

DEAN C. WORCESTER, PLAINTIFF AND APPELLEE, VS. MARTIN OCAMPO, TEODORO M. KALAW, LOPE K. SANTOS, FIDEL A. REYES, FAUSTINO AGUILAR ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 5932. February 27, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 23d day of January, 1909, the plaintiff commenced an action against the defendants in the Court of First Instance of the city of Manila, for the purpose of recovering damages resulting from an alleged libelous publication. The complaint was in the following language:

"COMPLAINT.

"I.

"That the plaintiff as well as the defendants are residents of the city of Manila, Philippine Islands.

"II.

"That for a long time before the 30th of October, 1908, the defendants, Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Fidel A. Reyes, Faustino Aguilar, Leoncio G. Lique, Manuel Palma, Arcadio Arellano, Angel Jose", Galo Lichauco, Felipe Barretto, and Gregorio M. Cansipit, were the owners, directors, writers (redactores), editors (editores) and administrators of a certain daily newspaper known as 'El Renacimiento' and 'Muling Pagsilang' which newspaper during all the time mentioned in this complaint was published and circulated daily in the Spanish and Tagalog languages in the city of Manila, having a large circulation throughout the Philippine Islands.

"III.

"That for a long time the defendants have been maliciously persecuting and attacking the plaintiff in said newspaper, until at last on the 30th of October, 1908, with the malicious intention of injuring the plaintiff, who on said date was, and still is a member of the Civil Commission of the Philippines and Secretary of the Interior in the Government of the Philippines, they attacked the honesty and reviled the fame of the plaintiff, not only as a private person but also as an official of the Government of the Philippine Islands, and with the object of exposing him to the odium, contempt, and ridicule of the public, printed, wrote (redactaron), and published in said newspaper in its ordinary number of the 30th of October, 1908, a malicious defamation and false libel which was injurious (injurioso) to the plaintiff, said libel reading as follows:

" '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-creatures' 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 fellow-men.

" '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 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 eggs 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 the 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 legend:

" 'MANE, TECEL, PHARES'

"IV.

"That the plaintiff was, on the date of said publication, and still is, well known to the officials of the Government of the Philippine Islands, and to the inhabitants of the Philippine Islands, and to the public in general, personally as well as a member of the Civil Commission of the Philippines and as Secretary of the Interior, and the defamation and libel, and the words, terms and language used in said defamation and libel were employed by the said defendants with the intention of indicating the said plaintiff, and that they should be understood, as in effect they were understood, by the public officials of the Government and the inhabitants of the Philippine Islands in general, as referring to the plaintiff, by reason of the publicly known fact that said plaintiff in compliance with his duties in his position as such member of the Civil Commission of the Philippines and as such Secretary of the Interior of the Philippine Islands, ascended on a previous occasion the mountains of the Province of Benguet to study the native tribe known as Igorot, residing in said region; by reason of the publicly known fact that in the said mountains of Benguet there exist large deposits of gold, and for the reason that, as member of the Civil Commission of the Philippines, which is the legislative body of the Philippine Islands, the plaintiff takes part in the enactment and repealing of laws in said Islands; by reason furthermore of the fact, publicly known, that the plaintiff, as such Secretary of the Interior of the Philippine Islands, has had under his direction and control the enforcement of the laws; of the Philippine Islands and the ordinances of the city of Manila relating to the slaughtering of cattle; by reason furthermore of the fact, publicly known that said plaintiff, as such Secretary of the Interior of the Philippine Islands, had under his direction and control the Bureau of Science of the Government of the Philippine Islands, and he is generally known as a man devoted to the study of science; by reason furthermore of the publicly known fact that the said plaintiff, as such Secretary, of the Interior of the Philippine Islands, at a previous time, caused the importation into the Philippine Islands of fish eggs for the purpose of supplying the mountain streams of the Philippine Islands with fish-hatcheries; by reason furthermore of the publicly known fact that said plaintiff, as such Secretary of the Interior of the Philippine Islands, has journeyed to and explored the Islands of Mindoro, Mindanao, and other regions of the Philippine Archipelago; by reason furthermore of the publicly known fact that said plaintiff, as such Secretary of the Interior of the Philippine Islands, at one time investigated and prepared a report for the Civil Commission of the Philippines in regard to a certain proposition for the purchase of a parcel of land for the city of Manila; by reason furthermore of the publicly known fact that said plaintiff, as member of said Civil Commission of the Philippines together with the other members of said legislative body, once opened negotiations with a certain firm engaged in the hotel business in regard to the location of a prospective hotel on one of the filled-in lands of the city of Manila.

"That said defendants charged said plaintiff with the prostitution of his office as member of the Civil Commission of the Philippines and as Secretary of the Interior of said Islands, for personal ends; with wasting public funds for the purpose of promoting his personal welfare; with the violation of the laws of the Philippine Islands and the ordinances of the city of Manila; with taking part in illegal combinations for the purpose of robbing the people; with the object of gain for himself and for others; and lastly with being 'a bird of prey;' and that said defamation should be understood, as in effect it was understood, by the public officials of the Government and the people of the Philippine Islands in general, as charging the said plaintiff with the conduct, actions and things above specified; all of which allegations relating to the character and conduct of the said plaintiff, as above stated, were and are false and without any foundation whatsoever. "That said defamation and libel were published by the defendants under a heading in large and showy type, and every effort made by said defendants to see that said defamation and libel should attract the attention of the public and be read by all the subscribers to said newspaper and the readers of the same.

"V.

"Besides assailing the integrity and reviling the reputation of the plaintiff, said defendants, in publishing the said libel, did so with the malicious intention of inciting the Filipino people to believe that the plaintiff was a

vile despot and a corrupt person, unworthy of the position which he held, and for this reason to oppose his administration of the office in his charge as Secretary of the Interior, and in this way they endeavored to create enormous difficulties for him in the performance of his official duties, and to make him so unpopular that he would have to resign his office as member of the Civil Commission of the Philippines and Secretary of the Interior.

"In fact said defendants, by means of said libel and other false statements in said mentioned newspaper, have been deliberately trying to destroy the confidence of the public in the plaintiff and to incite the people to place obstacles in his way in the performance of his official duties, in consequence of which the plaintiff has met with a great many difficulties which have increased to a great extent his labors as a public official in every one of the Departments.

"VI.

"And for all these reasons the plaintiff alleges: That he has been damaged and is entitled to an indemnity for the additional work to which he has been put, by the said defendants, in the compliance of his duties, both in the past and the future, as well as for the injuries to his reputation and feelings, in the sum of fifty thousand pesos (P50,000) Philippine currency, and besides this said amount he is entitled to collect from the defendants the additional sum of fifty thousand pesos (P50,000) Philippine currency, in the way of punitive damages, as a warning to the defendants.

"Wherefore the plaintiff files this complaint, praying the court:

" (1) That the defendants be summoned according to law.

"(2) That judgment be rendered ordering the defendants to pay the damages as above stated, and the costs of the action."

On the 23d of February, 1909, the defendants presented the following demurrer to the said complaint:

"DEMURRER.

"Now come the defendants, through their undersigned attorney, and demur to the complaint filed herein, upon the following grounds:

"First. That the complaint is vague and unintelligible.

"Second. That the facts alleged in the complaint do not constitute a cause or right of action.

"Third. That there is another action pending between the plaintiff and several of the defendants for the same cause; and

"Fourth. That some of the defendants have been erroneously included therein.

"Therefore, they respectfully ask the court to dismiss the complaint, with costs against the plaintiff."

On the 27th of February, 1909, the Honorable Charles S. Lobingier, judge, overruled said demurrer in the following decision, to which the defendants duly excepted:

"ORDER.

"The defendants demur upon, several grounds:

"(1) The first ground is that the complaint is vague and unintelligible and this is directed principally to paragraph 2, in which it is alleged that the defendants were 'duenos, directores, redactores,' etc., but it is not alleged that they were such simultaneously. If this were the sole averment of the defendants' connection with the alleged libel, the objection might be well taken, but paragraph 3 of the complaint alleges that the

defendants 'imprimieron, redactaron y publicaron,' etc., the article complained of. Under section 2 of Act 277 'every person' who 'publishes or procures to be published any libel' is made responsible. (Cf. U S. vs. Ortiz, 8 Phil. Rep., 752.) We think, therefore, that the connection of the defendants with the publication complained of is sufficiently charged.

"(2) It is also claimed that the facts alleged are not sufficient to state a cause of action and it is urged in support of this that the article complained of and which is copied in the complaint, fails to mention the plaintiff or to show on its face that it refers to him. It is, however, specifically alleged in paragraph 4 that the article was intended to refer to the plaintiff and was so understood by the public, and this allegation is admitted by the demurrer. Under the rule announced in Causin vs. Jakosalem (5 Phil. Rep., 155), where the words complained of do refer to the plaintiff 'an action for libel may be maintained even though the defamatory publication does not refer to the plaintiff by name.'

"(3) It is further urged that there is another action pending between the parties for the same cause. This, it is true, is made a ground for demurrer by the Code of Civil Procedure, sec. 91 (3), but like all grounds therein mentioned, it must 'appear upon the face' of the pleading objected to, and where it does not so appear 'the objection can only be taken by answer. (Code C. P., sec. 92.) There is no averment in the complaint which indicates that there is another action pending.

"The fourth ground of the demurrer is not one recognised by law (Code C. P., sec. 91) nor do we find anything in Sanidad vs. Cabotaje (5 Phil. Rep., 204) Which would necessitate any change in the views already expressed.

"The demurrer is, therefore, overruled and defendants are given the usual five days to answer."

On the 15th day of November, 1909, the defendants presented their amended answer, which was as follows:

"ANSWER;

"The defendants in the above-entitled cause, through their undersigned attorney, by their answer to the complaint, state:

"That the defendants deny generally the allegations of the complaint.

"As a special defense, the defendants allege:

"First. That the plaintiff has no legal capacity to institute this action, as it clearly appears from the allegations of the complaint and which the defendants hereby deny.

"Second. That the facts set out as constituting a cause of action in the complaint, are insufficient to constitute such cause of action in favor of the plaintiff and against the defendants.

"Third. That the said complaint is manifestly improper, for the reason that there is now pending in the Court of First Instance of this city a criminal cause, No. 4295, for the crime of libel against the defendants herein, Martin Ocampo, Teodoro M. Kalaw, and Fidel A. Reyes, both actions, criminal and civil, being based upon the same facts which the plaintiff herein, who is also a party to the said criminal action, now alleges as the basis of his action.

"Fourth. That the civil action in the above-entitled cause has been extinguished for the reason that plaintiff did not expressly reserve his right to enforce the same in the aforesaid cause 4295, for the crime of libel, after the said criminal cause had been finally disposed of.

"Fifth. That the defendants, Lope K. Santos, Faustino Aguilar, Leoncio G. Lique, Manuel Palma, Arcadio Arellano, Angel Jose, Galo Lichauco, Felipe Barretto, and Gregorio M. Cansipit, were erroneously included in the complaint, for the simple reason that the first two were acquitted in said criminal cause No. 4295, for

libel, the third was used as a witness for the prosecution in the said criminal cause, and the others have no interest, either directly or indirectly, in the newspaper 'El Renacimiento' in which it is alleged by the plaintiff the editorial, which is the basis of the complaint, and which it is claimed to be libelous, was published.

"Wherefore the defendants pray that they be acquitted of the complaint, with the costs against the plaintiff."

After hearing the evidence adduced during the trial of the cause, the arguments of the respective attorneys, the Honorable James C. Jenkins, judge, on the 14th of January, 1910, rendered the following decision:

"DECISION.

"This is a civil action sounding in damages to the amount of P100,000 for an alleged libel of the plaintiff by the defendants.

"The plaintiff is the Honorable Dean C. Worcester, a member of the Civil Commission of the Philippine Islands, and Secretary of the Interior of the Insular Government. The defendants are twelve persons designated by name in the complaint and alleged therein to be the owners, directors, writers (redactores), editors (editores), and administrators of a certain daily newspaper known as 'El Renacimiento' and 'Muling PagsilaNG' which defendants, as well as the plaintiff, are residents of the city of Manila, Philippine Islands.

"It is further alleged in the complaint that for a long time prior to the 30th of October, 1908, the defendants were the owners, directors, writers, editors, and administrators of said daily newspaper, and that said newspaper, during all the time mentioned in, the complaint, was published and circulated daily in the Spanish and Tagalog languages in the city of Manila, having a large circulation throughout the Philippine Islands.

"It is also alleged that for a long time the defendants had been maliciously persecuting and attacking the plaintiff in said newspaper, until at last, on said date, with the malicious intention of injuring the plaintiff, who then was and still is a member of the Civil Commission of the Philippines and Secretary of the Interior in the Government of the Philippines, they attacked the integrity and reviled the reputation of the plaintiff, not only as a private citizen, but also as an official of the Government of the Philippine Islands; and with the object of exposing him to the odium, contempt, and ridicule of the public, they wrote, printed, and published in said newspaper in its ordinary number of the said 30th of October, 1908, a malicious defamation and false libel, which was injurious to the plaintiff, said libel, as translated from the Spanish, reading as follows:

" '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 a majority of cases they do 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.

" 'Among men it is 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 will 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 fellow-men.

" '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 amongst 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 eggs of this country were less nourishing and 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 Mindanao, in Mindoro, 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 lands, 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 the 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 aim are never thwarted.

" 'Who will detain them?

" 'Some share in the booty and 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 legend: "

'MANE, TECEL, PHARES.'

"It is alleged, among other things, in paragraph four of the complaint, that the plaintiff was on the date of said publication, and still is, well known to the officials of the Government of the Philippine Islands, and to the inhabitants of the Philippine Islands, and to the public generally, personally as well as a member of the Civil Commission of the Philippines and as Secretary of the Interior; and the defamation and libel, and the words, terms, and language used in said defamation and libel were employed by the said defendants with the intention of indicating the said plaintiff, and that they should, be understood, as in fact they were understood, by the public officials of the Government and the inhabitants of the Philippine Islands in general, as referring to the plaintiff." (Here follow the reasons for saying the editorial referred to plaintiff and why the public understood it as referring to him.)

"The said defendants charged said plaintiff with the prostitution of his office as a member of the Civil

Commission of the Philippines and as Secretary of the Interior of said Islands, for personal ends; with wasting public funds for the purpose of promoting his personal welfare; with the violation of the laws of the Philippine Islands and the ordinances of the city of Manila; with taking part in illegal combinations for the purpose of robbing the people, with the object of gain for himself and for others; and lastly, with being a bird of prey; and that said defamation should be understood, as in effect it was understood by the public officials of the Government and the people of the Philippine Islands in general, as charging the said plaintiff with the conduct, actions and things above specified; all of which allegations relating to the character and conduct of the said plaintiff, as above stated, were and are false and without any foundation whatever. That said defamation and libel were published by the defendants under a heading in large and showy type, and every effort was made by said defendants to see that said defamation and libel should attract the attention of the public and be read by all the subscribers to said newspaper and the readers of the same.

"In paragraph five of the complaint it is further alleged that, besides assailing the integrity and reviling the reputation of the plaintiff, said defendants, in publishing said libel, did so with the malicious intention of inciting the Filipino people to believe that the plaintiff was a vile despot and a corrupt person, unworthy of the position which he held, and for this reason to oppose his administration of the office in his charge as Secretary of the Interior, and in this way they endeavored to create enormous difficulties for him in the performance of his official duties, and to make him so unpopular that he would have to resign his office as a member of the Civil Commission of the Philippines and Secretary of the Interior. In fact, said defendants, by means of said libel and other false statements in said mentioned newspaper, have been deliberately trying to destroy the confidence of the public in the plaintiff, and to incite the people to place obstacles in his way in the performance of his official duties, in consequence of which said plaintiff has met with a great many difficulties which have increased to a great extent his labors as a public official in every one of the Departments.

"And the allegations end with paragraph six, in which the plaintiff states that for all these reasons he has been damaged and is entitled to an indemnity for the additional work to which he has been put by the said defendants in the compliance with his duties, both in the past and in the future, as well as for the injuries to his reputation and feelings, in the sum of ₱50,000, and that besides this said amount he is entitled to collect from the defendants the additional sum of fifty thousand pesos in the way of punitive damages, as a warning to the defendants.

"The complaint concludes with a prayer, among other things, that judgment be rendered ordering the defendants to pay the damages as above stated and the costs of the action; and is dated and signed, Manila, P. I., January 23, 1909, Hartigan and Rohde, Kincaid and Hurd, attorneys for plaintiff.

"A demurrer to this complaint was filed by the defendants, through their attorney, Sr. Felipe Agoncillo, which demurrer was heretofore heard and overruled by the court, and the defendants required to answer. Accordingly, the defendants within the prescribed time, filed their answer; and on November 16, 1909, through their attorney, filed an amended answer, which is as follows (after stating the case):

" 'The defendants in the above-entitled action, through their undersigned attorney, answering the complaint, state: That they make a general denial of the allegations in the complaint, and as a special defense allege:

" '(1) That the plaintiff lacks the necessary personality to institute the complaint in question, as evidently appears from the allegations in the same, and which the defendants.

" '(2) That the facts set forth as a cause of action in the complaint are insufficient to constitute a cause of action in favor of the plaintiff and against the defendants;

" '(3) That the said complaint is in every sense contrary to law, criminal case No. 4295, for libel, against the defendants Martin Ocampo, Teodoro M. Kalaw, and Fidel A. Reyes, in the Court of First Instance of this city, being still pending, inasmuch as both causes, criminal and civil, are based upon the same facts which the plaintiff, who is also interested in said criminal cause, considers a cause of action;

" '(4) That the civil action in the above-entitled cause fare been destroyed as a consequence of the fact that the plaintiff did not expressly reserve his right to the same in the said mentioned cause No. 4295 for libel, in order to exercise it after the termination of said criminal cause;

" '(5) That the defendants Lope K. Santos, Faustino Aguilar, Leoncio G. Lique, Manuel Palma, Arcadio Arellano, Angel Jose, Galo Lichauco, Felipe Barretto, and Gregorio M. Cansipit have been erroneously included in the complaint, for the simple reason that the first two were acquitted in the said cause No. 4295 for libel, the third was used as a witness by the prosecution in the same cause, and the latter ones have no interest, directly or indirectly, in the newspaper "El Renacimiento" in which, the plaintiff presumes, was published the editorial which forms the basis of the complaint, and which is said to be libelous; and concluding with a prayer to the court to dismiss the case, with costs against the plaintiff.'

"The second paragraph of this 'special defense' is nothing other than a general demurrer to the complaint, which has been overruled, as already stated.

"The first paragraph is not clearly stated, but the court construes it as meaning a simple denial that the plaintiff is the person referred to in the alleged libelous article 'Birds of Prey' which issue is sufficiently raised by the general denial of the allegations in the complaint.

"The third paragraph is not a valid defense in law, for the simple reason that section 11 of Act 277 of the Philippine Commission, under which this suit is brought, especially provides for a separate civil action for damages, as Well as for a criminal prosecution. (See Mr. Justice Johnson's recent decision.) This third paragraph is therefore without merit; and the same may be said of the fourth paragraph thereof. As to paragraph five, it contains no material averment which could not have been set up and insisted upon under the general issue.

"One part of this so-called special defense is therefore a demurrer already adjudicated, another part is covered by the general issue, and the residue is without merit as a legal defense, and might have been stricken out. The defense is therefore tantamount to the general issue only, there being no special plea that these charges are true, nor any plea of justification.

"The trial of this case on its merits began November 16, and ended December 10, 1909, and the proceedings and evidence introduced are to be found in the exhibits and stenographic notes taken by the court's official reporter. At the trial Judge Kincaid and Major Hartigan appeared for the plaintiff and Senores Agoncillo, Cruz Herrera, and Ferrer for the defendants.

"After hearing the testimony and arguments of counsel and a due consideration of the case, the court finds the following facts established by the admissions and a decided preponderance of the evidence:

"That the defendants Martin Ocampo, Manuel Palma, Arcadio Arellano, Angel Jose, Galo Lichauco, Felipe Barretto, and Gregorio M. Cansipit, seven in number, are the proprietors and owners of the said daify newspaper known as 'El Renacimiento' and 'Muling Pagsilang' and that 'El Renacimiento' and 'Muling Pagsilang' are one and the same newspaper, owned, managed, printed, and published by the same persons; that Teodoro M. Kalaw and Lope K. Santos were the editors in chief or directors of this paper on the 30th of October, 1908, and that said nine defendants named were the owners, editors, proprietors, managers, and publishers of said newspaper on said 30th of October, 1908, for a long time prior thereto, and during all the time mentioned in the complaint.

"As to the defendants, Reyes, Aguilar, and Lique, they appear from the evidence to have been editors of said paper, but in a subordinate position to the chief editors or directors, Kalaw and Santos, and to have acted under the direction of the latter two defendants.

"The court further finds that every essential or material allegation of the complaint is true substantially as therein stated, with the exception noted as to Fidel A. Reyes, Faustino Aguilar, and Leoncio G. Lique, and as

may be herein- after indicated. The case is therefore dismissed as to these three defendants.

"The only serious contention of the defense is (1) that the editorial 'Birds of Prey' does not refer to a determinate person; and (2) that, conceding that it does refer to the plaintiff, none of the defendants, except Teodoro M. Kalaw, is responsible for the writing, printing, or publication of the alleged libelous article or the damage to the plaintiff resulting therefrom.

"In the opinion of the court this article so indubitably refers to the plaintiff, and was so easily and well understood by the readers of said paper as indicating the plaintiff, that it would be an act of supererogation to elaborately discuss the evidence adduced in support of or against the proposition. It is as clear to the court from the evidence adduced as the noonday sun, that the plaintiff is the identical and only person meant and referred to in said article 'Birds of Prey;' and it requires no argument to prove that it does mean and refer to him and was so intended by the writer, and therefore by said nine defendants, and could not have been otherwise understood by any intelligent reader or subscriber of said paper, in view of the reasons assigned in the complaint, which reasons are clearly disclosed and fully established by the evidence. And it may be added that much valuable time was needlessly consumed by the defense at the trial in an effort to establish the contrary.

"It seems to the court a reflection upon the intelligence of the subscribers and readers of 'El Renacimiento' to contend that this editorial was not well understood by them as referring to the plaintiff, and as fully as if his name had been mentioned in every paragraph thereof. And assuredly the omission of his name from the editorial has made the libel none the less hurtful and disastrous in its results to the reputation and feelings of the plaintiff.

"Much time was consumed also in adducing evidence to show that none of the twelve defendants were the owners of 'El Renacimiento' and 'Muling Pagsilang' but that six of them had originally contributed their money as a patriotic donation to the Filipino people, and that Martin Ocampo simply held the money and property of the paper as trustees for this people, and that the paper was being devoted exclusively to philanthropic and patriotic ends, and that Galo Lichauco had agreed to contribute to the same ends, but had not done so.

"This proposition in the light of the evidence is so preposterous as to entitle it to little, if any, serious consideration. To ask the court to believe it is tantamount to asking the court to stultify reason and common sense. That those seven defendants named contributed their respective sums of money, as shown by the evidence, to the foundation of said newspaper in 1901 for their own personal benefit and profit, is fully and unmistakably established. It is equally well established that Martin Ocampo is and was, not only a part owner, but that he has been and is still the administrator or business manager of said newspaper, and that the other six persons named are shareholders, part owners and proprietors thereof, and were such on said 30th of October, 1908.

"Arcadio Arellano testified positively that Galo Lichauco was one of the seven founders, and that Lichauco contributed P1,000. Martin Ocampo testified that Galo Lichauco promised to contribute an amount which he (the witness) did not remember but that Lichauco did not keep his promise. (See pp. 107, 108, and 231 of the evidence.)

"The other evidence and circumstances strongly corroborate Arcadio Arellano, and the court is constrained to believe that Arellano told the truth and Ocampo did not. See Exhibit B-J, a copy of 'El Renacimiento' containing the article 'Infamy Among Comrades' page 87 of the evidence, in which there was published that these seven persons named are the shareholders of the paper.

"Furthermore, Galo Lichauco failed to appear and testify, so as to enlighten the court as to which witness, Arellano or Ocampo, told the truth, or whether chief editor Kalaw had his authority to publish in said paper, as he did on November 22, 1907, that he, Galo Lichauco, was one of the shareholders. The presumptions are therefore against Galo Lichauco. See *S. S. Co. vs. Brancroft-Whitney Co.* (36 C.C.A., 136 and 153).

"It also appears from the evidence that Teodoro M. Kalaw was the chief editor or director of the Spanish section of said paper, and that Lope K. Santos was the chief editor or director of the Tagalog section on said 30th of October, 1908, and that the Spanish and Tagalog sections are, and then were, one and the same newspaper, but printed and published in different languages.

"It is alleged that said newspaper has a large circulation throughout the Philippine Islands, and was published and circulated daily in the Spanish and Tagalog languages in the city of Manila. Not only are these allegations true, but it is also true that said newspaper has a daily circulation and subscribers in other parts of the world, notably in the United States and Spain; and it has subscribers numbering in toto not less than 5,200, and a daily issue of 6,000 copies.

"It is also true as alleged, and the court so finds that since the year 1906 to said 30th of October, 1908, these nine defendants had been maliciously persecuting and attacking the plaintiff in their said newspapers, until at last, on said 30th of October, 1908 with the malicious intention of injuring the plaintiff, who on said date was and still is a member of the Civil Commission and Secretary of the Interior in the Government of the Philippine Islands; and with the object of exposing him to the odium, contempt, and ridicule of the public, they wrote, printed, and published in their said newspaper, in its ordinary, number of said 30th of October, 1908, the malicious defamation and false libel, of and concerning the plaintiff, entitled and herein alluded to as the editorial 'Birds of Prey' which libel was And is highly injurious to the plaintiff and from which the plaintiff has sustained serious damage.

"This editorial, when properly interpreted and read between the lines, means, besides other things, and was intended by the writer to mean and be understood by the readers thereof as meaning substantially the following:

"That the plaintiff, Dean C. Worcester, was born on the surface of the globe to eat and devour, like a bird of prey, and that others, born to be eaten and devoured, are the prey and food of the insatiable voracity of the plaintiff; that the plaintiff has a desire to copy and imitate the most rapacious bird, the eagle, in order to triumph in plundering his fellowman; that the plaintiff besides being an eagle, has the characteristics of the vulture, the owl, and the vampire.

"That the plaintiff ascended the mountains of Benguet to classify and measure the skulls of the Igorots, and study and civilize them and to spy in his flight with the eye of the bird of prey the large deposits of gold - the prey concealed amidst the lonely mountains - and to appropriate them to himself afterwards, and that to this end the plaintiff had the legal facilities, made and unmade at his own will, and that this is always done for his own benefit.

"That the plaintiff authorized, in spite of laws and ordinances, the 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; that while the plaintiff presents himself on all occasions with the wrinkled brow of the scientist who consumes his life in the mysteries of the laboratory of science, his whole scientific labor is confined to dissecting insects and importing fish eggs.

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

"That the plaintiff promoted, through secret agents and partners, the sale to the city of Manila of worthless land at fabulous prices, which the city fathers dared not refuse from fear of displeasing the plaintiff, who was behind the project, and which they did not refuse for their own good; that the plaintiff favored concessions for hotels in Manila on filled-in land; with the prospect of enormous profits, at the expense of the blood of the

people.

"That such are the characteristics of the plaintiff, who is at the same time an eagle that surprises and devours, a vulture that gorges himself on dead and rotten meats, an owl that affects a petulant omniscience, and a vampire that sucks the blood of the victim until he leaves it bloodless. And this libelous article concludes with the asseveration in substance that the plaintiff has been 'weighed in the balance and found wanting' - 'Mane, Tecel, Phares.'

"That this editorial is malicious and injurious goes without saying. Almost every line thereof teems with malevolence, ill will, and wanton and reckless disregard of the rights and feelings of the plaintiff; and from the very nature and number of the charges therein contained the editorial is necessarily very damaging to the plaintiff.

"That this editorial, published as it was by the nine defendants, tends to impeach the honesty and reputation of the plaintiff and publishes his alleged defects, and thereby exposes him to public hatred, contempt, and! ridicule, is clearly seen by a bare reading of the editorial.

"It suffices to say that not a line is to be found in all the evidence in support of these malicious, defamatory, and injurious charges against the plaintiff; and there was at the trial no pretense whatever by the defendants that any of them are true, nor the slightest evidence introduced to show the truth of a solitary charge; nor is there any plea of justification or that the charges are true, much less evidence to sustain such a plea.

"In the opinion of the court 'Birds of Prey,' when read and considered in its relation to and connection with the other articles libelous and defamatory in nature, published of and concerning the plaintiff by these nine defendants anterior and subsequent to the publication of this article, and having reference to the same subject matter as shown by the evidence, is one of the worst libels of record. It is safe to say that in all the court reports of the Philippine Islands, or of Spain, of England, or the United States, there is not to be found a libel case in which there is a more striking exemplification of the spirit of hatred, bad faith, evil motive, mischievous intent, actual malice, nefarious purpose, base malignity, or gross malevolence.

"It is proper to observe' also that since the beginning of this attack on the plaintiff in the year 1906 down almost to the present time, so far from there being any apology, retraction, or effort to repair the injury already done as far as lay in the power of the defendants, the persecution, wrong, and tortious injury to the plaintiff have been steadily kept up and persisted in, without the slightest abatement of the malevolent spirit.

"There has been neither retraction, apology, nor reparation; per contra, the libel has been repeated, reiterated, and accentuated, and widely and extensively propagated by these nine defendants through the columns of their said paper and otherwise; and it appears from the evidence that especial effort has been made by these same defendants to give as much publicity as possible to the libelous and defamatory words used of and concerning the plaintiff in said editorial.

"Through their instrumentality and persistency in asserting and reasserting its truth, this diabolical libel has been spread broadcast over the Philippine Islands and to other parts of the world. In said criminal case No. 4295 some of these nine defendants pleaded the truth of the charges; and in Exhibit A-Q is to be found this language: 'The defense will adduce its evidence demonstrating the truth of every one of the facts published.

"In their said paper of the 11th of January, 1909, there is published this statement:

" 'The brief period of time allowed us by the court, at the request of our counsel, to gather evidence which we are to adduce in our effort to demonstrate the truth of the accusations that we have formulated in the article which is the subject of the agitation against us, having expired, the trial of the case against our director has been resumed.' (See pp. 63 and 67 of the evidence.)

"And about the same time they also declared in their said paper that 'there is more graft than fish in the rivers

of Benguet' And this in the year of our Lord 1909! the persecution having begun in 1905; thus indicating that there is to be no 'let-up' or cessation of the hostile attitude toward the plaintiff or the vilification of his name and assaults upon his character, much less a retraction or an apology, unless drastic means and measures are made use of to the end that there may be no further propagation of the libel, or asseveration, or reiteration of its truth.

"This article 'Birds of Prey' charges the plaintiff with malfeasance in office and criminal acts, and is therefore libelous per se. It in substance charges the plaintiff with the prostitution of his office as a member of the Civil Commission of the Philippine Islands and Secretary of the Interior of said Islands for personal ends. It is charged also substantially that plaintiff in his official capacity wasted the public funds for the purpose of promoting his own personal welfare, and that he violated the laws of the Philippine Islands and the ordinances of the city of Manila.

"In its essence he is charged with taking part in illegal combinations for the purpose of robbing the people with the object of gain for himself and for others; with being a bird of prey, a vulture (buzzard), an owl, and a vampire that sucks the blood of the victim (meaning the people) until he leaves it bloodless; that is to say, robs the people, until he leaves them wretched and poverty-stricken, deprived of all worldly possessions; and lastly, that he, the plaintiff, like Belshazzar, has been weighed in the balance and found wanting as a high Government functionary; all of which charges are false and malicious and without any foundation whatever in fact, as the evidence fully demonstrates.

"It is also a matter of fact, and the court so finds, that said defamation was written and published that it might be understood, and it was understood, by the public officials of the Government and the people of the Philippine Islands in general, and wherever else said newspaper may have circulated and been read, as charging the plaintiff with the tortious and criminal acts and conduct charged in said editorial as hereinbefore specified and interpreted.

"The court finds it also true that, besides assailing the integrity and reviling the reputation of the plaintiff, said nine defendants, in publishing said libel, did so with the malicious intention of inciting the Filipino people to believe that the plaintiff was despotic and corrupt and unworthy of the position which he held, and for this reason to oppose his administration of the office in his charge as Secretary of the Interior, and in this way they endeavored to create enormous difficulties for him in the performance of his official duties, and to make him so unpopular that he would have to resign his office as a member of the Civil Commission of the Philippines and Secretary of the Interior.

"It is also true that the said nine defendants, by means of said libel, and other like false statements in their said newspaper, have been deliberately trying to destroy the confidence of the public in the plaintiff and to incite the people to place obstacles in his way in the performance of his official duties, in consequence of which the plaintiff has met with many difficulties which have greatly increased his labors as a public official.

"It further appears from the evidence that not only has an effort been made by these nine defendants to give as much publicity as possible to the charges, but in order that said defamation should attract the attention of the public, they published the same under a heading in large, bold and showy type, so that it might be easily seen and read by all the subscribers and readers of said paper.

"In full view of all the evidence, therefore, it is clearly seen that every essential allegation of the complaint is true substantially as therein claimed, and that the whole of the said editorial relating to the misconduct and bad character of the plaintiff is false and without the slightest foundation in fact. Not a scintilla of evidence was introduced in support of any injurious charge made therein against the plaintiff, to say nothing, of the plaintiff's evidence that each and every charge of malfeasance therein contained is false, and without reference to whether a failure to plead the truth admits the falsity of the charge.

"The evidence shows no 'special' or 'actual pecuniary damage and none is alleged in the complaint. Two other

kinds of damages, however, are claimed, to wit, general damages for injuries to the feelings and reputation of the plaintiff and additional work to which he has been put by the conduct of the defendants, which are laid in the sum of P50,000, and 'punitive,' exemplary, or vindictive damages, 'as a warning to the defendants,' or as expressed in Act 277 of the Philippine Commission, 'as a just punishment to the libelers and an example to others,' which are laid in the same sum of P50,000.

"The nine defendants being liable to the plaintiff for damages, the next question to be decided is what amount of damages should be awarded the plaintiff for the injury to his reputation and feelings and this being a proper case for punitive damages, the further question is, what sum shall be awarded as a just punishment to these nine libelers and as an example to others. In neither of these cases is there any precise measure of damages.

"In determining the amount to be awarded in the first instance it is proper to consider the previous character, influence, reputation, standing, official position, hope of advancement, prospect of promotion, and social status of the plaintiff and his family, and all the circumstances connected with the case.

"The plaintiff is a man in the prime of life, holding, as he has held for the last ten years an important, responsible, lucrative, high and exalted position of trust and honor in the service of the Government of the United States, in the Philippine Islands, without a blotch on his family escutcheon, so far as the evidence shows, and with an untarnished reputation as a man, as a citizen, and as a Government official.

"He is a man of honesty, integrity, and high social position; a man of learning, famous as a scientist, and scientific achievements and scholarly attainments, a man of industrious habits, genuine worth, and intellectual force. He has read, studied, traveled, and learned much, and is an author of merit and distinction. He was for a long while a professor in one of the largest and most renowned institutions of learning in the world; he is a man of vast experience, broad and liberal views, and an extensive acquaintanceship, not only in the Philippine Islands, but in the United States and other countries of the world. He was well and favorably received by the people wherever he journeyed previous to this atrocious libel upon his integrity and reputation.

"He has discharged the duties of his lofty official position in a manner that reflects credit upon himself as well as the Government which he represents, and apparently with entire satisfaction to all of his superiors in office and the people generally; and but for this pernicious, outrageous, and highly reprehensible assault upon his good name, fame and reputation, there were prospects of promotion to higher honors. And so far as his personal and private record is concerned it was without a blemish anterior to the time when these unfounded and dastardly aspersions were cast upon it by these nine defendants.

"Indeed, it is only necessary to advert to the testimony of the defense itself to ascertain that the plaintiff is an honorable man, and without a stain upon his character, officially or otherwise. It would be interesting to note here in parallel columns and compare the charges made in 'Birds of Prey' and the testimony of one of the witnesses for the defendants.

"Felipe Buencamino, an intelligent witness for the defense, in his testimony (p. 240) when asked the question, Do you know Mr. Worcester?' he answers, 'Yes, sir; I know him as an honorable man. I also know him as an honest, honorable public official.' In answer to another question he says, 'As I have said, I know Mr. Worcester as a private citizen and as a public official, and my opinion of him is that of an honorable man and an upright official.' And no other witness testified anything to the contrary.

" 'A good name is rather to be chosen than great riches and loving favor rather than silver or gold.'

" 'Who steals my purse steals trash;

* * * *

But he that filches from me my good name,
Robs me of that which not enriches him

And makes me poor indeed.'

"The enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty or property. It is one of those rights necessary to human society that underlie the whole scheme of human civilization.

" 'The respect and esteem of his fellows are among the highest rewards of a well-spent life vouchsafed to man in this existence. The hope of it is the inspiration of youth, and their possession the solace of later years. A man of affairs, a business man, who has been seen and known of his fellowmen in the active pursuits of life for many years, and who has developed a great character and an unblemished reputation, has secured a possession more useful, and more valuable than lands, or houses, or silver, or gold * * *

" 'The law recognizes the value of such a reputation, and constantly strives to give redress for its injury. It imposes upon him who attacks it by slanderous words, or libelous publication, a liability to make full compensation for the damage to the reputation, for the shame and obloquy, and for the injury to the feelings of the owner, which are caused by the publication of the slander or the libel.

" 'It goes further. If the words are spoken, or the publication is made, with the intent to injure the victim, or with criminal indifference to civil obligation, it imposes such damages as a jury (in this case the judge), in view of all the circumstances of the particular case adjudge that the wrongdoer ought to pay as an example to the public, to deter others from committing like offenses, and as a punishment for the infliction of the injury.

" 'In the ordinary acceptance of the term, malice signifies ill will, evil intent, or hatred, while its legal signification is defined to be "a wrongful act done intentionally, without legal justification.' (36 C. C.A., 475.)

"Surely in the case at bar there was a wrongful or tortious act done intentionally and without the semblance of justification or excuse, or proof that the libelous charges against the plaintiff were 'published with good motives and for justifiable ends.'

"But the Legislature and the highest judicial authority of these Islands have spoken in no uncertain words with regard to the rights of the plaintiff in this case; and we need not necessarily turn to the law of libel elsewhere, or the decisions of the courts in other jurisdictions to ascertain or determine his rights.

"In sections 1, 2, 3, 4, 6, and 11 of the Libel Law (Act 277, Philippine Commission) is to be found the law of these Islands especially applicable to this case. Section 1 thereof defines libel. Section 2 provides that every person who willfully and with a malicious intent to injure another publishes, or procures to be published, any libel shall be punished as therein provided. Section 3 provides that an injurious publication is presumed to have been malicious if no justifiable motive for making it is shown. Section 4 provides, among other things, that in all criminal prosecutions the truth may be given in evidence; but to establish this defense, not only must the truth of the matter charged as libelous be proven, but also that it was published with good motives and for justifiable ends; and the presumptions, rules of evidence, and special defenses are equally applicable in civil and criminal actions, according to section 11 of said Act.

"Section 6 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.'

"And section 11 provides as follows:

" 'In addition to such criminal action, any person libeled as hereinbefore set forth shall have a right to a civil

action against the person libeling him for damages sustained by reason of such libel, and the person so libeled shall be entitled to recover in such civil action not only the actual pecuniary damages sustained by him, but also damages for injury to his feelings and reputation, and in addition such punitive damages as the court may think will be a just punishment to the libeler and an example to others. Suit may be brought in any Court of First Instance having jurisdiction of the parties. The presumptions, rules of evidence and special defenses provided in this chapter for criminal prosecutions shall be equally applicable in civil actions under this section.'

"'The proprietor of a printing plant is responsible for publishing a libel. According to the legal doctrines and jurisprudence of the United States, the printer of a publication containing libelous matter is liable for the same.' (Mr. Justice Torres, in U.S. vs. Ortiz, 8 Phil. Rep., 757.) But said section 6 plainly fixes the liability of editors and proprietors of newspapers, and is clear enough for all the purposes of this case.

"Mr. Justice Carson (5 Phil. Rep., 155[1]), speaking for our Supreme Court, says:

" 'When there is an averment in the complaint that the defamatory words used refer to the plaintiff, and it is proven that the words do in fact refer to him and are capable of bearing such special application, an action for libel may be maintained even though the defamatory publication does not refer to the plaintiff by name,'

"And Mr. Justice Willard (12 Phil. Rep., 428[(1)]), for the same high authority, says:

" 'In an action for libel damages for injury to feelings and reputation may be recovered though no actual pecuniary damages are proven.

" 'Punitive damages can not be recovered unless the tort is aggravated by evil motive, actual malice, deliberate violence or oppression.'

"That is to say, if there is evil motive, or actual malice, or deliberate violence, or oppression then punitive damages, or 'smart money,' may be recovered.

"And Justice Carson (U. S. V8. Sedano, 14 Phil. Rep., 838), also says:

" 'Actual or express malice of an alleged libelous publication may be inferred from the style and tone of the publication.

" 'The publication of falsehood and calumny against public officers or candidates for public office is specially reprehensible and is an offense most dangerous to the people and to the public welfare.

" 'The interests of society require that immunity should be granted to the discussion of public affairs, and that all acts and matters of a public nature may be freely published with fitting comments and strictures; but they do not require that the right to criticise public officers shall embrace the right to base such criticism upon false statements of fact, or to attack the private character of the officer, or to falsely impute to him malfeasance or misconduct in office.'

"And there are almost numberless English and American authorities in perfect harmony with these decisions of our Supreme Court too numerous indeed to be cited here; and it is not necessary.

"Among the leading cases, however, in the United States, is that of Scott vs. Donald (165 U. S., 58) and cases therein cited. In this case the court says: 'Damages have been defined to be the compensation which law will allow for an injury done, and are said to be exemplary and allowable in excess of the actual loss when the tort is aggravated by evil motive, actual malice, deliberate violence or oppression,' which is in entire harmony with Justice Willard's decision hereinbefore cited.

"And quoting from the decision in Day vs. Woodworth (13 Howard, 371) the same high court says:

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

"It thus clearly appears that the facts established in the case at bar are more than sufficient to bring it within the rule of law here laid down by the highest judicial authority.

"Section 11 of the Libel Law expressly allows general damages; and Mr. Justice Willard, in *Macleod vs. Philippine Publishing Company*,[1] says:

" 'The general damages which are allowed in actions of libel are not for mental suffering alone, but they are allowed for injury to the standing and reputation of the person libeled, and the common law of England and America presumed that such damages existed without proof thereof from the mere fact of publication of the libel.' "

"In *Day vs. Woodworth*, the Supreme Court of the United States recognized the power of a jury in certain actions in tort to assess against the tortfeasor punitive damages. Where the injury has been inflicted maliciously or wantonly, and with circumstances of contumely, or indignity, the judge or jury, as the case may be, is not limited to the ascertainment of a simple compensation for the wrong committed against the aggrieved person.

" 'The public position of the plaintiff, as an officer of the Government, and the evil example of libels, are considerations with the jury (here the judge) for increasing damages.' (*Tillotson vs. Cheetham*, 3 Johns, 56.)

" 'The character, condition, and influence of the plaintiff are relevant on the matter of the extent of damages.' (*Littlejohn vs. Greely*, 22 How. Prac, 345; 13 Abb. Prac, 41, 811.)

" 'Where a publication is libelous, the law presumes that it was made with malice - technical, legal malice, but not malice in fact - and the amount of damages depends in a large degree upon the motives which actuated the defendants in its publication; and in such cases the law leaves it to the jury (here the judge) to find and return such damages as they think right and just, by a sound, temperate, deliberate and reasonable exercise of their functions as jurymen.' (*Erber vs. Dun*, (C. C.) 12 Fed., 526.)

" 'Actions of libel, so far as they involve questions of exemplary damages, and the law of principal and agent; are controlled by the same rules as are other actions of tort. The right of a plaintiff to recover exemplary damages exists wherever a tortious injury has been inflicted recklessly or wantonly, and it is not limited to cases where the injury resulted from personal malice or recklessness of the defendant. It follows that the owner of a newspaper is as responsible for all the acts of omission and commission of those he employs to edit it. and manage its affairs, as he would be if personally managing the same.' (*Malloy vs. Bennett*, (C. C.) 15 Fed., 371.)

" 'The fact that a publication, libelous per se, was made without any attempt to ascertain its correctness is sufficient to justify a finding that defendant committed libel with a wanton indifference, and with actual malice sufficient to sustain exemplary damages.' (*Van Ingen vs. Star Co.*, 1 App. Div., 429, 37 K Y., 114.)

" 'The court is not authorized to set aside a verdict for \$45,000 in an action for libel, where it appears that plaintiff was persistently persecuted in the columns of defendant's newspaper, and that he and his family were held up to public contempt and ridicule, and defendants withdraw from the case after failing to establish a plea of justification.' (*Smith vs. Times Co.*, (Com. p. 1) 4 Pa. Dist. Rep., 399.)

" 'In considering the amount which the defendant shall pay, on this account (exemplary damages) the turpitude of his conduct and his financial ability are only considered; and such consideration is not in view of the injury or distress of the plaintiff, but in behalf of the public; the wrongful act is regarded as an indication of the actor's vicious

mind - an overt deed of vindictive or wanton wrong, offensive and dangerous to the public good. This is the view of those damages which generally prevails.' (Sutherland on Damages, vol. 2, p. 1092, title Exemplary Damages.)

" 'Punitive damages are recoverable not to compensate the plaintiff, but solely to punish the defendant. This legal motive would suffer defeat if punitive damages could not be given for a malicious attack on a reputation too well established to receive substantial injury at the hands of a libeler.' (Judge Bond in *Ferguson vs. Pub. Co.*, 72 Mo. App., 462.)

"It may be suggested that the reputation of the plaintiff in this case is too well established to be seriously affected by the defamatory words used of and concerning him in 'Birds of Prey' but it would not be proper to gravely consider this suggestion.

"The conditions in these Islands are peculiar. The minds, thoughts, and opinions of the people are easily molded, and the public is credulous and perhaps frequently too ready to believe anything that may be said in derogation of an American official, especially so when it is published and vouched for by the editorial and business management and proprietors of a newspaper of the prominence, pretensions, circulation, and influence of 'El Renacimiento' which paper is everlastingly proclaiming in its columns that it is being conducted and published solely in the interests of the Filipino people - pro bono publico. There is stronger disposition to give credence to what is said in a newspaper here in the Islands than elsewhere, and when abuse, vilification, and defamation are persistently practiced for a period of several years, without modification or retraction, but with renewed emphasis, the people naturally come to believe in its verity and authenticity.

"It is apparent from the evidence that as an effect of the persecution of the plaintiff by 'El Renacimiento' and the libel published in its columns, the minds of the major part of the Filipino people have been poisoned and prejudiced against the plaintiff to such an extent that he is regarded by these people as odious, dishonest, unscrupulous and tyrannical.

"It may be that his reputation has not suffered so severely with those of his own race, but when it is considered that his vocation has tenfold more to do with the Filipinos than with his own people, that his official duties place him in constant contact with them, and that his success in his chosen career is largely dependent upon their good will and support, it is manifest that the damage to his reputation has been very great and that a large sum of money should be awarded to indemnify him, as far as money can indemnify, for the loss of his good name with the Filipino people.

"The plaintiff came to the Philippine Islands when a young man, full of hope and ambition. Since his arrival he has devoted himself incessantly and indefatigably to the uplifting of the inhabitants of the Archipelago and to the faithful performance, as far as he was able, of the pledges and promises of the Government to the Filipino people. The duties of his particular office were such as brought him in more immediate and constant contact with the people than any other official of the same category in these Islands.

"It is clearly shown that the plaintiff faithfully endeavored to perform, and did efficiently perform, all of these duties, doing everything that he could in an unselfish and disinterested manner for the welfare and development of the country and its people, knowing full well that his career, as well as his advancement, depended largely upon the good will of these people, and, that by incurring their censure or displeasure he would have little hope of success in his chosen work.

"Imagine, therefore, the chagrin, disappointment, mortification, mental suffering, and distress, and perturbation of spirit that would necessarily be occasioned him when he discovered that through the nefarious, studied, and practiced persecution of the paper in question, these high hopes were blasted, and that, instead of having gained

the respect and gratitude of the people for the assiduous labors devoted to their uplifting, they had been made to believe that, instead of being a benefactor, he was a vampire that was sucking their life blood, a corrupt politician who was squandering the money wrung from the people by means of taxation, in schemes for his own personal aggrandizement and enrichment.

"That instead of developing the mineral wealth of the Islands he was taking up all the rich veins and appropriating them in the names of subservient tools, to his own personal use, benefit and profit. That instead of protecting the people from disease, he was, by means of infected meat and for his own personal gain, spreading contagion among them.

"That he united in his person all the bad qualities of the vulture, the eagle, and the vampire; that, in short, he was a 'bird of prey,' with all that is implied in that term in its worst acceptance; that he was a corrupt tyrant, who never lost an opportunity to do the people hurt; that instead of wishing them well and seeking their advancement, he was their enemy, who never lost an opportunity to degrade and humiliate them; that instead of preferring them for office and positions of official trust, he treated them with all sorts of contempt and indifference.

"It is difficult to appreciate the feelings of a refined soul in its contemplation of a result so disastrous, so unjust, and so unmerited.

"It is furthermore shown that when the plaintiff came to these Islands a young scientist he had already won fame in his own country; that he is a fellow of the important scientific associations of the world. His election as a fellow or member of these scientific bodies shows that his labors in the Philippines were the object of solicitude by the prominent scientific and learned men not only of his own race, but in many other civilized countries of the world. Important results were evidently expected of him by them, and it can not be doubted that they expected of him a life honestly devoted to the conscientious discharge of his duties as a trusted public functionary of the American Government in the Philippine Islands.

"And yet he is falsely denounced in the columns of said newspaper to his fellows of these societies as a man who is so absolutely corrupt, so inordinately selfish and avaricious that he has not considered for a moment the duties incumbent upon him; that he has been oblivious to every obligation of trust and confidence, and that he is unworthy of the respect of honest men.

"One witness testified that he read this libel in the public library of the city of Boston. It is furthermore shown that copies of this paper went to Spain, England, and to different parts of the United States; and inasmuch as the plaintiff is a man of prominence in the scientific world, it is to be inferred that his fellows became more or less aware of these heinous charges.

"Thus we find that the plaintiff is here confronted with disappointed ambition and frustrated hopes, and placed in the humiliating attitude of having to explain to his fellows that the charges are untrue, of adducing evidence to clear himself, perhaps never with complete success, of the stain that has been cast upon his reputation by the libelous and defamatory declarations contained in 'Birds of Prey.'

"In view of the foregoing findings of fact and circumstances of the case and the law applicable thereto,

"It is the opinion of the court, and the court so finds, that the plaintiff has sustained damages on account of wounded feelings and mental suffering and injuries to his standing and reputation in the sum of thirty-five thousand (P35,000) pesos, and that he is entitled to recover this sum of the nine defendants named, as being responsible for having written, printed, and published said libel; and that the plaintiff is entitled to recover of them the further sum of twenty-five thousand (P25,000) pesos, as punitive damages, which the court thinks will be a just punishment to these nine libelers and an example to others.

"Wherefore, it is ordered and adjudged that the plaintiff, Dean C. Worcester, have and recover of the defendants, Martin Ocampo, Teodoro M. Kalaw, Lope K. Santos, Manuel Palma, Arcadio Arellano, Angel Jose, Galo Lichauco, Felipe Barretto, and Gregorio M. Cansipit, jointly and severally, the sum of sixty thousand (P60,000) pesos, and the costs of suit, for which execution may issue.

"It is ordered. At Manila, P. L., this 14th day of January, 1910."

From said decision the defendants appealed and made the following assignments of error in this court:

"I.

The court erred in overruling our motions for suspension of this case, in its present state, until final judgment should be rendered in criminal cause No. 4295 of the Court of First Instance of Manila, pending appeal in the Honorable Supreme Court, for libel based also on the editorial, 'Birds of Prey.'

"II.

"The court erred in admitting as evidence mere opinion adduced by counsel for the plaintiff with the intention of demonstrating to whom the editorial, alleged to be libelous, refers.

"III.

"The court erred in giving greater preponderance to the opinions of the witnesses for the plaintiff than to the expert testimony of the defense.

"IV.

"The court erred in declaring the editorial on which the complaint is based to be libelous per se and to refer necessarily to the plaintiff, Dean C. Worcester.

"V.

"The court erred in declaring the defendants Martin Ocampo, Manuel Palma, Arcadio Arellano, Angel Jose, Felipe Barretto, Gregorio M. Cansipit, and Galo Lichauco to be owners of 'El Renacimiento.'

"VI.

"The court erred in not admitting Exhibits 1 and 3 presented by counsel for the defendants.

"VII.

"The court erred in rendering judgment against the defendants.

"VIII.

"The court erred in sentencing the defendants jointly 'and severally' to pay to the plaintiff, Dean C. Worcester, the sum of P60,000.

"IX.

"The court erred in not ordering that execution of the judgment be confined to the business known as 'El Renacimiento' and to the defendant Teodoro M. Kalaw, without extending to property of the alleged owners of said newspaper which was not invested therein by them at its establishment.

"X.

"The court erred in granting damages to the plaintiff by virtue of the judgment rendered against the defendants.

"XI.

"The court, finally, erred in granting to the plaintiff punitive damages against the alleged owners of 'El Renacimiento,' admitting the hypothesis that said editorial is libelous per se and refers to the Honorable Dean C. Worcester."

The theory of the defendants, under the first assignment of error, is that the civil action could not proceed until the termination of the criminal action, relying upon the provisions of the Penal Code in support of such theory. This court, however, has decided in the case of *Ocampo et. al. vs. Jenkins* (14 Phil. Rep., 681) that a judgment in a criminal prosecution for libel, under the provisions of Act 277 of the Civil Commission, constitutes no bar or estoppel in a civil action based upon the same acts or transactions. The reason most often given for this doctrine is that the two proceedings are not between the same parties. Different rules as to the competency of witnesses and the weight of evidence necessary to the findings in the two proceedings always exist. As between civil and criminal actions under said Act (No. 277) a judgment in one is no bar or estoppel to the prosecution of the other. A judgment in a criminal cause, under said Act, can not be pleaded as *res adjudicata* in a civil action. (*Stone vs. U. S.*, 167 U. S., 178; *Boyd vs. U. S.*, 116 U. S., 616, 634; *Lee vs. U. S.*, 150 U. S., 476, 480; *U. S. vs. Jaedicke*, 73 Fed. Rep., 100; *U. S. vs. Schneider*, 35 Fed. Rep., 107; *Chamberlain vs. Pierson*, 87 Fed. Rep., 420; *Steel vs. Cazeaux*, 8 Martin (La.), 318, 13 American Decisions, 288; *Betts vs. New Hartford*, 25 Conn., 185.)

In a criminal action for libel the State must prove its case by evidence which shows the guilt of the defendant, beyond a reasonable doubt, while in a civil action it is sufficient for the plaintiff to sustain his cause by a preponderance of evidence only. (*Ocampo vs. Jenkins* (supra) ; *Reilly vs. Norton*, 65 Iowa, 306; *Sloane vs. Gilbert*, 27 American Decisions, 708; *Cooley on Torts*, sec. 208; *Greenleaf on Evidence*, 426; *Wigmore on Evidence*, sees. 2497, 2498.)

With reference to the second assignment of error above noted, we find that this court has already decided the question raised thereby, in the case of *U. S. vs. Ocampo et al.* (18 Phil. Rep., 1).

During the trial of the cause the plaintiff called several witnesses for the purpose of showing that the statements made in said alleged libelous editorial were intended to apply to the Honorable Dean C. Worcester, Secretary of the Interior. The defendants duly objected to these questions and excepted to the ruling of the court admitting them.

In the case of *Russell vs. Kelley* (44 Cal. 641, 642) the same question was raised and the court, in its decision, said:

"The rule laid down in 2 *Stockey 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 witnesses who knew the parties and circumstances and who can state their judgment and opinion upon the application and meaning of the terms used by the defendant; It is said that where the words are 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."

Mr. Odgers, in his work on *Libel and Slander* (p. 567), says:

"The plaintiff may also call at the trial his friends or others acquainted with the circumstances, to state that, in reading the libel, they at once concluded 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." (See also *Falkard's Stockey on Libel and Slander*, 4th English edition, 589.)

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. The lower court committed no error in admitting the opinion of witnesses offered during the trial of the cause. 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 person libeled is of the very 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 correctness of the opinion of the witnesses as to the identity of the person meant in the libelous publication may always be tested by cross-examination. (*Enquirer Co. vs. Johnston*, 72 Fed. Rep., 443; 2nd Greenleaf on Evidence, 417; *Nelson vs. Barchenius*, 52 Ill., 236; *Smith vs. Miles*, 15 Vt, 245; *Miller vs. Butler*, 6 Gushing (Mass.), 71.)

It is true that some of the courts have established a different rule. We think, however, that a large preponderance of the decisions of the supreme courts of the different States is in favor of the doctrine which we have announced here.

We are of the opinion that assignments of error Nos. 3, 4, and 7 may fairly be considered together, the question being whether or not the evidence adduced during the trial of the cause in the lower court shows, by a preponderance of the evidence, that the said editorial was libelous in its character. Here again we find that this question has been passed upon by this court in the case of *U. S. vs. Ocampo et al.* (18 Phil. Rep., 1), and we deem it unnecessary to discuss this question¹ again, for the reason that the evidence adduced in the present cause was practically the same, or at least to the same effect, as the evidence adduced in the cause of *U. S. vs. Ocampo et al.* It is sufficient here to say that the evidence adduced during the trial of the present cause shows, by a large preponderance of the evidence, that said editorial was one of the most pernicious and malicious libels upon a just, upright and honorable official, which the courts have ever been called upon to consider. There is not a scintilla of evidence, in the entire record, notwithstanding the fact that the defendants from time to time attempted to make a show of proving the truthfulness of the statements made in said editorial, which in any way reflects upon the character and high ideals of Mr. Dean C. Worcester, in the administration of his department of the Government.

With reference to the fifth assignment of error, to wit: That the court erred in holding that the defendants, Martin Ocampo, Manuel Palma, Arcadio Arellano, Angel Jose, Felipe Barretto, Gregorio M, Cansipit, and Galo Lichauco, were the proprietors of "El Renacimiento," the lower court said:

"Much time was consumed also in adducing evidence to show that none of the twelve defendants were the owners of 'El Renacimiento' and 'Muling Pagsilang' but that six of them had originally contributed their money as a patriotic donation to the Filipino people, and that Martin Ocampo simply held the money and property of the paper as trustee for this people, and that the paper was being devoted exclusively to philanthropic and patriotic ends, and that Galo Lichauco had agreed to contribute to the same ends but had not done so.

"This proposition," said the lower court, "in the light of the evidence, is so preposterous as, to entitle it to little, if any, serious consideration. To ask the court to believe it is tantamount to asking the court to stultify reason and common sense. That those seven defendants named contributed their respective sums of money, as shown by the evidence, to the foundation of said newspaper in 1901, for their own personal benefit and profit, is fully and unmistakably established. It is equally well established that Martin Ocampo is and was, not only a part owner, but that he has been and is still the administrator or business manager of said newspaper, and that the other six persons named are shareholders, part owners and proprietors thereof and were such on the said 30th of October, 1908."

Examining the evidence adduced during the cause in the lower court, we find, sometime before the commencement of the present action and before any question was raised with reference to who were the owners of the said newspaper, that the defendant, Arcadio Arellano, in the case of *United States vs. Jose Sedano* (14 Phil.

Rep., 338), testified upon that question as follows:

Q. "Who are the proprietors of 'El Renacimiento'?" - A. "I, Martin Ocampo, Gregorio Mariano (Cansipit), Mr. Barreto, and Galo Lichauco."

Q. "Who else?" - A. "No one else."

Q. "And Rafael Palma - is it not so?" - A. "No, sir; Manuel Palma, the brother of Rafael Palma."

During the trial of the present cause, Arcadio Arellano testified that his declarations in the other cause were true.

It also appears from the record (Exhibit B-J) that in the month of November, 1907, long before the commencement of the present action, "El Renacimiento" in reply to an article which was published in "El Comercio," published the following statement:

"They (it) say(s) that this enterprise" (evidently meaning the publication of "El Renacimiento") "is sustained by Federal money; that we are inspired by Federal personages. We declare that this, besides being false, is calumnious. The shareholders of this company are persons well known by the public, and never at any moment of their lives have they acted with masks on - those masks for which 'El Comercio' seems to have so great an affection. They are, as the public knows: Senores Martin Ocampo, Manuel Palma, Arcadio Arellano, Angel Jose, Galo Lichauco, Felipe Barretto, and Gregorio Cansipit."

Arcadio Arellano also testified during the trial of the present cause that he contributed P760 to the establishment of "El Renacimiento;" that Martin Ocampo contributed the sum of F500; that Mariano Cansipit, Felipe Barretto and Angel Jose contributed the sum of P250 or P500 each; that Galo Lichauco contributed the sum of P1,000 and that Manuel Palma contributed P3,000.

During the trial of the present cause Arcadio Arellano, Martin Ocampo, and Angel Jose testified as witnesses, relating to the ownership of the newspaper called "El Renacimiento." They testified that whatever money they gave for the purpose of establishing said newspaper, was given as a donation, and that they were neither the owners nor coflwners of said periodical. The defendants, Manuel Palma, Galo Lichauco, Felipe Barretto, and Gregorio Cansipit, did not testify as witnesses during the trial of the cause in the lower court. No reason is given for their failure to appear and give testimony in their own behalf. The record does not disclose whether or not the declarations of Arcadio Arellano, in the case of U. S. vs. Sedano (14 Phil. Rep., 338) at the time they were made, were called to the attention of Manuel Palma, Galo Lichauco, Felipe Barretto, and Gregorio Cansipit, as well as the reply to "El Comercio," above noted. Proof of said declarations and publication was adduced during the trial of the cause in the present case, and the attorney of these particular defendants well knew the purpose and effect of such evidence, if not disputed; but, notwithstanding the fact that said declarations and publication were presented in evidence, and notwithstanding the fact that the attorney for the defendants knew of the purpose of such proof, the defendants, Palma, Lichauco, Barretto, and Cansipit, were not called as witnesses for the purpose of rebutting the same. It is a well settled rule of evidence, that when the circumstances in proof tend to fix the liability on a party who has it in his power to offer evidence of all the facts as they existed and rebut the inferences which the circumstances in proof tend to establish, and he fails to offer such proof the natural conclusion is that the proof, if produced, instead of rebutting would swpport the inferences against him, and the court is justified in acting upon that conclusion. (Railway Company vs. Ellis, C. C. A. Reports, vol. 4, p. 454; Commonwealth vs. Webster, 5 Cush. (Mass.), 295; People vs. McWhorter 4 Barb. (N.Y.), 438.)

Lord Mansfield, in the case of Blatch vs. Archer (Cowper, 63, 65) said:

"It is certainly a maxim that all the evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other side to have contradicted."

Mr. Starkey, in his valuable work on evidence (vol. 1, p. 64), lays down the rule that:

"The conduct of a party in omitting to produce evidence in elucidation of the subject matter in dispute, which is within his power and which rests peculiarly within his own knowledge, frequently offers occasion for presumptions against him, since it raises the strong suspicion that such evidence, if adduced, would operate to his prejudice." (Pacific Coast et al. Co. vs. Bancroft-Whitney Co., 36 C. C. A. Reports, 136, 153.)

At the time of the said declarations of Arcadio Arellano in the case of Sedano and at the time of the said publication in reply to "El Comercio," there was no reason for stating anything except the truth: neither does there seem to have been any reason for publishing the fact that the defendants were the owners of "El Renacimiento" unless it was true.

At that time there seemed to be no reason to have it appear that they were donors and public benefactors only. They seemed to be proud of the fact that they were, the owners. The editors, publishers, and managers of "El Renacimiento," at the time the reply to "El Comercio" was published, seemed to be anxious to announce to the public who its owners were. It ("El Renacimiento") had not then realized that it belonged to no one; that it had been born into the community without parentage ;that it had been created a terrible machine for the purpose of destroying the good character and reputation of men without having any one to respond for its malicious damage occasioned to honorable men; that it was a castoff, without a past or the hope of a future; that it was liable to be kicked and buffeted about and persecuted and destroyed without any one to protect it; that its former friends and creators had scattered hither and thither and had disappeared like feathers before a cyclone, declaring, under oath, that they did not know their offspring and were not willing to recognize it in public. It seems to have been a Moses found in the bulrushes, destined by its creators to be a great good among the Filipino people, in teaching them to respect the rights of persons and property; but, unlike its Biblical prototype, it became, by reason of its lack of parentage, an engine of destruction let loose in the State, to enter the private abode of lawabiding citizens and to take from them their honor and reputation, which neither it nor the State could restore. To rob a man of his wealth is to rob him of trash, but to take from him his good name and reputation is to rob him of that which does not make the robber richer and leaves the person robbed poor indeed.

The appellants tried to make it appear that the money which they gave for the establishment of "El Renacimiento" was a pure donation. They claim that it was a donation to the Filipino people. They do not state, however, or attempt to show what particular persons were to manage, control, and direct the enterprise for which the donation was made. A donation must be made to definite persons or associations. A donation to an indefinite person or association is an anomaly in law, and we do not believe, in view of all of the facts, that it was in fact made. A donation must be made to some definite person or association and the donee must be some ascertained or ascertainable person or association.

A donation may be made for the benefit of the public, but it must be made, in the very nature of things, to some definite person or association. A donation made to no person or association could not be regarded as a donation in law. It could not be more than an abandonment of property. Of course where a donation is in fact made, without reservation to a particular person or association, the donor is no longer the owner of the thing donated nor responsible, in any way, for its use, provided that the object, for which the donation was made, was legal. A person does not become an owner or part owner of a church, for example, to the construction of which he has made a donation; neither is he responsible for the use to which said edifice may be applied. No one disputes the fact that donations may be made for the public use, but they must be made to definite persons or associations, to be administered in accordance with the purpose of the gift.

We can not believe, in the light of the whole record, that the defendants and appellants, at the time they presented the defense that they were donors simply and not owners, had a reasonable hope that their declarations as to said

donation, given in the manner alleged, would be believed by the court.

After a careful examination of the evidence brought to this court and taking into consideration the failure of the other defendants to testify, we are of the opinion that a preponderance of such evidence shows that the defendants, Martin Ocampo, Manuel Palma, Arcadio Arellano, Angel Jose, Galo Lichauco, Felipe Barretto, and Gregorio M. Cansipit, were the codowners of the newspaper known as "El Renacimiento," at the time of the publication of the said alleged libel.

With reference to the sixth assignment of error above noted, to wit: That the lower court committed an error in not admitting in evidence the judgment of acquittal of the defendant, Lope K. Santos, rendered in the criminal cause, we are of the opinion that the refusal to admit said evidence in the civil cause was not error. The fact that the evidence in the criminal cause was insufficient to show that Lope K. Santos was guilty of the crime charged, in no way barred the right of the person injured by said alleged libel to maintain the present civil action against him. (Ocampo vs. Jenkins, 14 Phil. Rep., 681.) The criminal action had to be sustained by evidence showing the culpability of the defendant beyond a reasonable doubt, while in the civil action it is sufficient to show that the defendants injured the plaintiff by the alleged libelous publication, by a preponderance of the evidence only. (Greenleaf on Evidence, sec. 426; Cooley on Torts, 208; Reilley vs. Norton, 65 Iowa, 306; Sloane vs. Gilbert, 23 Am. Dec, 708.)

In the case of Steel vs. Cazeaux (8 Martin, La., 318; 13 American Decisions, 288), the supreme court of Louisiana said:

"A judgment of conviction in a criminal prosecution cannot be given in evidence in a civil action."

In the case of Betts et al. vs. New Hartford (25 Conn., 180) Mr. Justice Ellsworth said (in a case where a judgment in a criminal case was offered in evidence):

"A conviction in a criminal case is not evidence of facts upon which judgment was rendered, when those facts come up in a civil case, for this evidence would not be material; and so the law is perfectly well settled. (1 Greenleaf on Evidence, sees. 536, 524; 1 Phillips on Evidence, 231; Hutchinson vs. Bank of Wheeling, 41 Pa. St., 42; Beausoleil w. Brown, 12 La. Ann., 543; McDonald vs. Stark, 176 Ill., 456, 468.)"

While we believe that the lower court committed no error in refusing to admit the sentence acquitting Lope K. Santos in the criminal case, we are of the opinion, after a careful examination of the record brought to this court, that it is insufficient to show that Lope K. Santos was responsible, in any way, for the publication of the alleged libel, and without discussing the question whether or not the so-called Tagalog edition of "El Renacimiento" and "El Renacimiento" constituted one and the same newspaper, we find that the evidence is insufficient to show that Lope K. Santos is responsible in damages, in any way, for the publication of the said alleged libel.

The appellants discussed the eighth and ninth assignments of error together, and claim that the lower court committed an error in rendering a judgment jointly and severally against the defendants and in allowing an execution against the individual property of said owners, and cite provisions of the Civil and Commercial Codes in support of their contention. The difficulty in the contention of the appellants is that they fail to recognize that the basis of the present action is a tort. They fail to recognize the universal doctrine that each joint tortfeasor is not only individually liable for the tort in which he participates, but is also jointly liable with his tortfeasors. The defendants might have been sued separately for the commission of the tort. They might have been sued jointly and severally, as they were. (Nicoll vs. Glennie, 1 M. & S. (English Common Law Reports), 588.) If several persons jointly commit a tort, the plaintiff or person injured, has his election to sue all or some of the parties jointly, or one of them separately, because the tort is in its nature a separate act of each individual. (1 Chiddey, Common Law Pleadings, 86.) It is not necessary that the cooperation should be a direct, corporeal act, for, to give an

example, in a case of assault and battery committed by various persons, under the common law all are principals. So also is the person who counsels, aids or assists in any way the, commission of a wrong. Under the common law, he who aided or assisted or counseled, in any way, the commission of a crime, was as much a principal as he who inflicted or committed the actual tort. (Page vs. Freeman, 19 Mo., 421.)

It may be stated as a general rule, that joint tort feors are all the persons who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit. They are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves. (Cooley on Torts. 133; Moir vs. Hopkins, 16 Ill., 313 (63 Am. Dec. 312 and note); Berry vs. Flefah, 1st Dill., 67; Smithwick vs. Ward, 7 Jones L. 64; Smith vs. Felt, 50 Barb. (N. Y.), 612; Shep- ard vs. McQuilkin, 2 W. Va., 90; Lewis vs. Johns, 34 Cal., 269.)

Joint tort feors are jointly and severally liable for the tort which they commit. The person injured may sue all of them, or any number less than all. Each is liable for the whole damage caused by all, and all together are jointly liable for the whole damage. It is no defense for one sued alone, that the others who participated in the wrongful act are not joined with him as defendants; nor is it any excuse for him that his participation in the tort was insignificant as compared with that of the others. (Forebrother vs. Ansley, 1 Campbell (English Reports), 343; Pitcher vs. Bailey, 8 East, 171; Booth vs. Hodgson, 6 Term Reports, 405; Vose vs. Grant, 15 Mass., 505; Acheson vs. Miller, 18 Ohio, 1; Wallace vs. Miller, 15 La. Ann., 449; Murphy vs. Wilson, 44 Mo., 313; Bishop vs. Ealey, 9 Johnson (N. Y.), 294.)

Joint tort feors are not liable pro rata. The damages can not be apportioned among them, except among themselves. They can not insist upon an apportionment, for the purpose of each paying an aliquot part. They are jointly and severally liable for the full amount. (Pardrige vs. Brady, 7 111. App., 639; Carney vs. Read, 11 Ind., 417; Lee vs. Black, 27 Ark., 337; Bevins vs. McElroy, 52 Am. Bee, 258.)

A payment in full of the damage done, by one of the joint tort feors, of course satisfies any claim which might exist against the others. There can be but one satisfaction. The release of one of the joint tort feors by agreement, generally operates to discharge all. (Wright vs. Lathrop, 2 Ohio, 33; Livingston vs. Bishop, 1 Johnson (N. Y.), 290; Brown vs. Marsh, 7 Vt., 327; Ayer vs. Ashmead, 31 Conn., 447; Eastman vs. Grant, 34 Vt., 387; Turner vs. Hitchcock, 20 Iowa, 310; Ellis vs. Esson, 50 Wis., 149.)

Of course the courts during the trial may find that some of the alleged joint tort feors are liable and that others are not liable. The courts may release some for lack of evidence while condemning others of the alleged tort feors. And this is true even though they are charged jointly and severally. (Lansing vs. Montgomery, 2 Johnson (N. Y.), 382; Drake vs. Barrymore, 14 Johnson, 166; Owens vs. Derby, 3 Ill., 126.)

This same principle is recognized by Act 277 of the Philippine Commission. Section 6 provides that:

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

In our opinion the lower court committed no error in rendering a joint and several judgment against the defendants and allowing an execution against their individual property. The provisions of the Civil and Commercial Codes cited by the defendants and appellants have no application whatever to the question presented in the present case.

The tenth assignment of error above noted relates solely to the amount of damages suffered on account of wounded feelings, mental suffering and injury to the good name and reputation of Mr. Worcester, by reason of the alleged libelous publication. The lower court found that the damages thus suffered by Mr. Worcester amounted to P35,000. This assignment of error presents a most difficult question. The amount of damages resulting from a

libelous publication to a man's good name and reputation is difficult of ascertainment. It is not difficult to realize that the damage thus done is great and almost immeasurable. The specific amount of damages to be awarded must depend upon the facts in each case and the sound discretion of the court. No fixed or precise rules can be laid down governing the amount of damages in cases of libel. It is difficult to include all of the facts and conditions which enter into the measure of such damages. A man's good name and reputation are worth more to him than all the wealth which he can accumulate during a lifetime of industrious labor. To have them destroyed may be eminently of more damage to him personally than the destruction of his physical wealth. The loss is immeasurable. No amount of money can compensate him for his loss. Notwithstanding the great loss which he, from his standpoint, sustains, the courts must have some tangible basis upon which to estimate such damages.

In discussing the element of damages in a case of libel, the Honorable James C. Jenkins, who tried the present case in the court below, correctly said that, "The enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty or property. It is one of those rights necessary to human society, that underlie the whole scheme of human civilization. The respect and esteem of his fellows are among the highest rewards of a wellspent life vouchsafed to man in this existence. The hope of it is the inspiration of youth and its possession is a solace in later years. A man of affairs, a business man, who has been seen and known by his fellowmen in the active pursuits of life for many years, and who has developed a great character and an unblemished reputation, has secured a possession more useful and more valuable than lands or houses or silver or gold. The law recognizes the value of such a reputation and constantly strives to give redress for its injury. It imposes upon him who attacks it by slanderous words or libelous publications, the liability to make full compensation for the damage to the reputation, for the shame, obloquy and for the injury to the feelings of its owner, which are caused by the publication of the slander or libel. The law goes further. If the words are spoken or the publication is made with the intent to injure the victim or with criminal indifference to civil obligation, it imposes such damages as the jury, in view of all the circumstances of the particular case, adjudge that the wrongdoer ought to pay as an example to the public and to deter others from doing likewise, and for punishment for the infliction of the injury."

As was said above, the damages suffered by Mr. Worcester to his good name and reputation are most difficult of ascertainment. The attorney for the appellants, in his brief, lends the court but little assistance in reaching a conclusion upon this question. The appellants leave the whole question to the discretion of the court, without any argument whatever.

After a careful examination, we are of the opinion that that part of the judgment of the lower court relating to the damages suffered by the Honorable Dean C. Worcester, should be modified, and that a judgment should be rendered in favor of Mr. Dean C. Worcester and against the defendants, jointly and severally, for the sum of P15,000, with interest at 6 per cent from the 23d of January, 1909.

With reference to the eleventh assignment of error above noted, to wit: That the court erred in imposing punitive damages upon the defendants, we are of the opinion, after a careful examination of the evidence, and in view of all of the facts and circumstances and the malice connected with the publication of said editorial and the subsequent publications with relation to said editorial, that the lower court, by virtue of the provisions of Act No. 277 of the Philippine Commission, was justified in imposing punitive damages upon the defendants.

Section 11 of Act No. 277 allows the court, in an action for libel, to render a judgment for punitive damages, in an amount which the court may think will be a just punishment to the libeler and an example to others.

Exemplary damages in civil actions for libel may always be recovered if the defendant or defendants are actuated by malice. In the present case there was not the slightest effort on the part of the defendants to show the existence

of probable cause or foundation whatever for the facts contained in said editorial. Malice, hatred, and ill will against the plaintiff are seen throughout the record. The said editorial not only attempted to paint the plaintiff as a villain, but upon every occasion, the defendants resorted to ridicule of the severest kind.

Here again we find difficulty in arriving at a conclusion relating to the damages which should be imposed upon the defendants for the purpose of punishment. Upon this question the courts must be governed in each case by the evidence, the circumstances and their sound discretion. Taking into consideration the fact that some of the defendants have been prosecuted criminally and have been sentenced, and considering that fact as a part of the punitive damages, we have arrived at the conclusion that the judgment of the lower court should be Modified, and that a judgment should be rendered against the defendants, jointly and severally, and in favor of the plaintiff, the Honorable Dean C. Worcester, in the sum of P10,000, as punitive damages, with interest at 6 per cent from the 23d day of January, 1909.

Therefore, after a full consideration of all of the facts contained in the record and the errors assigned by the appellants in this court, we are of the opinion that the judgment of the lower court should be modified and that a judgment should be rendered in favor of Dean C. Worcester and against the defendants Martin Ocampo, Teodoro M. Kalaw, Manuel Palma, Arcadio Arellano, Angel Jose, Galo Lichauco, Felipe Barretto, and Gregorio M. Cansipit, jointly and severally, for the sum of P25,000 with interest at 6 per cent from the 23d day of January, 1909, with costs, and that a judgment should be entered absolving Lope K. Santos from any liability under said complaint. So ordered.

Carson, Moreland, and Trent, JJ., concur.

CONCURRING

ARELLANO, C. J., and MAPA, J.:

We concur, except with reference to the liability imposed upon Galo Lichauco based on the testimony of one of the defendants, Arcadio Arellano, and an article published in the newspaper itself, "El Renacimiento." In a case against Sedano, Arcadio Arellano said that Galo Lichauco was one of the owners of that newspaper and in the criminal case prosecuted for libel against some of the defendants herein that he was one of the founders. Also, it was asserted in an article in "El Renacimiento" that Galo Lichauco was one of its stockholders.

If these things could be taken as evidence of his right as a partner, coowner or participant in a business or company, it would follow that they could be evidence of an obligation or liability emanating from such business, but it is quite impossible that they be regarded as evidence of such nature, that is, in his favor. Therefore, they can not be held to be sufficient proof against him to conclude that he has contracted an obligation or established a basis for liability, such as that of answering with all his property for the consequences of the act of another. Such person could not on this evidence claim a share of the earnings or profits of the Renacimiento company, because it is inconsistent with all the provisions and prohibitions of law bearing upon the validity and force of such pretended right of participation. He could not be held to be in the situation of the other so-called founders of "El Renacimiento," under article 117 of the Code of Commerce, according to which:

"Articles of association, executed with the essential requisites of law, shall be valid and binding between the parties thereto, no matter what form, conditions, and combinations, legal and honest, are embraced therein, provided they are not expressly prohibited by this code."

There operates in favor of these other so-called founders of "El Renacimiento" the testimony of the real founder and manager thereof, Martin Ocampo, who at the trial admitted that they had subscribed and paid sums of money

to aid him in the business he had projected.

But with reference to Galo Uchauco, Martin Ocampo explicitly stated that he offered to contribute, but did not carry out his offer and in fact paid nothing. It is incomprehensible how one could claim the right or title to share the earnings or profits of a company when he had put no capital into it, neither is it comprehensible how one could share in the losses thereof, and still less incur liability for damages on account of some act of the said company - an unrestricted liability to the extent of all his property, as though he were a regular general partner when he was not such.

If there could be one law for and another against, or, in other words, one for rights and another for obligations, emanating from the same source, as in a contract of partnership, then it might well happen that one could be a partner for assuming obligations, losses and liabilities, and not a partner in the sense of exercising rights and of participation in the earnings and profits of partnership. But the contrary is a legal axiom, and it is impossible to set aside the principle of reciprocity that pervades and regulates in equal manner rights and obligations. Hence it is impossible to reach as a conclusion derived from the evidence set forth that Galo Lichauco is a partner in the Renacimiento company and coowner of the newspaper of that name.

Judgment so rendered would not clothe Galo Lichauco, after he had been sentenced to pay damages for acts of "El Renacimiento," with any title, right, or reason for calling himself a coowner of said business and entitle him to claim a share of any earnings and profits which might be realized in the meantime or in the future. He would not be entitled to register in the mercantile registry on such ground, nor would or could any court oblige the Renacimiento company or Martin Ocampo to regard Galo Lichauco as a partner or coowner.

From the testimony of a single witness, corroborated by a newspaper article, wherein it is asserted that a certain person is a partner or coowner of the Y. M. C. A., the witness believing for a certain amount and the newspaper merely saying that he was a stockholder in that association, offset by the assertion of its president that he was not such, no court is capable of rendering judgment declaring that such person is actually a partner or coowner of the Y. M. C. A., and must pay damages for a culpable action of said association and must in exchange be recognized and admitted as a partner and coowner of the Y. M. C. A. and as a sharer in the earnings, profits and advantages thereof.

Neither could a person be recognized and held out to be the owner of one or more parcels of real estate on the testimony of one witness, the evidence of a newspaper article and the strength of a judgment based upon such testimony and newspaper article, in order that he might be required to pay the land tax and in exchange collect the rents from such property; it is no argument, either pro or con, to say that such person has neither impugned that testimony nor corrected or denied the article published. Should a newspaper publish a list of millionaires and include therein one who is not such, or if a millionaire should figure in a list of paupers, there is no law imposing upon the pauper or the millionaire the duty of denying or correcting the inaccurate report. Neither is there any law that creates the presumption that failure to make such correction implies the truth of what is so asserted. It is not a rational and acceptable rule to infer consequences from the failure to correct (whether proper or not) newspaper statements, and still less when in a judicial action such assertion is not substantiated, as has resulted in the case at bar.

Although Arcadio Arellano may say during a trial, as he has said, once, twice or a hundred times that Galo Lichauco is the proprietor or founder of "El Renacimiento;" although "El Renacimiento" may have asserted extrajudicially, in an article in reply to another newspaper, that Galo Lichauco is one of the stockholders of the business it conducts; yet when its editor on trial testifies that such report had been secured from mere hearsay among his associates in the newspaper office and not from the organizer, manager or administrator of the

newspaper, Martin Ocampo, it can not in justice be concluded that Galo Lichauco is a partner in the business or coowner of the newspaper "El Renacimiento."

DISSENTING IN PART

TORRES, J.:

I concur in the foregoing decision of the majority in regard to the defendants Martin Ocampo and Teodoro Kalaw, but dissent from it with reference to the others - Manuel Palma, Arcadio Arellano, Angel Jose, Galo Lichauco, Felipe Barretto, and Gregorio Cansipit - for they had neither direct nor indirect participation in the act that gave rise to the present suit for damages, nor were they owners or proprietors of the newspaper "El Renacimiento," its press or other equipment. Consequently they are not liable for the damages claimed and should be absolved from the complaint.

With the exception of Galo Lichauco, who did not pay up the sum he subscribed toward the founding of said newspaper, it is undeniable and clearly proven that the other five - Palma, Arellano, Jose, Barretto, and Cansipit - contributed different sums for the object stated. Martin Ocampo was placed at the head of the business and from the funds he took charge of purchased the press and other necessary equipment for printing and publishing said newspaper.

It is not conclusively shown in the record that a company was formed to found and publish "El Renacimiento," and divide the earnings and profits among the partners, through a contract entered into, among them, nor that there was established a community of ownership over the said newspaper, its press and the other equipment indispensable for its publication.

From the fact that the said five individuals contributed, each turning over to Ocampo a certain sum for the purpose of founding, editing and issuing the said newspaper, it is improper to deduce that the contributors formed a company of either a civil or commercial nature, just as it is inadmissible to presume the existence of a company unless it appears that the formation thereof was agreed upon among the partners. Aside from the fact of the contribution, it is not shown in the record that said six contributors had anything to do with acquiring the press, type and other equipment indispensable for getting out the newspaper; that any contract, either verbal or written, as to how and in what manner the publication with its receipts and expenditures should be managed, and in what manner profits should be divided or deficit made up in case of loss; or that at any time meetings were held for discussing the business and dividing the profits, as though they were really in partnership. Up to the time when said newspaper ceased publication, its sole manager, Martin Ocampo, acted freely, just as if he were the absolute owner of the publication, nor does it appear that he ever rendered any report of his acts to those who contributed their money to the founding of "El Renacimiento."

The six contributors mentioned believed in all good faith that it was necessary, expedient and useful for the rights and interests of the inhabitants of the Philippines to found a newspaper and that out of love and duty to their country they ought to contribute from their private fortunes toward the expenses indispensable thereto, and in so doing unconditionally and with liberality they made a genuine gift, each one freely turning over to Martin Ocampo the amount he could spare.

The case comes under article 618 of the Civil Code, which says:

"A gift is an act of liberality by which a person disposes gratuitously of a thing in favor of another, who accepts it."

It is true that Martin Ocampo is not the real donee, but considering that such acts of liberality were executed by said six contributors for the common good of the Filipino people and that it was Martin Ocampo who voluntarily undertook to realize and carry out the perfectly legitimate purpose of the contributors, his acceptance of the sums donated, not having been actually repudiated or disapproved by the community, must be understood to have been made in their name, and thus is fulfilled the requirement of acceptance established by the article of the code cited.

According to this theory the donors, after they had freely and spontaneously parted with the sums donated, could not retain any right over the objects to which these sums were applied, because the donor by his gift voluntarily conveys to the donee his rights of ownership over the thing donated. Therefore the said donors can not in strict logic be regarded as the proprietors of the newspaper "El Renacimiento," its press and equipment, because after having turned over the money to Martin Ocampo, who accepted the commission of carrying out the wishes and purposes of the contributors, they retained no right over the newspaper or the press, fixtures and equipment thereof.

Persons who contribute to the erection of a church or a hospital, in spite of the fact that they freely and liberally give money to parties charged with collecting it, do not therefore retain any right, nor can they be called coowners or coproprietors of the church or hospital constructed, and the receipt or acknowledgment of the sums paid to the parties at the head of the enterprise fulfills the requirement of the law, perfects and brings within the legal pale the donation voluntarily made from motives of piety or benevolence.

Such is the case of the said six contributors, who were animated by love of this country in which they were born. Five gave different sums to Martin Ocampo, and a sixth promised to give something, for the founding of "El Renacimiento," believing in good faith that by their acts they, were rendering a meritorious service to their country, but, notwithstanding the internal moral satisfaction they got, as in the case of the benefactors of a church or hospital, they can never be called coSwners or coproprietors of said newspaper.

If, after the establishment of the newspaper, its staff, editor or manager made bad use of the publication and issued a libelous article, the donors who contributed to the funds necessary for the founding of "El Renacimiento," from the very fact that they are not proprietors of the newspaper or of the press from which it is issued, are not liable for the publication of said article, because they did not participate therein either directly Or indirectly, just as in the criminal case they were not indicted even on the ground that they are members of the company that is alleged to have been formed for the establishment of the said newspaper, "El Renacimiento." But this is a theory which, as we hhave already said, we do not admit, because proof is entirely lacking of the existence of that company wherefrom it is attempted to derive the character of owner attrib- uted to the said donees and the consequent obligation to indemnify the plaintiff for the damages claimed.

After Martin Ocampo had accepted the various amounts proffered by the said Palma, Jose, Arellano, Barretto, and Cansipit, these latter ceased to be the owners of and surrendered all right to the money donated and to the objects that were, acquired therewith for the purpose of establishing the newspaper "El Renacimiento," from which business said five individuals, as also Galo Lichauco, are entirely separated. Therefore they can not incur, jointly and severally with the director and manager of "El Renacimiento," the liability to indemnify the plaintiff for the publication therein of an article constituting libel.

Section 11 of Act No. 277, applicable to the case, prescribes:

"In addition to the criminal action hereby prescribed, a right of civil action is also hereby given to any person libeled as hereinbefore set forth against the person libeling him for damages sustained by such libel, and the person so libeled shall be entitled to recover in such civil action not only the actual pecuniary damages sustained by him but also damages for injury to his feelings and reputation, and in addition to such punitive

damages as the court may think, will be a just punishment to the libeler and an example to others. Suit may be brought in any Court of First Instance having jurisdiction of the parties. The presumptions, rules of evidence, and special defenses herein provided for criminal prosecutions shall be equally applicable in civil actions under this section."

It is certain that Lachauco, who merely promised a certain sum, and each of the other five mentioned, who gave the amounts they could spare, did not write, edit, or publish the libelous article that gave rise to this action, neither did they take part directly or indirectly in writing and publishing said article for the purpose of discrediting the plaintiff, and for this reason there does not in our opinion exist any just or legal ground for bringing against them the corresponding civil action for damages, since the mere fact of having contributed from their respective fortunes to the establishment of the newspaper "El Renacimiento," a contribution made in the nature of a gift, and not for the purpose of forming a company for the sake of dividing among themselves earnings and profits, can not in any way have given rise to or produced the obligation to indemnify the plaintiff and place them on a par with those who have injured him by means of a defamatory article, because in making the gifts of money which they did the said six contributing defendants did not acquire, nor do they retain, any right of property or of participation in the said newspaper, its press and equipment. As it does not appear from the record to have been ascertained or proven that they contributed with bad faith and criminal intention to the founding of a newspaper expressly intended to publish libelous articles, or in so doing that they executed acts prohibited by law or contrary to public morality, those who gave money nine years ago for its establishment are certainly not responsible for the bad use that those who wrote and managed said newspaper made of it, especially when the penal action from which the obligation arises was committed many years later, unless it appears that said original donors had knowledge of or participation in the defamatory acts performed.

For these reasons it follows in our opinion that justice requires that the judgment appealed from with regard to the defendants Galo Lichauco, Manuel Palma, Arcadio Arellano, Angel Jose, Felipe Barretto, and Gregorio Cansipit should be reversed and that they should be absolved from the complaint entered against them for damages, with no special finding as to six-ninths of the costs in both instances. I concur in the decision of the majority with reference to the others - Kalaw, Ocampo, and the rest of the defendants.

[1] Causin vs. Jakosalem.

[(1)] Macleod vs. Philippine Publishing Co.

[{1}] 12 Phil., Rep., 428

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