros es la que dictan. el apetito y la fuerza para saciarlo a costa del projimo.

" 'Entre los hombres, es facilisimo observar el desarrollo de este fenomeno diario. Y por alguna razon psicologica los pueblos que se creen poderosos han tornado por emblema las criaturas mas fieras y mas danidas: ora es el leon, ora el aguila 6 la serpiente. Unos lo han hecho por un secreto impulso de afinidad, otros por efecto de una simulation, de vanidades infatuadas aparentando lo que no son ni pueden ser jamas.

" 'El aguila, simbolizando libertad y fuerza, es el ave que ha encontrado mas adeptos. Y los hombres, colectiva e individualmente, han querido copiar e imitar al ave mas rapaz, para triunfar en el saqueo de sus semej antes.

" 'Hay hombres que, ademas de ser aguilas, reunen en si las caracteristicas del buitre, del buho y del vampiro.

" 'Subiendo a las montanas de Benguet para clasificar y medir craneos de igorotes y estudiarlos y civilizarlos y sorprender al vuelo, con ojo de ave de rapiria, donde se encuentran los grandes yacimientos del oro, la presa oculta entre los montes solitarios, para apropiarselos despues gracias a facilidades legales hechas y deshechas al antojo, pero siempre en beneficio propio.

" 'Autorizando a despecho de leyes y ordenanzas una matanza ilegal de ganado enfermo, para sacar beneficio de la carne infecta y podrida que el mismo estaba obligado a condenar en virtud de su position oficial.

" 'Tresentandose en todas las ocasiones con el ceio fruncido del sabio que consume su vida en los misterios del laboratorio de ciencia, cuando toda su labor cientifica se reduce a desecar insectos e importar huevas de peces como si los peces de este pais fueran menos nutritivos y menos ricos, de tal modo que valiera la pena de sustituirlos con especies venidas de otros climas.

" 'Dando un impulso admirable al descubrimiento de veneros de riqueza en Mindoro, en Mindanaw y demas puntos virgenes del Archipielago con el dinero del pueblo y con el pretexto de bien publico, cuando en rigor se trata de poseer todos los datos y la clave de la riqueza nacional en provecho personalisimo como se demuestra por la adquisicion de inmensas propiedades registradas con nombres ajenos.

" 'Tromoviendo por medio de agentes y consocios secretos la venta a la ciudad de terrenos sin valor por cantidades fabulosas que los padres de la ciudad no se atreven a rehusar por el temor de disgustar a quien va detras de la motion, y que no rehusan por lo que les conviene.

" 'Patrocinando la concesion de hoteles en sitios terraplenados con la perspectiva de enormes utilidades, a expensas de la sangre del pais,

" 'Tales son las caracteristicas del hombre que es a la vez aguila que sorprende y devora, buitre que se solaza en las carnes muertas y putrefactas, buho que aparenta una omnisciencia petulante y vampiro que chupa en silencio la sangre de la victima hasta dejarle exangue.

" 'Estas aves de rapina son las que triunfan. Su vuelo y su direction jamas se ven detenidos.

^ Quien los detendra?

'Unos participan del botin y del saqueo. Otros son tan debiles para levantar la voz de protesta. Y otros mueren en la desconsoladora destruction de sus propias energias 6 intereses.

" 'Y entonces surge, terrorifica, la leyenda inmortal: MANE, TECEL, PHARES.'

"and a translation thereof into the English language is as follows :

" 'Manila, October 30, 1908.

[Editorial.]

" 'BIRDS OF PREY.

" 'On the surface of the globe some were born to eat and devour, others to be eaten and devoured.

" 'Now and then the latter have bestirred themselves, endeavoring to rebel against an order of things which makes them the prey and food of the insatiable voracity of the former. At times they have been fortunate, putting to flight the eaters and devourers, but in the majority of cases they did not obtain anything but a change of name or plumage.

" 'The situation is the same in all the spheres of creation; the relation between the ones and the others is that dictated by the appetite and the power to satisfy it at the fellow- creature's expense.

" * Amongst men it is very easy to observe the development of this daily phenomenon. And for some psychological reason the nations who believe themselves powerful have taken the fiercest and most harmful creatures as emblems; it is either the lion, or the eagle, or the serpent. Some have done so by a secret impulse of affinity and others in the nature of simulation, of infatuated vanity, making themselves appear that which they are not nor ever can be.

" The eagle, symbolizing liberty and strength, is the bird that has found the most adepts. And men, collectively and individually, have desired to copy and imitate the most rapacious bird in order to triumph in the plundering of their fellowmen.

" 'There are men who, besides being eagles, have the characteristics of the vulture, the owl, and the vampire. " 'Ascending the mountains of Benguet to classify and measure the skulls of the Igorots and study and civilize them, and to espy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

" 'Authorizing, despite laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position.

" 'Presenting himself oh all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

" 'Giving an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people, and under the pretext of the public good when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others.

" 'Promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices, which the city fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

" 'Patronizing concessions for hotels on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people.

" 'Such are the characteristics of the man who is at the same time an eagle who surprises and devours, a vulture who gorges himself on dead and putrid meats, an owl who affects a petulant omniscience, and a vampire who silently sucks the blood of the victim until he leaves it bloodless.

" 'It is these birds of prey who triumph. Their flight and their aim are never thwarted.

" 'Who will detain them?

" 'Some share in the booty and the plunder. Others are too weak to raise a voice of protest. And others die in the disconsolating destruction of their own energies and interests.

" 'And then there appears, terrifying, the immortal leg end: MANE, TECEL, PHARES.'

"That the said newspaper, 'El Renacimiento,' in the said issue of the 30th day of October, 1908, had, as the defendants well knew, a large circulation in the city of Manila and throughout the provinces of the Philippine Islands, in all of which the Spanish language is both read and spoken; that the said Dean C. Worcester was, at the time of said publication, and is now, well-known by the officials of the Government of the Philippine Islands, and by the inhabitants of the city of Manila, and by the people of the provinces of the Philippine Islands, and the public generally, not only personally but as a member of the Philippine Commission, and as Secretary of the Interior of the Philippine Islands. That the defamation and libel, and the words, terms, and language used in said defamation and libel, as follows:

" 'Ascending the mountains of Benguet to classify and measure the skulls of the Igorots and study and civilize them, and to espy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

" 'Authorizing, despite laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position.

" 'Presenting himself on all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

" 'Giving an admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people, and under the pretext of the public good, when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others.

" 'Promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices, which the city fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

" 'Patronizing concessions for hotels on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people.'

"were all intended by said defendants to refer to and mean the said Dean C. Worcester, and would be understood and were understood by the officials of the Government of the Philippine Islands, the inhabitants of the city of Manila, and the people of the Philippine Islands generally to refer to and mean the said Dean C. Worcester, for the reason that it is a matter of common knowledge that the said Dean C. Worcester, in the performance of his duties as such member of the Philippine Commission and as such Secretary of the Interior of the Philippine Islands, has heretofore ascended to the mountains of the Province of Benguet in order to make a study of the native tribe known as the Igorots, who reside there; for the reason that it is a matter of general knowledge that there are large deposits of gold in said mountains of Benguet, and for the reason that, as a member of the Philippine Commission, which is the lawmaking body of said Philippine Islands, the said Dean C. Worcester has taken, and does take part in the making and repeal of the laws of said Philippine Islands; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his

capacity as such Secretary of the Interior of the Philippine Islands, has had under his supervision and control the enforcement of the laws of the Philippine Islands and the ordinances of the city of Manila regarding the slaughtering of cattle; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, has supervision and control of the Bureau of Science of the Government of the Philippine Islands and is himself generally known as a man devoted to the study of science; and for the further reason that it is a matter of general knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands has heretofore caused to be imported into the Philippine Islands fish eggs, for the purpose of stocking the mountain springs of said Philippine Islands; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, has made journeys and explorations in the Islands of Mindoro, Mindanao, and in other regions of the Philippine Archipelago ; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, in his capacity as such Secretary of the Interior of the Philippine Islands, at one time investigated and made a report to the Philippine Commission regarding the proposed purchase of a certain piece of land by the city of Manila; for the further reason that it is a matter of common knowledge that the said Dean C. Worcester, as a member of said Philippine Commission, along with the other members of said body, has heretofore been in negotiation with a certain hotel company in regard to the location of a proposed hotel on some of the filled-in lands of the city of Manila.

"That the said defendants intended to and did charge the said Dean C. Worcester with prostituting his office as a member of the Philippine Commission and as Secretary of the Interior of the Philippine Islands, for private ends; with squandering the public funds for the purpose of promoting his personal welfare; with violating the laws of the Philippine Islands and the ordinances of the city of Manila; with entering into illegal combinations for the purpose of robbing the people, with the intent of gain to himself and certain other individuals; and that the said defamation would be and was so understood by the inhabitants of the city of Manila, the officials of the Government of the Philippine Islands, and the people of the Philippine Islands generally, to accuse the said Dean C. Worcester of the conduct and acts and things above set forth, and to state and publish by innuendo and inference that he, the said Dean C. Worcester, was guilty of said acts, deeds, and doings; all of which allegations regarding the character and conduct of the said Dean C. Worcester, as above set forth, were and are false and without foundation in fact.

"That the said defamation and libel was published by the defendants, and each of them as aforesaid, willfully and maliciously, under large and conspicuous headlines, and every effort made on the part of the said defendants, and each of them, to insure that said defamation and libel attract the attention of and be read by all the subscribers and readers of the said newspaper 'El Renacimiento,' and to give the said defamation and libel the widest publication possible.

"All contrary to the statute in such cases made and provided.

"L. M. SOUTHWORTH,

"Acting Prosecuting Attorney.

"Subscribed and sworn to before me this 5th day of November, 1908, in the city of Manila, Philippine Islands, by L. M. Southworth, acting prosecuting attorney of the city of Manila.

"Chas. H. Smith,

"Judge, Court of First Instance.

"A preliminary investigation has been conducted under my direction, having examined the witnesses under oath, in accordance with the provisions of section 39 of Act No. 183 (Manila Charter) as amended by section 2 of Act No. 612 of the Philippine Commission.

"L. M. Southworth,

"Acting Prosecuting Attorney.

"Subscribed and sworn to before me this 5th day of November, 1908, in the city of Manila, Philippine Islands, by L. M. Southworth, acting prosecuting attorney for the city of Manila.

"Chas. H. Smith,

"Judge, Court of First Instance.

"Witnesses: Addresses.

"Governor-General Jas. F.

Smith Ayuntamiento.

"Commissioner Newton W.

Gilbert Ayuntamiento.

"Secretary of Finance and

Justice Gregorio Araneta Ayuntamiento.

"A. O. ZINN..... Ayuntamiento.

"Dr. G. E. Nesom..... Oriente Building.

"B. LOWENSTEIN..... No. 34 Plaza Moraga.

"M. A. Clarke..... No. 2 Plaza Moraga.

"C. P. Shuman..... Post-office.

"Enrique Barrera y Caldes Not. Pub.

"Arcadio Arellano..... Maestro de Obras."

On the same day (the 5th of November, 1908) warrants of arrest were issued for each of the said defendants. They were duly arrested, appeared before the court and requested a copy of the complaint and that 'they be given until the 7th day of November, at 8 o'clock a. m., to answer.

On the 7th day of November, 1908, the defendants, by their attorney, the Hon. Felipe Agoncillo, presented the, following motion:

"Come now the above-mentioned defendants in this action, Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes, and Faustino Aguilar, and before presenting any dilatory plea or answer to the complaint, they respectfully allege:

"1. That in this action there has been issued an order of arrest for each of the defendants, and each and every one of them has been held to answer for a criminal offense to wit, the crime of libel without there having been had any preliminary investigation before any court, and without any tribunal, judge, magistrate, or other competent authority having determined in accordance with law that the alleged crime of libel has been committed, and that there exist reasonable motives to believe that all and each of the defendants are guilty of the crime charged; this in violation of sections 12 and 13 of General Orders, No. 58, issued by the Office of the Military Governor of the United States in the Philippine Islands on April 23, 1900, and the first, third, eleventh, and eighteenth paragraphs of section 5 of the Philippine Bill, approved by the United States Congress July 1, 1902.

"2. That section 2 of Act No. 612 of the Philippine Commission, passed February 3, 1903, although it deprives accused persons in the city of Manila of the right to a preliminary investigation, has not relieved the court from the duty of holding the preliminary investigation that is imperatively prescribed in section 13 of the above-mentioned General Orders, No. 58, and which provisions continue in force in the city of Manila.

"3. That section 2 of the above-mentioned Act No. 612, which deprives accused persons in the city of Manila of the right to demand a preliminary investigation, is contrary to the provisions of section 5 of the said Philippine Bill for the following reasons:

"(a) Because it prescribes that persons who find themselves in the city of Manila may be deprived of their liberty 'without due process of law/ (Par. 1.)

"(b) Because it denies to the inhabitants of the city of Manila the legal protection of the preliminary investigation before being deprived of their liberty that is conceded by the said General Orders, No. 58, said order being in force in all the Islands for the benefit of all persons, and in the city of Manila for the plaintiffs and for the courts, and therefore denies equal protection to all before the law. (Par. 1.)

"(c) Because it deprives persons held in the city of Manila to answer for a criminal offense of the guaranty of previous 'due process of law.' (Par. 3.)

"(d) Because it violates the right to be secure against unreasonable seizures. (Par. 11.)

"Wherefore the petitioners pray the court to revoke the order of arrest issued in this cause upon each of them, to release them, and in consequence to cancel the bail which each one has furnished to this court to secure his release, and further to abstain from any proceedings in this case until previous 'due process of law' brings the cause within the jurisdiction of this court to try it."

On the 10th day of November, 1908, the prosecuting attorney answered the foregoing motion in writing, which is as follows:

"Now comes the undersigned assistant prosecuting attorney for the city of Manila, and in answer to the motion of the accused herein to dismiss this cause, respectfully submits that the same should be overruled for the following reasons, to wit:

"(1) Because the information shows upon its face that a preliminary examination was held upon the charge alleged in said information, by the prosecuting attorney, in accordance with Act No. 612 of the Philippine Commission.

"(2) Because there is no law in the Philippine Islands requiring the judges of the Courts of First Instance of the city of Manila to hold preliminary investigations in criminal causes, and issue orders of probable cause, where the prosecuting attorney, after due investigation of the facts, as in this case, has presented an information against the accused, in proper form.

" (3) Because the accused have waived any rights which they may have had to object to any defects or irregularity in the warrants of arrest, by appearing before the court and giving bond for their several appearance before said court at a subsequent day of the term, to answer to the information against them.

"It is therefore respectfully submitted that the motion should be overruled and the defendants required to plead to the information."

After hearing the arguments upon the above motion to quash the proceedings, the Hon. Charles H. Smith, then one of the judges of the Court of First Instance of the city of Manila, rendered the following decision:

"The information was presented in this case on the 5th day of November, 1908, and was accompanied, as shown by the files in this case, by two affidavits of Mr. L. M. Southworth, assistant prosecuting attorney of the city of Manila, in the first of which the said prosecuting attorney swears to said information, and in the second of which the said official swore that he had practiced the preliminary investigation in the office of the prosecuting attorney of the city of Manila prescribed by section 39 of Act No. 183 of the honorable Philippine Commission, being the charter of the city of Manila, as amended by section 2 of Act No. 612 of said Commission. Said affidavits were signed and sworn to before the judge presiding over the criminal branch of this court. A warrant was thereupon issued for the arrest of the defendants who, in pursuance of said warrant, were brought into the court on the same day, the said information was read to them and they were allowed until the morning of the 7th day of November to plead thereto. At the conclusion of the reading of said complaint

the defendants, with the assistance of their counsel, all presented a bail bond in the sum of P1,000 each, and were then released from custody, being ordered to return to court the morning of the said 7th day of November. At the time last before mentioned the defendants with their counsel all appeared in court and presented in writing a motion to quash the proceedings herein, which motion is based upon two propositions: (1) That the preliminary investigation required by law has not been practiced in this court; (2) that no specific order has been issued by the court in which it has been determined that the crime complained of has been committed and that there is reasonable ground to believe that the parties charged have committed such crime.

"1. The charge in this case is a violation of the provisions of chapter 297 of the Compiled Laws of the Philippine Commission. The punishment prescribed for such violation is 'a fine of not exceeding four thousand pesos, or imprisonment not exceeding one year, or both, so that the case is only triable in this court. Section 13 of General Orders, No. 58 (being section 3261 of the Compiled Laws), provides that -

" 'When a complaint or information alleging the commission of a crime is laid before a magistrate, he must examine, on oath, the informant or prosecutor and the witnesses produced, and take their depositions in writing, causing them to be subscribed by the parties making them. If the magistrate be satisfied from the investigation that the crime complained of has been committed, and that there is reasonable ground to believe that the party charged has committed it, he must issue an order for his arrest. If the offense be bailable, and the defendant offer a sufficient security, he shall be admitted to bail; otherwise he shall be committed to prison.'

"This was the law promulgated during the military government of the Philippine Islands under American sovereignty, and after the establishment of the civil government here and the volume of business in this court was found to be substantially larger than was anticipated, the law hereinbefore mentioned was enacted by the honorable Philippine Commission to furnish relief to this court in the city of Manila. Thereupon such relief was provided by means of Act No. 612 of said Commission, the second section of which, so far as the same is applicable to this case, is as follows:

" 'In cases triable in the Court of First Instance of the city of Manila, the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the prosecuting attorney, after a due investigation of the facts, under section thirty-nine of the Act of which this is an amendment, shall have presented an information against him in proper form: Provided, however, That the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable it to fix the bail or to determine whether the offense is bailable.'

"The validity of this law and the sufficiency of the provisions thereof in the matter of criminal procedure treated therein were submitted to and considered by the honorable Supreme Court of the Philippine Islands in a very able decision of that court in the case entitled 'United States, complainant, vs. William A. Wilson, defendant/ reported in volume 4 of the Philippine Reports, English edition, at page 317, etc. In a very studious examination of said last-mentioned case, the honorable Supreme Court determined that a preliminary investigation conducted by the prosecuting attorney of the city of Manila or his assistants, in pursuance of the provisions of such section 2 of said Act No. 612, was sufficient to meet the requirements of the law operative in the Philippine Islands in the matter of preliminary investigations, and that no further investigation is required to be made by the magistrate, who in the city of Manila is the trial judge.

"It appears of record in the case at bar that the assistant prosecuting attorney of the city of Manila has practiced in the office of the prosecuting attorney of said city the preliminary investigation required by law. This is shown by his sworn statement annexed to said information and sworn to by him before the trial judge here. Under these circumstances and being governed by the rule promulgated by the honorable Supreme Court of the Philippine Islands in the said Wilson case, the court must and does overrule said motion as to the said first proposition.

"2. A specific separate order of the court as to probable cause, etc., is no longer required by law in criminal causes (felonies) instituted in this court (city of Manila). The practice prescribed in said section of General

Orders, No. 68, was only required in cases in which the preliminary investigations therein were conducted by the trial judge or magistrate; in fact, said section of General Orders, No. 58, does not provide that a written order to this end must be made by such magistrate. However, as to the city of Manila, said practice has been entirely substituted by section 2 of said Act No. 612, the prosecuting attorney of the city of Manila, according to the provisions of section 486 of the Compiled Laws (sec. 39, Act No. 183 of the Commission), is a judicial officer, having full authority to make preliminary investigations and present informations in all criminal cases, and when he as such officer presents in court an information sworn to by him accompanied by an affidavit that he has practiced the preliminary investigation required by law, in pursuance of said Act No. 612, and takes such oaths before the magistrate, who is the judge presiding¹ over this (criminal) branch of the court, probable cause, supported by oath or affirmation, appears of record in the case. In reality at the time of the presentation of said information, together with said affidavits, the trial judge (magistrate) considered and determined that probable cause, etc., had been shown. The issuance of the warrant signed by the same magistrate or trial judge must be considered as a determination on the part of the court or magistrate as to probable cause, etc., if such a determination is now necessary under the amended laws applicable to this feature of the case. Through the assistance of defendants' counsel a bail bond was provided by them and approved by the court at the time of the reading of the complaint and one and one-half days before the presentation of the motion. Under the rule laid down in text-books and in the American and English Encyclopedia of Law, the questions raised in said motion are unseasonable.

"In the said Wilson case, the honorable Supreme Court considered this very question, and there not appearing in the record a specific order of the trial judge (magistrate) as to probable cause, the Supreme Court held that the same is not now an indispensable legal step in a criminal cause instituted in this court (city of Manila).

"During the last two years it has been impossible to conduct preliminary investigations before the judge (magistrate) presiding over criminal sala, and it has not been considered necessary in view of the doctrine promulgated by the honorable Supreme Court of the Philippine Islands in the said Wilson case. The rule of procedure approved and settled in the said last-mentioned case has been followed by all the judges presiding over this branch of the court, and very properly so in view of the great magnitude of business pressed upon the court for its attention.

"Following and being governed by the interpretation of the law as found in the said decision of the honorable Supreme Court of the Philippine Islands, this court must and does overrule the said motion as to the said second proposition.

"It is therefore ordered that said motion be denied and that the defendants each and all plead to said information forthwith."

The defendants duly excepted to this order denying said motion.

On the 10th of November, 1908, the defendants presented another motion as follows:

"Come now Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes, and Faustino Aguilar, defendants in the present cause and, without intending this motion to mean they renounce anything they set forth in their motion of the 7th instant, and in their exception taken to the denial thereof, which they here maintain in all its parts and efficacy, respectfully pray the court that there be exhibited to the court and to the defendants the preliminary examination alleged to have been held by the acting prosecuting attorney for the city of Manila, and until the accused have not been so investigated, they pray that they be not obliged to present any dilatory plea or answer to the complaint.

"This prayer is based on the following propositions:

"(1) That said preliminary investigation is the basis of the action, and should show therein the nature, form, origin, and motive of the charge.

" (2) That each and all of the accused desire, need, and have the right to be duly and fully informed of the nature, form, origin, and motive of the charge before they present any dilatory plea or answer the complaint, in conformity with the provisions of the second paragraph of section 5 of the Philippine Bill, approved July 1, 1902, by the Congress of the United States, and section 15, paragraph 2, of General Orders, No. 58, published on April 23, 1900, by the Office of the Military Governor of the United States in the Philippine Islands."

This motion was decided by the court in the following language:

"A motion is presented in this case by defendants' counsel for an order of the court requiring the prosecuting attorney to place before the court and the defendants, the whole of the preliminary investigation conducted in this case in the office of the prosecuting attorney.

"1. The charge in this case is libel; violation of Act No. 277 of the Philippine Commission. The published article complained of is set out in full in the information, so that no one can be misguided or deceived as to the character of the crime complained of.

"2. The prosecuting attorney of the city of Manila is, by the law governing that office, a judicial officer. His duties in the matter of preliminary investigations are prescribed by law, to wit: Act No. 612 of the honorable Philippine Commission; likewise section 486 of the compiled Laws of the Philippine Islands. His duties are separate and distinct from those of the court. In each of these two branches of the judiciary there are plain limitations prescribed by law. The court has grave doubt, upon the refusal of the prosecuting attorney to present such information in compliance with the order of the court, that said prosecuting attorney could be punished for a violation of the order of the court.

"3. The question submitted in this motion was clearly settled in the case of the United States vs. Wilson, reported in the fourth volume of the Philippine Reports. The rules promulgated in that case must govern this court in the application of the law here now. Besides this, no showing has been made, and it has not been claimed, that the prosecuting attorney has refused to give the information sought, upon application therefor.

"4. If the motion presented at this time could have merit at any stage of the case, it is inopportune now.

"The motion is therefore denied and the defendants ordered to plead."

To this ruling of the court the defendants duly excepted. On the 12th day of November, 1908, the defendants presented another motion, as follows:

"Come now Teodoro M. Kalaw, Fidel A. Reyes, Lope K. Santos, Faustino Aguilar, and Martin Ocampo, the defendants in the present cause, and respectfully pray the court to hold a preliminary investigation in the present cause before the defendants present any dilatory plea or answer the complaint.

"This motion is based upon the provisions of General Orders, No. 58, and in section 5 of the Philippine Bill, and other laws of the Philippine Commission which concede to all accused persons the right to a preliminary investigation, and also that the provisions of section 2 of Act No. 612, which deny to accused persons in the city of Manila such right, are void and unconstitutional, being in open contradiction to the provisions of the said section 5 of the Philippine Bill in its paragraphs 1, 3, 11, and 18."

This motion was opposed by the prosecuting attorney in the following language:

"Section 2 of Act No. 612, in part, provides:

" 'In cases triable only in the Court of First Instance in the city of Manila, the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the prosecuting attorney, after a due investigation of the facts, under section thirty-nine of the Act of which this is an amendment, shall have presented an information against him in proper form: Provided, however, That the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable

it to fix the bail or to determine whether the offense is bailable.'

"The sole purpose of this provision of said Act was to change the law in regard to preliminary investigations, as it then existed in General Orders, No. 58, and thereby remove the necessity for such investigation by the judges of the Court of First Instance of the city of Manila. If the contention of counsel, that it is necessary for the judges of the Court of First Instance to hold preliminary examinations before issuing warrants of arrest, notwithstanding the fact that preliminary examinations have already been held by the prosecuting attorney in accordance with law, be correct, then the provisions of Act No. 612, above referred to, are rendered perfectly nugatory, and its purpose absolutely defeated. It was the duty of the prosecuting attorney under Act No. 183, to which Act No. 612 is an amendment, to investigate all crimes and misdemeanors occurring in the city of Manila, and to prepare and present complaints and informations to the proper courts, but to these investigations there is not given such solemnity under Act No. 183 as to render subsequent investigations by the court before issuing warrants of arrest unnecessary.

"The lawmaking body in passing Act No. 612 evidently had a twofold purpose in view, namely:

"(1) To prevent the publicity which was necessarily incident to such investigations before the judge in open court.

"(2) To expedite the criminal business in the Court of First Instance in the city of Manila (with dockets usually crowded) by having these preliminary examinations held by the prosecuting attorney.

"The Supreme Court of the Philippine Islands has expressly decided that it is not necessary for the judges of the Court of First Instance of the city of Manila to hold preliminary investigations, when an information is presented by the prosecuting attorney, certifying that a preliminary investigation has been held by him. (See *U. S. vs. Wilson*, vol. 4, Phil. Rep., p. 317.)

"The second contention of counsel that it is necessary for the judges of the Court of First Instance of the city of Manila to issue an order, finding that probable cause exists, before issuing warrants of arrest, is equally as untenable. It would be impossible for the judge to issue an order saying that he found probable cause to exist unless he personally conducted the preliminary examination. He would have nothing upon which to base the order. It might be said that the judge could issue the order upon the faith of the preliminary examination held by the prosecuting attorney, as certified to in the information. If this be true, if the judge has the right to accept the preliminary examination made by the prosecuting attorney, and from it, as certified in the information, find that probable cause exists, then the court has found that probable cause exists in this case by the issuance of the warrants of arrest. But conceding that it was absolutely necessary for the court to hold a preliminary examination; that it was absolutely necessary for the court to find that probable cause existed before issuing the warrants of arrest, these matters could only render the arrest illegal, and it is perfectly immaterial as to whether the arrest is legal or illegal. The defendants are before the court, and the court has the legal right to try them upon a valid information. The courts have held that if a party is arrested without warrant and brought before a court of competent jurisdiction, that the court will proceed to try the accused notwithstanding the illegality of the arrest. The books are full of cases where accused have been kidnaped beyond the jurisdiction in which the charges were filed against them and brought back and tried.

"The validity of prosecutions by information has been sustained by the United States Supreme Court in the following cases: *Hurtado vs. People of California* (110 U. S., 516) ; *McNulty vs. California* (149 U. S., 645) ; and again, in the case of *Hawaii vs. Mankichi* (190 U. S., 197).

"In an elaborate and well-considered opinion, the supreme court of New Mexico holds that an information presented by a prosecuting officer is a sufficient finding of probable cause to authorize a court to issue a warrant of arrest, although the information is not sworn to. (See *Territory vs. Cutinola*, 4 New Mex. Rep., 305.)

"In volume 30 of the American and English Encyclopedia of Law, page 86, it is stated:

"Where an information states an offense, and is sworn to positively by some person, it is sufficient of itself to authorize a clerk to issue a warrant for the arrest of the defendant without any finding by the clerk or other person of probable cause to believe the defendant guilty."

"Conceding again, for the sake of argument, that the warrants in this case are void because no probable cause was found by the court before issuing them, the accused have waived all their rights to object to the same by appearing and giving bond. 'Giving bond waives defects in issuance of process for arrest.' (2 Humphrey (Tenn.), 445; 15 Barb. (N. Y.), 26; 24 Vermont, 506.)

"It is respectfully submitted that the motion should be overruled, and the accused required to plead to the information."

Upon a due consideration of said motion and the arguments presented, the judge of the lower court rendered a decision denying the same, in the following language:

"The defendants are all present in court; likewise their counsel and counsel for the Government.

"The information was read in this cause on the 5th day of November, at which time the defendants were ordered to appear in court on the morning of the 7th of November to plead to said complaint. On the morning of November 7 a motion was presented by defendants' counsel for an order of the court quashing the complaint and warrant filed and issued in this cause, upon two certain reasons stated therein. An adjournment was then ordered by the court to the morning of the 10th day of the present month, for the purpose of considering said motion and rendering a decision thereon. On the morning of the 10th day of November defendants with their counsel appeared in court, at which time the Government was represented by the prosecuting attorney and his assistant, Mr. South worth, said motion was then and there overruled. Immediately following said decision a motion was presented by defendants' counsel for an order of the court requiring the prosecuting attorney to present and exhibit in this case the preliminary investigation practiced in the office of the prosecuting attorney, in pursuance of the provisions of Act No. 612 of the honorable Philippine Commission, which motion was denied, being founded upon the rule promulgated in the case of the United States against Wilson, reported in the fourth volume of Philippine Reports. Defendants' counsel then requested further time within which to present a demurrer to said complaint, and for nothing more. This application was granted and the defendants were ordered to appear in court at this time, to wit, 0 o'clock a. m., November 12, 1908, for the presentation of said demurrer, as the only further dilatory plea, and then to answer to said complaint.

"At the last-mentioned time, to wit, 9 o'clock a m., November 12, 1908, defendants' counsel now present a motion for an order of the court authorizing and directing that a preliminary investigation be now conducted in this case.

"Considering the foregoing proceedings in this case, and the orders of the court issued therein, together with the provisions of Act No. 612 of the honorable Philippine Commission, as interpreted by the honorable Supreme Court in said case of the United States vs. Wilson; and, no showing having been made of any special reason why a preliminary investigation should be conducted by the court at this time, and this criminal branch of the court being occupied with the consideration of a substantial volume of business, and the charge in this case being criminal libel, the article complained of being set out in full in the information, it is ordered that said motion be denied, and that the defendants plead to said complaint forthwith."

To which ruling of the court an exception was duly taken by the defendants.

On the 12th day of November (1908) the defendants appeared and each demanded a separate trial, which demand was granted on the same day.

On the same day (the 12th of November, 1908) the defendants presented separate demurrers, each of which was in the same form and supported by the same arguments, to the complaint. The grounds of the demurrers were as

follows:

"(1) That the court has no jurisdiction to try the crime charged in the complaint.

"(2) That the acts complained of do not constitute the crime of libel."

On the same day (12th of November, 1908) the court rendered the following judgment denying the said demurrers:

"Upon reading and considering the information presented in this cause, the court is satisfied and so finds that the same is prepared in accordance with the provisions of section 6 of General Orders, No. 58, being section 3253 of the Compiled Laws.

"The matter urged in part one of the demurrer presented in this cause has already been considered and determined by the court in its previous orders issued herein.

"In part two of said demurrer the question of the failure of specification of the name of the complaining witness or offended person in the article complained of here is urged as a fatal omission or infirmity in the information. This question, as the court remembers it, has been considered and determined by a Federal court in the case of Enquirer Co. vs. Johnson, reported in 72 Federal Reporter, in which case the doctrine was promulgated that an acquaintance of an offended person in matters of this kind may testify that upon reading the article complained of he understood it to refer to such offended person. This question was also considered by the honorable Supreme Court of the Philippine Islands in the case of Causin vs. Jakosalem, reported in the fifth volume of Philippine Reports, at page 155 of the English edition.

"Considering all the questions submitted in said demurrer and the arguments of counsel in support thereof, the court finds that said demurrer is not well founded, and it is ordered that the same be overruled and that the defendants each and all plead to said complaint forthwith."

To which ruling of the court the defendants duly excepted.

On the same day (12th of November, 1908) the defendants were duly arraigned, the complaint was read to each of them and a copy of the same was delivered to each one. They were each requested to plead whether or not they were guilty of the crime charged in the said complaint. Each defendant stood mute, and the plea of "Not guilty" was entered in the case of each and in behalf of each of the said defendants.

On the same day (12th of November, 1908) the Hon. Charles H. Smith, judge, ordered the accused to appear before him on the 14th of November, 1908, at 10 o'clock a. m., for the purpose of fixing the date of trial for each of the said defendants.

On the 16th day of November, 1908, the defendant Martin Ocampo appeared and requested the appointment of assessors to assist the judge in the trial of the cause, and two assessors were duly appointed in conformity with the provisions of law.

On the 24th day of November, 1908, the defendant Lope K. Santos appeared and requested the appointment of assessors to assist the judge in the trial of his cause, and two assessors were duly appointed, in conformity with the provisions of law.

On the 1st day of December, 1908, the defendant Faustino Aguilar appeared and requested the appointment of assessors to assist the judge in the trial of his cause, and two assessors were duly appointed, in conformity with the provisions of law.

On the 1st day of December, 1908, the defendant Fidel A. Reyes also appeared and requested the appointment of assessors to assist the judge in the trial of his cause, and two assessors were duly appointed, in conformity with

the provisions of law.

On the 2d day of December, 1908, the defendant Teodoro M. Kalaw appeared and requested the appointment of assessors to assist the judge in the trial of his cause, and two assessors were duly appointed, in conformity with the provisions of law.

The assessors selected in each of the cases against each of the defendants were duly summoned and sworn in accordance with the provisions of law.

TRIAL OF THE DEPENDANT MARTIN OCAMPO.

On the 18th day of November, 1908, the cause against the defendant Martin Ocampo was brought on for trial. There were present at the beginning of the trial the Hon. A. S. Crossfield, one of the judges of the Court of First Instance of the city of Manila, and the two assessors theretofore selected at the request of the defendant, Miguel Velasco and Tomas Arguelles, and the attorneys, Jesse George, prosecuting attorney for the city of Manila, and L. M. Southworth, assistant prosecuting attorney, for the plaintiff, and Moreno, Salas, and De la Rosa, attorneys for the accused. The accused, Martin Ocampo, was also present in court.

After hearing the evidence adduced during the trial of the cause, the Hon. A. S. Crossfield, after making a full finding of facts from the evidence, reached the following conclusions and rendered the following sentence on the 9th day of January, 1909 :

"That the article published in the newspaper 'El Renacimiento' on October 30, 1908, as charged in the complaint, is a malicious defamation tending to impeach the honesty, virtue, and reputation of Dean C. Worcester, a member of the Philippine Commission and Secretary of the Interior of the Philippine Islands, and is a libel.

"That no justifiable motive for publishing the article has been shown, neither has any evidence of its truth been given. "That it has not been shown that this defendant, Martin Ocampo, is the author of the article.

"That this defendant, Martin Ocampo, published and caused to be published said article by providing for the printing of 'El Renacimiento,' in which the article appeared, and the circulation of it throughout the Philippine Islands. "That he, as one of the proprietors of the newspaper 'El Renacimiento' is chargeable with the publication of the article, even though he is not the author of it, and even though he did not personally publish or cause it to be published.

"I therefore find this defendant, Martin Ocampo, guilty as charged in the complaint, and sentence him to six months' imprisonment and to pay a fine of P2,000 and one-fifth of the costs of this action.

"The sentence will be executed at Bilibid Prison, Manila, P. I.

"In case of insolvency and nonpayment of fine, the defendant will suffer subsidiary imprisonment at the rate of two and a half pesos per day until the fine is satisfied according to law."

The record shows that the assessors agreed with the judge in his finding of facts.

TRIAL OF THE DEFENDANT FIDEL A. REYES.

On the 4th day of December, 1908, the cause against the defendant Fidel A. Reyes was brought on for trial. There were present at the beginning of the trial the Hon. A. S. Crossfield, one of the judges of the Court of First Instance of the city of Manila, and the two assessors theretofore selected at the request of the defendants, Edilberto Calixto and Anselmo Singian; also L. M. Southworth, assistant prosecuting attorney, for the plaintiff, and Felipe Agoncillo and Felix Ferrer, attorneys for the defendants. The accused, Fidel A. Reyes, was also present in court.

After hearing the evidence adduced during the trial of the cause, the Hon. A. S. Crossfield, after making a full finding of facts from the evidence, reached the following conclusions and rendered the following sentence on the 9th day of January, 1909:

"That the article published in the newspaper 'El Renacimiento' on October 30, 1908, as charged in the complaint, is a malicious defamation tending to impeach the honesty, virtue, and reputation of Dean C. Worcester, a member of the Philippine Commission and Secretary of the Interior of the Philippine Islands, and is a libel.

"That no justifiable motive for publishing the article has been shown, neither has any evidence of its truth been given.

"That it has not been shown that this defendant, Fidel A. Reyes, is the person who actually published, or caused to actually be published, said libel, or that he was the author of it.

"A further question of fact and conclusion, however, arises.

"Section 3432 of the Compilation of the Acts of the Philippine Commission provides:

" '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'

"This would make any editor or proprietor of the newspaper 'El Renacimiento' liable for the publication of the article complained of as fully as if he were the author of it. "This defendant, Fidel A. Reyes, is the chief editor of the newspaper 'El Renacimiento,' as the word editor is used in section 3432 of the Compilation of the Acts of the Philippine Commission before referred to, and as such editor he is chargeable with the publication of the article set forth in the complaint.

"I therefore find this defendant, Fidel A. Reyes, guilty as charged in the complaint, and sentence him to six months' imprisonment and to pay a fine of P2,000 and one-fifth of the costs of this action.

"The sentence will be executed at Bilibid Prison, Manila, P. I., and in case of nonpayment of fine the defendant will suffer subsidiary imprisonment at the rate of two and a half pesos per day until the fine is satisfied according to law."

The assessors in the cause against Fidel A. Reyes disagreed with the judge in his conclusions, the reasons therefor being stated as follows:

"1. That there is no conclusive and final proof in the records showing that the article complained of refers directly and exclusively to Mr. Dean C. Worcester, the alleged injured party; on the other hand, the evidence of the prosecution itself has shown that each of the acts shown in each of the paragraphs which are presumed to be libelous refer to divers persons; furthermore the plaintiff himself has roundly declared that he has not committed the illegal acts which in a manner are referred to in each of the paragraphs.

"There exists, then, a rational doubt in the mind of the undersigned, having before it the proofs adduced by the plaintiffs, that the article 'Birds of Prey' on the whole is libelous per se; and in this sense, they believe the proofs tending to show the existence of the libel in the article in question are as weak and as insufficient to show responsibility on the part of the defendant Fidel A. Reyes.

"2. That even granting that the article 'Birds of Prey' were libelous per se, the responsibility of the defendant Fidel A. Reyes is not clearly shown. Nevertheless the court finds the said defendant guilty for the sole reason that he is the redactor jefe of the newspaper 'El Renacimiento' on or about the 30th of October, 1908, on which date the article alleged to be libelous was published in the said newspaper.

"The mere fact that the words redactor jefe were translated as 'editor chief' is not sufficiently conclusive to the minds of the undersigned to saddle upon the accused the consequent criminal responsibility in the present action. "The facts proven in the record which have served as grounds for the defense of the accused are clear and evident, and show his exemption from responsibility. These facts are, first, that Fidel A. Reyes is not the director of 'El Renacimiento' but that his fellow-defendant, Teodoro M. Kalaw, is; second, because Fidel A. Reyes could not if he would, publish the newspaper 'El Renacimiento' without the consent of his director; third, because the accused, as simply redactor jefe does not write the editorials or doctrinal articles of the said newspaper, but only prepares the local news, which he also submits to the director; fourth, because there is no proof in the record that Fidel A. Reyes is the author of the said article; fifth, because the accused is not the editor of 'El Renacimiento,' and sixth, because, finally, neither is the proprietor.

"These facts are based on the testimony of witnesses also for the defense, tending: to show, as has been satisfactorily shown, that in the organization of Spanish and Filipino newspapers in the Philippines the person responsible in the eyes of the law for the publication of the newspaper is the director; in the present case the accused was not nor could he be the director of 'El Renacimiento' on the date of record, that official being Sr. Teodoro M. Kalaw.

"For the considerations shown, the undersigned are of the opinion that the accused Fidel A. Reyes should be absolved of the complaint."

TRIAL OF THE DEFENDANT TEODORO M. KALAW.

On the 5th day of December, 1908, the cause against the defendant Teodoro M. Kalaw was brought on for trial. There were present at the beginning of the trial the Hon. A. S. Crossfield, one of the judges of the Court of First Instance of the city of Manila, the two assessors theretofore selected at the request of the defendant, Ponciano Reyes and Geronimo Jose, L. M. Southworth, assistant prosecuting attorney, for the plaintiff, and Felipe Agoncillo, Roberto Moreno, Fernando Salas, and Ramon Diokno, attorneys for the defendant. The accused, Teodoro M. Kalaw, was also present in court.

After hearing the evidence adduced during the trial of the cause, the Hon. A. S. Crossfield, after making a full finding of facts from the evidence, reached the following conclusions and rendered the following sentence on the 8th day of March, 1909:

"That the article published in the newspaper 'El Renacimiento' on October 30, 1908, as charged in the complaint, is a malicious defamation, tending to impeach the honesty, virtue, and reputation of Dean C. Worcester, a member of the Philippine Commission and Secretary of the Interior of the Philippine Islands, and is a libel.

"That the article being published, as appears from the showing made by the defense, upon the facts adduced by it at the trial, the malice of its statements is only accentuated. "That no justifiable motive for publishing the article has been shown, neither has any evidence of its truth been given.

"That it has not been shown that this defendant, Teodoro M. Kalaw, is the author of the article.

"That this defendant, Teodoro M. Kalaw, as director and editorial manager of 'El Renacimiento,' is responsible for any article appearing therein, and thus was responsible for the publication of the article complained of.

"That while this defendant, Teodoro M. Kalaw, is not shown to be the author of the article complained of, he is chargeable with its publication, under the provisions of section 3432- of the Compilation of the Acts of the Philippine Commission, which is as follows:

" '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.'

"as an editor of 'El Renacimiento.'

"I therefore find this defendant, Teodoro M. Kalaw, guilty as charged in the complaint, and sentence him to nine months' imprisonment, and to pay a fine of P3,000, and one-fifth of the costs of this action.

"In case of insolvency and nonpayment of the fine imposed, the said defendant will suffer subsidiary imprisonment at the rate of two and a half pesos per day until the fine is satisfied according to law,

"This sentence will be executed at Bilibid Prison, Manila, P. L."

It appears of record that the said assessors entirely agreed with the sentence of the judge.

TRIAL OF DEFENDANT LOPE K. SANTOS.

After hearing the evidence adduced during the trial of the cause against the defendant Lope K. Santos, the Hon. A. S. Crossfield, together with the assessors selected, found that the evidence was insufficient to support the complaint, and therefore the cause against the said Lope K. Santos was dismissed and he was discharged from custody.

TRIAL OF THE DEFENDANT FAUSTINO AGUILAR.

After hearing the evidence adduced during the trial of the cause against the defendant Faustino Aguilar, the Hon. A. S. Crossfield, together with the assessors selected, found that the evidence was insufficient to support the complaint, and therefore the cause against the said Faustino Aguilar was dismissed and he was discharged from custody. The defendants, Martin Ocampo, Fidel A. Reyes, and Teodoro M. Kalaw, duly appealed from the sentence of the lower court and each made assignments of error in this court, some of which are as follows:

"1. The court erred in issuing the warrant of arrest and proceeding with the trial of the defendant without any preliminary investigation of the complaint being made.

"2. The court erred in holding that Act No. 612 is not unconstitutional.

"3. The court erred in assuming jurisdiction of the complaint herein filed.

"4. The court erred in holding that the facts alleged in the complaint constitute the crime of libel.

"5. The court erred in admitting as evidence on behalf of the prosecution the opinion of witnesses."

With reference to these assignments of error, the first three we think may logically be considered together. Under these assignments of error, the appellants contend:

- (a) That they were entitled, as of right, to a preliminary investigation;
- (b) That the court committed an error in issuing the warrant for their arrest and proceeding with the trial without first giving them a preliminary hearing;
- (c) That they were deprived of their liberty without "due process of law;"
- (d) That in the absence of a preliminary examination the court was without jurisdiction to try them; and
- (e) That Act No. 612 of the Philippine Commission is unconstitutional.

With reference to the necessity of a preliminary examination, under the procedure adopted for the city of Manila, this court has decided in the cases of U. S. vs. Wilson (4 Phil. Rep., 317), U. S. vs. McGovern (6 Phil. Rep., 621),

and others that defendants in criminal causes are not entitled to a preliminary examination.

In the case of *United States vs. Wilson*, supra, this court said, speaking through Mr. Justice Willard, now United States judge of the district of Minnesota (pp. 321, 322) : "It is claimed, also, that the judgment of conviction is erroneous because no preliminary investigation was held, as required by sections 12 and 13 of General Orders, No. 58.

This claim is answered by reference to Act No. 612 of the Commission, which in section 2 provides as follows:

" 'In cases triable only in the Court of First Instance in the city of Manila, the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the prosecuting attorney (of the city of Manila) after due investigation of the facts, under section 39 (Act No. 183, the Charter of the city of Manila) of the Act of which this is an amendment, shall have presented an information against him in proper form.' "

In the case of *United States vs. McGovern*, supra, this court, speaking through its Chief Justice, Mr. Arellano, said (citing and relying upon said Act No. 612) (p. 623) :

"* * * Investigation made by the judge was not substantially defective, nor was it necessary, and this is the most important, the complaint having been presented to the Court of First Instance of the city of Manila, in which an accused person is not entitled, as a matter of right, to a preliminary investigation, and consequently no law or statute has been violated, and due process of law has not been lacking."

The appellants contend that to arrest a defendant in a criminal cause in: the Philippine Islands and bring him to trial, without first giving him a preliminary examination when he demands it, is to deprive him of his liberty, without due process of law. This contention is based upon certain paragraphs of section 5 of the Act of Congress of July 1, 1902, known as the Philippine Bill, which, among other things, provide as follows:

"No person shall be held to answer for a criminal offense, without due process of law. * * *

* * * * *

"And no warrant shall issue but upon probable cause, supported by oath or affirmation, * * *"

It will be noted that there is nothing in the said bill (Philippine Bill) which defines or attempts to define what is meant by the phrase "due process of law." The Philippine Bill does not expressly require a preliminary examination and, therefore, unless a preliminary examination is a necessary step in "due process of law" or for the "issuance of a warrant of arrest," said Act No. 612 can not be regarded as unconstitutional, regarding the Philippine Bill as the constitution protecting the life, liberty, and property of the people of the Philippine Islands. It will be noted, also, that the Philippine Bill was enacted by Congress on the 1st of July, 1902, and that Act No. 612 was enacted by the Philippine Commission on the 3d of February, 1903. The legislative department of the Government, therefore, must have had in mind, when it denied to defendants the right of a preliminary examination in the city of Manila, the provisions of the Philippine Bill.

By reference to the proceedings in the court below preceding the arrest of the defendant (all of which is set out above)» it will be seen that the procedure adopted by Act No. 183 (Charter of the city of Manila), as amended by said Act No. 612, was followed; therefore the question is presented: Does such procedure constitute due process of law? This phrase has been discussed a great many times by the Supreme Court of the United States, by the supreme courts of the different States, and by all of the writers upon questions of constitutional law. The requirement above quoted from the Philippine Bill relating to due process of law is found in the constitution of practically all of the States of the Union. It is sometimes couched in the language that persons "shall not be deprived of their life, liberty, or property" except by "the law of the land." In others, the phrase is "due process of

law." These different phrases, however, have been given practically the same definition by the different courts which have attempted an explanation of their meaning. The phrase "due process of law" has been variously defined. Judge Story, in his work on Constitutional Law, defines it as "The law in its regular course of administration, through the courts of justice."

Judge Cooley, in his work on Constitutional Limitations, says (p. 434) :

"Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs"

But even though it be contended that a preliminary examination is a necessary step in "due process of law," then we reply that a preliminary examination was held in the present case by the prosecuting attorney of the city of Manila, as will appear from his sworn statement. Certainly it will not be contended that he is not as competent to conduct a preliminary examination as the average person designated by the law for that purpose. He is a sworn officer of the court and the law makes it his duty to make these investigations. The legislature may designate whomsoever it pleases, within the judicial department, for that purpose. The prosecuting attorney is a sworn official of the Government and is just as likely to be free from prejudice as any other official who might be appointed or designated.

It may be argued also that Act No. 612 is a special law applicable to the city of Manila alone and is for that reason unconstitutional. In reply to that argument it may be said:

- (a) That there is no requirement that all the laws in the Philippine Islands shall be alike applicable throughout the Islands;
- (b) That the city of Manila is governed by a special charter and has such powers as are expressly or impliedly given to it without reference to the powers given to the other municipalities;
- (c) That it has special courts with special jurisdiction which other municipalities do not have;
- (d) It has its own method of levying and collecting taxes, which is different from the method of other municipalities;
- (e) It has its own officials with special functions, some of which other municipalities do not have;
- (f) It has many special powers, such as to make and enter into certain classes of special contracts, which other municipalities do not have.

It would be just as logical to hold that all of the other special provisions for the city of Manila are unconstitutional, as to hold that the one in question is contrary to the Philippine Bill, simply because they are not applicable throughout the Philippine Islands. To hold thus would mean that the legislature could not grant to particular municipalities any special rights or impose upon them any special obligations which were not applicable to all the municipalities.

"Due process of law" is not ironclad in its meaning. It does not necessarily mean a particular procedure. The National Government may adopt one procedure satisfying the requirement and the State government may adopt still another, and not only that, but each State may adopt an entirely different procedure from that adopted either by the National Government or by any of the sister States, provided always that the procedure adopted in each jurisdiction fully furnishes protection to life, liberty, and property. (*Hurtado vs. State of California*, 110 U. S., 516; *Baldwin vs. State of Kansas*, 129 U. S., 57; *Caldwell vs. State of Texas*, 137 U. S., 691, 698; *Leeper vs. State of Texas*, 139 U. S., 462, 468; *McNulty vs. State of California*, 149 U. S., 645, 648;

Hodgson vs. State of Vermont, 168 U. S., 272; Brown vs. State of New Jersey, 175 U. S., 172, 175; Bolln vs. State of Nebraska, 176 U. S., 83; Reetz vs. State of Mich., 188 U. S., 505, 508; Mankichi vs. Territory of Hawaii, 190 U. S., 197, 211; Dorr vs. U. S., 195 U. S., 138; Kepner vs. U. S., 195 U. S., 100; Munn vs. State of Illinois, 94 U. S., 113.) In the case of Dorr vs. United States (195 U. S., 138)a Mr. Justice Day, speaking for the court, said (pp. 147, 148) : "The Spanish system in force in the Philippines gave right to the accused to be tried before judges, who acted in effect as a court of inquiry and whose judgments were not final until passed in review before the audiencia, or superior court, with right of final review and power to grant a new trial for errors of law in the supreme court at Madrid. To this system the Philippine Commission, in executing the power conferred by the orders of the President and sanctioned by Act of Congress (Act of July 1, 1902, 32 Stat. at L., 691, chap.1369), has added (1) a guaranty of the right of the accused to be heard by himself and counsel; (2) to demand the nature and cause of the accusation against him; (3) to have a speedy and public trial; (4) to meet the witnesses against him face to face; (5) and to have compulsory process to compel the attendance of witnesses in his behalf; and (6) that no person shall be held to answer for a criminal offense without due process of law, nor be put twice in jeopardy of punishment for the same offense, nor compelled in any criminal case to be a witness against himself. * * * It can not be successfully maintained that this system does not give an adequate and efficient method of protecting the rights of the accused, as well as executing the criminal law by judicial proceedings, which give full opportunity to be heard by competent tribunals before judgment can be pronounced."

The requirement that no person shall be held to answer for a criminal offense without "due process of law" simply requires that the procedure established by law shall be followed. If that procedure fully protects the life, liberty, and property of the citizens in the State, then it will be held to be "due process of law."

The procedure provided for the arrest and trial of defendants in the city of Manila fully guarantees all oi the rights mentioned in the Philippine Bill. Such procedure is not, therefore, in conflict with the provisions of the Philippine Bill and is constitutional.

The provision that no warrant shall issue but upon probable cause supported by oath or affirmation is a provision in the Philippine Bill. The question whether "probable cause" exists or not must depend upon the judgment and discretion of the judge or magistrate issuing the warrant. It does not mean that particular facts must exist in each particular case. It simply means that sufficient facts must be presented to the judge or magistrate issuing the warrant to convince him, not that the particular person has committed the crime, but that there is probable cause for believing that the person whose arrest is sought committed the crime charged. No rule can be laid down which will govern the discretion of the court in this matter. If he decides, upon the proof presented, that probable cause exists, no objection can be made upon constitutional grounds against the issuance of the warrant. His conclusion as to whether "probable cause" existed or not is final and conclusive. If he is satisfied that "probable cause" exists from the facts stated in the complaint, made upon the investigation by the prosecuting attorney, then his conclusion is sufficient upon which to issue the warrant for arrest. He may, however, if he is not satisfied, call such witnesses as he may deem necessary before issuing the warrant. The issuance of the warrant of arrest is prima facie evidence that, in his judgment at least, there existed "probable cause" for believing that the person against whom the warrant is issued is guilty of the crime charged. There is no law which prohibits him from reaching the conclusion that "probable cause" exists from the statement of the prosecuting attorney alone, or any other person whose statement or affidavit is entitled to credit in the opinion of the judge or magistrate.

The appellants contend that, under the fourth assignment of error, the court committed an error in holding that the facts alleged in the complaint constitute the crime of libel. The particular parts of the said editorial charged in the information as libelous are as follows:

"Ascending the mountains of Benguet to classify and measure the skulls of the Igorot and study and civilize them, and to espy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey

concealed amidst the lonely mountains, to appropriate them to himself afterwards, thanks to legal facilities made and unmade at will, but always for his own benefit.

"Authorizing, despite laws and ordinances, an illegal slaughtering of diseased cattle in order to derive benefit from the infected and putrid meat which he himself was obliged to condemn by virtue of his official position.

"Presenting himself on all occasions with (he wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, when his whole scientific labor is confined to dissecting insects and importing fish eggs, as if the fish of this country were less nourishing and less savory, so as to make it worth the while replacing them with species coming from other climes.

"Giving admirable impulse to the discovery of wealthy lodes in Mindoro, in Mindanao, and in other virgin regions of the Archipelago, with the money of the people and under the pretext of the public good, when, as a strict matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal benefit, as is shown by the acquisition of immense properties registered under the names of others.

"Promoting through secret agents and partners the sale to the city of worthless land at fabulous prices, which the city fathers dare not refuse, from fear of displeasing the one who is behind the motion, and which they do not refuse for their own good.

"Patronizing concessions for hotels on filled-in land, with the prospects of enormous profits, at the expense of the blood of the people."

The information alleges that the publication related to Mr. Dean C. Worcester, and that the defendants intended and did charge the said Dean C. Worcester with prostituting his office as a member of the Philippine Commission and as Secretary of the Interior of the Philippine Islands for private ends; with squandering the public funds for the purpose of promoting his personal welfare; with violating the laws of the Philippine Islands and the ordinances of the city of Manila; with entering into-illegal combinations for the purpose of robbing the people, with the intent of gain, to himself and other individuals; and that the said defamation would be and was so understood by the inhabitants of the city of Manila, the officials of the Government, and the people of the Philippine Islands generally, to accuse the said Dean C. Worcester of the conduct and acts and things set out in the said complaint, and to state and publish, by innuendo and inference, that he, the said Dean C. Worcester, was guilty of the said acts, deeds, and doings; all of which allegations regarding the conduct and character of the said Dean C. Worcester, as above set forth, were charged to be false and without foundation in fact.

In our opinion these charges, if false, are clearly libelous; therefore the lower court committed no error in overruling said demurrer. We think that the information contains sufficient facts to constitute a cause of action for libel.

The theory of the defense is that the alleged libelous editorial does not apply to the said Dean C. Worcester. That is a question of proof. It is charged that they do. If they do, then they tend to impeach the honesty, virtue, and reputation of Mr. Worcester and to expose him to public hatred, contempt, and ridicule and are, therefore, libelous;

Under the fifth assignment of error above noted, the defendants and appellants contend that the court committed an error in permitting witnesses to give their opinion upon the question whether or not the words in the said editorial apply to Mr. Dean C. Worcester. The Solicitor-General, in his very able brief presented to this court, cites many authorities in support of the ruling of the lower court. Among these authorities are: 18 American and English Encyclopedia of Law, at page 996, Note 2; Russell vs. Kelly (44 Cal., 641, 642) ; Enquirer Company vs. Johnston (72 Fed. Rep., 443) ; State vs. Mason (35 Pac. Rep., 130) ; People vs. Ritchie (42 Pac. Rep., 209).

In the present case a number of witnesses, among whom were the Hon. James F. Smith, then Governor-General of

the Philippine Islands; the Hon. Gregorio Araneta, then and now Secretary of Finance and Justice of the Philippine Islands; Hon. Newton W. Gilbert, Secretary of Public Instruction, were called for the purpose of showing that the statements made in said editorial were intended to apply to the Hon. Dean C. Worcester, Secretary of the Interior. Each of the witnesses testified that he was acquainted with Mr. Worcester, that he had read the said editorial, and that, in his opinion, the statements made therein were intended to and did apply to the Hon. Dean C. Worcester and to no other person or persons. The defendants duly objected to these questions and excepted to the ruling of the court admitting them.

In the case of *Russell vs. Kelly*, supra, the action was for libel founded upon certain publications made by the defendant, in which the name of the plaintiff was not mentioned. At the trial, witnesses were called by the plaintiff to testify that they were acquainted with the parties and familiar with the relations which existed between them immediately prior to the date of the publication; that on reading the publication they understood the plaintiff to be one of the persons referred to. The plaintiff also offered in evidence a subsequent publication made by the defendant (in which the plaintiff was referred to by name) for the purpose of identifying him as one of the persons to whom the preceding publication referred. Objection was duly made to this proof and overruled by the lower court. The Supreme Court, in deciding the question presented, said (pp. 644, 645)

"The rule as laid down in 2 Starkie on Slander (p. 51) is that the application of the slanderous words to the plaintiff, and the extrinsic matters alleged in the declaration, may be shown 'by the testimony of the witnesses who knew the parties and circumstances, and who can state their judgment and opinion on the application and meaning of the terms used by the defendant.' At page 321 it is said that where it is ambiguous on the face of the libel to whom it was intended to be applied, 'the judgment and opinion of witnesses, who from their knowledge of the parties and circumstances are able to form a conclusion as to the defendant's intention and application of the libel, is evidence for the information of the jury.' The same rule is stated in almost the same language in 2 Greenl. on Evidence, section 417. The correctness of this rule is not only established by the weight of authority, but is supported by every consideration of justice and sound policy. I am, therefore, of opinion that there was no error in admitting oral testimony to show the application of the alleged libel to the plaintiff." In the case of the *Enquirer Company vs. Johnston*, supra, the witness was asked a question almost identically similar to the question asked in the present case, to wit:

"Q. You may state, Mr. Barnett [the witness], after reading the article [meaning the publication in question], to whom did you understand it to refer when it spoke of Mr. Johnston's intimacy with the wife of a deceased brother? "The witness [Mr. Barnett] answered as follows:

"A. I understood it to mean Mr. Johnston and the widow that had come from Australia, that he had sent for."

To this question and answer the defendants objected and the court, in passing upon the objection, said:

"In *Odgers on Libel and Slander* (p. 567), it is said, 'The plaintiff may also call at the trial his friends, or others acquainted with the circumstances, to state that, on reading the libel, they at once concluded that it was aimed at the plaintiff. It is not necessary that all the world should understand the libel; it is sufficient if those who know the plaintiff can make out that he is the person meant.' To the same effect is the text in *Falkard's Starkie on Libel and Slander*. (4th Eng. ed., p. 589.)

* * * * *

"One's reputation is the sum or composite of the impressions spontaneously made by him from time to time, and in one way or another, upon his neighbors and acquaintances. The effect of a libelous publication upon the understanding of such persons, involving necessarily the identity of the individual libeled, is of the essence of the wrong. The issue in a libel case concerns not only the sense of the publication, but, in a measure, its effect upon a reader acquainted with the person referred to. The accuracy of the witness as to identity may be tested by cross-examination. At all events, and in view of the answer by Mr. Barnett, which appears to be the only

matter in the record suggesting the possibility that there might have been some 'wife of a deceased brother' other than this defendant in error to whom the publication in fact referred, this court can not hold the error in question well assigned."

While the action of the Enquirer Company vs. Johnston, *supra*, was a civil action for damages, yet the rule in a criminal action is the same. (25 Cyc, 582.)

In the case of the People vs. Ritchie, *supra*, the court, in deciding the same question presented here, said:

"We think the weight of authority supports the view that when the person sought to be libeled is designated in an ambiguous manner, testimony may be given that the publication was understood to mean the person alleged to be libeled. (2 Greenl. Ev., 417; Nelson vs. Borchenius, 52 111., 236; Smith vs. Miles, 15 Vt., 245; Russell vs. Kelly, 44 Cal., 641; 2 Starkie Sland. & L., 51, 321; Smart vs. Blanchard, 42 N. H., 146; Miller vs. Butler, 6 Cush., 71; Leonard vs. Allen, 11 Cush., 241; Farrand vs. Aldrich (Mich.), 48 N. W., 628.) However, if the admission of this evidence was error, it was harmless, because the record before us conclusively establishes the fact that Frank E. McGurkin was the person referred to in the article. (Farrand vs. Aldrich, *supra*; 13 Am. & Eng. Enc. Law, 486; 3 Lawson, Rights Rem. & Prac, 1244.)"

Our conclusion is, therefore, with reference to this assignment of error, that in a criminal action for libel, where the publication is ambiguous as to the person to whom it applies, the testimony of persons who read the publication is admissible for the purpose of showing who is intended to be designated by the words in said publication, and that the court committed no error in admitting the testimony of the various witnesses for that purpose.

SPECIAL DEFENSES OF THE APPELLANT MARTIN OCAMPO.

In addition to the foregoing assignments of error made by each of the appellants the appellant Martin Ocampo, made the following:

- "1. The court erred in declaring that the crime of libel was proved at the trial.
- "2. The court erred in holding that the accused is one of the owners of 'El Renacimiento.'
- "3. The court erred in holding that Martin Ocampo published and caused to be published the article in question, using 'El Renacimiento' therefor, and the circulation thereof throughout the Philippine Islands.
- "4. The court erred in convicting the accused."

With reference to the first above assignment of error, the appellant Martin Ocampo contends that the evidence fails to show that the crime of libel had been committed. Upon this contention of the defendant, from an examination of the evidence adduced during the trial, we are of the opinion that the proof shows that the editorial in question did refer to the Hon. Dean C. Worcester, and from an examination of the said editorial we find that he is charged with ascending the mountains of Beguet to spy in his flight, with the eye of the bird of prey, where are the large deposits of gold, the prey concealed amidst the lonely mountains, to appropriate them to himself, thanks to legal facilities made and unmade at will, but always for his own benefit;" with "authorizing * * * an illegal slaughter of diseased cattle in order to derive benefit from the infected and putrid meat * * *;" with "giving an admirable impulse to the discovery of wealthy lodes * * * with the money of the people, and under the pretext of the public good, when, as a matter of truth, the object is to possess all the data and the key to the national wealth for his essentially personal wealth, as is shown by the acquisition of immense properties registered under the names of others;" with "promoting, through secret agents and partners, the sale to the city of worthless land at fabulous prices;" * * * with "patronizing-concessions for hotels * * * at the expense of the blood of the people."

These charges, in our opinion, if not proved to be true, constitute a malicious defamation, expressed in writing, tending* to impeach the honesty and reputation of Dean C. Worcester and expose him to public hatred, contempt, and ridicule, and are, therefore, libelous. It was proven that the said alleged libel was published and circulated throughout the Philippine Islands and will be presumed to have been published with malice, no justifiable motive having been proven for making it. In our opinion the lower court committed no error in declaring that the evidence adduced during the trial of the cause clearly demonstrated that the crime of libel had been committed.

With reference to the second assignment of error, to wit: that the court erred in holding that the accused is one of the owners of "El Renacimiento," an examination of the proof shows, beyond question, that Ocampo was the administrator, manager, and one of the proprietors of the newspaper known as "El Renacimiento," published at No. 26 Calle Gunao, in the city of Manila, on the 30th day of October, 1908, and had been such administrator, manager, and part proprietor of the said newspaper for some time theretofore. The lower court, therefore, committed no error in declaring that the said Martin Ocampo was one of the owners of "El Renacimiento."

With reference to the third above assignment of error, to wit: that the court erred in holding that Martin Ocampo published and caused to be published the article in question, using "El Renacimiento" therefor and the circulation thereof throughout the Philippine Islands, from the evidence adduced during the trial it clearly appears, and there is no proof to the contrary, that Ocampo was one of the owners of "El Renacimiento" and was its administrator.

Section 6 of Act No. 277 provides that—

"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."

It will be noted that this article provides that—

"Every * * * proprietor of any newspaper * * * is chargeable with the publication of any words contained in any part of * * * each newspaper * * * as fully as if he were the author of the same."

This article has been interpreted in the case of the United States vs. Ortiz (8 Phil. Rep., 753). In that case this court, speaking through Mr. Justice Torres, said (pp. 757, 758) :

"With regard to Jose Gonzalez Paramos, his culpability arises from the proven fact that he was at the time the proprietor of the printing plant which printed the Revista Catolica, and therefore responsible for publishing the libel. He was at the same time the printer and editor of the Revista by virtue of a contract for a certain consideration made by and between him and the Centro Catolico, and is, therefore, likewise liable for the crime as charged.

"By means of his printing plant, and with his express consent, among others the issue No. 27 of the Revista, dated February 6, 1904, containing the libelous matter complained of, was printed and published. By so doing he has rendered himself guilty, together with the director of the Revista, of the crime as defined in section 2 of Act No. 277.

"According to the legal doctrines and jurisprudence of the United States, the printer of a publication containing libelous matter is liable for the same by reason of his direct connection therewith and his cognizance of the contents thereof. With regard to a publication in which a libel is printed, not only is the publisher but also all other persons who in any way participate in or have any connection with its publication are liable as publishers."

This decision would seem to be conclusive against the contention of the appellant. However, an examination of the jurisprudence of other jurisdictions shows clearly that the same doctrine has been established elsewhere. In the

case of *State vs. Mason* (26 L. R. A., 779; 26 Oreg., 273; 46 Am. St. Rep., 629), the question of the responsibility of the manager or proprietor of a newspaper was discussed. The court said, among other things (pp. 782, 783):

"The question then recurs as to whether the manager or proprietor of a newspaper can escape criminal responsibility solely on the ground that the libelous article was published without his knowledge or consent. When a libel is published in a newspaper, such fact alone is sufficient evidence *prima facie* to charge the manager or proprietor with the guilt of its publication. * * *

"The manager and proprietor of a newspaper, we think ought to be held *prima facie* liable criminally for whatever appears in his paper; and it should be no defense that the publication was made without his knowledge or consent, * * *

"One who furnishes the means for carrying on the publication of a newspaper and entrusts its management to servants or employees whom he selects and controls may be said to cause to be published what actually appears, and should be held responsible therefor, whether he was individually concerned in the publication or not, * * * Criminal responsibility for the acts of an agent or servant in the course of his employment necessarily implies some degree of guilt or delinquency on the part of the publisher; * * *

"We think, therefore, the mere fact that the libelous article was published in the newspaper without the knowledge or consent of its proprietor or manager is no defense to a criminal prosecution against such proprietor or manager."

In the case of *Commonwealth vs. Morgan* (107 Mass., 197), this same question was considered and the court held that in the criminal prosecution of a publisher of a newspaper in which a libel appears, he is *prima facie* presumed to have published the libel, and that the exclusion of an offer by the defendant to prove that he never saw the libel and was not aware of its publication until it was pointed out to him and that an apology and retraction were afterwards published in the same paper, gave him no ground for exception. In this same case, Mr. Justice Colt, speaking for the court, said:

"It is the duty of the proprietor of a public paper, which may be used for the publication of improper communications, to use reasonable caution in the conduct of his business that no libels be published." (Wharton's Criminal Law, sees. 1627, 1649; 1 Bishop's Criminal Law, sees. 219, 221; *People vs. Wilson*, 64 111., 195; *Commonwealth vs. Damon*, 136 Mass., 441.)

The above doctrine is also the doctrine established by the English courts. In the case of *Rex vs. Walter* (3 Esp., 21) Lord Kenyon said that he was "clearly of the opinion that the proprietor of a newspaper was answerable criminally as well as civilly for the acts of his servants or agents for misconduct in the management of the paper."

This was also the opinion of Lord Hale, Mr. Justice Powell, and Mr. Justice Foster.

Lofft, an English author, in his work on Libel and Slander, said:

"An information for libel will lie against the publisher of a paper, although he did not know of its being put into the paper and stopped the sale as soon as he discovered it."

In the case of *People vs. Clay* (86 111., 147) the court held that—

"A person who makes a defamatory statement to the agent of a newspaper for publication, is liable both civilly and criminally, and his liability is shared by the agent and all others who aid in publishing it."

We are of the opinion that not only is the decision of the lower court, upon the question to which this assignment of error relates, sustained by sound jurisprudence, but by the express provisions of said article 6 (Act No. 277). Said article 6 provides that "Every author * * * is chargeable with the publication." * * * "Every editor is chargeable with the publication," etc. * * * "Every proprietor of any * * * newspaper * * * is chargeable with the

publication of any words contained in any * * * number of each newspaper * * * as if he were the author of the same."

Our conclusion is, in relation to this assignment of error, that the lower court committed no error in holding the defendant liable.

SPECIAL DEFENSES OF THE APPELLANT TEODORO M. KALAW.

The defendant and appellant Teodoro M. Kalaw, made the following assignments of error:

"1. The lower court erred in admitting proofs of mere opinion submitted by the plaintiffs with reference to the value and significance of the article complained of.

"2. The lower court erred in allowing incompetent witnesses to give an opinion upon the article supposed to be libelous.

"3. The lower court erred in according greater weight to the opinion of the plaintiffs' witnesses than to the authorities and best expert proofs of the defense.

"4. The court erred in considering that the article complained of alludes exclusively and directly to Mr. Worcester.

"5. The court erred in considering that the numbers of 'El Renacimiento,' Exhibits B and C of the plaintiffs, indicate that the editorial supposed to be libelous refers to Dean C. Worcester.

"6. The court erred in holding that the crime of libel charged was proved.

"7. The court erred in considering that justifiable motives for publishing the article that is considered libelous were not proven.

"8. The court erred, finally, in convicting" the defendant Teodoro M. Kalaw."

The above assignments, Nos. 1, 2, 3, 4, 5, and 6, have been sufficiently answered in the discussion of the preceding assignments of error. We deem it unnecessary, therefore, to repeat the argument here.

Under the seventh assignment of error the appellant Teodoro M. Kalaw contends that the lower court committed an error in holding that the records do not show justifiable motives in publishing the alleged libelous article. Upon this question the Hon. A. S. Crossfield, in rendering his sentence in the court below, said:

"There was an attempt to justify the article (the editorial) on the ground that wrongs had been committed by some one in authority which should be righted and that the article was intended to call attention to the wrongs to have them righted, but the attempt failed utterly. No wrong or evil as stated in the article, was found to exist.

"In the attempt to justify, the defendant attempted to show that the article was" prepared and published upon information received after investigation made, and because the subject matter of some portions of it had appeared in other newspapers, which were taken to be true, but the evidence in this behalf did not establish the truth of any libelous statement in the article, or that the article was justified upon information at hand when it was published, as appears from the evidence."

An examination of the evidence brought to this court in our opinion fully justifies the conclusion of the lower court upon the question of justifiable motives.

The Attorney-General in his brief said:

"The testimony of witnesses such as those who testified to Mr. Worcester's ownership of land in Mindoro,

Nueva Ecija, and Benguet is so unreliable and so rebutted by such eminently trustworthy witnesses for the Government that the evidence to this end results in nullity. The same conclusion applies to all the appellant's attempts to show justifiable motives."

The burden of showing justifiable motives rests upon the persons responsible for the publication of a libel. (U. S. vs. Prautch, 10 Phil. Rep., 562; Hearn vs. De Young, 119 Cal., 670.)

Before the commencement of the trial in the court below of the cause against the defendant Kalaw, he gave notice to the court that his defense consisted in proving the truth of each and all of the facts mentioned in said alleged libelous editorial. (See record, p. 219.)

Section 4 of Act No. 277 (the Libel Law) holds that the truth in criminal prosecutions for libel 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 (the truth of the publication), not only must (a) the truth of the matter so charged be proven, but also (b) that it was published with good motives and for justifiable ends. Then, under this section the alleged libelous matter must not only be proved to be true, in order to constitute a defense, but it must be proved that it was published both with good motives and for justifiable ends.

In the present case the lower court found from the evidence that the proof adduced by the defense did not prove the truth of the facts charged in the alleged libelous editorial. Upon an examination of the evidence brought to this court, we are of the opinion that the evidence adduced by the defendant in no way approaches proving the truth of the libelous allegations. 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 malicious intent. When malice in fact is found to exist, the publisher can not be relieved from liability by pretense of "justifiable motives." The publication of a malicious defamation, whether it be true or not, is clearly an offense under Act No. 277. (U. S. vs. Bustos, 13 Phil. Rep., 690; U. S. vs. Prautch, 10 Phil. Rep., 562.) The truth of the facts stated in the alleged libelous editorial not having been proved, the defense of "good motives" and "justifiable ends" can not be sustained. (Sec. 4, Act No. 277; U. S. vs. Lerma (2 Phil. Rep., 254) ; U. S. vs. Crozier (5 Phil. Rep., 621); U. S. vs. Prautch, supra; U. S. vs. Bustos, supra.)

The lower court committed no error in holding that the defense of "justifiable motives" was not shown in publishing the alleged libelous article.

SPECIAL DEFENSES OF THE APPELLANT FIDEL A. REYES.

The appellant Fidel A. Reyes, in addition to the assignments of error above discussed, also made the following assignment of error:

"3. The court erred in holding that the defendant published and caused to be published the editorial referred to in the complaint, and in convicting him of said crime." The lower court in rendering its decision against this defendant (Reyes) said:

"This defendant (Fidel A. Reyes) is the chief editor of the newspaper 'El Renacimiento' as the word editor is used in section 6 of Act No. 277 above referred to, and as such editor is chargeable with the publication of the article set forth in the complaint."

The Solicitor-General, after discussing the evidence pro and con relating to the defendant Reyes, refused to make any recommendation concerning him.

The evidence shows that Fidel A. Reyes was the redactor jefe of "El Renacimiento" at the time of the publication of the said alleged libelous editorial. Many witnesses were called for the purpose of showing the duties of the

redactor jefe. The conclusions of the Solicitor-General relating to the said duties are found in the following quotation:

"The duties of the redactor jefe are in general to centralize and examine rough copy which comes in, requests for publication, etc., and to properly edit it, and this work he afterwards submits to the directors, without whose approval it can not be published."

W. B. Watson was called as a witness on rebuttal by the Government, and testified that the position of redactor jefe corresponded generally to that of city editor on American papers, who oversee news matter, edit the reporter's copy, and can write editorials, which, if approved, are published.

Macario Adriatico was called as a witness, and after stating the experience which he had had as director of newspapers in the Philippine Islands, testified that the position of redactor jefe was subordinate to the director, and that the publication of editorials was exclusively under the control of the director. It appears from the evidence, under the system of editing publications in the Philippine Islands, that the redactor jefe has no control whatsoever of the publishing¹ of newspapers. Neither was it proven in the present case that he was the author or proprietor of the said newspaper. We find no sufficient evidence in the record to justify the conviction of the defendant, Fidel A. Reyes.

After a careful consideration of the record brought to this court, of the evidence adduced pro and con during the trial of the cause, and a full consideration of the law applicable to such facts, we have arrived at the following conclusions:

First. That the sentence of the lower court with reference to the defendant Martin Ocampo should be and is hereby affirmed, and he is hereby sentenced to be imprisoned for a period of six months and to pay a fine of P2,000, to pay one-fifth part of the costs of the action in the lower court and one-third part of the costs in this court, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of Act No. 1732.

Second. That the sentence of the lower court imposed upon the defendant Teodoro M. Kalaw, in view of the high character of the person libeled and the dignity of the office which he held at the time the libel was published, and in view of the fact that the defendant attempted to prove the truth of the alleged libelous publication and his failure so to do, thereby practically repeating and republishing the libel; and in view of the recommendation of the Attorney-General, we are of the opinion that the sentence of the lower court should be modified, and that the defendant Teodoro M. Kalaw should be sentenced to be imprisoned for a period of twelve months, to pay a fine of P3,000, one-fifth part of the costs of the action in the lower court and one-third part of the costs in this court, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of Act No. 1732.

Third. That the sentence of the lower court imposed upon the defendant Fidel A. Reyes, because of the insufficiency of the proof adduced during the trial of the cause, should be reversed and the complaint as to him should be dismissed, with costs de oficio. It is so ordered.

Arellano, C. J., Torres, Moreland, and Trent, JJ., concur.

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