

MARIANO PERFECTO, PLAINTIFF AND APPELLEE, VS. FULGENCIO CONTRERAS ET AL., DEFENDANTS. FULGENCIO CONTRERAS AND JULIAN OCAMPO, APPELLANTS.*G.R. No. 8894. December 02, 1914*

Ponente: JOHNSON, J.

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On the 3d day of November, 1910, the plaintiff commenced an action against the defendants in the Court of First Instance of the Province of Ambos Camarines, for the purpose of recovering the sum of P100,000 as damages resulting from an alleged libelous publication.

The complaint alleged that the plaintiff was a citizen of the municipality of Nueva Caceres, Province of Ambos Camarines, and was, at the time of the commencement of the action, governor of said province.

The complaint alleged that the defendants were the proprietors, directores, redactores, editores, administradores, and socios of a bisemanal newspaper called "El Camarinense" which newspaper was published in the Spanish and Bicol languages and circulated in the Province of Nueva Caceres, in Manila, and in almost all provinces and municipalities. The complaint set out in full extracts from said newspaper published on several dates. The first on the 9th of June, 1910, was entitled "El Rabudo Affair." The second was published on the 14th of July, 1910, and was entitled "Balance Semestral." The third was published on the 4th of August, 1910, entitled "Consumatum Est." The fourth was published on the 4th of August and was entitled "Gobierno de Parientes

The complaint also contained further allegations relating to the alleged libelous publications in said newspaper on the 20th and 28d days of October, 1910.

The defendants, Fulgencio Contreras and Julian Ocampo, each answering for himself, filed a general and special denial. The special denial admitted said publications and alleged that they were true and were published in good faith, with good intentions and with justifiable ends and in compliance with their legal, moral, and social duty. They also alleged that said publications were privileged.

The defendants Mariano de la Rosa, Vicente Rodriguez, Frank Silva-Netto, Juan San Buenaventura, Hugo Camps, and Leon Reyes, each answering for himself, alleged that they had not written or published, neither had they participated in said publication of the said alleged libelous articles contained in the complaint.

Upon the issues thus presented the cause was brought on for trial. After hearing the evidence, the Honorable Percy M. Moir, judge, rendered a decision on the 12th day of February, 1918. The decision contains all of the material allegations of the complaint, together with a very careful analysis of the proof adduced during the trial of the cause. The lower court found that the evidence against the said Mariano de la Rosa, Vicente Rodriguez, Frank Silva-Netto, Juan San Buenaventura, Hugo Camps, and Leon Reyes was not sufficient to support the facts alleged in the complaint and therefore absolved said defendants from any liability under the complaint. The lower court found from the evidence adduced during the trial of the cause that the defendants Fulgencio Contreras and Julian

Ocampo were responsible for the publication of the alleged libelous matters and sentenced them jointly and severally to pay to the plaintiff the sum of P12,000, as damages done to his reputation and fame, as well as the sum of P3,000 as punitive damages, and to pay the costs.

From that sentence the defendants Fulgencio Contreras and Julian Ocampo appealed to this court and made the following assignments of error:

"1. The court erred in denying the motion of the defendants, Fulgencio Contreras and Julian Ocampo, in which they prayed that he should not sit in this case because the said court had sentenced the said defendants in the two criminal actions for libel which were brought against them by reason of the same writings and articles upon which the plaintiff bases his right of action in the present cause, and because the trial court had already formed an opinion adverse to the defendants in this case.

"2. The court erred in deciding that the articles complained of as libelous are so in themselves and because this honorable Supreme Court had already decided that they were.

"3. The court erred in failing to make a finding of the facts upon which he based his belief and decision that the said articles are libelous.

"4. The court erred in deciding that the only question he had to decide was that relating to the damage and prejudice occasioned to the plaintiff as related in his complaint.

"5. The court erred in deciding that the damages occasioned to the plaintiff's reputation, fame and feelings could be estimated, as he did estimate them, at P12,000 Philippine currency.

"6. The court erred in sentencing the defendants to pay punitive damages and in estimating these latter at P3,000 Philippine currency.

"7. The court erred in sentencing the defendants, Fulgencio Contreras and Julian Ocampo, jointly and severally to pay to the plaintiff P15,000 Philippine currency, and costs."

With reference to the first assignment of error, we find that the error assigned therein was merely a challenge to the qualification of the judge to try the cause. Upon the question of disqualification of judges, we find that section 8 of the Code of Procedure in Civil Actions provides when a judge may be disqualified. Such disqualification seems to be as follows:

First. When the judge is pecuniarily interested.

Second. When the judge is related to either of the parties within the sixth degree of consanguinity or affinity, computed according to the rules of Civil Law.

Third. When he has been counsel for the parties.

Fourth. Where he had presided in the inferior court and where his rulings or decisions are the subject of review.

Said section 8 further provides that these disqualifications may be waived by the written consent of all the parties in interest, when such written consent is signed by the respective parties and entered upon the record.

Said section 8 further provides that no challenge as to the competency of any official named shall be received or allowed, but if it be claimed that the official is disqualified by the provisions of said section, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be made in writing and filed with the other papers in the case, but no appeal or stay of action shall be allowed from or by reason of his decision in favor of his own competency, until

after final judgment in his court.

From an examination of the objection made by the attorneys to the qualification of the judge in the present case, it may be noted that the objection is not based upon any of the grounds of disqualification stated in said section. The basis of the alleged disqualification was simply that the judge had theretofore tried the same defendants for the crime of libel and that the present action for civil damages was based upon the same alleged libel. The record shows that the lower court made repeated efforts to secure some other judge to try the case. Upon his failure, however, to secure another judge, he proceeded with the trial. There being nothing in law which prohibited him from proceeding with the trial of the cause, we are of the opinion that he committed no error in so doing. (*Jurado & Co. vs. Hongkong & Shanghai Banking Corporation*, 1 Phil. Rep., 395; *U. S. vs. Sy Maco*, 17 Phil. Rep., 565.) Considering the fact that he was not disqualified, by virtue of the provisions of said section 8, from trying the cause, it was his duty to go forward with the trial. (*Joaquin vs. Barretto*, 25 Phil. Rep., 281.) It being, therefore, his legal duty to proceed with the trial, a reversal of the judgment upon the ground that he did proceed, would be unwarranted. The question whether or not the result of the first trial created a prejudice in the mind of the court which resulted in his failure to properly appreciate the weight of the evidence adduced during the trial of the present cause, will be considered when we come to examine the sufficiency of the evidence adduced. We find no reason for reversing or modifying the sentence of the lower court based upon the first assignment of error.

With reference to the second assignment of error, to wit, that the evidence did not show that the defendants were guilty of the crime of libel, it will be noted that during the trial of the present cause (*R. G. No. 8894*), by agreement, the proof which had theretofore been presented in causes Nos. 7897[1] and 7898[2] was presented in the present cause. Therefore the only proof which we have before us upon the question whether or not the defendants were guilty of the crime of libel is the proof which had been theretofore presented in said criminal cases. Upon a consideration of the proof in said other cases, the lower court found that the facts showed, beyond a reasonable doubt, that the defendants were guilty of the crime of libel. From that decision the defendants appealed to this court, and this court, upon a full consideration of such proof, also found that the said facts constituted the crime of libel. Upon a reexamination of the same proof adduced during the trial of the present cause, we find no reason for modifying our conclusions heretofore given in said causes Nos. 7897 and 7898. We find no reason for reversing or modifying the decision of the lower court based upon the second assignment of error.

With reference to the third assignment of error, to wit, that the lower court failed to make a finding of facts in his decision, we find, upon an examination of said decision, that it contains a very full and complete analysis of the facts adduced during the trial of the cause. The lower court set out in full the publications constituting the crime of libel, and showed in detail how said publications were libelous. We find no reason for modifying the decision of the lower court based upon the third assignment of error.

With reference to the fourth assignment of error, in view of the fact that the action was brought for damages resulting from an alleged libel, that being the only purpose of the action, it is difficult to see how the lower court committed an error in his decision when he said that the only question which he had to resolve in the action was that relating to the damage and prejudice occasioned to the plaintiff. There is nothing in the fourth assignment of error which makes it necessary to modify the decision of the lower court.

With reference to the fifth assignment of error, it may be said that the amount of damage done to the reputation, fame, and feelings of a person libeled is one of the most difficult questions which the courts have to decide, for the reason that there is seldom ever any tangible evidence by which such damage can be accurately and mathematically measured or estimated. Courts must take into consideration the standing and reputation of the person libeled in the community in which he lives, together with many other circumstances and relations, which are almost impossible of definition. The damage resulting can not be mathematically ascertained. Courts must do

the best they can in an effort to be just to all the parties. The damage resulting from the libeling of a man living in a sparsely settled community, with no political or social relations, even though he might be equally aggrieved, would not be equal to the damage suffered under the same kind of a libel by one living in a thickly settled community, with a high standing socially and politically. In either case, however, the exact amount of damage suffered can not be accurately computed. The amount which the courts must fix in such a case, after having reached the conclusion that the publication was libelous, is largely dependent upon the opinion and discretion of the court. It is not difficult to realize, however, that the damage done to one's reputation and feelings by a libel such as the present, is great and almost immeasurable. The specific amount of damages, however, 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 covering the amount of damages in such cases. It is difficult to include all of the facts and conditions which enter into the measure of such damages. The difficulty, however, in arriving at the actual damages occasioned by a libel to a man's reputation and fame, does not disentitle him to have an attempt made to assess such damages. (*Wakeman vs. Wheeler, etc., Co.*, 101 N. Y., 205; *Beeman vs. Banta*, 118 N. Y., 538; *Swain vs. Schieffelin*, 134 N. Y., 471; *U. S. vs. Beham*, 110 U. S., 338; *Howard vs. Stillwell & B. Manufacturing Co.*, 139 U. S., 199.)

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 that destroyed may be eminently of more damage to him personally than the destruction of his physical wealth or health. He may prize his good name more than even his physical wealth or his health. The loss is immeasurable. No amount of money can compensate him for his loss. (*Worcester vs. Ocampo*, 22 Phil. Rep., 42.) 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 and underlies the whole scheme of civilization and stable government. The respect and esteem of a man's neighbors are among the highest rewards of a well spent life vouchsafed to man in this existence. The hope of the good esteem of one's neighbors and associates is the inspiration of youth and its possession is a solace in later years. A man of affairs who has been seen and known by his fellow men in the active pursuits of life for many years and who has developed a great character and an unblemished reputation, has acquired a possession more useful and more valuable to most men than the possession of lands or houses or silver or gold. The law recognizes the value of such a reputation and imposes upon him who attacks it by slanderous words or libelous publication, the liability to make full compensation for the damage done.

In the present case the defendants in their answer alleged that the publications alleged to be libelous were true. The proof, however, adduced during the trial of the cause, failed to sustain that allegation. In many of the States of the Union the courts have held that in an action for libel where the defendant attempts to prove the truthfulness of the libelous allegations and fails, that the allegation is a repetition of the libel and justifies the courts in increasing the damages resulting from the original libel. The effect of such allegation in the answer and the failure to sustain the same as affecting the damages, however, is not raised in the present case.

The lower court sentenced the defendants to pay to the plaintiff the sum of P12,000, as the amount of damage done to his good name and reputation. After a careful examination of the evidence brought to this court, we are of the opinion that the judgment of the lower court imposed upon the defendants, jointly and severally to pay to the plaintiff the sum of P12,000 and the costs, should be modified and that a judgment should be entered against the defendants, jointly and severally, to pay to the plaintiff the sum of P2,000.

With reference to the sixth assignment of error, the appellants allege, in effect, that the lower court committed an error in rendering a judgment against them, jointly and severally, for the sum of P3,000 as punitive damages. The right of the courts to impose punitive damages is expressly recognized by the Libel Law (Act No. 277). The

courts have the same difficulty in arriving at the exact amount of the punishment which should be imposed as punitive damages, which they have in arriving at the exact amount of damages done to reputation, etc. Considering the fact that each of the defendants has heretofore been sentenced to pay a fine of P1,000 as a result of the criminal action for the same libel, and considering that sentence as a part of the punishment, we are of the opinion that the sentence in the present case, imposing upon them the obligation to pay P3,000, should be modified and that a judgment should be entered against each of them, jointly and severally, to pay to the plaintiff the sum of P 500 and the costs.

With reference to the seventh assignment of error, we find no reason for modifying or reversing the judgment of the lower court for the reason that the judgment imposed by him was imposed upon the defendants jointly and severally. They each are guilty of the acts which caused the damages to the plaintiff. The record shows that they acted together. They are joint tort feorsors. The record fails to show that one was less culpable than the other. Joint tort feorsors 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 liable for the whole damage. Joint tort feorsors are not liable pro rata. The damages can not be apportioned among them, by the courts. The apportionment can only be made by themselves, 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 whole amount. (Forebrother vs. Ansley, 1 Campbell (Eng.), 343; Pitcher vs. Bailey, 8 East, 171; Booth vs. Hodgson, 6 Term Reps., 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. Ely, 9 Johnson (N. Y.), 294 , Pardridge vs. Brady, 7 111. App., 639; Carney vs. Read, 11 Ind., 417; Lee vs. Black, 27 Ark., 337; Bevins vs. Mc- Elroy, 52 Am. Dec, 258; Worcester vs. Ocampo, 22 Phil. Rep., 42.)

For the foregoing reasons and with the modifications above indicated, the judgment of the lower court is hereby affirmed, with costs.

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

[1] 23 Phil. Rep., 513.

[2] Not published.

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