

ANTONIO M. JIMENEZ, PLAINTIFF AND APPELLANT, VS. FIDEL REYES, DEFENDANT AND APPELLEE.*G.R.No. 8227. March 09, 1914*

Ponente: TRENT, J.

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This is a civil action for libel. The defendant is editor and proprietor of the weekly newspaper called "El Mensajero Catolico," published in the city of Vigan, Ilocos Sur. The plaintiff is also a resident of Vigan, following the profession of attorney at law; he is also a druggist and has operated a drug store in Vigan for the last seventeen years; and he is a councilman of the municipality. On August 29, 1910, the defendant published, in the aforesaid newspaper, an article which is quoted in full below. These facts are alleged in the complaint and expressly admitted in the answer. The article in question follows;

"FATHER THOMPkins ACQUITTED.

"Innocence has triumphed again. Truth and Justice, even in the midst of the passions and miseries of mankind, cannot be trampled under foot when Providence, the Divine Intelligence, intervenes. Lord, the insufferable Protestant, the constant persecutor of the Faith and her ministers, was unable to prove the complaint which he presented, through his attorney, Mr. Antonio Maria Jimenez, before the justice of the peace of Vigan. It could not have been otherwise. The intelligent populace of Vigan had expected this result and they were not mistaken. The judgment handed down by the upright justice of the peace, Mr. Lupo Asurin, is replete with rational logic, which demonstrates his great talent. From a mere perusal of the judgment, one can not help being satisfied with the clearness of expression, the depth of thought, and the simplicity of style. We regret that we can not publish it in its entirety because of its length.

"To the Rev. Father Thompkins and the Order to which he belongs we extend our most cordial congratulations, because Innocence emerged triumphant in spite of the efforts of her enemies to tarnish her, to cover her with filth and human wretchedness. The Catholic Church is also to be congratulated because the acquittal of the Rev. Father Thompkins is her victory against error and falsity, against the mendacity and bad faith of certain miserable creatures who have used their profession to deceive the unwary public and encompass its ruin."

It is alleged that that part of the last sentence of this article following the word "victory" is libelous of the plaintiff.

Moved by the institution of the present action, the defendant published another article in his newspaper on September 5, 1910, which is reproduced below:

"OUR EDITOR AGAIN BEFORE THE COURTS OF JUSTICE.

"Explanation. Our esteemed editor, Mr. Fidel Reyes, has been again charged with libel before the Court of First Instance of this province. The complainant is Mr. Antonio Maria Jimenez, lawyer, druggist, president of the Ilocano University, and councilman of this municipality of Vigan, who asks an indemnity of ten thousand pesos in his complaint for losses and damages. On learning of this complaint, we felt in the bottom of our heart a sincere pleasure, because, beyond it, we perceived another fine opportunity to demonstrate to the public the

sanity of the doctrine for which we stand, and the purity of our motives and intentions.

"The cause of the complaint was our article of last Monday, entitled 'Father Thompkins Acquitted,' and we are going to reproduce it to-day below in its entirety, to satisfy the curiosity of our readers. Here it is:"

[Here is quoted in full the article already quoted above.]

"According to the complaint, it is alleged that our words, 'certain miserable creatures who have used their profession to deceive the unwary public and encompass its ruin,' alluded to Mr. Antonio Maria Jimenez. Why it is thought that those words refer to Mr. Antonio Maria Jimenez is beyond our comprehension, because, frankly, our intention was not to censure him in the least, nor did we endeavor, through them, to reproach any specific individual with respect to his position or professional honor.

"We are the first to recognize the nobility of character, the loftiness of purpose, and the probity in his dealings which Mr. Jimenez has always shown in all his acts, social as well as private and official.

"In his profession as attorney, all Vigan knows and we are the first to admit that Mr. Jimenez is the No. 1, or, in other words, he is the non plus ultra of his colleagues. Mr. Jimenez is not like other shameless lawyers who undertake the despicable business of pettifogging.

"In his profession of pharmacist, all Vigan is aware of and we are the first to admit his great skill in the various drug-chemical combinations, and that Mr. Jimenez has never used his pharmaceutical knowledge to cause harm to anyone; Mr. Antonio Maria Jimenez is not the type of other druggists who, forgetting the high mission with which they have been endowed by God of superiority over their neighbors, use their knowledge to satisfy base passions and execute dreadful plans.

"In his profession as proprietor of the Ilocano University, Mr. Jimenez has never deceived students like certain directors of universities and colleges who issue titles of lawyer or bachelor without even examining the candidates, provided they give them a little money.

"In his capacity of councilman, we are also the first to recognize his activity.

"In his domestic relations, all Vigan knows and we are the first to admit that Mr. Jimenez leads a tranquil and happy life in the midst of his family; because, as a father, he loves his children; and as a husband, affectionate to his wife, because every time he travels he takes with him his sweet helpmate.

"Finally, we did not endeavor to humiliate any specific person by our article, 'Father Thompkins Acquitted,' much less the famous and celebrated lawyer and druggist, Mr. Antonio Maria Jimenez.

"In conclusion, permit us to say that we do not make this explanation with the intention of disavowing any responsibility, criminal or civil, because we are convinced that we have not committed any crime against anyone; rather, we desire to make it plain that our purpose was to oppose the enemies of our Faith, as to whom our pen will never rest in showing them the error into which they have fallen, to the end that they may return to the bosom of the Catholic Church, which is the only true religion."

The publication of this article is alleged in the complaint and admitted in the answer; while the allegation in the complaint that it contains satirical comment of the plaintiff, which exposed him to public contempt and ridicule, was denied, the defendant alleging that the words used should be construed in their true and natural grammatical sense.

We consider that a large part of the testimony introduced at the trial relating to the construction that should be placed on the language of these two article is immaterial. Whether particular witnesses thought that the first article as a whole was defamatory of the plaintiff was wholly incompetent as proof of the libelous or harmless character of the publication, as no attempt was made by either party to prove that the language had a double or ambiguous

meaning. The efforts of both parties have been confined to a mere construction. The plaintiff has attempted to show that the odium of the last paragraph will be attached to him as the attorney for the prosecution in the Thompkins case. The defendant has attempted to show that the criticism in the last paragraph referred to no determinate person, but to those clergy of other religions than his own who resort to deceit in their efforts to inculcate their doctrines and promote, in that manner, the interests of their respective creeds. This is the explanation given in the last paragraph of the second article as amplified in the brief of the defendant on this appeal.

We cannot allow either party to an action for libel to furnish us the meaning of an alleged libelous publication which is plain and unambiguous in its terms. Were we to accept assistance in such a matter, it would be a confession of our inability to understand the official language of this country. This court, and in fact every court in the land, is daily engaged in interpreting the meaning and import of language used by the people in contracts, wills and all sorts of documents which create, establish, or extinguish legal rights and liabilities.

"The terms of a writing are presumed to have been used in their primary and general acceptance, but evidence is nevertheless admissible that they have a local, technical or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly." (Sec. 290, Code Civ. Proc.)

No attempt has been made to show that the words of either of these articles "have a local, technical, or otherwise peculiar signification."

"No ambiguities appear upon the face of the article. Words of common and ordinary import alone are used. No technical or provincial terms are contained therein. The names of all the parties in any way connected with the affair are plainly given. Under such circumstances, the article is libelous per se, or it is not libelous at all. If, by fair inferences and deductions from the article, taken as a whole, it can be said that murder is charged against plaintiff, then the article is libelous per se. And the deductions and conclusions of any number of witnesses looking toward or against plaintiff's contention in this regard could not aid the jury in arriving at the true deduction from the publication. Of necessity, these witnesses simply stood upon equal footing with the jurors, and their deductions from the publication were no more likely to be correct than the jurors' deductions. * * * Notwithstanding the courts have not all trod the same path upon this question, yet of the many cases cited by the respondent we fail to find one that reaches the mark of sustaining the legal admissibility of the evidence here introduced. Indeed, when the article is libelous upon its face, and the party libeled is named upon, the face of the article, there is no room for the introduction of evidence of witnesses as to their understanding of its meaning. * * * We conclude that the common import of the words of this article must be applied to test its libelous character. The publisher's intentions are to be gauged by such import. The reader's understanding of it must be based upon such import; and, that being the fact, it is the sole province of the jury to declare its true import from the words used. By such rule the law fully guards the liberty of the press, and also at the same time defends the reputation of the citizen against defamation." (Hearne vs. De Young, 119 Cal, 670.)

In the recent case of Arnold vs. Ingram (138 N. W., 111, 118), the supreme court of Wisconsin said: "In libel, words are to be understood according to their plain and natural import. Where there is no ambiguity in the language its meaning is for the court to determine."

In Sheibley vs. Ashton (130 Iowa, 195), the court said:

"Where the situation is not controlled by matters of inducement or colloquium pleaded, the question whether a publication relied upon as libelous comes within the statutory definition, and hence is to be taken as actionable per se, is always a question for the court. (18 Am. & Eng. Ency., 990.) Our cases fully recognize the doctrine as thus stated."

As to the effect to be given an alleged libelous article, Townshend on Slander and Libel (sec. 139), has the following to say: "The sense in which the publisher meant the language cannot be material. The dicta which apparently sanction such a rule will, on a comparison with their context, be found in reality to be, not what did the defendant mean, but what properly may he be taken to have meant. How might the language be understood by those to whom it was published. It cannot, therefore, be correct to say that the language is to be construed in the sense in which the publisher intended it to be understood. 'When a party has made a charge that clearly imputes a crime, he cannot afterwards be permitted to say, I did not intend what my words legally imply.'"

In *Tawney vs. Simonson, Whitcomb & Hurley Co.* (109 Minn., 341), the court had the following to say on this point: "In determining whether the specified matter is libelous per se, two rules of construction are conspicuously applicable: (1) That construction must be adopted which will give to the matter such a meaning as is natural and obvious in the plain and ordinary sense in which the public would naturally understand what was uttered, (2) The published matter alleged to be libelous must be construed as a whole."

In applying these rules to the language of an alleged libel, the court will disregard any subtle or ingenious explanation offered by the publisher on being called to account. The whole question being the effect the publication had upon the minds of the readers, and they not having been assisted by the offered explanation in reading the article, it comes too late to have the effect of removing the sting, if any there be, from the words used in the publication.

Considering the first article quoted above in its entirety, what impression would its perusal leave upon the minds of the people who read it as to the attorney who filed the complaint in the *Thompkins* case? From the rather extravagant language used, it is clear that the defendant was exulting over the fact that *Thompkins* was acquitted. The acquittal is referred to as a triumph for the Catholic Church against "the error and falsity, against the mendacity and bad faith of certain miserable creatures who have used their profession to deceive the unwary public and encompass its ruin." For the purpose of determining the effect of this statement we must assume its truth. (*Simons vs. Burnham*, 102 Mich., 189; *Mosnat vs. Snyder*, 105 Iowa, 500.) To whom connected with the *Thompkins* case could it have referred? Obviously, the defendant and the court itself must be eliminated. The question is therefore narrowed down to the complaining witness and his counsel. Both of these parties are specifically mentioned in the publication, the first being one Lord, and the latter the attorney Antonio Maria Jimenez, the plaintiff in the case at bar.

In the first sentence of the last paragraph it is stated that Father *Thompkins* was innocent, and that an attempt was made to cover his innocence with filth and human wretchedness. In the last sentence it is stated that his acquittal was a victory "against error and falsity, against the mendacity and bad faith" of certain persons referred to as "miserable creatures who have used their profession to deceive." Assuming that the complaining witness in the *Thompkins* case was the object of the author's wrath, would the censure and criticism directed at him in the last paragraph of the publication be apt to reflect upon the integrity and professional reputation of his attorney? The vitriolic comment on the merits of the charges against the defendant in that case would lead any ordinary person to believe that the charges had been wholly trumped up, were a tissue of lies, were not made in good faith, and were intended merely to harass and persecute the defendant; in other words, that the moving witness in the case was practically guilty of malicious prosecution, a most reprehensible act, and made a crime by the laws of all civilized countries.

The professional deportment of members of the bar and bench is, perhaps, accorded greater prominence in the forum of public opinion and discussion of the present day than ever before. The legal technicalities and the law's delay, with the consequent defeat of justice in many instances, which had become an unbearable burden of an era scarcely yet relegated to the past, have aroused public opinion. The pettifogger, the shyster, who live by sharp

practices and whose sole consideration in accepting a case is the offered fee, are responsible in no small degree for the present-day criticism of the bar. It is this ilk that have forgotten the oath they took on being admitted to the bar, which reads as follows:

"* * * I do solemnly swear that I will do no false-hood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, but will conduct myself in the office of a lawyer within the courts according to the best of my knowledge and discretion, and with all good fidelity as well to the courts as to my clients. So help me God." (Sec. 18, Code Civ. Proc.)

They are the ones who undertake and press to a conclusion the kind of cases described by the epithets in the Article complained of. It is hardly necessary to say that the attorney who undertakes such a case is detested as heartily as his client by all honest people. We are clearly of the opinion that the connection of any attorney with such a case as that described in the language of the publication in question will not redound to his credit; that, on the contrary, in the language of section 1 of the Libel Law, it will impeach his "honesty, virtue, and reputation," and "thereby expose him to public hatred, contempt, or ridicule." No attempt was made to prove the utter lack of merit in the prosecution of the Thompkins case, alleged in the publication in question. We must assume, therefore, that such comment was altogether unwarranted. The consequence is that no privilege can attach to its publication. The article must be held a libel against the plaintiff, within the purview of section 1 of the Libel Law.

The subject of the second article, it must be conceded, is the private and professional reputation of the plaintiff. The question to be decided is, whether the remarks contained therein are in the nature of a panegyric or a pasquinade. Had the remarks of the defendant been limited to the generalities of the second paragraph following the quotation of the first article, we are clearly of the opinion that there would have been room for no pique on the part of the plaintiff. That paragraph taken alone is hardly anything more than an effusive display of hero-worship. But the article does not stop at this point. It proceeds to take up one by one the various activities of the plaintiff and concludes with a paragraph concerning his private life.

In the first of these the professional ability of the plaintiff as a lawyer is discussed. It is asserted that he is the No. 1, or the non plus ultra of his profession, and that all Vigan knows this. We do not think the average reader would place any attorney upon so high a pinnacle, let alone an attorney whose activities were practically confined to the city of Vigan, Ilocos Sur. And the absurdity of such a shining legal light hiding his great talents in that small city heightens the suggestion that the comment is insincere and intended to ridicule rather than praise the attorney referred to. "Praise undeserved is slander in disguise." (Pope, Epistles of Horace.) Common sense would indicate to the average reader that the author's purpose was not praise, and the next sentence of the paragraph offers him an explanation of the real purpose of the author. It being apparent that the attorney in question could not possibly occupy so high an eminence, the reader, by the second sentence, is abruptly invited to look into the sordidness and baseness of the legal profession, and the unpleasant thought immediately suggests itself that here is where the writer desires to place the subject of the sketch. This conclusion is strengthened, when we remember that pains were taken to reproduce just above the first publication in its entirety, in which Mr. Jimenez is pointed out as the attorney in a prosecution entirely devoid of righteousness.

With this key to the drift of the author's thought, it is easy to interpret the rest of the article. The satirical comment on the plaintiff's professional ability and reputation as a lawyer being so apparent, it is clear to the reader, as he peruses the remainder of the article, that the object of the author in praising the plaintiff, followed with a reminder of the sharp practices of the black sheep among druggists and directors of universities, is to convey the impression that he is, in those phases of his activities, what has been so pointedly suggested of him as an attorney. Finally, the pseudoattempt to prove plaintiff's affection for his wife by the assertion that he always takes her with him on all

his travels, coupled with the information that she is "sweet," can hardly be considered as anything but a gibe at an eccentricity of the plaintiff. The constant repetition, in these paragraphs, that "all Vigan knows and we are the first to recognize" the various worthy and amiable traits of plaintiff's character, and the studied arrangement in each paragraph of praise of the plaintiff followed by dispraise of the seamy side of each of the pursuits in which he is engaged, put at rest any doubt as to the real purpose of the writer. We are clearly of the opinion that this, article also tends to expose the plaintiff to public contempt, hatred, and ridicule.

The proof introduced by the plaintiff as to injury to his business as a result of the libelous publications of the defendant is not definite enough upon which to base an award of actual pecuniary damages. The first libel was published on August 29, 1910. The clerk of the court testified that in May, 1910, plaintiff had appeared in no cases; in June he had appeared in one case only. On September 16 he had appeared in one case. The trial was held on November 1, 1910. In his own behalf, plaintiff testified that he had appeared in about ten civil cases and four or five criminal cases during the then term of court. He testified that his business in the justice of the peace court of Laoag had practically ceased since the libel was published, as had also his business in Cagayan. So far as the volume of business done by the plaintiff in the Court of First Instance is concerned, the fact that he appeared in only one case from August 29 to the date of the trial, a period of two months, does not tend to prove a falling off in his business, when it is remembered that during July and August, a like period just preceding the trial, his business in the court was also limited to one case. While he testifies in his own behalf that his business in Laoag and Cagayan has practically been destroyed by the publication of the libel, no statement is given as to its value. Nor does he attempt to say how much his business in the Court of First Instance was worth. Obviously, both value and volume are necessary to any intelligent estimate of damage to the business of a professional man. We cannot, therefore, allow him anything for this item.

Notwithstanding that plaintiff has failed to establish actual pecuniary damages, he may recover under section 11 of Act No. 277 damages for injury to his feelings and reputation. These are generally referred to as general damages. The English rule is stated in *Odgers on L. & S.* (5th, ed., p. 372), as follows:

"General damages are such as the law will presume to be the natural or probable consequence of the defendant's conduct. They arise by inference of law, and need not therefore be proved by evidence. Such damages may be recovered wherever the immediate tendency of the words is to impair the plaintiff's reputation, although no actual pecuniary loss has in fact resulted.

"Such general damages will only be presumed where the words are actionable per se. If any special damage has also been suffered, it should be set out on the pleadings; but, should the plaintiff fail in proving it at the trial, he may still recover general damages."

How nearly this approaches the American rule may be judged from the following quotation from *Fenstermaker vs. Tribune Pub. Co.* (13 Utah, 532; 35 L. R. A. 611) :

"If the publication was false, the plaintiff was entitled, in the absence of allegation and proof of special damage, to such general damages as the law would presume to be the natural or probable consequence of the defamatory words. These damages arise by inference of law, and need not be proved by evidence. Such damages may be recovered wherever the immediate tendency of the libelous words is to impair the party's reputation, although no actual pecuniary loss has in fact resulted. (3 Sutherland, Damages, 2d ed., pars. 1204-1206; Newell, Defamation, Slander, and Libel, p. 838 et seq.; *Wilson vs. Fitch*, 41 Cal., 363-386.)"

In considering damage to reputation there must be taken into account the publicity given to the publication, the extent to which it tends to expose the plaintiff's reputation to public hatred, contempt, or ridicule, and the social and business standing of the parties. In estimating damages for injured feelings there should be considered the manner of the publication, that is, whether the method of publication tends to add ignominy to the natural effects

of the publication. Also, those factors which enter into the assessment of damages for injury to reputation must influence the injury to plaintiff's feelings. Plaintiff's feelings, in this sense, are considered to be the mental suffering, shame, and humiliation experienced by him as a result of the libel.

While the statement of these abstract rules for the ascertainment of damages to feelings and reputation is practically free from difficulty, their application to particular cases is a difficult matter. In England and America the measure of damages is left entirely to the jury. The following comment from *Graham & Waterman on New Trials* (second ed., p. 451), as quoted in *Minter vs. Bradstreet Co.* (174 Mo., 444), explains the attitude of courts in those countries with reasonable clearness:

"The reason for holding parties so tenaciously to the damages found by the jury in personal torts is, that in cases of this class there is no scale by which the damages are to be graduated with certainty. They admit of no other test than the intelligence of a jury governed by a sense of justice. * * * To the jury, therefore, as a favorite and almost sacred tribunal, is committed, by unanimous consent, the exclusive task of examining the facts and circumstances, and valuing the injury and awarding compensation in damages. The law that confers on them this power, and exacts of them the performance of this solemn trust, favors the presumption that they are actuated by pure motives, * * * and it is not until the result of the deliberation of the jury appears in a form calculated to shock the understanding and impress no dubious conviction of their prejudice and passion, that courts have found themselves compelled to interpose."

In this jurisdiction all the functions of the Anglo-Saxon jury, except in those few cases wherein assessors sit at the special request of the parties, devolve upon the trial judge. It is not necessary for us to say now whether an assessment of damages found by the trial judge should carry the same or less weight than the findings of a jury for the reason that the plaintiff was allowed no damages in the court below. We are given plenary power, however, to affirm, modify, or reverse all decisions brought to us on appeal, when the evidence is before us; and we are of the opinion that the test to be applied to an award of damages is much the same as that applied to any other finding of fact by the trial judge. Such an award must appear reasonable in view of all the evidence of the case and the presumption of correctness attaching to findings of fact made by a trial court. And when, as in the case at bar, this court is called upon to fix those damages *imprimis*, or when it can not agree with the award made by the trial court, it will endeavor, in accordance with the rules laid down above, to fix the damages of the plaintiff at a reasonable amount. To attempt a more definite formula for the assessment of damages to the feelings and reputation of libeled plaintiffs, would be to invite what it is our purpose to avoid, namely, erroneous bases of calculation. After a consideration of all the evidence of record, we fix the damages to plaintiff's feelings and reputation at P300.

Plaintiff has further asked for punitive or exemplary damages. Plaintiff may prove in aggravation subsequent remarks defamatory of the plaintiff. (*Townshend, L. & S.*, p. 650.) Refusal to retract a libelous publication is evidence of aggravation. It is proper to show the conduct of the defendant from the publication of the libel to the rendition of judgment as evidence of express malice or ill-will. Evidence may be given of antecedent or subsequent libels or slanders to show *quo animo* the words were published (*Odgers, L. & S.*, 5th ed., p. 390). Punitive damages may be given where there is actual malice or a reckless disregard of plaintiff's rights. (Cases digested in 12 Dec. Dig., Libel and Slander, sec. 120 (2).) The authorities are eminently satisfactory and harmonious upon this point, and they are, we believe, applicable to the facts of the present case. The first publication was libelous *per se*. The second publication, a pretended disavowal of the first, was also libelous *per se*, and contains a reproduction of the first publication. No better evidence of express malice and ill-will toward the plaintiff could be afforded than a sham "explanation" that a previous libelous publication did not refer to the plaintiff. Such conduct dispels any doubt as to the original intention of the author, indelibly stamps his opinion of the injured person as contemptuous if not worse, and invites his auditors to share in his opinion. We have also

observed in the perusal of the testimony taken in open court, a degree of acrimony and captiousness in the questions put to the plaintiff concerning his professional ability and his private life, a considerable number of which were put by the defendant himself, entirely inappropriate to the defense of a charge of exposing a fellow man to public contempt and ridicule. For these reasons, exemplary damages should be allowed. We fix these damages at P200.

The judgment appealed from is therefore reversed and total damages are awarded to the defendant in the sum of P500. Without costs.

Carson, J., concurs.

Arellano, C. J., Moreland and Araullo, JJ., concur in the result.

Judgment reversed.

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